

75JA. Corporate reconstructions: exemptions

- (1) This section applies if in connection with a scheme for the reconstruction of a body corporate or the amalgamation of bodies corporate —
 - (a) a body corporate (“**the transferee**”) acquires at least 90% of the issued share capital of —
 - (i) a body corporate; or
 - (ii) each of 2 or more bodies corporate that were associated with one another immediately prior to the acquisition,
 (“**the target**”);
 - (b) the transferee is incorporated in Australia and has been dormant from when it was incorporated until it resolves to make the acquisition;
 - (c) at least 90% of the consideration for the acquisition of the target, or if there are 2 or more targets, each target, consists of the issue of shares in the transferee to the holders of shares in the target or targets in exchange for those shares;
 - (d) each holder of shares in the target or targets whose shares are acquired receives consideration equal in value to the value of those shares; and
 - (e) immediately after the acquisition at least 90% of the issued share capital of the transferee consists of shares issued in consideration for the acquisition of shares in the target or, if there are 2 or more targets, for the acquisition of shares in all the targets.

[(1a) repealed]

- (2) If, on an application under section 75JD, it is shown to the satisfaction of the Commissioner that this section applies because of subsection (1) and the acquisition is a relevant acquisition under Division 2 or 3 of Part IIIA, the Commissioner shall exempt a Part IIIA statement lodged in respect of the acquisition from duty chargeable under section 76AH or 76AO.

[(2a) repealed]

- (3) If a Part IIIA statement is exempted under subsection (2) and within 5 years after the date of the occurrence of the relevant acquisition to which the Part IIIA statement relates —
 - (a) the transferee issues or cancels any shares or varies the rights of any of its shares; or
 - (b) the beneficial interest in any share in the transferee issued in the circumstances described in subsection (1)(c) is transferred from the person to whom the share was issued,
then —
 - (c) the transferee shall notify the Commissioner in an approved form within one month after the relevant event; and
 - (d) the claw-back applies unless, in a case where paragraph (b) applies, the Commissioner is satisfied that the transfer is in connection with a scheme for the reconstruction of a body corporate or the amalgamation of bodies corporate.

- (4) If —
- (a) an instrument was exempted under subsection (2a) before it was repealed; and
 - (b) within 6 months after the acquisition the transferee has not become listed on a recognised stock exchange situated in the country where the transferee is incorporated,

the clawback applies.

[(5) repealed]

- (6) In this section —

“instrument” does not include a section 31B or 31C statement.

[Section 75JA inserted by No. 48 of 1996 s. 42; amended by No. 51 of 1997 s. 6; No. 53 of 1999 s. 22; No. 2 of 2003 s. 76; No. 21 of 2003 s. 28(1); No. 66 of 2003 s. 49; No. 11 of 2004 s. 13; No. 12 of 2004 s. 30.]