Duty Exemption – Entity Restructuring

Under Chapter 6 of the *Duties Act 2008*

As at 18 June 2021

Chapter 6 of the *Duties Act 2008* (Duties Act) provides a duty exemption for certain transactions that occur for entity restructuring purposes. The exemption applies to *relevant transactions* between related corporations or unit trust schemes that are a *family*.

An exemption may be automatically revoked if an entity leaves the group within three years after the transaction while holding some of the property acquired under the exempt transaction. The Commissioner may revoke an exemption if satisfied the exempt transaction was part of a scheme or arrangement for a purpose of reducing or avoiding duty or other State taxes.

The Commissioner must be notified about certain transactions that affect the family within three years after the relevant transaction.

Definition of a family

A *parent entity* and its subsidiaries are members of a *family*.

A *parent entity* is a corporation, or the trustee of a unit trust scheme, which directly or indirectly holds at least 90 per cent of the securities of another entity (the subsidiary) and controls at least 90 per cent of the maximum number of votes that may be cast at a general meeting of that subsidiary.

Where all of the securities of an entity are stapled to the securities of another entity, both entities and their subsidiaries are also members of a family.

For the purposes of this fact sheet, a *transferee entity* is:

- for a transfer, agreement to transfer or vesting of dutiable property or vehicle licence – the entity that receives (or will receive) the property or licence
- for a surrender of special dutiable property – the entity to whom the special dutiable property is surrendered
- for a declaration of trust over dutiable property – the entity for whom the property is held on trust
- for the acquisition of an interest in a landholder – the entity whose interest in the landholder increased.

Relevant transactions

The exemption applies to a *relevant consolidation transaction* or a *relevant reconstruction transaction*.

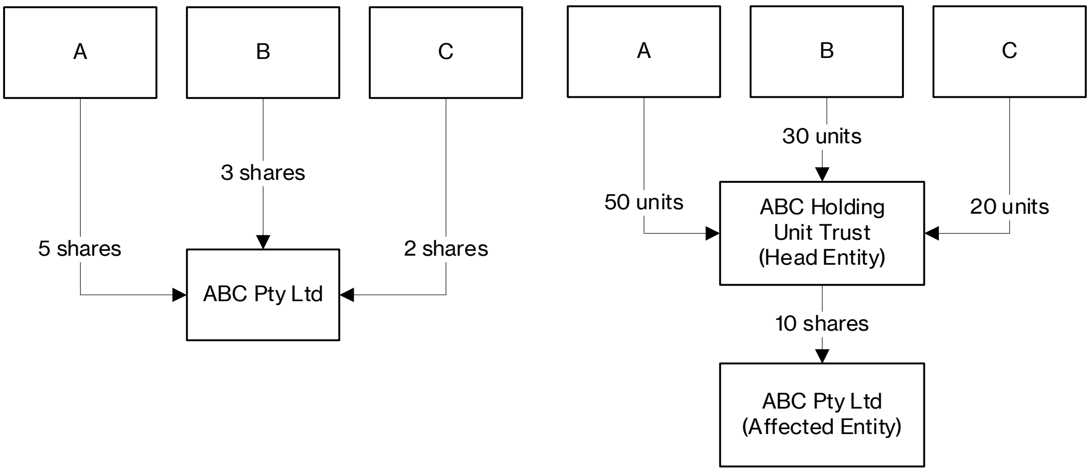
Relevant consolidation transaction

A *relevant consolidation transaction* is a landholder acquisition that is solely for the purpose of forming a family by inserting an entity (the head entity) between a landholder (the affected entity) and its security holders. A transaction is only a relevant consolidation transaction if:

- the only consideration given by the head entity for the share or unit transfers is the issue or transfer of its securities to the person(s) from whom the affected entity's securities were acquired
- immediately prior to the acquisition, the head entity does not hold any dutiable property, vehicles or interest in any other entity and
- immediately after the transaction each person who held securities in the affected entity holds the same proportion of securities in the head entity.

Example

Structure before consolidation *Structure after consolidation*



Relevant reconstruction transaction

A *relevant reconstruction transaction* is any of the following transactions involving members of a family:

- a transfer of, or an agreement to transfer, dutiable property from one member of a family to another
- a declaration of trust over dutiable property under which one member of a family holds the property on trust for another member of the family
- a vesting of dutiable property held by one member of a family in another member of the family
- a surrender of special dutiable property by one member of a family to another[1]
- a transfer of a vehicle licence from one member of a family to another or

---

[1] The surrender of a mining tenement is a relevant reconstruction transaction if one family member surrenders the tenement so that it can be granted to or acquired by another family member.

- an acquisition by a member of a family of an interest in an entity from another member of the family.[2]

The exemption only applies if transfer duty, foreign transfer duty, landholder duty, foreign landholder duty or vehicle licence duty would be payable.

A relevant reconstruction transaction does not include a transaction where:

- any consideration for the transaction is provided by a non-family member other than as a loan to the family member that will be repaid or
- the dutiable property, vehicle or interest in an entity is held subject to a discretionary trust. This condition applies both immediately before and immediately after the transaction.

Application for exemption

Apply for an exemption using Form FDA24 'Relevant Consolidation Transaction' or Form FDA25 'Relevant Reconstruction Transaction' within 12 months after the relevant transaction.

