



**Stamp duty corporate  
reconstruction exemption  
changes 2019**

# Recent changes to stamp duty reorganisation relief in Victoria and Western Australia

There has been significant change to the stamp duty corporate reconstruction rules that will have an impact on decisions about restructuring in these states.

## Corporate reconstruction exemption changes



### Victoria – effective on 1 July 2019

#### Corporate reconstruction exemption

- Under the new rules, full exemptions will no longer be available. Rather, concessional duty of 10% of the duty otherwise payable applies (i.e. an effective top rate of 0.55% for corporate reconstructions).
- If transactions for the same assets occur within 30 days there is only one lot of duty (i.e. not multiple).
- There is no clawback of duty. Under the old rules, the companies or trusts needed to remain at least 90% group members for three years after the exempt transaction in order to avoid clawback of duty.
- For an arrangement or agreement entered into before 1 July 2019, the Commissioner may apply the old rules with a full exemption but with a three year post-association requirement.

#### Impact

- The new corporate reconstruction exemption rules are a positive for businesses looking to restructure their corporate group before sale to a third party as the clawback of duty will be removed for any “degrouing”/sale within three years, unlike under the old rules.
- However, this is at a cost of paying 10% of the duty, which may be prohibitive if the Victorian assets are of material value (especially as there are changes to broaden the taxation of “fixtures” – see below). This also raises a potential need for independent valuations.



### Western Australia – effective on 13 June 2019

#### Corporate reconstruction exemption

- An automatic three year clawback period has been reintroduced so that the transferor and transferee entities will need to remain part of the same corporate group for at least three years after the transaction.
- The Commissioner can deny an exemption where the transaction would be revoked (e.g. if restructuring of assets is for a future sale).
- Under the new rules hybrid entities (e.g. LLCs, Co-operatives, Limited Liability Partnerships) which have issued securities similar to shares will be considered as members of a corporate group.
- The exemption will not be available where part or all of the consideration for a relevant transaction is or will be provided by an entity which is not a member of the group.
- The Commissioner is not bound by a favourable ruling given before 13 June 2019 if the transaction is entered into on or after that day and the Commissioner would make a different decision based on the new provisions.

#### Impact

- The widening of the types of entities to include hybrid entities as members of the same corporate group may provide opportunities to groups that would not have previously qualified for the relief.
- However, consideration will need to be given to the satisfaction of the post-association requirements applying to a restructure.

## Other significant changes

In addition to the changes to the corporate reconstruction exemption rules, both Victoria and Western Australia introduced changes to tighten their stamp duty legislation and widen their tax bases. Outlined below are some of the most significant changes, but please consult with one of our stamp duty specialists for specific advice on your transaction.



### Victoria - effective on 19 June 2019

#### Changes to economic entitlement

- The concept of economic entitlements (being very broadly defined to include any entitlement referable to participation in profits, rents or income derived from Victorian land) falls within the standard transfer duty provisions and removes the 50% threshold test – broadening the base of transactions that are dutiable.

#### Impact

- This means that any property development agreement that contains any entitlement of the developer to participate in income, rents or profits, capital growth or any other amount that is determined based on these factors could be subject to duty in Victoria.

#### Transfer of fixtures

- A new type of dutiable property, defined as “an interest in fixtures that is created, dealt with or held separately from an estate or interest in land on which the fixtures are located”, has been introduced under the new provisions.

#### Impact

- This means that transfers of business assets not dutiable under the old regime may become dutiable where there is a transfer of fixtures (e.g. tenant’s fixtures or leasehold improvements).



### Western Australia – effective on 13 June 2019

#### Changes to definition of “land”

- The meaning of land is extended to include anything that is fixed to the land even if a chattel at law.
- Rights that allow persons to control, access or operate fixed infrastructure are now included as dutiable property and for landholder duty purposes.

#### Impact

- This means that entities holding interests such as leasehold interests, infrastructure assets (e.g. power stations, stadiums, toll roads and renewables) may be considered as landholders under the new provisions.

#### Landholder duty changes

- Widening of the aggregation provisions allows the Commissioner to apply specific anti-avoidance rules to bring two or more transactions to duty. For example:
  - Aggregating a transfer of goods and a separate transfer of shares in a landholding company acquired by associated persons; or
  - Aggregating acquisitions in two or more entities that together have a direct or indirect interest of 50% or more in a landholding entity

#### Impact

- The landholder duty provisions will have a much broader application as the new rules may apply even to transactions that, on their face, do not trigger landholder duty (e.g. a less than 50% acquisition of an interest in landholder). This is because the Commissioner has the power to look at other associated transactions to assess duty.

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