

Guideline

Corporate Reconstruction and Consolidation Transaction Exemption Provisions

Preamble

General exemptions from duty are contained in Chapter 10 of the *Duties Act 2001* (the Act). Part 1A of that Chapter, introduced with effect from 6 December 2016, provides specific exemptions for corporate reconstruction and corporate consolidation transactions resulting from corporate reorganisations that would otherwise attract landholder or transfer duty.

For the purposes of those exemptions, and this Guideline, a reference to a corporation includes a unit trust scheme and a reference to securities refers to shares in the case of companies or units in the case of unit trusts.

Exemption for corporate reconstruction and consolidation transactions

For a corporate reconstruction or consolidation transaction exemption to be granted, Section 226E of the Act requires the Commissioner of State Revenue (the Commissioner) to be satisfied that the transaction is undertaken for the purpose of changing the structure of a corporate group or changing the holding of assets within the group.

In addition, the Commissioner is required to be satisfied that the transaction (or series of transactions of which the transaction is a part) was not undertaken for the purpose of reducing duty on another transaction under the *Duties Act 2001*, or reducing another tax liability in Australia.

What is a corporate group?

For the purposes of the corporate reconstruction and consolidation transaction exemptions, a corporate group means a parent corporation and its subsidiaries. However, to be considered a subsidiary of a parent corporation for the purposes of the exemptions, the parent corporation must, either directly or indirectly:

- own 90 per cent or more of the securities in the other corporation; and
- hold voting control in the other corporation (being the ability to cast, or control the casting of, 90 per cent or more of the maximum number of votes that may cast at a general meeting of the other entity).

A corporate group also includes:

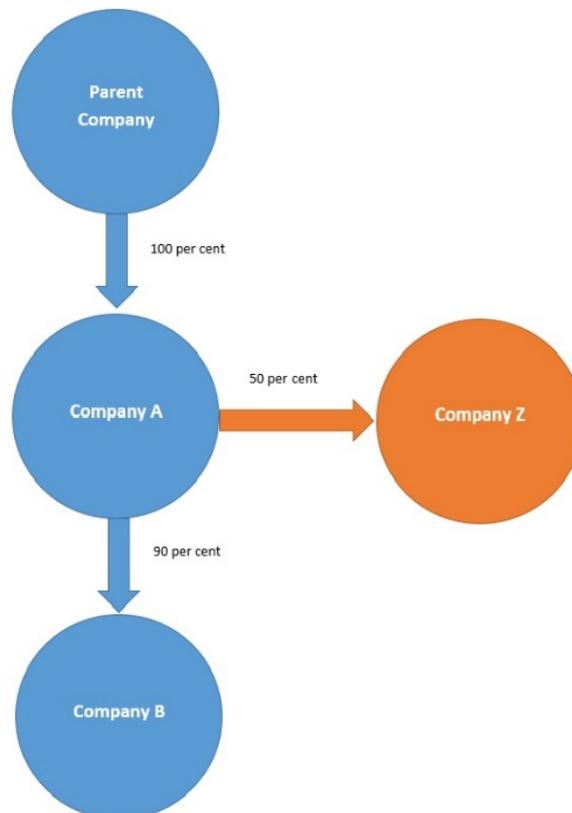
- stapled entities (being entities the securities of which cannot be traded except as a combined single security with the securities of one or more other corporations), including all of their other (stapled) corporations and subsidiaries; and
- unit trust schemes where the transaction is between the trustee of the scheme (acting in that capacity) and another corporation that is a member of the same corporate group as the unit trust scheme.

However, a corporation is **not** a member of a corporate group if the corporation is acting in the capacity of trustee of:

- a unit trust scheme that is not a member of the same corporate group as the other party to the transaction;
- a discretionary trust; or
- a trust (not being a unit trust scheme) for any person who is not a member of the corporate group.

Example – Corporate grouping

In this example, Parent Company, Company A and Company B form a corporate group. Parent Company holds 100 per cent of the shares of Company A and has voting control. Likewise, Company A holds 90 per cent of the shares of Company B, meaning that Parent Company indirectly holds 90 per cent of securities and enjoys voting control in Company B. However, Company Z does not form part of the corporate group because Company A holds only 50 per cent of Company Z shares.



