

Australian Capital Territory

Duties Act (Corporate Reconstruction) Determination 2003 (No 1)

Disallowable instrument DI2003—178

made under the

***Duties Act 1999*, s 70A (Corporate reconstructions—concessional duty for dutiable transactions), s 91A (Corporate reconstructions—concessional duty for relevant acquisitions) and s 208AA (Corporate reconstructions—concessional duty for motor vehicle registration applications)**

I revoke Instrument No 246 of 2001 notified in the ACT Government Special Gazette S61 dated 23 August 2001, and make the following Determination for guidelines for the purposes of sections 70A, 91A and 208AA.

GUIDELINES FOR CONCESSION UNDER SECTIONS 70A, 91A AND 208AA OF THE *DUTIES ACT 1999*

1. The purpose of sections 70A, 91A and 208AA of the *Duties Act 1999* (the Duties Act) is to provide a concession from duty for certain transactions within a corporate group where the ultimate beneficial ownership of the assets remains unchanged. That is, the assets or corporation owned by a member of the corporate group remain subject to the ownership and control of the corporate parent, either directly, or indirectly by virtue of the parent's ownership and control of the member of the corporate group.

DEFINITIONS FOR THE PURPOSES OF THESE GUIDELINES

Corporate reconstruction

2. Corporate reconstruction means an “eligible transaction” between “eligible members” of a “corporate group”.

Corporate group

3. Corporate group means a corporate parent and subsidiary corporations that are at least 90% beneficially owned, either directly or indirectly, by the parent, and over which the parent or other subsidiaries have voting control. Indirect ownership includes a sub-subsidiary that is at least 90% owned by one or more other subsidiaries of that parent. The parent and subsidiary corporations are regarded, for the purposes of this determination, as members of the corporate group.
4. In sections 70A (6), 91A (6) and 208AA (6), corporation includes a unit trust scheme. A unit trust in which at least 90% of the units are beneficially owned by members of the same corporate group is taken to be a member of the corporate group for the purposes of these guidelines.
5. If the issued shares or units of a corporation are stapled to the issued shares or units of one or more other corporations, and such stapled securities are quoted on a stock exchange, each of those corporations will be treated as if they are subsidiaries of the same parent corporation in determining whether corporations constitute a corporate group. Consequently, each stapled corporation, and any subsidiaries that are at least 90% beneficially owned, either directly or indirectly, by those corporations, will be regarded as members of the same corporate group.

Eligible members

6. Members of a corporate group will be eligible members if the relevant corporations and unit trust schemes have been members of the same corporate group for at least 12 months prior to the date of the transaction, or since the date of incorporation (date of establishment of a unit trust scheme) where the corporation or unit trust is less than 12 months old. There are two exceptions to these requirements:
 - (a) a company that had not traded before the date it became a member of the corporate group is an eligible member; and
 - (b) any member of the corporate group will also be an eligible member in respect of a transaction, to the extent that the transaction relates to dutiable property, the making of a relevant acquisition, or motor

vehicles acquired by the corporation or unit trust after the date on which the corporation or unit trust became a member of the corporate group.

Non-eligible member

7. A member of a corporate group is not eligible to the extent that the property the subject of the transaction is or will be held as trustee of a discretionary trust, regardless of whether members of the corporate group are beneficiaries under the discretionary trust.

Discretionary trust

8. A discretionary trust is a trust the terms of which (such as the identity of income or capital beneficiaries, the amounts they might receive, the duration of the trusts, and the property in the trust fund) depend upon the exercise of, or the failure to exercise, powers bestowed by the trust deed upon the trustee.

Eligible Transaction

9. The following transactions and instruments are eligible transactions:
 - (a) section 70A (1) a dutiable transaction, and section 91A (1) the making of a relevant acquisition, apply if:
 - (i) by the transaction, property is:
 - (A) transferred or agreed to be transferred by a member of a group of corporations to another member of the same group; or
 - (B) vested in a member of the group, if the property was owned immediately before the vesting by another member of the same group; and
 - (ii) the transaction is approved by the commissioner.

- (b) section 208AA (1) an application to register a motor vehicle applies if:
 - (i) the application is made by a member of a group of corporations; and
 - (ii) immediately before the application was made, the vehicle was registered in the name of another member of the same group; and
 - (iii) the application is approved by the commissioner.

CONCESSION

- 10. A transaction or instrument that arises from a corporate reconstruction will be approved under sections 70A (3), 91A (3) and 208AA (3) for the concession under sections 70A (2), 91A (2) and 208AA (2), respectively, by the Commissioner for ACT Revenue, subject to any conditions he or she might impose, except where a purpose of the transaction is to avoid any Commonwealth, State or Territory taxation.
- 11. An approval for a concession will be withdrawn if the transferor and transferee do not remain members of the corporate group for at least 12 months from the date of the eligible transaction, except where the transferor or transferee cease to be members of the corporate group solely by virtue of the liquidation or deregistration of either of them (or winding up in the case of a unit trust) or by virtue of a public float.
- 12. The effect of the withdrawal of the concession approval is that the transaction will be liable to full duty from the date on which the transaction occurred.

PROCEDURAL

- 13. An application for concession 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 reconstruction. The application must:
 - (a) identify that the transaction or instrument arises from a corporate reconstruction;

- (b) state the purpose of the corporate reconstruction (for example, whether for the purpose of the sale or liquidation of a company), including the anticipated benefits to the corporate group;
 - (c) indicate how the relevant corporations are eligible members of a corporate group;
 - (d) identify that the transactions are eligible transactions; and
 - (e) include an estimate of the value of all dutiable property, relevant acquisitions (including the unencumbered value of any ACT land), and motor vehicles to which the application relates.
14. Applications may be made at any time prior to the relevant transaction, or within 1 year of the date of assessment of the transaction in respect of which the concession is sought.

APPROVALS

15. Under sections 70A (3), 91A (3), and 208AA (3) the Commissioner may grant approval for concession under sections 70A (2), 91A (2) and 208AA (2), respectively, subject to such conditions as he or she determines, including:
- (a) the applicant must, on entering into a transaction on which prior concession approval has been given by the Commissioner for ACT Revenue, advise the Commissioner whether or not there have been any material changes in circumstances which might have resulted in the application not being approved;
 - (b) the applicant (or such other person as determined by the Commissioner) must lodge a written undertaking to:
 - (i) advise the Commissioner if, within 12 months from the date of the eligible transaction, the immediate parent of the transferor or transferee corporations:
 - transfers shares (or units) in the corporation, or
 - enters into an agreement to transfer shares (or units) in the corporation, or

- enters into any other transaction (other than a liquidation, deregistration or float referred to in paragraph 11)

as a result of which the corporation will not remain a member of the corporate group; and

- (ii) pay the full duty otherwise payable on the eligible transaction if approval is withdrawn under paragraph 11;
- (c) the applicant must enter into an undertaking to abide by the conditions of any approval given by the Commissioner for ACT Revenue, and to agree to pay all or part of the duty on the transaction on which approval was given, if any conditions included in the undertaking are not met within a specified time frame.

DATE OF COMMENCEMENT

16. This determination applies to transactions entered into from the commencement date of the *Revenue Legislation Amendment Act 2003*.

Ted Quinlan
Treasurer
30 June 2003