

AUSTRALIAN CAPITAL TERRITORY

DUTIES ACT 1999

EXEMPTION GUIDELINES FOR CERTAIN VOLUNTARY TRANSFERS MADE UNDER THE *FINANCIAL SECTOR (TRANSFERS OF BUSINESS) ACT 1999* (CWLTH)

INSTRUMENT NO. 247 OF 2001

Under section 115G(1) of the *Duties Act 1999*, I DETERMINE the following guidelines for the purpose of section 115G (2):

GUIDELINES FOR EXEMPTION UNDER SECTION 115G OF THE *DUTIES ACT 1999* FOR CERTAIN VOLUNTARY TRANSFERS MADE UNDER *THE FINANCIAL SECTOR (TRANSFERS OF BUSINESS) ACT 1999* (Cwlth)

The purpose of section 115G of the *Duties Act 1999* (the Duties Act) is to provide exemptions from the duty imposed by Section 115F of the Duties Act where:

- (i) a certificate is issued by the Australian Prudential Regulation Authority (APRA) under section 18 of the FS(TB) Act; and
- (ii) the merger or transfer of engagements would not previously have been liable to duty under the Duties Act by virtue of the operation of the former *Financial Institutions (ACT) Code*.

DEFINITIONS FOR THE PURPOSES OF THESE GUIDELINES

2. In this determination, under section 115A:

asset, under section 4 (1) of the FS (TB) Act, means property, or a right, of any kind, and includes:

- (a) any legal or equitable estate or interest (whether present or future, vested or contingent, tangible or intangible, in real or personal property) of any kind; and
- (b) any chose in action; and
- (c) any right, interest or claim of any kind including rights, interests or claims in or in relation to property (whether arising under an instrument or otherwise, and whether liquidated or unliquidated, certain or contingent, accrued or accruing); and
- (d) any asset within the meaning of Part IIIA of the *Income Tax Assessment Act 1936*;

business, under section 4 (1) of the FS(TB) Act, in relation to a body means the assets and liabilities of the body;

commissioner means the Commissioner for ACT Revenue;

Duties Act means the *Duties Act 1999*;

FS(TB) Act means the *Financial Sector (Transfers of Business) Act 1999* (Cwlth);
receiving body, under section 4 (1) of the FS(TB) Act, means a body to which another body is to transfer, or has transferred, business under this Act; and
voluntary transfer means a transfer made under part 3 of the FS(TB) Act.

APPLICATION REQUIREMENTS

3. Under sections 115B (1) and (2) of the Duties Act, a declaration is required if a business is transferred and the assets transferred would be liable to duty under this Act. All receiving bodies must lodge a declaration about the transfer with the commissioner, within 14 days after the voluntary transfer. The declaration must be in a form approved by the Commissioner for ACT Revenue.
4. Under section 115B (3) of the Duties Act the declaration must state:
 - the names, addresses and capacities (eg transferor/transferring body or transferee/receiving body) of the parties to the transfer;
 - the reason for the transfer;
 - a description of the dutiable property transferred;
 - the market value of the property on the date the certificate under section 18 of the FS(TB) Act comes into force;
 - if land is transferred, the address and identifying suburb, section, block and unit of the property, and the unencumbered value on the date of the section 18 certificate; and
 - any other information required by the approved form.
5. Section 115B (4) states that a receiving body that gives, or is liable to give, a declaration, may be required by the commissioner to give a statement, within 14 days or any longer period allowed by the commissioner, with specified information about the transfer. For section 115F (Assessment of duty), this statement may be treated as having varied or supplemented a given declaration, or, if a declaration has not been provided, it may be treated as a declaration (sections 115F (2) (a) and (b)).

LIABILITY FOR DUTY

6. Under section 115C, liability for duty arises when the voluntary transfer of a business is made to a receiving body and, under section 115D, duty must be paid within 90 days of the liability arising. Duty chargeable under this part is payable by the receiving body (section 115E).
7. A declaration to the commissioner will be chargeable with duty at the determined rate on the value of the transferred property stated in the declaration (section 115F (1)), unless the conveyance, transfer or assignment falls into a class exempted by these guidelines (section 115G (2)).
8. Duty does not apply to property transferred to a receiving body unless the transfer would have given rise to a liability to duty under this Act if it had not been a voluntary transfer.

DATE OF COMMENCEMENT

9. This determination is effective from the date of commencement of the Duties Amendment Act 2001 (*No 2*).

Date: 21st August 2001

Gary Humphries
Treasurer