An exemption will not be granted if:

- the Commissioner is satisfied the transaction is part of a scheme for reducing or avoiding duty or tax
- the exemption would be automatically revoked because of a specific notifiable event or
- any member of the family has an outstanding tax liability.

See Revenue Ruling DA 19 'Applying for a Connected Entities Exemption' for the Commissioner's interpretation of relevant terms.

Pre-transaction decision requests

You may request the Commissioner to determine whether a proposed transaction would be exempt if it is entered into. When the proposed transaction is entered into, an application for exemption will be approved if the transaction is the same as that in the original request.

To request a ruling on a proposed transaction, lodge Form FDA24 'Relevant Consolidation Transaction' or Form FDA25 'Relevant Reconstruction Transaction' with the required supporting information.

Ruling on whether exemption would be revoked

You may request a ruling on whether an exemption that has been granted would be revoked if a further transaction occurs by lodging Form FDA26 'Pre-transaction Decision Request' with the required supporting information.

Notify the Commissioner of certain events

Once an exemption has been granted, the Commissioner must be notified if any of the *notifiable events* set out in the list below occur within three years after the date of the transaction. The notification must be made within two months after the date of the event using Form FDA23 'Relevant Consolidation and Reconstruction Transaction – Notice of Notifiable Event'.

---

[2] This includes where one family member acquires an interest in an entity because another family member's interest deceases.

Terms used

The **controlling entity** is:

- for a relevant consolidation transaction – the head entity (the entity interposed between the affected entity and its security holders) and
- for a relevant reconstruction transaction – the parent entity of the *transaction group* either immediately before, or immediately after, the transaction.

A **major holder** of an entity is a person who directly or indirectly holds at least 90 per cent of the securities of the entity.

The **transaction group** is:

- for a relevant consolidation transaction – the head entity and the affected entity and
- for a relevant reconstruction transaction – those family members that are parties to the transaction, as well as any other members of the family necessary to establish that the parties to the transaction are parent entity and subsidiary, or subsidiaries of the same parent entity.

List of notifiable events

- The controlling entity is wound up and does not have a major holder when the winding up begins.
- The controlling entity, or the major holder if the controlling entity is wound up and has a major holder, ceases to directly or indirectly
  - hold more than 50 per cent of the shares or units or
  - control more than 50 per cent of the maximum number of votes that may be cast at a general meeting

  of a member of the transaction group, unless this is a result of
  - any member of the transaction group (other than the controlling entity) being wound up or
  - another member of the family acquiring an interest in a member of the transaction group.
- The entities are members of a family because two entities have their securities stapled, and those securities cease to be stapled.

Revocation of exemption

An exemption can either be revoked automatically when a certain notifiable event occurs or it may be revoked by the Commissioner. [Commissioner's Practice TAA/DA 48 'Revocation of Connected Entities Exemption'](#) explains when a connected entities exemption will be revoked.

Automatic revocation

The exemption for a relevant reconstruction transaction will be automatically revoked if the parent entity ceases to:

- hold 50 per cent or more of the shares or units in the transferee entity or
- is no longer able to control more than 50 per cent of the votes at a general meeting of the transferee entity

within three years after an exempt transaction occurs, unless:

- this occurs because the notifiable event is the result of a public float or listed demerger
- the transferee entity no longer holds any of the property that was exempted
- this results from any member of the transaction group (other than the controlling entity) being wound up or
- this results from another member of the family acquiring an interest in a member of the transaction group.

Once the exemption is revoked, the Commissioner must issue a duty assessment for the transaction. A duty deduction will apply if:

- at the date of the notifiable event, the transferee entity does not hold all the property the subject of the transaction
- landholder duty was payable on the notifiable event to the extent it relates to land and chattels the subject of the transaction.

Example 2

On 1 January 2020, ABC Ltd transfers land valued at $5 million and business assets valued at $5 million to its wholly-owned subsidiary, XZY Pty Ltd. This is a relevant reconstruction transaction that receives an exemption.

On 1 July 2020, 123 Ltd acquires all of the shares in XZY Pty Ltd (triggering acquisition). It pays landholder duty on the acquisition based on the land value of $5 million.

The exemption for the relevant reconstruction transaction is automatically revoked. Duty on the transaction is assessed on the combined value of the land and business assets of $10 million. The duty on this value is reduced by the amount of landholder duty paid on the triggering acquisition.

Revocation by the Commissioner

An exemption can be revoked if the Commissioner determines that a relevant transaction is part of a scheme or arrangement entered into or carried out for a purpose of avoiding or reducing duty, or for the sole or dominant purpose of avoiding or reducing tax other than duty.

If the Commissioner revokes an exemption, an assessment will be made for the duty payable on the relevant transaction. Penalty tax equal to the duty will also apply.

Contact RevenueWA

Web Enquiry	www.osr.wa.gov.au/DutiesEnquiry	**Website**	WA.gov.au
Office	200 St Georges Terrace Perth WA 6000	**Phone**	(08) 9262 1100 1300 368 364 (WA country landline callers)
Postal	GPO Box T1600 Perth WA 6845		

Note: This fact sheet provides guidance only. Refer to the *Duties Act 2008* for complete details.