

2 August 2022

Kelly Whitfield
Assistant Director
Legislation Services
Department of Finance Western Australia

By email: kelly.whitfield@finance.wa.gov.au

Dear Ms Whitfield

Draft Revenue Ruling DA 19.2 | Connected entities exemption

The Tax Institute welcomes the opportunity to make a submission to the Western Australia Department of Finance (**Department**) in relation to draft Revenue Ruling DA 19.2 *Applying for a Connected Entities Exemption (draft Ruling)*.

In the development of this submission, we have closely consulted with our Western Australia State Taxes Committee to prepare a considered response which represents the views of the broader membership of The Tax Institute.

Our comments are set out below for the Department's consideration. All legislative references are to the *Duties Act 2008 (WA)*, unless otherwise indicated.

Paragraph 33 – notifiable events

We consider that the Commissioner should take account of an agreement, arrangement or understanding in respect of a notifiable event in determining an exemption application, if requested by the taxpayer. That is, the Commissioner should take these agreements or arrangements into account in determining whether an event would or would not result in automatic revocation under section 264A. In the former case, this would prevent the exemption from being granted due to paragraph 263(4)(b).

We suggest that this approach should be taken even if the event has not yet occurred and would be subject to the Commissioner being satisfied that the specific event is expected to occur. Under this approach, the Commissioner would also be able to determine whether or not such an event would be a notifiable event.



We note that where a specific event is expected to occur, there is limited utility to a taxpayer in obtaining an exemption if the Commissioner's views on its potential revocation are not known. The suggested approach would provide greater upfront clarity to taxpayers on the availability of a connected entity exemption at the time the application is determined, rather than only once the event has occurred and a notice of notifiable event has been lodged. Commercial examples of the need for upfront clarity include:

- where a float or demerger is proposed, and the taxpayer seeks confirmation on whether it will qualify as a 'public float', or a 'listed entity demerger' or 'hybrid demerger'; and
- where an agreement to sell shares or units in a subsidiary has been entered into but not yet completed.

Under the suggested approach, the Commissioner would continue to have the power to revoke an exemption once the event occurs. This includes situations where the facts were materially different and an event that was previously thought not to be a notifiable event, turns out to be a notifiable event. Conversely, where an exemption is denied, we consider that the taxpayer should remain free to reapply for an exemption if the facts turn out to be materially different, subject to the 12-month time limit in subsection 262(3).

Further, as stated in paragraph 33 of the draft Ruling, such an agreement, arrangement or understanding may be taken into account in determining whether the relevant transaction is part of a scheme or arrangement for a purpose of avoiding duty or other tax. That is, in determining whether to not grant the exemption due to paragraph 263(4)(a). We consider that a similar approach should be taken in relation to paragraph 263(4)(b), which should not be read as applying only to events that have already happened. This would be harmonious with the Commissioner's position on determining pre-transaction decision requests, subject to our comments below.

Paragraphs 34 & 36 – pre-transaction decision requests

The Tax Institute broadly agrees with the approach adopted in paragraphs 34 and 36 of the draft Ruling. However, we consider that minor amendments would assist to ensure that it is consistent with commercial expectations and understandings, and provides sufficient clarity to taxpayers.

We consider that the following change, marked up in red below, should be made to paragraph 34 of the draft Ruling:

*'When someone requests a ruling on a proposed transaction and advises the Commissioner that a notifiable event ~~will~~ **is expected to** occur after the relevant transaction, the Commissioner will determine the request assuming the notifiable event will occur before the exemption is determined.'*

A taxpayer is generally unlikely to be able to guarantee that a notifiable event 'will' occur. However, this should not preclude a transaction being taken into account, provided that the event is specific and is reasonably expected to occur, rather than merely a possibility of occurring. The suggested amendment and approach is also consistent with Example 4 of the draft Ruling, where the use of the word 'intends' and 'planned' indicates a reasonable likelihood of the proposed restructure.

We also consider that paragraph 36 of the draft Ruling would benefit from some minor amendments for clarity, specifically to be more clearly distinguished from the scenarios covered in paragraph 34 of the draft Ruling. To achieve this, we recommend replacing the second sentence in paragraph 36 of the draft Ruling with:

'It is unknown whether the event is expected to occur or the details are insufficiently clear.'

To ensure consistency, the final sentence of Example 5 of the draft Ruling also should be subsequently modified as indicated in **red** below:

*'It is not clear whether this transaction **will is expected to occur** or, if it did, whether it would result in revocation of the exemption **as the details are insufficiently clear.**'*

We would be pleased to continue to work with the Department on further development of the draft Ruling to ensure it provides the most useful advice and guidance for taxpayers and their advisers.

The Tax Institute is the leading forum for the tax community in Australia. We are committed to shaping the future of the tax profession and the continuous improvement of the tax system for the benefit of all. In this regard, The Tax Institute seeks to influence tax and revenue policy at the highest level with a view to achieving a better Australian tax system for all. Please refer to **Appendix A** for more information about The Tax Institute.

If you would like to discuss any of the above, please contact our Tax Counsel, Julie Abdalla, on (02) 8223 0058.

Yours faithfully,



Jerome Tse

President

APPENDIX A

About The Tax Institute

The Tax Institute is the leading forum for the tax community in Australia. We are committed to representing our members, shaping the future of the tax profession and continuous improvement of the tax system for the benefit of all, through the advancement of knowledge, member support and advocacy.

Our membership of more than 11,000 includes tax professionals from commerce and industry, academia, government and public practice throughout Australia. Our tax community reach extends to over 40,000 Australian business leaders, tax professionals, government employees and students through the provision of specialist, practical and accurate knowledge and learning.

We are committed to propelling members onto the global stage, with over 7,000 of our members holding the Chartered Tax Adviser designation which represents the internationally recognised mark of expertise.

The Tax Institute was established in 1943 with the aim of improving the position of tax agents, tax law and administration. More than seven decades later, our values, friendships and members' unselfish desire to learn from each other are central to our success.

Australia's tax system has evolved, and The Tax Institute has become increasingly respected, dynamic and responsive, having contributed to shaping the changes that benefit our members and taxpayers today. We are known for our committed volunteers and the altruistic sharing of knowledge. Members are actively involved, ensuring that the technical products and services on offer meet the varied needs of Australia's tax professionals.