Government of **Western Australia**
Department of **Finance**
Office of State Revenue

REVENUE RULING **DA 19.1**

DUTIES APPLYING FOR A CONNECTED ENTITIES EXEMPTION

INTRODUCTION

1. This ruling sets out the Commissioner of State Revenue's ('Commissioner') interpretation of certain terms relevant to applying for a connected entities exemption under the *Duties Act 2008* ('Duties Act').

BACKGROUND

2. Chapter 6 of the Duties Act provides an exemption from duty for *relevant transactions*[1] between corporations and unit trust schemes that are members of a *family*.[2] This exemption can be revoked automatically following certain events, or at the discretion of the Commissioner in certain circumstances.[3]

Pre-transaction Decision Requests

3. Upon a request made in the approved form, the Commissioner must provide a decision as to:
   (a) if a proposed relevant transaction is entered into – whether it would be exempted;[4]
   or
   (b) if a proposed transaction is entered into – whether the exemption granted for a separate relevant transaction would be revoked.[5]

4. The Commissioner may refuse a request if it does not differ materially from a request made previously, or a request for information concerning the proposed transaction is not satisfied.[6] The Commissioner must refuse a request if the transaction to which the request relates has been entered into.[7]

5. If a decision is provided, the relevant transaction is subsequently entered into and an application for exemption is made, the Commissioner is bound by the decision unless:
   (a) the transaction, or a circumstance relating to it, differs materially from the transaction or circumstances to which the request related;

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1 Duties Act s 257.

2 Duties Act s 258.

3 Duties Act s 265. The Commissioner's practice dealing with the exercise of the discretion to revoke a connected entities exemption is set out in CP DA 21 'Revocation of Connected Entities Exemption'.

4 Duties Act s 261(2).

5 Duties Act s 261(4).

6 Duties Act s 261(7).

7 Duties Act s 261(7A).

(b) information relevant to the transaction, or to any circumstance relating to it, differs materially from the information given to the Commissioner; or

(c) the Commissioner considers there was not a full and true disclosure of information in relation to the pre-transaction decision request.[8]

Exemption Applications

6. An exemption application must be made in the approved form not later than 12 months after the transaction date.[9]

7. If the Commissioner is satisfied a relevant transaction has been entered into, the Commissioner must exempt the transaction from duty unless:

   (a) the Commissioner is satisfied that the transaction is part of a scheme or arrangement that has been or will be carried out for the purpose of avoiding or reducing any liability for duty, or for the sole or dominant purpose of avoiding or reducing any liability for a tax other than duty;

   (b) the Commissioner is satisfied that the exemption would be revoked under section 264A because of the occurrence of a notifiable event[10] referred to in that section; or

   (c) any member of the family has an outstanding tax liability.[11]

8. The *Taxation Administration Act 2003* ('TAA') provides a five-year time period for applying for a reassessment after an original assessment is made.[12] Where a relevant transaction is originally assessed for duty, an exemption application cannot subsequently be made under section 262 of the Duties Act by applying under the TAA for a reassessment of the transaction.[13]

Meaning of Tax

9. *Tax* is defined in the TAA to mean:[14]

   (a) tax, duty or another impost, or an instalment of tax, duty or other impost, that is payable under a *taxation Act*;[15] or

   (b) penalty tax payable under a taxation Act; or

   (c) costs of obtaining a valuation that are recoverable under section 23A of the TAA.

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8 Duties Act s 261(10).

9 Duties Act s 262(3).

10 Duties Act s 264A(1)(a).

11 Duties Act s 263(4).

12 TAA s 17(1).

13 Duties Act s 262(2).

14 TAA Glossary.

15 *Taxation Act* is defined in the Glossary to the TAA and includes the Duties Act, *Land Tax Assessment Act 2002*, *Metropolitan Region Improvement Tax Act 1959* and *Pay-roll Tax Assessment Act 2002*.

