

Exemption for Transfers in Respect of an Amalgamation

Property Transfer Tax Act

An application made under the *Land Title Act* for a change of name following a corporate amalgamation, or the transfer of land to a newly incorporated society as the result of an amalgamation of two or more British Columbia societies under the *Society Act*, is a taxable transaction under the *Property Transfer Tax Act*. However, exemptions are provided in certain situations. This bulletin outlines the specific conditions and requirements for claiming an exemption.

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Change in Legal Name

A change in the legal name of the registered owner of a property can be made under section 191 of the *Land Title Act*. Section 191(4) of the *Land Title Act* deems there to be a change of name where there is an amalgamation of two or more corporations.

Section 191(1) or 191(3) of the *Land Title Act* permits an amalgamated corporation to register for a change of name from the names of its predecessor corporations.

Amalgamations Under the *Society Act*

Under section 17(3) of the *Society Act*, after a *Certificate of Incorporation* is issued to an amalgamated society, the predecessor societies are dissolved and all property of those societies passes to the new society. Under section 17(5), land registered under the *Land Title Act* in the name of the predecessor societies must be registered in the name of the new society.

Exemption Requirements

Although any application made under the *Land Title Act* as the result of an amalgamation is a taxable transaction, exemptions are provided under sections 14(4)(u) and 14(4)(w) of the *Property Transfer Tax Act* where:

- there has been a corporate amalgamation under the statutory amalgamation provisions of a federal (Canadian) or provincial corporate statute, or
- there has been an amalgamation of British Columbia societies under section 17 of the *Society Act*.

For corporate amalgamations, the exemption is based on the corporate law of the jurisdiction under which the predecessor corporations are amalgamated.

The exemption is allowed where the corporate law in the jurisdiction provides that the predecessor corporations involved in the amalgamation continue into the amalgamated corporation and that all of the property, interests, rights and liabilities of the predecessor corporations become those of the amalgamated corporation.

If the corporate law provides that the predecessor corporations involved in the amalgamation cease to exist and/or a new corporation is formed on the amalgamation, then the corporation making the application for a change in the legal name will **not** be entitled to the exemption.

For example, if a transaction involves the winding up of one corporation into another corporation, and the predecessor corporation does not continue into the amalgamated corporation or is dissolved, then the exemption is not allowed.

Also, a simple delay in the dissolution of a corporation following a windup will not alter the fact that the predecessor corporation has not continued into the amalgamated corporation, and the exemption will not be allowed.

For amalgamating British Columbia societies, the exemption is based on the *Society Act*. An exemption is allowed where the amalgamating societies demonstrate that the requirements of section 17 of the *Society Act* are met.

Determining Eligibility

Amalgamating corporations or British Columbia societies may be eligible for the exemption only under the following circumstances.

A corporation must demonstrate that the amalgamation was effected under Division 3 of Part 9 of the *British Columbia Business Corporations Act*, under sections 181 to 186 of the *Canada Business Corporations Act* (Canada), or under similar statutory amalgamation provisions of a federal or provincial corporate statute. Only amalgamations effected under a Canadian statute are eligible for the exemption.

In addition, the administrator must receive evidence that the predecessor corporations continue into the amalgamated corporation. Where this criteria is not met, regardless of whether or not there was a change in economic interest, or that the transactions were exempt from income tax, the amalgamation exemption will not apply.

A society must demonstrate that the amalgamation was effected under section 17 of the *Society Act*. An amalgamation of societies effected under another statute is not eligible for the exemption.

Claiming the Exemption

When determining the eligibility of an amalgamation for the exemption, the administrator may require some or all of the following documents (or their equivalent):

- the amalgamation agreement,
- the articles of amalgamation,
- any court order approving the amalgamation, and/or
- a *Certificate of Amalgamation* issued by the applicable corporate registry.

The administrator may also request additional documentation that is not listed above.

When multiple returns are filed in respect of an amalgamation, it is only necessary to attach one copy of the supporting documents to one of the returns. The return to which the documents are attached must be referenced on all other returns submitted in respect of that amalgamation.

If claiming either of these exemptions, claim code 38.

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