



## Duty Exemption – Entity Restructuring

Under Chapter 6 of the *Duties Act 2008*

As at 1 July 2008

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### Introduction

The purpose of this exemption is to provide relief from duty for certain transactions that occur in relation to entity restructuring, that are carried out to help facilitate more efficient business structures. The exemption is not intended to apply to restructuring arrangements that are for the purpose of facilitating the avoidance of duty or other taxes.

### Overview

The entity restructuring exemption applies to certain transactions involving related entities (referred to as a 'family'). The entities involved may be corporations and/or unit trusts schemes. An exemption is available for a 'relevant transaction', which may be either a 'relevant consolidation transaction' or a 'relevant reconstruction transaction'.

An application for an exemption in relation to a relevant transaction is required to be lodged with the Commissioner of State Revenue within 12 months of the transaction. A person can also request the Commissioner to determine whether an exemption would be granted in relation to a transaction that is proposed, but has not yet occurred.

Once an exemption has been granted, there is an obligation to notify the Commissioner of certain transactions that occur that may affect the entity structure, for three (3) years following the relevant transaction.

The Commissioner also has the ability to revoke an exemption if he is of the opinion that it was part of a scheme or arrangement to avoid duty on another transaction or to avoid another tax, such as pay-roll tax or land tax.

Further information in relation to each of these aspects of the exemption is provided below.

### Explanation of terms

#### Family

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

Further, if all of the securities of an entity are stapled to the securities of another entity, those entities and their subsidiaries are members of a family.

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

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### **Controlling entity**

In the case of a relevant consolidation transaction, the controlling entity is the head entity (the entity interposed between the affected entity and its security holders).

In the case of a relevant reconstruction transaction, the controlling entity is the parent entity of the transaction group either immediately before, or immediately after, the transaction.

### **Major holder**

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

### **Transaction group**

In the case of a relevant consolidation transaction, the transaction group is the head entity and the affected entity.

In the case of a relevant reconstruction transaction, the transaction group is those members of a family that are parties to a transaction, as well as any other members of the family that are necessary to establish that the parties to the transaction are parent entity and subsidiary, or subsidiaries of the same parent entity.

## **Relevant transactions**

### **Relevant Consolidation Transaction**

A relevant consolidation transaction is any acquisition on which landholder duty is chargeable that is made solely for the purposes of a 'corporate consolidation'. A corporate consolidation means the formation of a family by the interposition of an entity, being a corporation or a unit trust, (the 'head entity') between another entity (the 'affected entity') and the holders of the affected entity's securities. A relevant consolidation transaction may involve the acquisition of the shares or units in the affected entity by the head entity, or of the shares or units of the head entity by a holder of the shares or units of the affected entity.

The following conditions must also be satisfied for an acquisition to be considered a relevant consolidation transaction:

- in the case of an acquisition of the securities of the affected entity, the only consideration given by the head entity 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 did not hold dutiable property, vehicles or an interest in any other entity; and
- the securities of the head entity are issued or transferred only to the same persons, in the same ratio, that held the securities of the affected entity prior to the acquisition.

### **Relevant Reconstruction Transaction**

A relevant reconstruction transaction is any of the following transactions involving members of a family that would otherwise be chargeable with transfer duty, vehicle licence duty or landholder duty:

- an agreement to transfer dutiable property from one member of a family to another;
- a transfer of 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;

- a transfer of a licence for a vehicle from one member of a family to another;
- an acquisition by a member of a family of an interest in another member of the family;
- an acquisition by a member of a family of an interest in an entity from another member of the family.

It should be noted that a relevant reconstruction transaction does not include cases where the dutiable property, vehicle or interest in an entity is held subject to a discretionary trust either immediately before or immediately after the transaction.

## Application for exemption

An application for an exemption in respect of a relevant transaction that has already taken place must be made to the Commissioner of State Revenue within 12 months of the date of the transaction, using the approved form, which is available at [www.osr.wa.gov.au](http://www.osr.wa.gov.au). Please note that there are separate forms depending on whether the transaction is a relevant consolidation transaction or a relevant reconstruction transaction.

