



Duty Exemption – Entity Restructuring

Under Chapter 6 of the *Duties Act 2008*

As at 26 November 2015

Introduction

The purpose of this exemption is to provide relief from duty for certain transactions that occur for entity restructuring purposes. 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 or unit trust 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 must be lodged within 12 months after the transaction. A person can also request a ruling on:

- whether an exemption would apply to a transaction that is proposed but has not yet occurred;
- if a proposed transaction were entered into and exempted, whether the exemption would be revoked; and
- if a proposed transaction were entered into, whether the exemption granted for a previous relevant transaction would be revoked.

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

The exemption may also be revoked if the Commissioner determines the exempt transaction was part of a scheme for the purpose of avoiding duty.

Definition of a 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.

Note: Two entities owned and controlled by the same individual do not form a family.

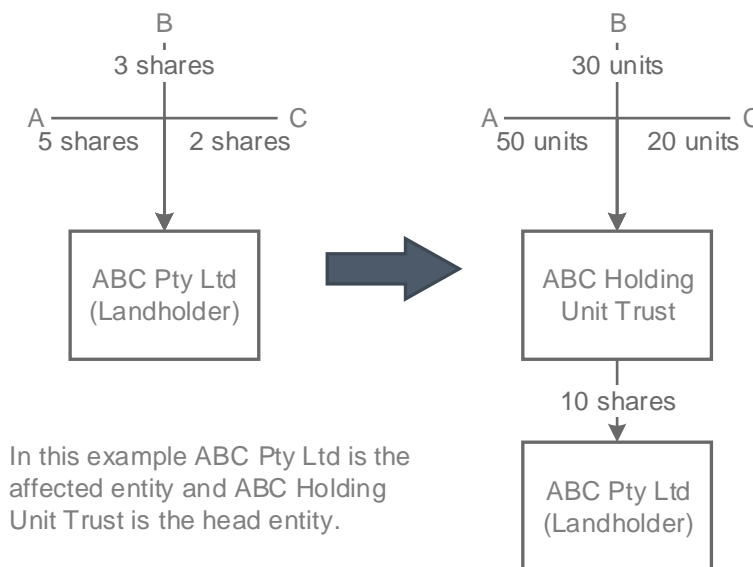
Relevant transactions

Relevant Consolidation Transaction

A *relevant consolidation transaction* is an acquisition of an interest in a landholder that results from interposing an entity (the head entity) between a landholder (the affected entity) and its security holders, provided the following conditions are met:

- 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.

Example



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; or
- an acquisition by a member of a family of an interest in an entity from another member of the family.

A relevant reconstruction transaction does not include a transaction 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 for a relevant transaction that has already taken place must be made within 12 months of the date after the transaction using the approved form. Please note there are separate forms depending on whether the transaction is a relevant consolidation transaction or a relevant reconstruction transaction. Application forms are available from the website at www.osr.wa.gov.au.

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 requests

A person may request the Commissioner to determine whether if a proposed relevant transaction would be exempted if it were entered into. When the proposed transaction is entered into, a subsequent application for exemption for the transaction will be approved providing no material changes have occurred since the original request was made.

A person may also request to Commissioner to determine whether:

- if a proposed relevant transaction were entered into and exempted, that exemption would be revoked; and
- if a proposed transaction were entered into, the exemption previously granted for another relevant transaction would be revoked.

An application for a pre-transaction decision request must be made using the relevant approved form. Application forms are available from the website at www.osr.wa.gov.au.

Commissioner to be notified of certain events

Once an exemption has been granted, the Commissioner must be notified if any of the *notifiable events* set out in the table below occur 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 using Form FDA23 '[Relevant Consolidation and Reconstruction Transaction – Notice of Notifiable Event](#)'. The person required to notify the Commissioner is the *responsible person* and will differ depending on which of the notifiable events has occurred.

The table below uses the following terms:

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 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.

Notifiable event	Responsible person
<p>The controlling entity is wound up and does not have a major holder when the winding up begins.</p>	<ul style="list-style-type: none"> • If the controlling entity is a corporation – the directors; or • If the controlling entity is a unit trust scheme – the trustee of the unit trust; or • 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>The controlling entity, or if the controlling entity is wound up and has a major holder, the major holder, ceases to directly or indirectly:</p> <ul style="list-style-type: none"> • 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>NOTE: The cessation is not a notifiable event if it results from:</p> <ul style="list-style-type: none"> • a winding up of a member of the transaction group other than the controlling entity; or • a relevant transaction that is itself the subject of an exemption application; or • an acquisition for which a landholder duty acquisition statement or application for determination of liability has been lodged with the Commissioner. 	<ul style="list-style-type: none"> • The controlling entity or, if the controlling entity is wound up and has a major holder, the major holder; and • The member of the transaction group that has ceased to be more than 50% owned or controlled.
<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 stating the duty payable on the relevant transaction and including penalty tax equal to that amount of duty.

Lodgment of applications and requests

Office	200 St Georges Terrace PERTH WA 6000	Telephone	(08) 9262 1100 1300 368 364 (WA country STD callers only – local call charge)
Postal	Office of State Revenue GPO Box T1600 PERTH WA 6845	Web Enquiry Website	www.osr.wa.gov.au/DutiesEnquiry www.osr.wa.gov.au

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.