Revocation of Connected Entities Exemption

This Commissioner's practice explains when a connected entities exemption will be revoked, when penalty tax may apply and how that penalty tax will be remitted.

Background

Exempt transactions

Chapter 6 of the *Duties Act 2008* (Duties Act) provides an exemption for relevant transactions between corporations and unit trust schemes that are members of a *family*.[1] Members of a family are:[2]

- a parent entity and its subsidiaries and
- if all securities of an entity are stapled to the securities of one or more other entities, all of the entities and their subsidiaries.

If a corporation or unit trustee directly or indirectly holds at least 90 per cent of the securities of another entity and controls at least 90 per cent of the maximum number of votes that may be cast at a general meeting of that other entity, the corporation or unit trustee is the parent of the other entity and the other entity is the subsidiary of the parent.[3]

Under section 257(1) of the Duties Act, a *relevant transaction* is:

- a *relevant consolidation transaction* – a landholder acquisition that is solely for the purpose of forming a family by inserting a head entity between an entity and its security holders[4] or
- a *relevant reconstruction transaction* – certain dutiable transactions and foreign dutiable transactions, a transfer of a licence for a vehicle, or the acquisition of an interest in a landholder between members of a family.[5]

The Commissioner cannot grant an exemption for a relevant transaction if satisfied that the exemption would be revoked under section 264A or 265 of the Duties Act.[6]
Sections 266A and 266B of the Duties Act may apply to reduce the duty payable if the exemption is not granted.

1 For further information, refer to the 'Duty Exemption – Entity Restructuring' fact sheet.
2 Duties Act s 258.
3 Duties Act s 257(2).
4 Duties Act s 259.
5 Duties Act s 260.
6 Duties Act s 263(4).

The Commissioner must be notified of certain events

Under section 264 of the Duties Act, the Commissioner must be notified about certain events involving the *transaction group* that occur within three years after the date of an exempt relevant transaction (a *notifiable event*).[7] The *transaction group* means:[8]

- for a relevant consolidation transaction – the head entity and the affected entity
- for a relevant reconstruction transaction – the family members that are parties to the transaction and any other members of the family necessary to establish the relationship between the parties.[9]

A *notifiable event* occurs in relation to a relevant transaction if:

- the controlling entity is wound up and does not have a major holder when the winding up begins[10] or
- the controlling entity or the major holder (if the controlling entity is wound up and has a major holder when the winding up begins) ceases to directly or indirectly:[11]
    - hold more than 50 per cent of the securities of a member of the transaction group or
    - control (either by being able to cast or to control the casting of) 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 or
- where entities are members of a family because the securities of two or more of the entities are stapled – any of the stapled securities cease to be stapled.[12]

There is no notifiable event if the controlling entity ceases to hold more than 50 per cent of the securities or control more than 50 per cent of votes resulting from:[13]

- the winding up of a member of the transaction group other than the controlling entity
- a relevant transaction that is the subject of an application for exemption under section 262 of the Duties Act or
- an acquisition by one member of a family from another member of the family of an interest in an entity, if landholder duty is not chargeable on the acquisition.

The responsible person[14] must notify the Commissioner within two months after the notifiable event.[15]

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7 Duties Act s 264(4).

8 Duties Act s 257(1).

9 This includes all of the intervening entities in a chain of ownership between a parent and its subsidiaries.

10 Duties Act s 264(2)(a).

11 Duties Act s 264(2)(b).

12 Duties Act s 264(2)(c).

13 Duties Act s 264(3).

14 A *responsible person* includes a director or trustee of the entity being wound up or the controlling entity if it ceases to hold more than 50 per cent of the securities of a member of the transaction group: Duties Act s 264(1).

15 Form FDA23 'Relevant Consolidation and Reconstruction Transactions – Notice of Notifiable Event' is available on the website at www.wa.gov.au

Automatic revocation

Under section 264A of the Duties Act, the exemption for an exempt relevant reconstruction transaction is automatically revoked if:

- the notifiable event involves the controlling entity ceasing to directly or indirectly hold more than 50 per cent of the securities and control more than 50 per cent of the votes that may be cast at a general meeting of a member of the transaction group and
- that member holds, or is entitled to, any of the property to which the relevant reconstruction transaction related.

