

112HA. Certain capital reductions dutiable

- (1) This section applies if a taxable event occurs because a WA company, under section 195 of the Corporations Law, reduces its share capital by cancelling any of its shares (“**the capital reduction**”).
- (2) This section applies if —
 - (a) a taxable event occurs because a WA company varies or abrogates the voting rights of any of its voting shares (“**the rights alteration**”); and
 - (b) within 6 months after doing so the WA company, under section 195 of the Corporations Law, reduces its share capital by cancelling those shares (“**the share cancellation**”).
- (3) A taxable event occurs if —
 - (a) a person who immediately prior to the capital reduction or the rights alteration —
 - (i) was not entitled to any voting shares in the company; or
 - (ii) was entitled to less than 50% of the voting shares in the company,becomes entitled to at least 50% of the voting shares of the company; or
 - (b) a person who immediately prior to the capital reduction or the rights alteration was entitled to at least 50% of the voting shares of the company becomes entitled to at least 5% more of the voting shares.
- (4) If this section applies the WA company shall prepare and lodge a statement with the Commissioner unless the capital reduction, the rights alteration or the share cancellation also results in a relevant acquisition occurring under Part IIIA.
- (5) The statement shall be in a form approved by the Commissioner and shall be lodged within 3 months after the later of —
 - (a) the date when the capital reduction or the share cancellation has effect (as the case requires); or
 - (b) if the capital reduction or the share cancellation requires the approval of a court, the date when under section 195 of the Corporations Law an office copy of the order of the Court is lodged with the Australian Securities and Investments Commission.
- (6) The statement shall be deemed, for the purposes of this Act, to be an instrument executed on the date when the capital reduction or the share cancellation has effect, as the case may be.
- (7) The statement shall be charged with duty at the rate provided for in item 4A(1)(f) or (fa) of the Second Schedule, according to the nature of the cancelled shares, on the dutiable value.
- (8) The dutiable value is the greater of —
 - (a) the unencumbered value of the cancelled shares immediately prior to the company’s resolution for the capital reduction or for the rights alteration (as the case requires); or

- (b) the amount, or value at the date of the resolution, of the consideration payable to the holders of the cancelled shares by the company or any other person.
- (9) If under section 74A(1) duty is charged on the conveyance or transfer of any property to a shareholder of the company that is made on or pursuant to the capital reduction or the share cancellation, the dutiable value shall be reduced by the unencumbered value of the property conveyed or transferred.
- (10) The Commissioner —
 - (a) may require the company to provide him with evidence in a form approved by him of the unencumbered value of the cancelled shares or of the value of the consideration payable; and
 - (b) either on the basis of that evidence or of a valuation obtained by him, may determine the dutiable value.
- (11) The company and its directors at the time of the company's resolution for the capital reduction or for the rights alteration (as the case requires) are jointly liable to pay the duty charged on the statement.
- (12) A WA company that contravenes subsection (4) or (5) or that lodges a statement that is false in a material particular commits an offence against this Act.
- (13) A WA company that fails to comply with a requirement made under subsection (10)(a) commits an offence against this Act.

[Section 112HA inserted by No. 57 of 1996 s.8¹⁶; amended by No. 13 of 1997 ss.23 and 42; No. 26 of 1999 s.103(2).]