Corporate Reconstruction Transactions

A corporate reconstruction transaction is where a corporate group transfers securities or property amongst its members to reorganise its business structure in order to, for example:

- align its business operations to a relevant legal entity;
- improve the balance sheet of a subsidiary seeking finance;
- respond to structural changes by a parent;
- remove expensive, outdated structures in complex groups; and
- merge business operations and legal entities following a takeover.

What is a corporate reconstruction transaction?

The following transactions constitute corporate reconstruction transactions that may be eligible for an exemption from duty if made between members of a corporate group (which members satisfy the pre-association test and are likely to satisfy the post-association test) in appropriate circumstances:

- an acquisition of an interest in a landholder;
- a transfer of dutiable property;
- a surrender of an interest in land;
- a vesting of dutiable property; and
- an application to register a motor vehicle as a result of a transfer of the vehicle between members of the same group.

Corporate Consolidation Transactions

A corporate consolidation transaction relates to the acquisition of an interest in a landholder by virtue of interposing a company or unit trust (the head corporation) between another company or unit trust (the affected corporation) and the holders of the affected corporation's securities.

What is a corporate consolidation transaction?

A corporate consolidation transaction is a transfer or acquisition of securities:

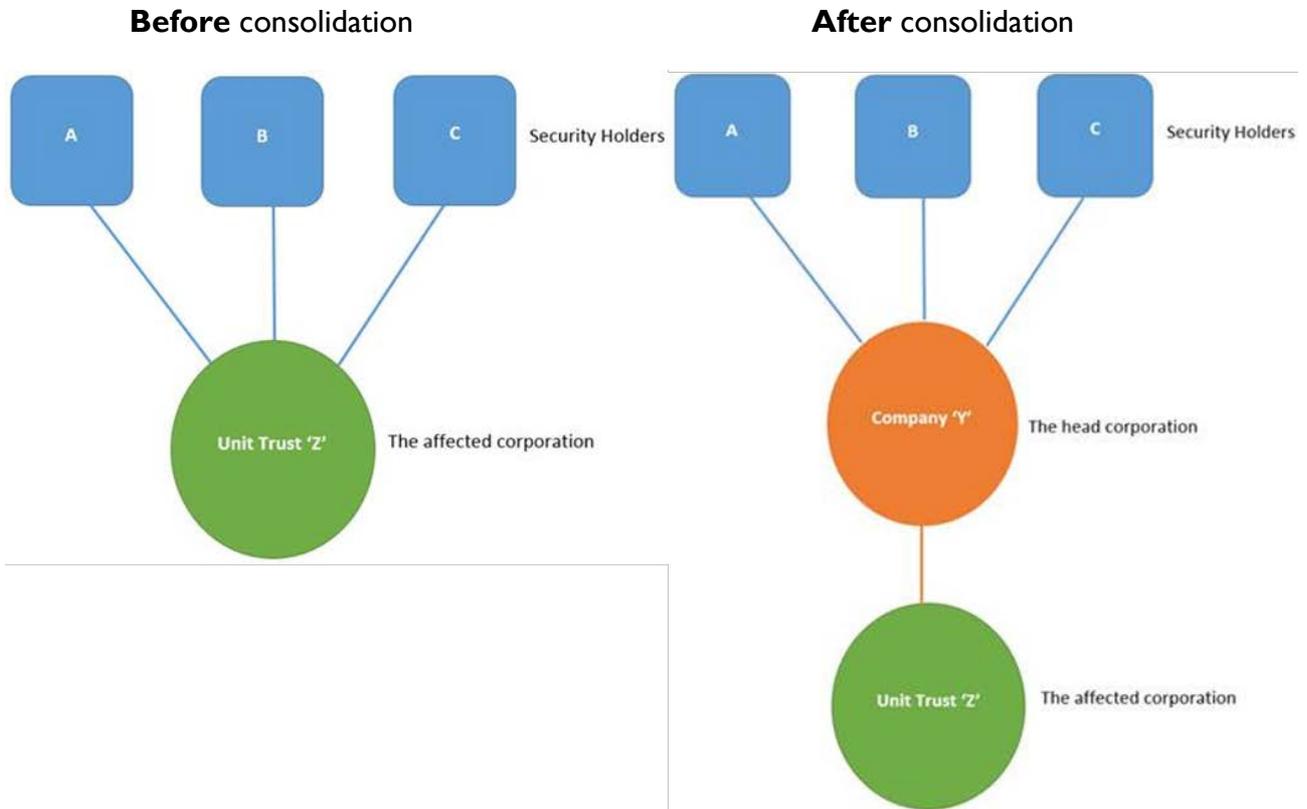
- in the affected corporation by the head corporation, where the only consideration given by the head corporation is the issue or transfer of its securities to the person(s) from whom the affected corporation's securities were transferred or acquired; or
- in the head corporation by a holder of securities of the affected corporation.

