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ISSUES WITH NSW STAMP DUTY

Having surveyed those in the property development industry for many years, the only thing that developers seem to dislike more than paying stamp duty, is paying stamp duty twice on the same property. Although this may arise in a variety of circumstances, the most common is when a developer that has completed the purchase of property in one entity wishes to subsequently transfer that property to another entity. This often occurs when:

- a developer moves quickly to acquire a property and uses an existing entity which they later decide may have too many inherent risks (historical trading etc), or
- the entity used already owns existing property and putting all their eggs in one basket is an unnecessary gamble.

Fortunately (if the developer has an appropriate legal structure in place), an exemption from NSW stamp duty may be available for both the transfer of property and the transfer of interests in property (shares or units) between entities that ultimately have the same owners. As with all exemptions, the devil is in the detail and understanding the sequence of steps required to give effect to the transfer is vital.

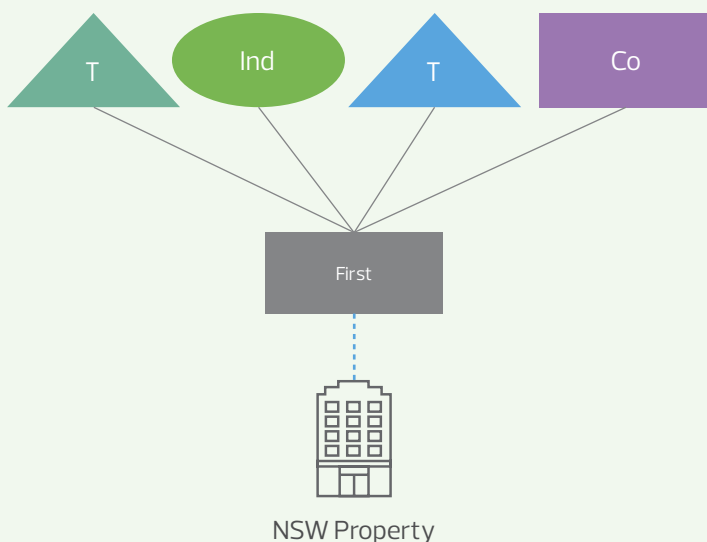
The exemptions are known as 'corporate consolidation' and 'corporate reconstruction' transactions.

Corporate consolidation

The corporate consolidation exemption allows a new company or unit trust to be interposed between an existing company or unit trust that owns land in NSW and the shareholders of that existing company or unit trust.

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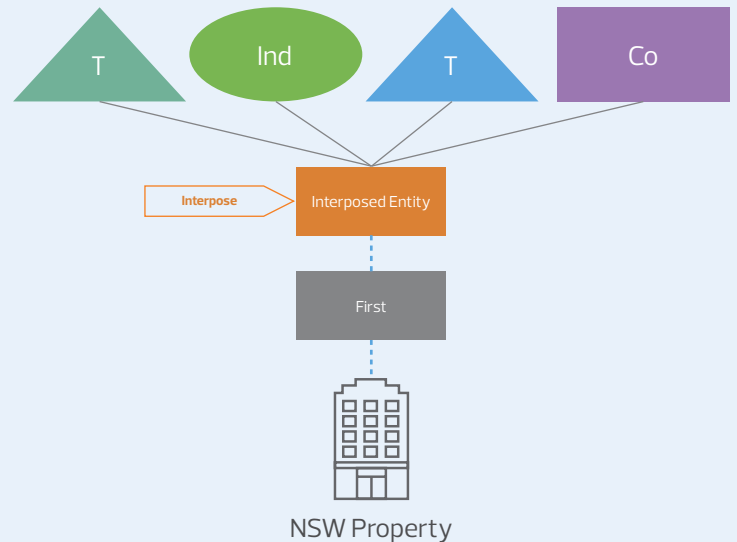
Shareholders



NSW Property

AFTER

Shareholders



NSW Property



Importantly, for the exemption to apply;

- the interposed entity must not hold any dutiable property, or a vehicle or an interest in a corporation immediately before the transaction; and
- the only consideration given by the interposed entity to the shareholders for the purchase of the existing entity is the issue or transfer of shares or interests in the interposed entity; and
- the same shareholders must hold the shares or interests in the interposed entity in the same proportion as those they held in the existing entity; and
- an application must be made to the Chief Commissioner for relief to apply for the exemption.