The automatic revocation does not apply if the notifiable event results from a public float[16] or a prescribed demerger of a listed entity.[17]

When a connected entities exemption is revoked under section 264A of the Duties Act, the Commissioner will issue an assessment for the transaction.[18] The duty to be assessed is subject to any reduction that applies under sections 266A and 266B of the Duties Act.[19]

A reassessment after an exemption is automatically revoked must be made before the later of the day that is:[20]

- five years after the day on which the Commissioner granted the exemption or
- 12 months after the day on which notice of the notifiable event was lodged.

Penalty tax equal to the amount of duty on the transaction may also apply.[21]

Reduction of duty under section 266A

Under section 266A of the Duties Act, the duty to be assessed on a relevant reconstruction transaction is to be reduced if:

- either of the following occurs –
  - an exemption is granted for a relevant reconstruction transaction but the exemption is automatically revoked on the occurrence of a notifiable event
  - an exemption application is made in accordance with section 262 for a relevant reconstruction transaction and the exemption would have been granted but for section 263(4)(b), which prevented the Commissioner granting an exemption because there was a notifiable event

and

- at the time of the notifiable event, the relevant entity still holds, or is entitled to, some, but not all, of the property to which the relevant reconstruction transaction relates.

Duty is chargeable only to the extent that the relevant reconstruction transaction relates to the part of the property that is held by, or on trust for, the relevant entity at the time of the notifiable event.[22]

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16 Duties Act s 264A(3)(a). A *public float* means an entity's securities being offered for sale or issue to the public for the purpose of listing the entity on a prescribed financial market or the securities being listed on a prescribed financial market within 12 months after being offered to the public: Duties Act s 257(1).

17 Duties Act s 264A(3)(b). Duties Regulations 2A and 8A prescribe demergers of listed entities for the purposes of s 264A(3)(b).

18 Duties Act s 266(1).

19 Duties Act s 266(1A)(a).

20 Duties Act s 266(6).

21 Duties Act s 266(1A)(b). This penalty tax may be partially or fully remitted under section 29 of the TAA.

22 Duties Act s 266A(2).

Reduction of duty under section 266B

Under section 266B of the Duties Act, the duty assessed on a relevant reconstruction transaction is to be reduced if:

- either of the following occurs –
  - an exemption is granted for a relevant reconstruction transaction but the exemption is automatically revoked on the occurrence of a notifiable event
  - an exemption application is made in accordance with section 262 for a relevant reconstruction transaction and the exemption would have been granted but for section 263(4)(b), which prevented the Commissioner granting an exemption because there was a notifiable event

  and
- the notifiable event results from a relevant acquisition (the 'triggering acquisition') on which landholder duty is chargeable and
- transfer duty or landholder duty is chargeable on the relevant reconstruction transaction in relation to particular land assets[23] and/or chattels (the 'relevant reconstruction transaction property') and
- landholder duty is chargeable on the triggering acquisition in relation to particular land assets and/or chattels (the 'triggering acquisition property') and
- the triggering acquisition property includes all or part of the relevant reconstruction transaction property.

The duty chargeable on the relevant reconstruction transaction is to be reduced by the lesser of:[24]

- the amount of transfer duty or landholder duty that is chargeable on the relevant reconstruction transaction, to the extent that the duty is chargeable in relation to relevant property or
- the amount of landholder duty that is chargeable on the triggering acquisition, to the extent that the duty is chargeable in relation to relevant property.

Relevant property is property that is both triggering acquisition property and relevant reconstruction transaction property. It does not matter if the legal description of the property changed between the relevant reconstruction transaction and the triggering acquisition.[25]

Revocation by the Commissioner

Under section 265 of the Duties Act, the Commissioner may revoke the exemption granted for a relevant transaction if the Commissioner determines the transaction is part of a scheme or arrangement entered into, or carried out, by a person:

- for a purpose of avoiding or reducing any liability of a person for duty or
- for the sole or dominant purpose of avoiding or reducing any liability of a person for tax[26] other than duty.

The exempt relevant transaction does not need to be the transaction on which duty is avoided or reduced.

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23 A *land asset* means land, a fixed infrastructure control right, a derivative mining right and, subject to section 204A, a fixed infrastructure access right: Duties Act s 148.

24 Duties Act s 266B(3).

25 Duties Act s 266B(4).

26 *Tax* is defined in the Glossary to the TAA and includes land tax, payroll tax, and penalty tax.

Penalty tax

Section 266(1A) of the Duties Act provides that where an exemption for a transaction is automatically revoked, the assessment for that transaction may include penalty tax equal to the amount of duty assessed.

Section 266(2) of the Duties Act provides that where the Commissioner revokes an exemption for a transaction, the assessment for that transaction must include penalty tax equal to the amount of duty assessed.

