

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

EXPLANATORY STATEMENT

The *Duties Act 1999* (the Duties Act) imposes duty on a range of Territory related documents and transactions including:

- ◆ transfers of Crown leases, subleases, unquoted marketable securities (shares and trust units), and of business assets in the ACT;
- ◆ leases of land (other than Crown leases);
- ◆ insurance policies (both general and life)
- ◆ hiring of goods; and
- ◆ sale and transfer of motor vehicles.

2 All building societies, credit unions and friendly societies became Authorised Deposit-taking Institutions (ADIs) within the meaning of the *Banking Act 1959* on 1 July 1999. From this date these institutions also became companies for the purposes of the *Corporations Act*, and the *Financial Institutions (ACT) Code* ceased to apply to these entities.

3 As a result of these changes, the supervision of ADIs has now been transferred to the Commonwealth via the *Financial Sector (Transfers of Business) Act 1999* (the FS(TB) Act). Under section 22 of that Act, where there is a transfer of business from one ADI to another, all assets and liabilities of the transferring body become the assets and liabilities of the receiving body without any transfer, conveyance or assignment of property.

4 The compulsory transfers usually occur for prudential reasons, and it is not intended to impose duty in these cases. However, there is nothing to prevent voluntary transfers from being made for purely commercial reasons, and in these cases, duty that would be paid by any other business is avoided.

5 Part 6 of chapter 3 of the Duties Act imposes stamp duty on all voluntary transfers of engagements and mergers by banks, building societies, credit unions, friendly societies and life insurance companies.

- 6 The voluntary transfer of assets as a result of the merger of a financial institution may, however, be eligible for an exemption under the Duties Act where the merger meets the criteria established under these guidelines, which have been determined by the Minister.
- 7 The intention of these guidelines is to exempt any transfer that would not previously have been liable to duty under the Duties Act by virtue of the operation of the former *Financial Institutions (ACT) Code*.
- 8 It is an offence under the *Taxation Administration Act 1999* to give false or misleading information to the commissioner, or to fail to give a declaration or statement required under section 115B of the Duties Act.

This determination sets the guidelines that take effect from the date of commencement of the *Duties Amendment Act 2001 (No 2)*.

Circulated by the authority of the Treasurer.