



STATE TAXES

[1143] Qld stamp duty: New relief for land-rich company reconstructions – beware the traps

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An anomaly in Queensland stamp duty law prevented the reconstruction of corporate groups where the reconstruction would have triggered land-rich stamp duty. New Revenue Ruling 37.1 goes some way to addressing that anomaly. However, the ruling is not as broad as it first seems. There are still some practical traps.

In this article, I will point out important limitations in the ruling which might trip up practitioners and I'll also suggest practical steps which can be taken. I would also like to highlight the fact that the Qld Office of State Revenue (OSR) is listening to taxpayer concerns, but is bound by anomalies in the law. Ruling 37.1 represents a one-off extra-statutory concession which I hope OSR would now seek to broaden.

Original anomaly

The anomaly came about because the reconstruction rules in s 49C of the *Stamp Act 1894* (Qld) only exempt certain types of documents. The OSR doubted that

s 49C exempted the special form required by the land-rich rules, form Z.

Share-swaps

Some "share-swap" reconstructions have apparently been able to proceed, despite the companies involved being land-rich. This has relied on the wording of s 49C(1), which is broader than other parts of the reconstruction rules. Section 49C(1) exempted a document made "for, or in connection with, a share transfer". Ruling 37.1 confirms that OSR will treat form Z as such a document.

Other reconstructions

However, where the reconstruction did not simply involve the specific type of share-swap which s 49C(1) exempts, the other reconstruction rules in s 49C(2) had to be used. That section only exempts an instrument which transfers a beneficial interest in property. Form Z does not do so. Form Z is simply the means of reporting a transaction, even though the form is then taxed.

Therefore, where a reconstruction involved an acquisition of a relevant interest in a land-rich company, usually the only way to obtain exemption was to use s 56FO. This exempts form Z, but only if the underlying land could have been transferred free of duty. In practice, s 56FO rarely applies. There are simply too many hoops through which to jump.

Ruling 37.1 reforms administration of s 49C(2)

In reconstructions which do not involve just a share-swap under s 49C(1), s 49C(2) will now be administered so that, if a share transfer itself is exempt in accordance with s 49C(2), the accompanying form Z will also be treated as exempt.

However, the ruling was based on a particular transaction which was referred to the previous Treasurer, according to Practice Direction PD 5.2. The permission to administer the law differently from the way the law reads is therefore limited. This poses some problems.

Traps in concessional administration of s 49C(2)

Now, for the form Z to be exempted, the share transfer must be exempt under s 49C(2). Where Queensland has no interest in stamping the share transfer, the transfer is not exempt under s 49C(2).

Where the target company is incorporated in another Australian State, an off-market share transfer is not liable to

Queensland duty. However, if the target is land-rich, form Z will still need to be produced and stamped. At present, the OSR has advised that it does not have permission to administer the law concessionally in that situation.

Another concern is that Ruling 37.1 only refers to acquisition of a majority interest. Surely the former Treasurer's extra-statutory concession can be read as extending to all relevant acquisitions. An acquisition of a "further interest" (beyond 50%) should also be concessionally treated.

The OSR has been made aware of some of the unattractive and obvious anomalies involved. For example, it would appear that place of registration of shares in a foreign company might be relevant at least for a traditional paper transfer. Place of the registered office would be relevant for a CHESS transfer of shares in a foreign company.

OSR is bound to administer the law. To do otherwise would require commitments from government. If OSR believes that the existing extra-statutory concession is not broad enough to eliminate all anomalies, I trust OSR will approach Government again.

Until the administration of Ruling 37.1 becomes better settled, practitioners should consider obtaining private binding rulings under s 49C(7). Practitioners unable to fall within Ruling 37.1 should consider highlighting any perceived anomaly when seeking *ex gratia* relief.

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