Under section 29 of the *Taxation Administration Act 2003* ('TAA'), the Commissioner may partly or fully remit penalty tax.

Pre-transaction decision requests

A person may ask the Commissioner to decide whether, if a proposed transaction is entered into, it would be exempted. This includes deciding if an exemption would not be granted because it would be revoked under section 265 or 264A.[27]

A person proposing to enter into a transaction may also ask the Commissioner to decide whether, if the transaction were entered into, the Commissioner would revoke under section 265 the exemption granted for a previous relevant transaction.[28]

For more information on pre-transaction decision requests, see Revenue Ruling DA 19.

Commissioner's Practice

Automatic revocation under section 264A

1. Under section 264A of the Duties Act, the exemption for a relevant reconstruction transaction is automatically revoked when a notifiable event results in the transferee or acquirer (relevant entity) leaving the family while it still holds some or all of the property that received an exemption.[29]

2. When this occurs, the Commissioner must issue a duty assessment for the relevant reconstruction transaction. A duty deduction will apply if the relevant entity no longer holds all the property the subject of the relevant reconstruction transaction or if landholder duty was payable on the acquisition that removed the entity from the family.

3. The following examples explain when automatic revocation will occur and how duty will be calculated.

> *Example 1 (No duty reduction)*
>
> On 1 January 2019, Business Owner Pty Ltd transfers its business assets valued at $1 million to its wholly owned subsidiary, Asset Package Pty Ltd. The transfer is a relevant reconstruction transaction that receives an exemption.
>
> Three months later, a third party acquires all of the shares in Asset Package Pty Ltd. At the time of the acquisition, Asset Package Pty Ltd still holds all of the business assets that were acquired from Business Owner Pty Ltd on 1 January 2019.
>
> In this case, the exemption will be automatically revoked and the Commissioner will issue an assessment based on a dutiable value of $1 million.

27 Duties s 261(2).

28 Duties Act s 261(4).

29 This does not include where the notifiable event results from a public float or listed demerger.

Example 2 (Reduction under section 266A)

On 1 July 2019, Company A transfers the following assets to its wholly owned subsidiary, Company B:

- land with a value of $10 million
- business assets with a value of $2 million.

The transfer is a relevant reconstruction transaction that receives an exemption.

On 1 July 2020, Company B disposes of the land to a third party and, following that, Company C acquires all of the shares in Company B. This acquisition is a notifiable event that results in the exemption being automatically revoked.

As Company B only holds the business assets at the time of the notifiable event, duty is chargeable on the previously exempt transaction only to the extent of the business assets of $2 million as at 1 July 2019.

Example 3 (Reduction under sections 266A and 266B)

On 1 July 2019, Company E enters into an agreement to transfer the following assets to its wholly owned subsidiary, Company F:

- land with a value of $10 million
- chattels with a value of $3 million
- business assets with a value of $2 million.

Following this, Company E transfers all of the shares in Company F to another wholly owned subsidiary, Company G. The agreement to transfer and the acquisition of shares in Company F are each a relevant reconstruction transaction that receives an exemption.

On 1 December 2020, Company F disposes of the chattels to a third party but still retains the land (now valued at $11 million) and business assets (now valued at $2.5 million). Immediately following this, Company H acquires all of the shares in Company F. This triggering acquisition is a notifiable event that results in the exemption being automatically revoked.

For the agreement to transfer, the duty chargeable for the previously exempt transaction will be calculated as follows:

- As Company F only holds the land and business assets at the time of the notifiable event, duty is chargeable on the previously exempt transaction only to the extent of the land and business assets with a total value of $12 million as at 1 July 2019 = $611,915.
- Transfer duty chargeable on the previously exempt transaction in relation to relevant property (i.e. land) of $10 million as at 1 July 2019 = $508,915.
- Landholder duty chargeable on the triggering acquisition in relation to relevant property (i.e. land) of $11 million as at 1 December 2020 = $560,415.
- As the transfer duty chargeable on the previously exempt transaction is the lesser amount, the duty assessed is $611,915 - $508,915 = $103,000.

For the acquisition of shares in Company F, the landholder duty chargeable for the previously exempt transaction will be calculated as follows:[1]

- As Company F only holds the land at the time of the notifiable event, landholder duty is chargeable on the previously exempt transaction only to the extent of the land of $10 million as at 1 July 2019 = $508,915.
- Landholder duty chargeable on the previously exempt transaction in relation to relevant property (i.e. land) of $10 million as at 1 July 2019 = $508,915.
- Landholder duty chargeable on the triggering acquisition in relation to relevant property (i.e. land) of $11 million as at 1 December 2020 = $560,415.
- As the landholder duty chargeable on the previously exempt transaction is the lesser amount, the duty assessed is $508,915 - $508,915 = $0.

