



Western Australia

Duties Amendment Act 2022

As at 27 May 2022

No. 16 of 2022

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Duties Amendment Act 2022

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Western Australia

Duties Amendment Act 2022

No. 16 of 2022

An Act to amend the *Duties Act 2008*.

[Assented to 27 May 2022]

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary

1. Short title

This is the *Duties Amendment Act 2022*.

2. Commencement

This Act comes into operation as follows —

- (a) Part 1 comes into operation on the day on which this Act receives the Royal Assent (*assent day*);
- (b) Part 3 comes into operation on 1 July 2022;
- (c) Part 4 is deemed to have come into operation on 13 June 2019;
- (d) the rest of the Act comes into operation on the day after assent day.

3. Act amended

This Act amends the *Duties Act 2008*.

Part 2 — Amendments commencing on day after Royal Assent

4. Section 113 amended

(1) In section 113:

(a) delete “Duty” and insert:

(1) Duty

(b) delete “section 129(b) or (c)” and insert:

section 129

(c) delete “section 130(a).” and insert:

section 130.

(2) At the end of section 113 insert:

(2) A dutiable transaction that is duty endorsed to indicate that duty is not chargeable because of subsection (1) is taken not to be duty endorsed for the purposes of section 42.

5. Section 131 amended

(1) In section 131(1) delete the passage that begins with “it is — ” and ends with “if — ” and insert:

it is in accordance with a matrimonial instrument if —

- (2) In section 131(2) delete the passage that begins with “it is — ” and ends with “if — ” and insert:

it is in accordance with a de facto relationship instrument if —

Note: The heading to amended section 131 is to read:

Transactions in accordance with matrimonial instrument or de facto relationship instrument

6. Section 132 amended

In section 132(1)(b) delete “the transaction was effected by, or”.

Note: The heading to amended section 132 is to read:

Reassessment of transaction if s. 131 becomes applicable

7. Section 228 amended

In section 228 in the definition of *new vehicle* paragraph (b):

- (a) delete “section 246(1) or 247(1),” and insert:

section 246(1)(a) or (3)(a) or 247(1)(a),

- (b) delete “section 246(1)(a)(ii) or 247(1)” and insert:

section 246(1)(a)(ii) or (3)(a) or 247(1)(a)

8. Section 233 amended

- (1) In section 233(1) delete “amount of duty payable on” and insert:

liability to duty of

- (2) In section 233(3) delete “subsection (1)” and insert:

subsection (1), or a reassessment made under section 244B(2) by the CEO,

9. Section 244B inserted

After section 244A insert:

244B. If agreement for purchase of vehicle is terminated or vehicle is returned

- (1) Duty is not chargeable on the grant or transfer of a licence for a vehicle if —
- (a) the application for the grant or transfer of the licence is the result of an agreement for a person (the *purchaser*) to purchase the vehicle from another person (the *seller*); and
 - (b) either —
 - (i) the agreement is rescinded, annulled or otherwise terminated before the purchaser takes possession of the vehicle; or
 - (ii) after the purchaser takes possession of the vehicle, the purchaser returns the vehicle for a refund or a replacement vehicle and the return is accepted;
- and
- (c) any money that is refundable on the occurrence of the relevant event referred to in paragraph (b) is refunded to the purchaser.

- (2) The appropriate reassessment officer must, on application in the approved form, make any reassessment necessary as a result of the operation of subsection (1).
- (3) In subsection (2) —
appropriate reassessment officer means —
- (a) the CEO if —
- (i) the seller is a dealer; and
 - (ii) the application for the grant or transfer of the licence to the purchaser is made by the seller; and
 - (iii) the agreement is rescinded, annulled or otherwise terminated before the purchaser takes possession of the vehicle as referred to in subsection (1)(b)(i);
- or
- (b) otherwise — the Commissioner.
- (4) The time limits in the Taxation Administration Act section 17 apply to a reassessment under subsection (2), whether made by the CEO or the Commissioner.
- (5) If, as the result of a reassessment made by the CEO under subsection (2), it appears that an overpayment of tax has been made, the CEO must refund the tax.
- (6) Despite the Taxation Administration Act section 16(1)(c), the Commissioner is not required to make a reassessment under that section if tax is refundable by the CEO under subsection (5).
- (7) If duty is not chargeable on the grant or transfer of a licence for a vehicle under subsection (1), duty is also not chargeable on a subsequent transfer of the licence

for the vehicle from the purchaser to the seller if the application for the subsequent transfer is made as a result of the occurrence of the relevant event referred to in subsection (1)(b).

