

Stamp Duty: Family Farm Exemption

July 2018

What is the Family Farm Exemption?

The Family Farm Exemption allows landowners to transfer land used in primary production to relatives without the imposition of stamp duty. This legislation was introduced to encourage younger family members to stay on the farm and continue running the business.

Depending on the state or territory, other property may also be exempt from stamp duty. In NSW the exemption extends to any other property that is an integral part of the business of primary production, such as a water license. In other jurisdictions, the exemption covers personal property used to carry on the business. This may include a parcel of land, used as the owner's residence, which is adjacent to the land used for primary production.

The stamp duty rate that would otherwise apply ranges from 1 to 7 percent depending on the value and location of the property.

The Australian Government is not responsible for the governance of stamp duty. **It is legislated by each state and territory and therefore it is important to highlight that the laws, with respect to stamp duty exemptions, differ between each jurisdiction.**

The following information outlines the exemption, its definitions and some differences from state to state (or territory).

What types of primary production are covered?

For the purpose of the exemption, primary production generally means:

- Cultivating land to sell the produce of the cultivation
- Maintaining animals or poultry for the purpose of selling them or their natural increase or bodily produce
- Keeping bees to sell their honey
- Commercial fishing and the cultivation of aquatic plants or animals
- Cultivating or propagating for sale - plants, seedlings, mushrooms or orchids

The Queensland government also provides a family business concession for prescribed businesses. The current business activities covered under this exemption include (but are not limited to) excavating, printing and publishing, upholstering,

laundry services, restaurants and service stations. The full list of 'prescribed businesses' can be found on the Queensland government website.

If the land is leased and it is used by the lessee for primary production, the Family Farm exemption may still be available. The Tasmanian government allows an exemption, in this instance, provided that the land continues to be used for primary production after the land title transfer.

Who is it available to?

The family farm exemption is generally made available on a transfer between the landowner and their relatives. Relatives include (but are not limited to):

- Child or Step Child
- Brother or Sister
- Brother-in-law or Sister-in-law
- Niece or Nephew
- Spouse of any of the above

Note that in some jurisdictions, the relative is required to have worked in the landowner's business. For example, in South Australia, the relative must have a 'business relationship' for the 12 months prior to the land transfer.



What if the transferee/transferor is a company or trust?

The exemption may still be available even if a company/trust owns the property, or if the transferee would like their company/trust to own the property. The legislation in this area is complex and there are significant differences between each state and territory.

To illustrate this, let's consider the application of the exemption in New South Wales and Tasmania, where the transferor is a company.

In New South Wales, in order for the transferee to access the exemption, they must be related to a shareholder of the transferor who:

- Holds the shares beneficially;
- Is entitled to vote at meetings of the company; and
- Is entitled to 25% of the assets of the company on winding up **and** would have been entitled for the three years prior to the date of transfer.

In contrast, in Tasmania, the transferee must simply be a relative of **all** of the company's shareholders at the time of the transfer.

How can I apply?

Applicants must provide evidence to the commissioner of their state or territory, that the exemption criteria have been met. Application forms have been made available on each government's website.

If you require assistance in making an application or would like to discuss the exemption further, please contact your local Nexia advisor.

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