REVENUE CIRCULAR SD023

ISSUED NOVEMBER 2002

2002-03 Budget Amendment
Corporate reconstruction exemptions

This circular provides information on amendments to the Taxation (Administration) Act ("the Act") as part of the 2002-03 Budget, that provide a stamp duty exemption for certain corporate reconstruction transactions. The changes outlined in this circular commence on 10 October 2002.

What is a corporate reconstruction?

A corporate reconstruction is a transaction or series of transactions whereby:

- property is conveyed between group corporations for the purposes of improving the efficiency of the operations of the corporate group to which the corporations belong and
- the ultimate beneficial ownership of the property conveyed does not alter throughout and immediately following the transaction or transactions.

It does not include a transaction or series of transactions that are undertaken for any other purpose.This includes an agreement for the conveyance of property under which any corporation involved in the transaction or transactions cease to belong to the same corporate group other than as permitted in specific circumstances.

Corporate groups

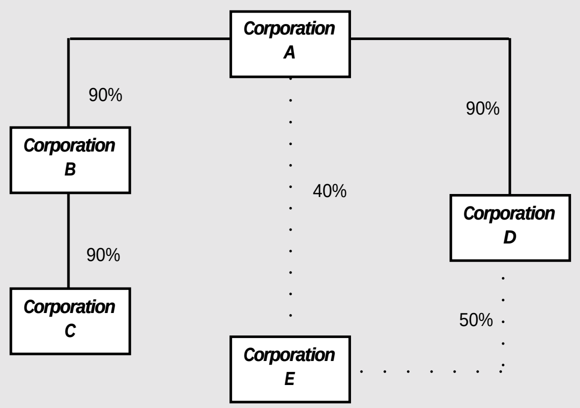
The Act provides that a corporate group is a group of corporations that are related because each corporation in the group is the parent corporation ("parent") or a subsidiary of another member of the group.

A corporation is a parent where it owns (otherwise than as a trustee) at least 90 per cent of the issued shares in, and has voting control over, another corporation.

A corporation is a subsidiary where at least 90 per cent of its shares are owned by, and voting control over it is held by, another corporation, or by that other corporation and its subsidiaries, or by subsidiaries of that other corporation.

For the purpose of the corporate reconstruction provisions, voting control is where a corporation is in a position to cast, or control the casting of, 90 per cent or more of the maximum votes that can be cast at a general meeting other than under a debenture or trust deed securing the issue of a debenture.

Example of a corporate group



Identifying "parent corporations"

A is the parent of B and D, because A owns 90 per cent of the shares issued in, and has voting control over, each of B and D.

B is the parent of C, because B owns 90 per cent of the shares issued in, and has voting control over, C.

No corporation is the parent of E, because no corporation holds 90 per cent of its issued shares, and has voting control, over it.

Identifying "subsidiaries"

B and D are subsidiaries of A, because 90 per cent of the shares issued in each of B and D are owned, and voting control over

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each is held, by A.
C is a subsidiary of B because 90 per cent of the shares issued in C are owned, and voting control over it is held, by B. Additionally, because B is a subsidiary of A, C is also a subsidiary of A.
E is a subsidiary of A because A and its subsidiary D, together hold 90 per cent of the issued shares in, and have voting control over, E.

Identifying a "corporate group"
All the corporations form a corporate group because B,C, D, and E are subsidiaries of A.

Identifying "group corporations"
Corporations A, B, C, D, and E are group corporations in the same corporate group.

Conveyance or transfer between members of a corporate group

Conveyances of dutiable property and marketable securities, and transfers of motor vehicle certificates of registration, are exempt from stamp duty where they are between corporations in the same corporate group. However, ***all*** of the following conditions must apply for the purposes of the exemption.

1. The property is not held (and will not be held) by a corporation as trustee.
2. No part of the consideration can be provided or received, directly or indirectly, by a person who is ***outside*** the corporate group.
3. All of the consideration must be provided by a group corporation, although that group corporation can finance the consideration from:
   - a financial institution by way of loan on ordinary commercial terms
   - a corporation in the same corporate group or
   - an offer and sale of shares to the public.
4. The transaction has not been made pursuant to an arrangement under which a group corporation may dispose of any of the consideration through a payment or other disposition to a person who is not a group corporation unless by way of a loan on ordinary commercial terms.
5. The group corporations involved in the transaction must meet ***one*** of the following criteria.
   - They are members of the same corporate group prior to, and at all times since, the property first became owned by a member of that group.
   - They must have been members of the same corporate group for at least 3 years prior to the transaction (even if either corporation became part of the corporate group after the group initially acquired the property).
   - They are members of the same corporate group prior to, and at all times since, the property was transferred to a member of the corporate group whereby duty was paid on that transaction. This will allow the exemption to apply to a subsequent transfer of property within the group where a corporation cannot otherwise meet the other exemption criteria.
   - One of the corporations has been interposed in the corporate group (see below).
   - One of the corporations is the parent of the other and has been so from the date of the subsidiary's registration (or the subsidiary was dormant until the other corporation became the parent of it) until the date of the transaction.
   - One of the corporations is a parent of the other and "land rich duty" was paid under Division 8A of Part III of the Act by the parent in respect of the acquisition of shares in its subsidiary.
6. The conveyance will not be exempt where it is a tax avoidance scheme or part of a tax avoidance scheme (see below).