RULING

Timeframe for Lodging an Exemption Application

10. Where a taxpayer lodges an exemption application with the Office of State Revenue ('State Revenue') in relation to a relevant transaction, the application will only be considered if it is made in the approved form within 12 months after the relevant transaction date.

11. The date of a relevant transaction is the date liability to duty arose on the transaction under the Duties Act,[16] for example, the date the agreement for transfer is made or the date the acquisition of an interest in a landholder is taken to have occurred.

12. The lodgment date for an exemption application is the date the application is received by State Revenue.

13. The Duties Act does not give the Commissioner any discretion to extend the exemption application lodgment period. Exemption applications lodged more than 12 months after the relevant transaction date will not be considered and the relevant transaction will be assessed for duty.

Effective Date of Transaction

14. The Duties Act provides that liability to duty arises on a transfer of dutiable property when the property is transferred and on an agreement to transfer when the agreement is made.[17] An agreement to transfer is usually made before the property is transferred under the agreement. However, in some cases, including where the transaction involves business assets, the agreement executed by the parties may provide that:

    (a) the transfer of property happened before the document was executed; or

    (b) the effective date of the transaction is a date prior to the date the document was executed.

15. Where the transfer of property happens before the parties execute an agreement documenting the transaction, the relevant transaction for duties purposes is a transfer of dutiable property. In this case, the transaction date (that is, when liability to duty first arises) is when the transfer took place rather than the date the agreement is made.

16. An agreement that effects or evidences a relevant transaction may provide that the effective date of the transaction is a date prior to the date the instrument was executed. Parties may agree to an earlier effective date for a number of commercial reasons, including fixing a date based on the availability of reliable financial data. In this case, if the transfer of property did not occur prior to the agreement being executed, the effective date is considered to be a fiction agreed to between the parties and is not the date of the transaction for duties purposes. In these circumstances, the dutiable

16 See Duties Act ss 19 and 20, Schedule 1; Duties Act s 176.

17 Duties Act, Schedule 1.

transaction is an agreement to transfer and liability to duty arises when the agreement is made.

17. Where an earlier effective date is nominated in an agreement and the transfer of the dutiable property does not require any further documentation to be effected, the Commissioner will treat the date of the agreement as the transaction date where:

    (a) the terms of the agreement and any other relevant transaction documents support that the date of the agreement is the transaction date, for example, the terms of the agreement do not suggest the transaction took place on an earlier date by providing for completion to take place prior to the execution of the agreement;

    (b) there is probative evidence that supports the date of the agreement as the transaction date, for example, director's minutes, correspondence with external parties such as banks, and accounting records; and

    (c) there is a commercial explanation for the adoption of the earlier date as the effective date.

> *Example 1*
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> An instrument evidences the transfer of business assets between corporations that are family members. The instrument was executed on 1 September 2015, however, it provides the effective date of the transfer was 30 June 2015. On 30 August 2016, the transferee lodges an application for a connected entities exemption.
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> In this case, the Commissioner will require evidence to be satisfied that the effective date of 30 June 2015 is not the transaction date, which would mean the application for exemption should have been lodged by 30 June 2016.
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> The parties to the transaction provide evidence that:
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> - the parties adopted an earlier effective date because it was the time at which the most reliable information was available for determining the asset values;
> - there were no asset transfers recorded or reflected in the parties' financial documents and systems until after the agreement was executed; and
> - the director's minutes reflect both the agreement to transfer being made on the execution date and the reasons for adopting the earlier effective date.
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> In this case, the Commissioner would accept the date of the agreement of 1 September 2015 as the transaction date, which means the application for exemption was lodged within 12 months after the transaction.

18. An agreement that deems an effective date earlier than the date of the agreement and provides that completion of the transaction also predates the date of the agreement will not be accepted as taking place on the date of the execution of the agreement. In this case, the completion date is the date of the transaction for duties purposes.

Form of Application

19. To request a pre-transaction decision for a proposed transaction, the following approved forms are available on the State Revenue website at www.osr.wa.gov.au:

    (a) Form FDA24 'Relevant Consolidation Transaction';

    (b) Form FDA25 'Relevant Reconstruction Transaction'; and

    (c) Form FDA26 'Revocation of Exemption for Relevant Transaction'.