Example 4 (Appreciation in market value and acquisition of other property after exemption)

On 30 June 2019, Company J transfers Land 1 with a value of $5 million to its wholly owned subsidiary, Company K. This transfer is a relevant reconstruction transaction that receives an exemption.

One year later, Company K buys Land 2 from a third party with a value of $3 million and pays transfer duty for the purchase.

On 1 January 2022, Company K still holds Land 1 now valued at $6 million and also holds Land 2 now valued at $4 million. On the same date, Company L acquires all of the shares in Company K. This triggering acquisition is a notifiable event that results in the exemption being automatically revoked.

The duty chargeable for the previously exempt transaction will be calculated as follows:

- As Company J still holds Land 1 at the time of the notifiable event, duty is chargeable on the previously exempt transaction only to the extent of Land 1 of $5 million as at 30 June 2019 = $251,415.
- Transfer duty chargeable on the previously exempt transaction on Land 1 of $5 million as at 30 June 2019 = $251,415.
- Landholder duty chargeable on the triggering acquisition with Land 1 now valued at $6 million as at 1 January 2022 = $302,915.
- As the transfer duty chargeable on the previously exempt transaction is the lesser amount, the duty assessed is $251,415 - $251,415 = 0.

Example 5 (Depreciation in market value after exemption)

On 30 June 2019, Company X transfers land with a value of $3 million to its wholly owned subsidiary, Company Y. This transfer is a relevant reconstruction transaction that receives an exemption.

On 30 June 2020, Company Y still holds the land, but it is now valued at $2.5 million. On the same date, Company Z acquires all of the shares in Company Y. This triggering acquisition is a notifiable event that results in the exemption being automatically revoked.

The duty chargeable for the previously exempt transaction will be calculated as follows:

- Transfer duty chargeable on the transfer of land with a value of $3 million as at 30 June 2019 = $148,415.
- Landholder duty chargeable on the triggering acquisition with land now valued at $2.5 million as at 30 June 2020 = $122,665.
- As the landholder duty chargeable on the triggering acquisition is the lesser amount, the duty assessed is $148,415 - $122,665 = $25,750.

Revocation under section 265

4. Under section 265 of the Duties Act, a connected entities exemption for a relevant transaction may be revoked if there are reasonable grounds for the Commissioner to determine there was a scheme or arrangement for:

   4.1 a purpose of avoiding or reducing any liability of a person for duty or

   4.2 the sole or dominant purpose of avoiding or reducing any liability of a person for tax other than duty.

5. The Commissioner will not generally revoke a connected entities exemption for a relevant transaction when the relevant entity is removed from the family as the result of a public float or a prescribed demerger. A demerger of an entity that is not prescribed will be considered in accordance with paragraph 6.

6. A decision about whether to revoke an exemption will depend on the facts and circumstances of each transaction. Factors the Commissioner may have regard to for this purpose include:

   6.1 whether there are any actual or proposed arrangements involving a third party and the nature of these arrangements

   6.2 whether any member of the family that receives consideration for the transaction uses that consideration to pay another member of the family or to repay a loan

   6.3 whether the apparent transferee holds the property on trust for another person and, if so, who that other person is

   6.4 whether multiple transactions, one or more of which is exempt, are used to achieve a particular outcome that could have been achieved with fewer transactions that would not be exempt

   6.5 how long before the transaction the parties became members of a family and how long after the transaction the parties remain family members

   6.6 the period for which the property the subject of the relevant transaction has been owned by a family member

   6.7 whether there are any genuine commercial reasons for the relevant transaction, for example, reducing administration and compliance costs and

   6.8 any other matters the Commissioner considers relevant.

Example 6 (Revocation of exemption)

On 1 January 2020, Company R transfers land valued at $1 million to its wholly owned subsidiary, Company S. Company S applies for a connected entities exemption, which is allowed on 15 January 2020. The transfer is registered the same day.