Corporate reconstruction

The corporate reconstruction exemption allows dutiable property (including real property and interests in real property such as shares or interest in unit trusts) to be transferred between members of the same corporate group.

Importantly, for the purposes of the exemption, a 'corporate group' includes a

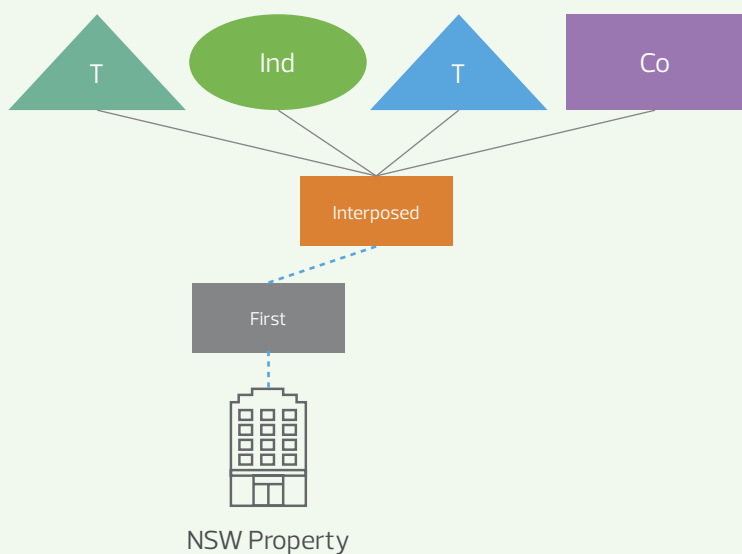
head entity (company or unit trust) and any of its subsidiary entities in which it directly or indirectly holds at least 90% of the shares or interests in the subsidiary entity. Similar to a corporate consolidation transaction, an application must also be made to the Chief Commissioner for relief to apply for the exemption.



Furthermore, for the exemptions to apply, the transaction (or series of transactions) must be undertaken for the purpose of changing the structure of the corporate group and/or changing the holding of assets within a corporate group. They must not be undertaken for a purpose of avoiding or reducing NSW stamp duty on another transaction. Additionally, they must not be undertaken for the sole or dominant purpose of avoiding or reducing a liability for tax under a law of another Australian jurisdiction.

