

FREQUENTLY ASKED QUESTIONS

Practice Note on Exemption from Stamp Duty and Real Property Gains Tax

1. In relation to listed companies, what is the aim of the exemption from stamp duty and real property gains tax (RPGT)?

The exemption from stamp duty and RPGT was announced in Budget 2006 together with the introduction of Group Relief and the removal of Section 132G of the Companies Act 1967. These measures are aimed at further encouraging merger and acquisition (M&A) activities between listed companies. In particular, the measures would encourage the formation of larger and stronger listed companies. There are now over 1,000 companies listed on Bursa Malaysia Securities Bhd (Bursa Malaysia), but many of these companies are too small to attract the attention of institutional funds, especially foreign ones. The exemptions would facilitate merger among listed companies, resulting in bigger and more investible companies on Bursa Malaysia.

2. Do the exemptions include hostile take-overs?

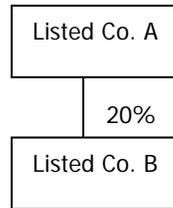
Yes, the exemptions cover voluntary, mandatory and hostile take-overs.

3. What forms of M&A can enjoy the exemption from stamp duty and RPGT?

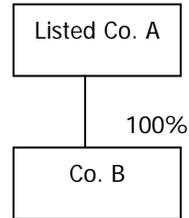
The exemptions apply to M&As which involve the acquisition of interests/assets/businesses between at least two listed companies. The acquisition must be an acquisition that requires the approval of the SC pursuant to Section 32 of the Securities Commission Act 1993 or a take-over offer considered by the SC pursuant to the Malaysian Code On Take-Overs and Mergers 1998. It is expected that the listing status of the target company(ies) or acquirer must be "surrendered" such that only one listing status shall be retained upon completion of the M&A exercise. The exemptions do not apply to M&As of distressed listed companies categorised under PN4 or PN17 issued by Bursa Malaysia. This is to ensure that the end result of the M&A is a larger and stronger listed entity. Please refer to the illustrations below on M&As where the exemptions may apply.

Example 1: Listed Co. A currently has a 20% interest in Listed Co. B. Listed Co. A has proposed to acquire the remaining interest in Listed Co. B by way of a voluntary take-over offer. The offer will be satisfied by cash. Upon completion of the proposal, Listed Co. B will be de-listed. The shareholding structure before and after the proposal is as follows:

Before:

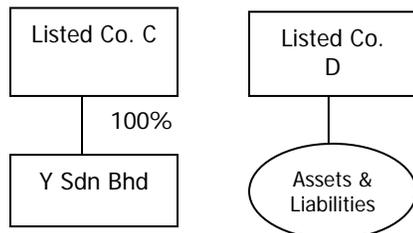


After:

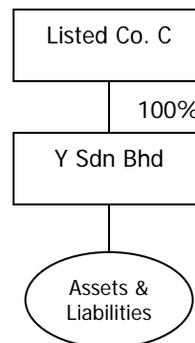


Example 2: Listed Co. C, through its wholly-owned subsidiary, Y Sdn Bhd, intends to acquire the assets and liabilities of Listed Co. D. The acquisition will be satisfied by the issuance of shares of Listed Co. C. Upon completion of the proposal, Listed Co. D will be de-listed. The shareholding structure before and after the proposal is as follows:

Before:

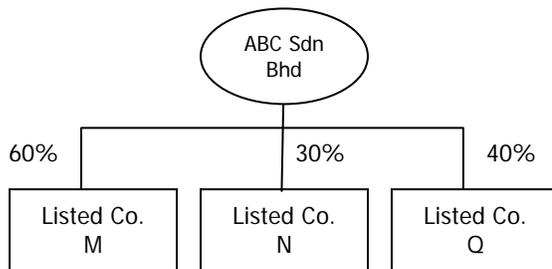


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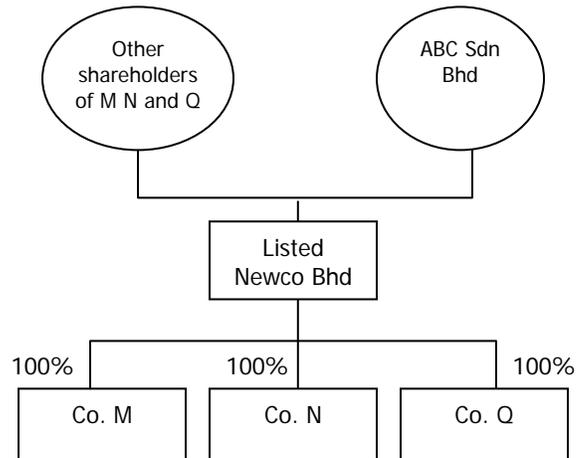


Example 3: Listed Co. M, Listed Co. N and Listed Co. Q share the same substantial shareholder, ABC Sdn Bhd. ABC Sdn Bhd has proposed to rationalise its group of companies. ABC Sdn Bhd incorporates a special purpose vehicle, Newco, where ABC Sdn Bhd shall dispose its current shareholdings in Listed Co. M, N and Q to Newco and Newco will make a take-over offer for the remaining shares of Listed Co. M, N and Q. The offer will be satisfied by the issuance of Newco shares. Following the proposal, Listed Co. M, N and Q will be de-listed and Newco will be listed in their place. The shareholding structure before and after the proposal is as follows:

Before:



After:



4. What is meant by “a proposal that has been approved by the SC from 1 October 2005 to 31 December 2007”?

This criterion will be met where -

- (i) The proposal submitted pursuant to Section 32 of the Securities Commission Act 1993 has been approved by the SC from 1 October 2005 to 31 December 2007; or
- (ii) The offer document for the take-over offer submitted pursuant to the Malaysian Code On Take-Overs and Mergers 1998 has been consented to by the SC from 1 October 2005 to 31 December 2007.

5. Prior to the release of the Practice Note on Exemption from Stamp Duty and RPGT, my company received the SC’s approval for an acquisition proposal which complies with the said Practice Note. Does my company qualify for the exemptions?

Yes, listed companies which had undertaken M&A proposals which comply with the criteria set out in the said Practice Note also qualify for the exemptions. Such companies should, through their principal adviser, write to the SC, providing the relevant supporting information (see the answer to question 6 below) and the SC will issue a written confirmation to the listed company concerned of its eligibility for the exemptions.

6. Upon satisfaction of the criteria stated in paragraph 2.1 of the Practice Note, must an application be submitted to the SC in order to qualify for the tax exemptions?

Yes. Listed companies should, through their principal adviser, write to the SC to indicate their intention to obtain the said tax exemptions. The information that is required to be provided to the SC to support the application for the tax exemptions includes the following:

- (i) Particulars of the M&A proposal;
- (ii) Date of the SC's approval;
- (iii) Particulars of the de-listing of the Target Company and/or Acquirer;
- (iv) Confirmation on compliance with paragraph 2.1 of the Practice Note;
- (v) Particulars of the instruments executed pursuant to the M&A proposal for which the stamp duty exemption is sought; and
- (vi) Particulars of the chargeable assets disposed of pursuant to the M&A proposal for which the RPGT exemption is sought.

The SC shall then provide a written confirmation on the eligibility of the proposal for the stated tax exemptions.