On 16 January 2020, Company R enters into an agreement with Company T as follows:

- Company T will pay $1 million to Company R for an option to acquire the shares in Company S for $1, exercisable from 16 January 2023 to 31 December 2023
- Company T will be entitled to all profits from Company S prior to the exercise of the option
- Company R will appoint board members to Company S as instructed by Company T

On discovering the agreement between Company R and Company T, the Commissioner is likely to revoke the exemption granted on the transfer of land from Company R to Company S on the basis it is a scheme or arrangement to avoid duty on the transfer of land from Company R to Company T.

Example 7 (Revocation of exemption)

On 1 July 2020, Company V and its wholly owned subsidiary, Company W, execute an instrument where Company V agrees to surrender an exploration licence to allow Company W to apply for a new exploration licence over the same area. The consideration for this agreement is $1. The parties apply for a connected entities exemption, which is granted.

On 1 August 2020, Company V sells all of the shares in Company W to Company Z for $5 million. Company W holds no property at the time of the transfer.

On 1 September 2020, Company V surrenders the exploration licence and Company W applies for and is granted a new exploration licence over the same area.

As Company W did not hold any of the dutiable property to which the transaction relates at the time it left the family on 1 August 2020, section 264A does not apply and the exemption is not automatically revoked.

However, the Commissioner is likely to determine the exempt transaction is part of a scheme or arrangement to avoid the duty that Company Z would have paid if Company V had surrendered the exploration licence so that Company Z could apply for it. As a result, the Commissioner would revoke the exemption. As no consideration was paid for the surrender, duty will be charged on the value of the exploration licence surrendered.

Notifiable events

7. Under section 264 of the Duties Act, the Commissioner must be advised of certain notifiable events that occur within three years after an exempt relevant transaction.

8. As explained in paragraphs 1 and 2, the exemption for a relevant reconstruction transaction is automatically revoked when a notifiable event results in the relevant entity leaving the family while it still holds some of the property that received an exemption. An exemption is not automatically revoked in these cases if the notifiable event results from a public float or a prescribed demerger. However, the Commissioner must still be notified about the event.

9. The Commissioner will not automatically revoke a connected entities exemption for any other notifiable event that occurs after an exempt relevant transaction.

10. In these cases, the Commissioner will examine the full facts and circumstances of the transaction, including the notifiable event and the factors outlined in paragraph 6, to determine if the exemption should be revoked. Before a decision is made, the taxpayer will have the opportunity to comment on the Commissioner's view that a connected entities exemption should be revoked.

11. The Commissioner can revoke the connected entities exemption for a relevant transaction even if a notifiable event did not occur after the transaction.

Penalty tax following revocation

12. When granting an exemption, the Commissioner will inform each taxpayer of their obligation to advise the Commissioner of specific notifiable events. On that basis, the Commissioner considers that failing to advise of a notifiable event in the approved form within the required timeframe is, at minimum, careless or reckless behaviour.[30]

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[30] This differs from the presumption that late lodgment of a transaction record or acquisition statement is an inadvertent oversight or omission (see Commissioner's Practice TAA 18).

Exemption automatically revoked

13. If an exemption is automatically revoked under section 264A of the Duties Act, the assessment may include penalty tax equal to the amount of duty assessed on the previously exempt transaction.[31]

14. If a taxpayer advises the Commissioner within the required timeframe of a notifiable event that triggers automatic revocation,[32] the Commissioner will not usually impose any penalty tax when assessing duty on the relevant transaction unless it is warranted by the circumstances.

15. Examples of circumstances when the Commissioner will impose penalty tax when notified in the required timeframe include:
    - 15.1 the Commissioner is satisfied the only reason for the relevant transaction was to allow the taxpayer to delay payment of duty on another transaction
    - 15.2 the relevant transaction is part of a scheme or arrangement allowing registration of a transaction record before the appropriate duty is paid
    - 15.3 any other circumstances where the Commissioner is satisfied the relevant transaction is part of a scheme or arrangement that allows a person to avoid or delay their obligations under a taxation Act.

16. When the Commissioner imposes penalty tax in these circumstances and is satisfied the total tax payable across all of the transactions in the scheme or arrangement has not been reduced, the penalty tax will be remitted to 20 per cent of the duty payable on the relevant transaction.

17. When the Commissioner is satisfied that the relevant transaction was part of a scheme or arrangement to avoid or reduce duty, penalty tax will be imposed equal to the duty payable on the transaction.[33]

Example 8 (Application of penalty tax)

On 1 July 2020, Mr K incorporates Company J and all of the shares are issued to Company H (which is not owned or controlled by Mr K).

On 2 July 2020, Company H transfers land valued at $1 million to Company J. On 6 July 2020, Company H applies for an exemption for the transfer.