In addition, the following eligibility conditions must **also** be satisfied:

- the head corporation must not have held any dutiable property, motor vehicle or an interest in a corporation immediately before the acquisition;
- immediately following the issue or transfer of the head corporation's securities, each person who holds those securities is a person who held shares or units (and in the same proportions) in the affected corporation immediately before the transaction; and

- the entities involved in the corporate consolidation transaction (excluding the security holders as indicated in the example below) must satisfy the pre-association test and be likely to satisfy the post-association test.

Example – corporate consolidation transaction



What are the Pre and Post-Association tests?

Under Sections 226C and 226D of the Act, a transaction does not constitute a corporate reconstruction or corporate consolidation transaction unless the parties to the transaction(s) (excluding the security holders (as indicated in the example above) in the case of a corporate consolidation) satisfy both a pre-association test and the Commissioner is satisfied that the members involved will also meet the post-association test.

Pre-Association Test

The pre-association test requires the members of the relevant corporate group who are parties to the corporate reconstruction or corporate consolidation transaction to satisfy the following:

- the members of the relevant corporate group must have been members for at least 12 months prior to the transaction occurring; or
- where a company/unit trust has been incorporated/established for less than 12 months prior to the transaction, the members of the relevant corporate group have been members since its incorporation/establishment; or

- in the case of a company (not a unit trust) that has not been a member of the group for at least 12 months, the company may still be considered a member of a corporate group if it: was acquired from a person who, in the ordinary course of business, registers shelf companies for sale; has not traded between the time of its incorporation and its acquisition and provided it remains a member of the corporate group.

Post-Association Test

Sections 226C(4) and 226D(6) of the Act provide that a transaction is not a corporate reconstruction or corporate consolidation transaction unless the Commissioner is satisfied the parties to the arrangement will satisfy the post association test in Section 226H(1)(a).

Section 226H(1)(a) requires members of the relevant corporate group involved in the transaction to remain members of the group for at least 12 months commencing immediately after the day on which the relevant corporate reconstruction or corporate consolidation transaction occurred. Where the post-association test is not satisfied by any member of the group involved in the relevant corporate reconstruction or consolidation transaction, Section 226H permits the Commissioner to revoke an exemption previously granted and assess *ad valorem* duty on the transaction(s).

However, the post-association test does not apply where a corporation that was a member of a corporate group ceases to be a member by virtue of:

- a public float that occurred within 12 months of the transaction;
- the securities of the member becoming unstapled (so that the securities may be traded separately from the shares or units of other members) to enable the member's liquidation, deregistration, dissolution or, in the case of a unit trust scheme, winding up; or
- its liquidation, deregistration, dissolution or, in the case of a unit trust scheme, winding up.

Can an exemption be revoked?

An exemption may be revoked if the post-association requirement is not adhered to, or if the exemption was granted based on false or misleading information provided to the Commissioner.

Application for exemption

An application for a corporate consolidation or corporate reconstruction exemption must be made to the Commissioner in the [approved form](#) after the transaction occurs.

The Commissioner is not able to advise on whether or not a transaction would qualify for an exemption prior to the transaction(s) having been undertaken. Accordingly, taxpayers should seek independent advice if unsure whether a contemplated transaction would qualify for an exemption.

Section 226F of the Act permits the Commissioner to approve an exemption subject to conditions.

Are refunds available?

Where duty is paid in advance of a corporate reconstruction or corporate consolidation exemption being granted and an exemption is subsequently approved, Sections 226F and 226G require the Commissioner to reassess the duty charged on the transaction(s) and refund any duty payable taking into account the exemption. The Commissioner is not required to pay interest on any amount refunded pursuant to Section 226G.

More information from the State Revenue Office

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