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

Relevant transactions

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

Relevant consolidation transaction

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- 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

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- 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 transactio