On 15 July 2020, Mr K acquires all of the shares in Company J for $1 million.

The Commissioner is not aware of this acquisition and, on 22 July 2020, grants an exemption for the transfer of land from Company H to Company J. The transfer is registered with Landgate that day.

On 15 September 2020, Company H advises the Commissioner of the notifiable event, which automatically revokes the exemption. On 15 October 2020, the Commissioner issues a reassessment to Company J. There is no duty deduction because landholder duty was not paid on Mr K's acquisition of shares in Company J. The due date for payment is 2 July 2021.

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31 Duties Act s 266(1A).

32 The approved form is available from the Department's website at www.wa.gov.au

33 The total amount of penalty tax applicable to the transaction (for example, where revocation penalty tax and late payment penalty tax apply) will be capped at 100 per cent of the duty payable: TAA s 27.

The Commissioner was advised of the notifiable event within two months after it occurred. However, the Commissioner is likely to impose penalty tax on the reassessment because Company H and Mr K used the connected entity exemption provisions to allow the transfer to be registered, and effective ownership of the land transferred to Mr K, without duty being paid first. The penalty tax will be imposed at 20 per cent of the duty payable on the relevant transaction.

18. Subject to paragraph 20, penalty tax usually will be imposed for failure to notify the Commissioner within the required timeframe about a notifiable event that triggers automatic revocation.

19. The penalty tax will be remitted to a percentage of the duty payable on the relevant transaction as follows:[34]

    19.1 If the taxpayer voluntarily advises the Commissioner after the required timeframe, the percentage will be determined in accordance with the voluntary category in the table below.

Commissioner notified of notifiable event	**Voluntary %**	**Involuntary %**
Within 7 days of the required notification date	Nil	Nil
Within one calendar month of the required notification date	2.5%	5%
Within 4 months of the required notification date	5%	10%
Within 7 months of the required notification date	10%	20%
Within 10 months of the required notification date	15%	30%
After 10 months of the required notification date	20%	40%

    19.2 If, as a result of an investigation,[35] the Commissioner discovers that a notifiable event has occurred and does not consider the taxpayer has deliberately attempted to evade duty or mislead the Commissioner, the percentage will be determined in accordance with the involuntary category in the table below.[36]

    19.3 If the Commissioner determines that a taxpayer has deliberately attempted to evade duty or mislead the Commissioner by not informing the Commissioner of a notifiable event, penalty tax equal to 100 per cent of the duty payable will be imposed.

20. When a notice of notifiable event is not lodged in the required timeframe, and the Commissioner also considers that the circumstances are similar to those described in paragraph 15, penalty tax will be imposed and will be remitted to the higher of the percentage calculated in the table above and 20 per cent of the duty payable on the relevant transaction.

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34 The duty payable will take into account any reduction under sections 266A and 266B of the Duties Act.

35 An ‘investigation’ means the term as used in section 92 of the TAA. It is not limited to activities carried out by a ‘tax investigator’ appointed under section 8 of the TAA.

36 The date the Commissioner is notified will be the earlier of the date the taxpayer provides a notice of notifiable event in the approved form and the date the Commissioner has all necessary information to make a reassessment of the relevant transaction.

21. The Commissioner will consider further remission of penalty tax determined under paragraphs 19.1 and 19.2 in exceptional circumstances, examples of which include where:

21.1 the notice was not lodged in the required timeframe due to advice from RevenueWA

21.2 the notice was not lodged in the required timeframe because of the serious illness or death of the person responsible for notifying the Commissioner

21.3 there were other circumstances outside the responsible person's control that prevented them from notifying the Commissioner in the required timeframe.

Exemption revoked by Commissioner

22. If the Commissioner revokes an exemption under section 265 of the Duties Act, the assessment must include penalty tax equal to the amount of duty assessed on the previously exempt transaction.[37]

Date of effect

This Commissioner's practice takes effect from 9 October 2019.

Nicki Godecke
COMMISSIONER OF STATE REVENUE

9 October 2019

Document history

Commissioner's Practice	Issued	Dates of Effect	
		From	To
DA 21.0	1 May 2009	1 July 2008	15 December 2016
DA 21.1	16 December 2016	16 December 2016	8 October 2019
TAA / DA 48.0	9 October 2019	9 October 2019	Current

37 Duties Act s 266(2). The total amount of penalty tax applicable to the transaction (for example, where revocation penalty tax and late payment penalty tax apply) will be capped at 100 per cent of the duty payable: TAA s 27.