It should be noted that an exemption will not be granted where any member of the family has an outstanding tax liability.

## Pre-transaction decision request

A person may request the Commissioner to determine if a proposed relevant transaction would be exempted, by completing an application for exemption as if the transaction had occurred, and nominating that the applicant is making a pre-transaction decision request.

A subsequent application for exemption with respect to the transaction, once effected, will be approved providing no material changes have occurred since the original request was made.

## Commissioner to be notified of certain events

Once an exemption has been granted, the Commissioner must be notified if any of the following 'notifiable events' occurs within three (3) years after the date of the transaction. The notification must be made within two (2) months after the date of the event. The person that is required to notify the Commissioner is the 'responsible person' and will differ depending on which of the notifiable events has occurred.

Notifiable event	Responsible person
The 'controlling entity' is wound up and does not have a 'major holder' when the winding up begins.	<p>If the controlling entity is a corporation – the directors; or</p> <p>If the controlling entity is a unit trust scheme – the trustee of the unit trust; or</p> <p>If the controlling entity is a unit trust scheme and the trustee of the unit trust, being a corporation, is wound up – the directors of the trustee.</p>

Notifiable event <small>continued</small>	Responsible person <small>continued</small>
<p>The controlling entity or, if the controlling entity is wound up and has a major holder, the major holder, ceases (but see NOTE below) to directly or indirectly:</p> <p>Hold more than 50% of the securities, or control more than 50% of the maximum number of votes that may be cast at a general meeting of a member of the transaction group.</p> <p>NOTE: the cessation is not a notifiable event if it results from:</p> <p>A winding up of a member of the transaction group other than the controlling entity; or</p> <p>A relevant transaction that is itself the subject of an exemption application; or</p> <p>An acquisition that is the subject of a landholder duty acquisition statement or application for determination of liability, where the statement or application has been lodged with the Commissioner.</p>	<p>The controlling entity or, if the controlling entity is wound up and has a major holder, the major holder; and</p> <p>The member of the transaction group that has ceased to be more than 50% owned or controlled.</p>
<p>If, where entities are members of a family due to the stapling of their securities, the securities of an entity cease to be stapled to the securities of another of the entities.</p>	<p>The entities whose securities cease to be stapled.</p>

## Revocation of exemption

If the Commissioner determines that a relevant transaction is part of a scheme or arrangement entered into or carried out by a person for a purpose of avoiding or reducing duty on a transaction, or for the sole or dominant purpose of avoiding or reducing tax other than duty, the Commissioner may revoke the exemption for the transaction.

If the Commissioner revokes an exemption, an official assessment will be made by the Commissioner stating the duty payable on the relevant transaction and including penalty tax equal to that amount of duty.

## Pre-transaction decision request – revocation of exemption

A person may request the Commissioner to determine whether, if a proposed relevant transaction were entered into and exempted, that exemption would be revoked. A person may also request the Commissioner to determine whether, if a transaction were entered into, the exemption previously granted for another relevant transaction would be revoked. The approved form for these requests can be found at [www.osr.wa.gov.au](http://www.osr.wa.gov.au)

## Lodgment of applications and requests

<b>Office</b>	Plaza Level 200 St Georges Terrace PERTH WA 6000	<b>Telephone</b>	(08) 9262 1100 1300 368 364 (WA country STD callers only – local call charge)
<b>Office hours</b>	8:00 am – 5:00 pm Monday to Friday	<b>Facsimile</b>	(08) 9226 0834
<b>Postal</b>	Office of State Revenue GPO Box T1600 PERTH WA 6845	<b>E-mail</b> <b>Website</b>	<a href="mailto:duties@finance.wa.gov.au">duties@finance.wa.gov.au</a> <a href="http://www.osr.wa.gov.au">www.osr.wa.gov.au</a>

**Note:** The information contained in this DUTIES FACT SHEET is issued for guidance purposes only. It is not an exhaustive explanation of the provisions of the *Duties Act 2008* and reference should be made to the Act for complete details.