



REVENUE CIRCULAR DAA006.2

Personal Relationship Transfer Exemptions – *Duties Act 1999*

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Introduction

The *Duties Act 1999* (the Act) provides for exemptions from duty for certain transactions resulting from changes to personal relationships. Changes to such relationships may arise from a court order or be pursuant to an agreement.

The *Revenue Legislation Amendment Act 2017*, effective 18 September 2017, simplifies exemption provisions in the Act by removing the requirements to pay nominal duty on transfers related to certain personal relationships for various concessional transactions.

The purpose of this circular is to show how the exemptions apply.

Meaning of ‘partner’

The dictionary to the Act defines ‘partner’ as a person’s spouse or someone with whom the person has a domestic relationship within the meaning of the *Domestic Relationships Act 1994*, section 3. A domestic relationship (see below) includes a domestic partnership, which is defined in the *Legislation Act 2001*, section 169.

Domestic relationship

A ‘domestic relationship’ means a personal relationship between two adults in which one provides personal or financial commitment and support of a domestic nature for the material benefit of the other, and includes a domestic partnership (see below), but does not include a legal marriage.

Domestic partnership

Section 169 of the *Legislation Act 2001* defines the following:

- A domestic partner is a reference to someone who lives with the person in a domestic partnership, and includes a reference to a spouse, civil union partner or civil partner of the person.
- A domestic partnership is the relationship between 2 people, whether of a different or the same sex, living together as a couple on a genuine domestic basis (and includes a reference to a marriage, a civil union and a civil partnership).

Section 169 (2) gives a non-exhaustive list of indicators to decide whether 2 people are in a domestic partnership, as follows:

- the length of their relationship;
- whether they are living together;
- if they are living together—how long and under what circumstances they have lived together;
- whether there is a sexual relationship between them;
- their degree of financial dependence or interdependence, and any arrangements for financial support, between or by them;
- the ownership, use and acquisition of their property, including any property that they own individually;
- their degree of mutual commitment to a shared life;
- whether they mutually care for and support children;
- the performance of household duties;
- the reputation, and public aspects, of the relationship between them.

Transfers pursuant to court orders

No duty is payable on a transfer of dutiable property pursuant to a court order under the *Family Law Act 1975* (Cwlth) (Family Law Act), the *Married Persons Property Act 1986*, or any other court order for the distribution of property consequent on the termination of a domestic relationship.

The transferee must keep a copy of the sealed court order as a record.

Transfers pursuant to a financial agreement, domestic relationship agreement or termination agreement

No duty is payable on:

- financial agreements made under the Family Law Act, section 90B, section 90C or section 90D, that is binding on the parties under that Act;
- part VIIIAB financial agreements made under the Family Law Act, section 90UB, section 90UC or section 90UD that is binding on the parties under that Act; or
- domestic relationship agreements or termination agreements, under the Domestic Relationships Act 1994.

Financial agreements

Duty is not payable on transfers of dutiable property under part 11.2 of the Act (section 232G) if the transfer is made under a financial agreement made under the Family Law Act 1975, sections 90B, 90C or 90D.

The Commissioner for ACT Revenue (the Commissioner) must be satisfied that the transfer is consequent on the dissolution, annulment or irretrievable breakdown of a marriage.

The transferee must retain a record of the financial agreement. The Commissioner may request access to the agreement in order to determine whether duty is payable.

The property transferred must be matrimonial property transferring to the parties to the marriage or children (or the trustee of the children) of the marriage.

Part VIIIAB financial agreements

Duty is not payable on transfers of dutiable property under part 11.2 of the Act (section 232H) if

the transfer is made under a part VIIIAB financial agreement made under the *Family Law Act 1975* (Cwlth), section 90UB, 90UC or 90UD.

The Commissioner must be satisfied that the transfer is consequent on the end of the de facto relationship between the parties.

The transferee must retain a record of the financial agreement. The Commissioner may request access to the agreement in order to determine whether duty is payable.

The property transferred must be relationship property transferring to the parties to the relationship or children (or the trustee of the children) of the relationship.

Domestic relationship agreements or termination agreements

Duty is not payable on transfers of dutiable property under part 11.2 of the Act (section 2321) if the transfer is made under a domestic relationship agreement or a termination agreement within the meaning of the *Domestic Relationships Act 1994*.

The agreement must satisfy the following requirements:

- there is an agreement between the parties to a domestic relationship;
- the agreement is in writing;
- the agreement is signed by the party against whom it is sought to be enforced;
- before the agreement was signed each party was given a certificate by a solicitor to the effect that the solicitor had advised the party, independently of the other party, about:
 - the effect of the agreement on the rights of the parties under the *Domestic Relationships Act 1994*; and
 - the advantages and disadvantages for the party, at the time the advice was given, of making the agreement; and
- the certificates given to each party are endorsed on or accompany the agreement.

The transferee must retain a record of the domestic relationship agreement or termination agreement. The Commissioner may request access to the agreement in order to determine whether duty is payable.

Transfers of an interest in a principal place of residence

Under section 72 of the Act, no duty is payable in relation to a transfer from one partner to another partner of an interest in dutiable property, if the Commissioner is satisfied that the dutiable property is, at the date of the transfer, used as the partners' principal place of residence.

To be exempt, the transfer must result in the property being held by them as:

- joint tenants;
- tenants in common in equal shares; or
- tenants in common in shares that are proportionate to their contribution towards the purchase and improvement of the property or in such proportions as are prescribed.

Statutory declaration required for section 72

For the purposes of determining whether the parties to the transaction satisfy the requirements of this provision, the Commissioner may require statutory declarations from both partners stating that:

- they are or were in a domestic relationship at the relevant date;
- the property being transferred was their principal place of residence on the relevant date;
- the dates that they lived at the property.

The transferee of the transaction remains responsible for keeping proper records of the transaction under the Taxation Administration Act 1999, including evidence that the partners were in a domestic relationship and that the property was used as both partners' principal place of residence as at the date of the transfer. Copies must be provided if the Commissioner requests them.

Proportionate contribution

Where the transfer results in the property being held by the parties as tenants in common in shares that are proportionate to their contribution towards the purchase and improvement of the property, the transferee is responsible for retaining records of the proportionate contribution. The Commissioner may request access to the records in order to determine whether the exemption applies.

Records of cash or monetary contributions made toward the purchase of the property by both parties that predate the intended transfer date must include the following:

- copies of any financial agreements between the parties in respect of that purchase; and
- details of bank accounts from which deposits, regular mortgage payments (if any), or other one-off payments for the purchase or subsequent improvements of the property, were drawn.

The Commissioner may require statutory declarations by both parties attesting to the date and purchase price of the property and their respective contributions.

Evidence of value in relation to personal relationship transfer exemptions

Revenue Circular *Evidence of Value* (DAA010) outlines the situations in which a transferee must prepare evidence of value for a dutiable transaction.

In general, evidence of value must be completed where the parties to the transaction are related or associated, or they are otherwise not dealing at arms' length. Evidence must usually take the form of a property valuation report by a practising valuer.

If an exemption under part 11.2 or section 72 is claimed for a dutiable transaction, no duty will be payable. In these situations, an estimate of the dutiable value can be entered under the appropriate field on the transfer form. Using a free price estimate of the market value obtained from a real estate website or property value report website will be accepted for this purpose.

For more information, see the latest version of Revenue Circular *Evidence of Value* (DAA010).

Signed

Kim Salisbury
Commissioner for ACT Revenue
15 December 2017