10. Section 245 amended

In section 245 delete “section 246(1) or (2) or 247(1)” and insert:

section 246(1)(a), (2)(a) or (3)(a) or 247(1)(a)

11. Section 246 amended

(1) In section 246(1)(b)(i) delete “paragraph (a) or” and insert:

paragraph (a), subsection (3)(a) or

(2) After section 246(2) insert:

(3) Duty is not chargeable on the grant of a licence for a vehicle to a dealer if —

- (a) the dealer acquired the vehicle solely for the purpose of using it as a service demonstrator vehicle; and
- (b) at the time of acquisition, the vehicle has not been used; and
- (c) the application for the grant of the licence is accompanied by, or includes, a declaration in the approved form to the effect that —
 - (i) while the dealer holds the licence the vehicle will not be used for any purpose

- other than a purpose referred to in paragraph (a), subsection (1)(a) or section 247(1)(a); and
- (ii) the dealer understands the effect of sections 248 and 249.
- (4) For the purposes of subsection (3)(a), a vehicle is used as a service demonstrator vehicle if —
- (a) a dealer uses the vehicle to loan to customers while their vehicles are being serviced or repaired, or otherwise undergoing mechanical work undertaken, by or on behalf of the dealer; and
- (b) each loan to a customer referred to in paragraph (a) is made —
- (i) without charge or for a nominal charge only; and
- (ii) for the purpose of demonstrating the vehicle to encourage the customer to purchase a new vehicle of the same make, model and model year from the dealer;
- and
- (c) the vehicle is of a make of vehicles that the dealer is authorised to supply under an agreement or arrangement with the manufacturer or principal distributor; and
- (d) the model year of the vehicle is the latest model year released by the manufacturer in Australia for that model of vehicle.

Note: The heading to amended section 246 is to read:

If licence is for vehicle in dealer's trading stock, demonstrator vehicle or service demonstrator vehicle

12. Section 247 amended

In section 247(1)(b)(i) delete “section 246(1) or (2); and” and insert:

section 246(1)(a), (2)(a) or (3)(a); and

13. Section 248 amended

In section 248:

(a) delete “under section 246(1) or (2)” and insert:

under section 246(1), (2) or (3)

(b) delete “in section 246(1) or (2) or 247(1),” and insert:

in section 246(1)(a), (2)(a) or (3)(a) or 247(1)(a),

14. Section 249 amended

In section 249(1):

(a) delete “under section 246(1) or (2)” and insert:

under section 246(1), (2) or (3)

(b) delete “in section 246(1) or (2) or 247(1)” and insert:

in section 246(1)(a), (2)(a) or (3)(a) or 247(1)(a)

(c) in the Penalty delete “Penalty:” and insert:

Penalty for this subsection:

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15. Section 250 amended

In section 250(6)(b) delete “was effected by or”.

16. Section 254 amended

In section 254 delete “246(1)(b) or (2)(b)” and insert:

246(1)(b), (2)(b) or (3)(c)

17. Section 255 amended

In section 255(b) delete “that duty and penalty tax” and insert:

the amount of duty and penalty tax paid to the CEO, other than any amount refunded under section 244B(5),

18. Schedule 3 Division 10 inserted

After Schedule 3 Division 9 insert:

Division 10 — Provisions relating to *Duties Amendment Act 2022*

55. Terms used

(1) In this Division —

commencement day means the day on which the *Duties Amendment Act 2022* Part 2 comes into operation.

(2) A term used in clause 56(1)(b) or (2) or 57 has the same meaning as it has in Chapter 5.

56. Application of amendments made by *Duties Amendment Act 2022 Part 2*

- (1) The amendments made by the *Duties Amendment Act 2022 Part 2* apply in relation to the imposition of duty on —
 - (a) transactions that occur on or after commencement day; and
 - (b) grants or transfers of licences for vehicles that occur on or after commencement day.
- (2) Despite subclause (1), section 244B applies in relation to the imposition of duty on the grant or transfer of a licence for a vehicle that occurs before commencement day if the relevant event referred to in section 244B(1)(b)(i) or (ii), whichever is applicable, occurs on or after commencement day.

