

Revenue Circular DAA002.1 - *Duties Act 1999*

Exemption from Duty—Intergenerational Rural Transfers

CIRCULAR HISTORY

Circular number	Issued date	Dates of effect		Status
		From	To	
DAA002	30 June 2008	1 March 1999	6 August 2015	Republished as DAA002.1 with minor amendments
DAA002.1	7 August 2015	7 August 2015		Current

PREAMBLE

- Under Chapter 11 of the *Duties Act 1999* (the Act), families in the rural sector are eligible to seek relief from duty on the transfer of farming properties to younger generations. The intention is to encourage descendants or younger members of farming families to stay on the farm.
- Section 230 of the Act provides that duty is not chargeable on certain transactions relating to land used for primary production. The exemption is limited by reference to the use of the land, the parties to the transaction, and other requirements contained in guidelines approved from time to time by the Treasurer. The current guidelines are at DI1999-91 at www.legislation.act.gov.au/di/default.asp.
- This circular provides details of how the exemption applies, including guidelines approved by the Treasurer.
- The exemption applies to transactions effected on or after 1 March 1999.

CIRCULAR

Transactions which Qualify for the Exemption

- The following transactions relating to land used for primary production are eligible for an exemption from duty:
 - a transfer of land;
 - an agreement for the sale or transfer of land;
 - a lease of land other than a Crown Lease; and/or
 - a transfer or assignment of a lease or permit in respect of land.
- If the transaction relates to land and other property, the exemption extends to other property that is an integral part of the business of primary production. Examples of this are an entitlement to water, a milk quota and shares in a co-operative.

Land Used for Primary Production

- The land to which the transaction relates must be "land used for primary production", which is defined in section 4 of the Act as land used primarily for:
 - the cultivation of the land for the purpose of selling the produce of the cultivation;
 - the maintenance of animals or poultry on the land for the purpose of selling them or their natural increase or bodily produce;

- (c) the keeping of bees on the land for the purpose of selling their honey;
 - (d) a plant nursery;
 - (e) the propagation for sale of mushrooms, orchids or flowers; or
 - (f) aquaculture.
8. The Commissioner for ACT Revenue must be satisfied that the land was used for primary production by the transferor immediately before the transaction, and that the land will continue to be used for primary production by the transferee (subparagraphs 230 (1) (a) and (b) of the Act).
9. The exemption will not be granted if at the time of the eligible transaction, the primary production business is leased to a person who is not a descendant (subparagraph 3 (d) of the Instrument).

Parties to the Transaction

10. The transferee, lessee or assignee must be a natural person who is a descendant of the transferor, lessor or assignor in accordance with the following table:

Transferor, lessor or assignor	Transferee, lessee or assignee
Natural person	Descendant of the transferor, lessor or assignor
Proprietary limited company	Descendant of a shareholder or shareholders: where the shareholder or shareholders hold(s) the shares beneficially in the company; where the shareholder or shareholders is entitled to vote at meetings of the company; and where the shareholder or shareholders was entitled (as a shareholder(s)) to at least 25% of the assets of the company on winding up, being an entitlement which existed for at least 3 years prior to the date of transfer, lease or assignment, unless the company was incorporated within 3 years of that date.
Trustee of a bare trust for named beneficiaries	Descendant of a named beneficiary of the trust
Trustee of a discretionary trust	Descendant of a person or persons who is or who are entitled (as takers in default of appointment) to at least 25% interest in the capital of the trust fund
Trustee of a private unit trust	Descendant of a unit holder or unit holder's: where the unit holder or unit holders holds the units beneficially in the unit trust; and where the unit holder or unit holders was entitled (as unit holder(s)) to at least 25% of the assets of the unit trust on winding up, being an entitlement which existed for at least 3 years prior to the date of transfer, lease or assignment unless the trust was established within 3 years of that date.

“Descendant”

11. For the purposes of these guidelines, “descendant” means:
- (a) child or stepchild;
 - (b) grandchild;
 - (c) brother or sister;
 - (d) niece or nephew; or the spouse of any of the above.

Other Requirements

12. The transferee must take legal and beneficial ownership of the property.
13. The transferor may retain the farm house and the existing area of land on which the farm house is situated.
14. Application for exemption must be made in the form of a letter to the Commissioner for ACT Revenue addressing each of the issues specified in the guidelines that are relevant to the transaction. The application must also:
 - (a) identify the nature of the eligible transaction and provide all relevant supporting information relating to the transaction;
 - (b) provide an estimate of the value of the land; and
 - (c) where the transferor is a:
 - (i) trustee of a discretionary trust or a trust for a named beneficiary — provide a copy of the stamped trust deed and any amendments;
 - (ii) trustee of a unit trust — provide copies of the stamped trust deed and the latest balance sheet of the unit trust; or
 - (iii) company — provide copies of the memorandum and articles of association, and the latest balance sheet of the company, together with a certified copy of the share register.

Signed

Kim Salisbury
 Commissioner for ACT Revenue
 7 August 2015

Contact the ACT Revenue Office

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