

AUSTRALIAN CAPITAL TERRITORY

DUTIES ACT 1999

INTERGENERATIONAL RURAL TRANSFER GUIDELINES

INSTRUMENT NO. 91 OF 1999

Under section 230 of the *Duties Act 1999*, I DETERMINE the following:

GUIDELINES FOR EXEMPTION UNDER SECTION 230 OF THE *DUTIES ACT 1999*

1. The purpose of these Guidelines made under section 230 of the *Duties Act 1999* (the Act) is to exempt from duty certain transactions involving the transfer of farming properties to younger generations. The exemption is limited by reference to the use of the land, the parties to the transaction, and other requirements contained in these guidelines.

DEFINITIONS FOR THE PURPOSES OF THESE GUIDELINES

2. In this determination:

Act means the *Duties Act 1999*;

assignee is the natural person to whom the assignment of property is made;

assignor is the person (or company, etc.) who makes the assignment of property;

descendant means a child, stepchild, grandchild, sibling, niece or nephew, or the spouse of any of them;

eligible persons are the transferee, lessee or assignee, being a natural person who is a descendant of the transferor, lessor or assignor determined in accordance with the following table:

Transferor, lessor or assignor	Transferee, lessee or assignee
Natural person	Descendant of the transferor, lessor or assignor
Proprietary limited company	Descendant of a shareholder or shareholders: (i) who hold the shares beneficially; (ii) who are entitled to vote at meetings of the company; and (iii) who were entitled (as shareholders) to 25% of the assets of the company on winding up, being an entitlement which existed for at least 3 years prior to the date of transfer, lease or assignment, unless the company was incorporated within 3 years of that date.
Trustee of a bare trust for named beneficiaries	Descendant of a named beneficiary of the trust.
Trustee of a discretionary trust	Descendant of a person or persons who are entitled (as takers in default of appointment) to a 25% interest in the capital of the trust fund.
Trustee of a private unit trust	Descendant of a unitholder or unitholders: (i) who hold the units beneficially; and (ii) who were entitled (as unitholders) to 25% of the assets of the unit trust on winding up, being an entitlement which existed for at least 3 years prior to the date of transfer, lease or assignment, unless the trust was established within 3 years of that date.

eligible transactions are the following transactions between eligible persons:

- (i) a transfer of rural land;
- (ii) an agreement for the sale or transfer of rural land;
- (iii) a lease of rural land other than a Crown lease; and
- (iv) a transfer or assignment of a lease or permit in respect of rural land;

land used for primary production has the same meaning as in the Act;

lease has the same meaning as in the Act;

lessee is the natural person to whom the lease is granted;

lessor is the person (or company, etc.) who grants the lease;

property means the property or land being transferred, leased or assigned;

spouse, in relation to a person, includes a person who lives with the first-mentioned person -

- a) as his or her **spouse**, although not legally married to him or her; or
- b) in a homosexual relationship;

on a bona fide domestic basis;

transfer has the same meaning as in the Act;

transferee is the natural person to whom the transfer of property is made; and

transferor is the person (or company, etc.) who transferred the property;

EXEMPTION

3. An exemption from stamp duty on an eligible transaction between eligible persons will be approved by the Commissioner for ACT Revenue, subject to satisfying the following criteria:

- a) the property must be land used for primary production by the transferor, lessor or assignor immediately before the transaction or the date of first execution of the instrument;
- b) the property must continue to be land used for primary production by the transferee, lessee or the assignee;
- c) the eligible person must take legal and beneficial ownership of the property. The transferor, lessor or assignor (as the case may be) may retain the farm house and the existing area of land on which the farm house is situated;
- d) if the primary production business of the property is leased at the time of the eligible transaction, it must be leased to a descendant, otherwise it will not be eligible for exemption.

4. If a transaction relates to land and other property, the exemption extends to other property that is an integral part of the business of primary production. Examples of this are an entitlement to water, a milk quota and shares in a co-operative;

PROCEDURAL

5. Application for exemption must be made in the form of a letter to the Commissioner for ACT Revenue addressing each of the issues specified in the guidelines that are relevant to the eligible transaction. The application must also:

- (a) identify the nature of the eligible transaction and provide all documentation relating to the eligible transaction;
- (b) provide an estimate of the value of the land and all other property that is an integral part of the business of primary production;
- (c) where the transferor is a trustee of a discretionary trust or a trust for a named beneficiary, provide a copy of the stamped trust deed and any amendments;

- (d) where the transferor is trustee of a unit trust, provide copies of the stamped trust deed and the latest balance sheet of the unit trust; and
- (e) where the transferor, assignor or lessor is a company, provide copies of the memorandum of articles of association, and the latest balance sheet of the company, together with a certified copy of the share register.

DATE OF COMMENCEMENT

6. This Determination applies to eligible transactions entered into on or after 1 March 1999.

Date: 10/5/99

Kate Carnell
Treasurer