57. Validation of certain reassessments and refunds of vehicle licence duty by CEO before commencement day

- (1) This clause applies if —
 - (a) in the period beginning on 1 July 2008 and ending immediately before commencement day, the CEO made a reassessment determining that no duty was payable on the grant or transfer of a licence for a vehicle; and
 - (b) the application for the grant or transfer was the result of an agreement to purchase the vehicle from a dealer and was made by the dealer on behalf of the purchaser; and
 - (c) the agreement was rescinded, annulled or otherwise terminated before the purchaser took possession of the vehicle.
- (2) The reassessment is, and is taken to have always been, validly made.
- (3) If, as a result of the reassessment, the CEO refunded an amount of duty paid on the grant or transfer of the licence

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for the vehicle, the refund is, and is taken to have always been, validly made.

- (4) The rights, obligations and liabilities of all persons are taken to be, and to have always been, the same as if the reassessment had been validly made.
- (5) Anything done, or purportedly done, before commencement day is as valid and effective, and is taken to have always been as valid and effective, as it would have been if the reassessment had been validly made.

Part 3 — Amendments commencing on 1 July 2022

19. Chapter 2 Part 5 Division 7A inserted

After Chapter 2 Part 5 Division 7 insert:

Division 7A — Prospecting licences and related dutiable property

91DA. Transactions as to prospecting licences or related dutiable property alone not usually dutiable

- (1) Subject to subsections (2) and (3), a transaction is not a dutiable transaction if the only dutiable property the subject of the transaction consists of any or all of the following —
 - (a) a prospecting licence granted under the *Mining Act 1978* section 40;
 - (b) an estate or interest in a prospecting licence granted under the *Mining Act 1978* section 40;
 - (c) a derivative mining right in relation to a prospecting licence granted under the *Mining Act 1978* section 40;
 - (d) a right under an application for a prospecting licence under the *Mining Act 1978* section 41;
 - (e) a part of, or an interest in, a right of a kind referred to in paragraph (c) or (d).
- (2) A transaction referred to in subsection (1) is a dutiable transaction if, under section 37, it is aggregated with a transaction that is a dutiable transaction and the transactions are treated as a single dutiable transaction.

- (3) A transaction referred to in subsection (1) is a dutiable transaction if —
- (a) there is a relevant acquisition for the purposes of Chapter 3 or an agreement for the making of such an acquisition; and
 - (b) the transaction and the acquisition or agreement together form, evidence, give effect to or arise from what is, substantially one arrangement.
- (4) Without limiting subsection (3), unless the Commissioner is satisfied to the contrary, a transaction and an acquisition or agreement together form, evidence, give effect to or arise from what is, substantially one arrangement if —
- (a) the transaction has taken place, and the acquisition or agreement has been made, within 12 months; and
 - (b) in respect of both the transaction and the acquisition or agreement, the person liable to pay duty is the same person (whether that person is the only person liable to pay duty or is liable to pay duty with the same or different persons).
- (5) A reference in subsection (4) to a person liable to pay duty on the transaction is a reference to a person that would be liable to pay duty if the transaction were a dutiable transaction.

20. Section 91H amended

In section 91H(1)(d) delete “endorsed.” and insert:

endorsed or is not a dutiable transaction.

21. Chapter 2 Part 6 Division 4A deleted

Delete Chapter 2 Part 6 Division 4A.

22. Section 147 amended

Delete section 147(3).

23. Section 204E amended

In section 204E(2) delete “endorsed,” and insert:

endorsed or is not a dutiable transaction,

24. Schedule 2 amended

(1) After the heading to Schedule 2 insert:

[s. 3, 9, 26 and 184]

(2) Delete Schedule 2 Divisions 1 and 2 and insert:

Division 1 — General rate

| Dutiable value (<i>rounded down to nearest whole dollar</i>) | General rate of duty |
|-----------------------------------------------------------------------|--------------------------------------------------------------|
| \$0 — \$120 000 | \$1.90 per \$100 or part of \$100 |
| \$120 001 — \$150 000 | \$2 280 + \$2.85 per \$100 or part of \$100 above \$120 000 |
| \$150 001 — \$360 000 | \$3 135 + \$3.80 per \$100 or part of \$100 above \$150 000 |
| \$360 001 — \$725 000 | \$11 115 + \$4.75 per \$100 or part of \$100 above \$360 000 |

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| Dutiable value (<i>rounded down to nearest whole dollar</i>) | General rate of duty |
|-----------------------------------------------------------------------|--------------------------------------------------------------|
| \$725 001 and upwards | \$28 453 + \$5.15 per \$100 or part of \$100 above \$725 000 |