20. The approved forms for an application for exemption are:

    (a) where the exemption application is lodged without a pre-transaction decision that the transaction would be exempted if it were entered into[18] – the 'Relevant Consolidation Transaction' or 'Relevant Reconstruction Transaction' form referred to in paragraph 19; or

    (b) where the exemption application is lodged after the grant of a pre-transaction decision that the transaction would be exempted if it were entered into – the completed application form the Commissioner provided to the taxpayer when the pre-transaction decision was made.

Material Difference

21. The Commissioner is not bound by a pre-transaction decision that a proposed transaction would be exempt if it was entered into if there is a 'material difference' between the actual transaction and the information given about the proposed transaction in the pre-transaction decision request.

22. For a difference to be material it is necessary for it to change the substance of the proposed transaction that is the subject of the pre-transaction decision request. These changes may be to the parties to the transaction, the property the subject of the transaction, or other significant aspects of the transaction.

23. Examples of differences that would not usually be considered material include:

    (a) changes to the date of a transaction, unless the date change results in transactions occurring in a different order;

    (b) minor changes to the consideration for a transaction as contemplated by the agreement or resulting from a change in currency exchange rates or the balance of an outstanding loan;

    (c) minor changes to the chattels that are transferred with land or business assets as a result of changes to plant and equipment in the normal course of business; and

    (d) the addition of a newly granted mining tenement to a transaction relating to other mining tenements in the same mineral field.

[18] Including where a determination has been made that if an exemption is granted it will not be revoked.

Outstanding Tax Liability

24. An exemption will not be granted for a relevant transaction where any of the family members has an outstanding tax liability, including members who are not parties to the transaction.

25. An 'outstanding tax liability' is not defined in the Duties Act or the TAA. The Commissioner interprets the term to mean all tax that is unpaid after the due date specified in an assessment notice or because a return has not been lodged as required under a special tax return arrangement, including any amount subject to a tax payment arrangement under section 47 of the TAA. This does not include any land tax that remains payable as instalments under a land tax assessment notice.[19]

26. The requirement to satisfy all outstanding tax liabilities exists at the time an exemption is granted. If an outstanding tax liability exists at the time a pre-transaction decision is made the taxpayer will be notified that an exemption will only be granted if the outstanding liability is paid at that time.

27. Before granting an exemption for a relevant transaction the Commissioner will review State Revenue's tax records for each family member and request that any outstanding tax liabilities be paid.

28. Tax liabilities in other jurisdictions such as the Commonwealth or other States are not included within the meaning of 'outstanding tax liability' and do not affect the availability of the connected entities exemption.

> *Example 2*
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> Company A has various landholdings and receives a land tax notice of assessment for the current financial year. The notice of assessment is issued on 8 October 2016 with a due date for payment on 26 November 2016. The notice of assessment gives the taxpayer three payment options.
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> Company A opts to pay its land tax liability over three instalments. The first instalment is paid on 26 November 2016 with the second instalment due on 7 April 2017. During February 2017, Company A purchases land from a wholly owned family member and immediately applies for a connected entities exemption from duty.
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> Although the second and third instalments for Company A's land tax bill have been recorded as debits against its tax records, the due date for payment of both instalments has not yet passed and there are no outstanding tax liabilities to be paid. Providing all other requirements under Chapter 6 of the Duties Act have been satisfied, a connected entities exemption will be granted.

[19] Under the *Land Tax Assessment Regulations 2003* a taxpayer has three options to discharge a liability to pay land tax. Taxpayers may choose to pay in one discounted amount, two instalments of the total amount assessed, or three instalments of the total amount assessed plus an interest charge.

RULING HISTORY

Revenue Ruling	Issued	Dates of effect	
		From	To
DA 19.0	5 December 2017	5 December 2017	16 July 2019
DA 19.1	17 July 2019	17 July 2019	Current