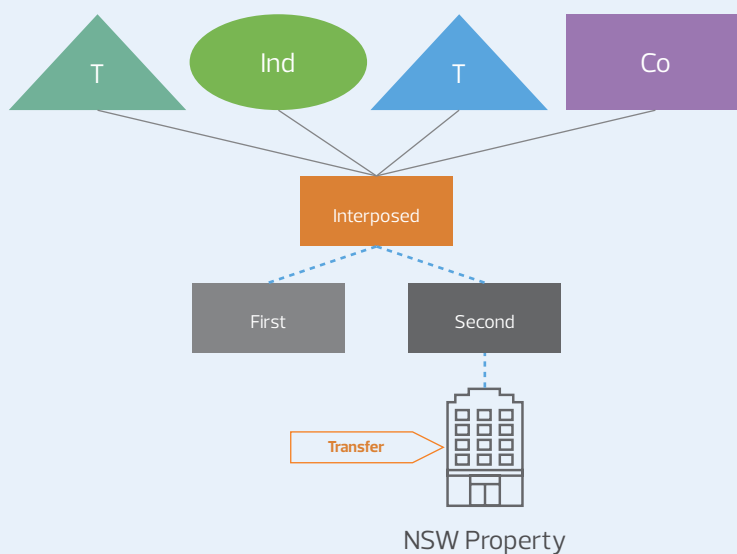
BEFORE

Shareholders

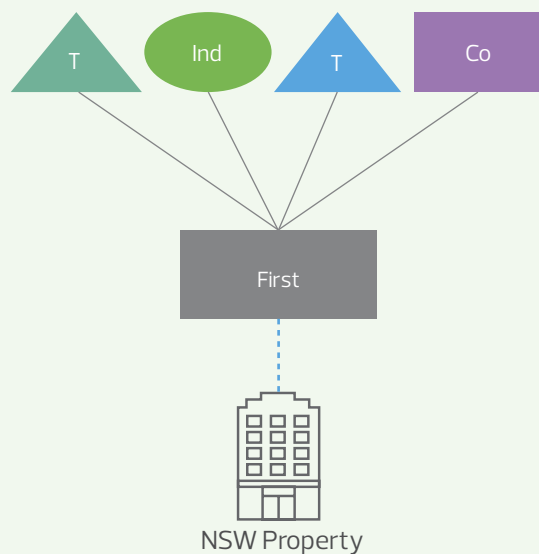


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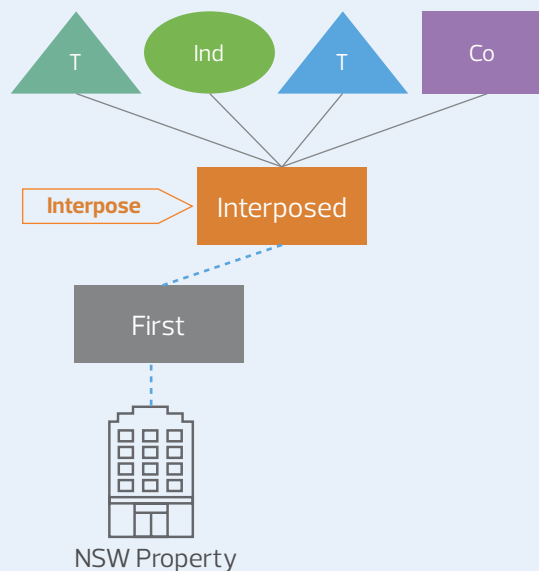


Before Shareholders



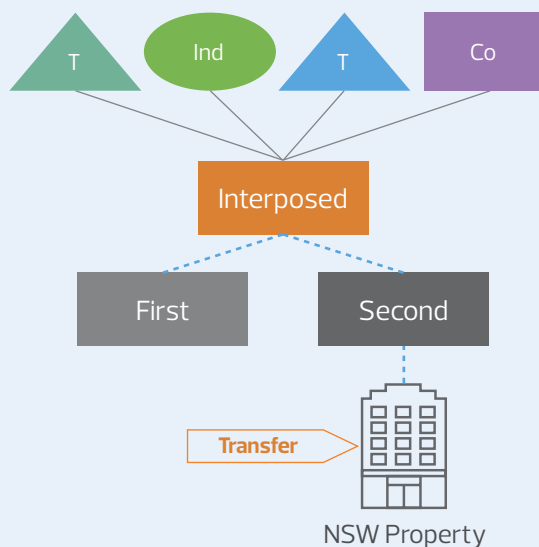
Corporate Consolidation

Shareholders



Corporate Reconstruction

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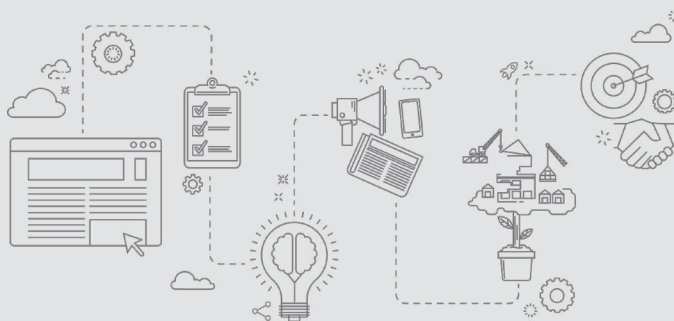
Practical application

As an example, where a developer had acquired a property in one entity (First Landholder) and then sought to transfer that property to another entity (Second Landholder – whilst still maintaining ultimate ownership), the transaction may be undertaken by:

- Firstly, undertaking a corporate consolidation to interpose a new entity (Interposed Entity) between the shareholders and the First Landholder, and
- Secondly, undertaking a corporate reconstruction to incorporate the Second Landholder as a subsidiary of the Interposed Entity and subsequently transferring the property from the First Landholder to the Second Landholder.

Providing the various requirements under the act have been met and applications approved by Revenue NSW, both the transfer of shares in the First Landholder to the Interposed Entity and the subsequent transfer of the property from the First Landholder to the Second Landholder may be exempt from NSW duty.

Importantly, whilst the above concessions deal with NSW duty, other rollovers or exemptions will need to be considered for purposes of income tax and GST. As with all transfers that may be subject to duty, it is important to seek specialist advice. When it comes to undertaking corporate consolidations and reconstructions, 'it is better to ask permission, than to seek forgiveness'.



If you have any questions about the content contained in this article please get in touch with your [local RSM property and construction expert](#) or contact:



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