Division 2 — Concessional rates

| Concessional transaction | Dutiable value (<i>rounded down to nearest whole dollar</i>) | Concessional rate of duty |
|--------------------------------------------|-----------------------------------------------------------------------|-------------------------------------------------------------|
| s. 143 First home owners | | |
| If the property includes a home | \$0 — \$430 000 | Nil |
| | \$430 001 — \$530 000 | \$19.19 per \$100 or part of \$100 above \$430 000 |
| If the property does not include a home | \$0 — \$300 000 | Nil |
| | \$300 001 — \$400 000 | \$13.01 per \$100 or part of \$100 above \$300 000 |
| s. 147 Residential or business property | \$0 — \$120 000 | \$1.50 per \$100 or part of \$100 |
| | \$120 001 — \$200 000 | \$1 800 + \$4.04 per \$100 or part of \$100 above \$120 000 |

25. Schedule 3 clause 11A deleted

Delete Schedule 3 clause 11A.

26. Schedule 3 clauses 58 and 59 inserted

At the end of Schedule 3 Division 10 insert:

58. Application of amendments made by *Duties Amendment Act 2022 Part 3*

- (1) The amendments made by the *Duties Amendment Act 2022 Part 3* apply in relation to the imposition of duty on transactions or acquisitions that occur on or after 1 July 2022.
- (2) Without limiting subclause (1) —
 - (a) section 91DA(2) applies in relation to the imposition of duty on a transaction referred to in section 91DA(1) that occurs on or after 1 July 2022, whether the other transaction referred to in section 91DA(2) occurs before, on or after that day; and
 - (b) section 91DA(3) applies in relation to the imposition of duty on a transaction referred to in section 91DA(1) that occurs on or after 1 July 2022, whether the acquisition or agreement referred to in section 91DA(3) occurs before, on or after 1 July 2022.

59. Provisions relating to residential concession

- (1) In this clause —
former Chapter 2 Part 6 Division 4A means Chapter 2 Part 6 Division 4A as in force before its repeal by the *Duties Amendment Act 2022* section 21.
- (2) Despite the repeal of former Chapter 2 Part 6 Division 4A by the *Duties Amendment Act 2022* section 21 —
 - (a) sections 147F and 147G, as in force immediately before 1 July 2022, continue to apply on and after 1 July 2022 to a dutiable transaction that —
 - (i) occurred before 1 July 2022; and

- (ii) was an eligible transaction for the purposes of former Chapter 2 Part 6 Division 4A;
 - and
 - (b) any reassessment made under section 147F, as it applies under paragraph (a), must be made at the applicable concessional rate of duty that applied when the transaction occurred.
- (3) If, immediately before 1 July 2022, a transaction that occurred before that day was both a concessional transaction for the purposes of section 147 and a concessional transaction for the purposes of former Chapter 2 Part 6 Division 4A, then on and after that day —
- (a) the taxpayer may elect for the transaction to be assessed or reassessed under Chapter 2 Part 6 Division 4 or former Chapter 2 Part 6 Division 4A; and
 - (b) the Commissioner may, with the consent or at the request of the taxpayer, treat an application for assessment or reassessment under one of those Divisions as an application for assessment or reassessment under the other Division.
- (4) Subclauses (2) and (3) do not limit the effect of clause 58(1) or the *Interpretation Act 1984* section 37.

**Part 4 — Amendment taken to have commenced on
13 June 2019**

27. Schedule 3 clause 54 inserted

At the end of Schedule 3 Division 9 insert:

54. Provisions about derivative mining rights

- (1) The exemption from duty in section 91F(3) applies despite the acquisition of the previous right not being duty endorsed if that acquisition —
 - (a) occurred before commencement day; and
 - (b) was not a dutiable transaction.
- (2) Section 91G(2) or (3) applies for the purpose of determining the dutiable value of a transfer or agreement referred to in section 91G(1)(c) despite the acquisition of the previous right not being duty endorsed as required by section 91G(1)(b) if that acquisition —
 - (a) occurred before commencement day; and
 - (b) was not a dutiable transaction.
- (3) The exemption from duty in section 91H(1) applies despite the acquisition of the derivative mining right in relation to the prospecting licence or exploration licence not being duty endorsed as required by section 91H(1)(d) (as in force on commencement day) if that acquisition —
 - (a) occurred before commencement day; and
 - (b) was not a dutiable transaction.
- (4) Section 204E(2) applies for the purpose of determining the unencumbered value of a mining tenement despite the acquisition of the derivative mining right not being duty

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Part 4 Amendment taken to have commenced on 13 June 2019

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endorsed as required by that section (as in force on commencement day) if that acquisition —

- (a) occurred before commencement day; and
- (b) was not a dutiable transaction.

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