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Corporate reconstruction exemptions cont …

Reassessment

Where a group corporation that was party to a corporate reconstruction transaction ceases to be a member of the corporate group within 3 years after the transaction, the group (including the former group member) will be jointly and severally liable to the duty that would have been payable if the exemption had not applied.

This may also include the imposition of late payment penalties.

However, the Commissioner of Taxes will not be required to make such an assessment where the corporation ceasing to be a member of the corporate group does so because one of the following occurs.

- It is deregistered.
- The shares in that corporation or its parent are offered and sold to the public (and the corporation is quoted on a recognised financial market within 1 year of that offer).
- It has no assets or no assets other than cash, a negotiable instrument, or money in an account at call or on deposit.

Lodgement of notice that transaction requires reassessment

Where a corporation triggers the reassessment of a transaction, the parties to the transaction are required to give the Commissioner of Taxes notice by way of form SD30 within 30 days of that event, and lodge all documents necessary to assess any duty payable.

It is an offence not to give notice and lodge the required documents within this timeframe, for which a penalty of up to 500 penalty units ($55 000 at the time this Circular was issued) may be imposed.

Interposing a new corporation into a corporate group

Where a corporation is interposed between an exisiting corporation and its shareholders with the result that the interposed corporation becomes the parent of the existing corporation, an exemption will apply for the marketable securities duty that would normally be payable on this transaction. For the exemption to apply the criteria listed below must be met.

1. The interposed corporation must:
   - be a corporation with limited liability
   - have been dormant from the time it was registered until the resolution to become the parent of the existing corporation and
   - acquire at least 90 per cent of the issued shares in, and gains voting control over, the existing corporation as a result of the conveyance.
2. At least 90 per cent of the consideration for the conveyance of the shares in the existing corporation consists of shares in the interposed corporation that are issued to the shareholders of the existing corporation.
3. The value of the consideration for the acquisition of the shares conveyed from the existing corporation's shareholders is equal to the value of the shares held by those shareholders immediately before the shares were conveyed.
4. Immediately after the conveyance of the shares in the existing corporation, at least 90 per cent of the shares in the interposed corporation are held by the shareholders of the existing corporation as consideration for the acquisition of their shares.

Where a corporation is interposed as the parent of more than one existing corporation, the exemption will apply where the same shareholders owned at least 90 per cent of the issued shares in, and had voting control over, each of the existing corporations.

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Corporate reconstruction exemptions cont …

The exemption will not apply where the transaction is a tax avoidance scheme or part of a tax avoidance scheme (see below).

Land rich duty

Where a conveyance of marketable securities is exempt as a result of the corporate reconstruction provisions and the conveyance is a "relevant acquisition" for the purposes of "land rich duty" under Division 8A of Part III of the Act, the exemption will also apply to that "land rich duty". See circular SD 021 for details on "land rich duty".

This exemption will also apply to corporations and unit trusts that are not registered in the Territory.

Tax avoidance scheme

A tax avoidance scheme is a scheme that, in the opinion of the Commissioner of Taxes, has or is intended to have a collateral purpose of either:

- reducing the tax or duty otherwise payable under the Act in respect of a conveyance of dutiable property or marketable securities or
- obtaining the benefit of an exemption or concession under the Act in respect of a conveyance of dutiable property or marketable securities.

For the purpose of the corporate reconstruction exemption, a transaction will ***not*** be considered to be a tax avoidance scheme or part of a tax avoidance scheme where:

- the transaction, a part of a series of transactions, is undertaken for the purpose of improving the efficiency of the operations of the corporate group to which the companies belong and
- the transactions or each transaction is necessary to give effect to this purpose and is not undertaken for any other purpose.

It will be considered to be a tax avoidance scheme where the Commissioner of Taxes subsequently discovers that the transaction was undertaken for a purpose other than as indicated above.

Application for exemption

Parties applying for a corporate reconstruction exemption will need to complete the relevant form SD28 or SD29. Applicants are referred to the explanatory notes provided with these forms.

Application for rulings

Corporations proposing to be parties to a corporate reconstruction transaction are able to apply to the Commissioner of Taxes for a ruling on whether a conveyance, transfer or relevant acquisition would be exempt from duty as a corporate reconstruction.

Such a ruling will apply to the transaction provided the following criteria are met.

(a) The information that accompanies the application for the exemption does not differ in a material particular to the information that accompanied the application for the ruling.

(b) The circumstances relating to the transaction are not materially different from those referred to in the application for the ruling and the information that accompanied the application for the ruling.

(c) The application for the ruling and the information that accompanied the application for the ruling was not false or misleading in a material particular.

Revenue Circular RA001, which sets out information on the revenue circular system, is incorporated into and is to be read as one with this Circular.

Refer to the Taxation (Administration) Act for precise information on the corporate reconstruction exemptions. For general information, please contact TRM on 1300 305 353.

Authorised by
the Commissioner of Taxes
8 November 2002