Australian Capital Territory

Duties (Corporate Reconstruction) Determination 2014 (No 1)

Disallowable instrument DI2014-288

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)**

EXPLANATORY STATEMENT

1. The *Duties Act 1999* (Duties Act) imposes duty on a range of Territory transactions, including the transfer and agreement to transfer dutiable property, the acquisition of interests in certain landholders, and the sale and transfer of motor vehicles. Dutiable property is defined as, among other things, land in the ACT, a Crown lease, a land use entitlement, and an interest in any such dutiable property. It also includes an option to purchase land in the ACT or a Crown lease over ACT land.

2. Certain eligible transactions within a corporate group may be approved for concessional duty under section 70A (Corporate reconstructions—concessional duty for dutiable transactions), section 91A (Corporate reconstructions—concessional duty for relevant acquisitions) and section 208AA (Corporate reconstructions—concessional duty for motor vehicle registration applications) of the Duties Act. The purpose of these sections is to limit the concessions to transactions where the ultimate beneficial ownership of the assets remains unchanged. That is, the assets or corporation owned by a member of a 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.

3. These provisions vest in the Commissioner for ACT Revenue the power to approve duty concessions for certain eligible transactions, in accordance with guidelines determined by the Minister. This determination sets those guidelines in accordance with the Duties Act:

- Section 70A (1) applies to dutiable transactions and section 91A (1) applies to relevant acquisitions by which property is transferred, or agreed to be transferred by, or vests in, a corporation that is a member of a group of corporations to another corporation that is a member of the same group, and the transaction is approved by the Commissioner in accordance with guidelines;

- Section 208AA (1) applies to an application to register a motor vehicle by a corporation that is a member of a group of corporations if, immediately before the application was made, the motor vehicle was registered in the name of another corporation that is a member of the same group, and the transaction is approved by the Commissioner in accordance with guidelines;

- Sections 70A (2), 91A (2) and 208AA (2) allow concessional duty at the rate of 5 per cent of the amount that would, apart from these sections, be payable;

- Sections 70A (3), 91A (3) and 208AA (3) allow the Commissioner to give approval subject to any conditions he or she determines;

- Sections 70A (4), 91A (4) and 208AA (4) allow the Minister, in writing, to determine guidelines for the purposes of sections 70A , 91A and 208AA;

- Sections 70A (5), 91A (5) and 208AA (5) state that a determination is a disallowable instrument which must be notified and presented to the Legislative Assembly under the *Legislation Act 2001*; and

- Sections 70A (6), 91A (6) and 208AA (6) state that for these sections, reference to a corporation includes a unit trust.

4. This instrument provides an update to the previous instrument, DI2003-178. There is no change to the eligibility for concession, how duty is applied to eligible transactions or the issues that must be addressed in a concession application. This instrument clarifies that an application for concessional duty under these guidelines can be made any time prior to the relevant transaction, or within one year of the relevant <u>transaction</u> in respect of which the concession is sought. The revoked instrument provided that the application could be made within one year of the <u>assessment</u> of the transaction, which was not properly reflective of the provisions of the Duties Act.

5. In addition, these guidelines now provide information on interest and penalty tax that may be imposed on an assessment of duty, in accordance with sections 25 and 30 of the *Taxation Administration Act 1999*. Interest may be applied to an assessment if payment of the liability is not made within the statutory timeframe. Penalty tax may be applied if a tax default occurs, with the amount of penalty tax determined in accordance with section 31 of the *Taxation Administration Act 1999*.

6. Interest and penalty tax is applied to an amount of tax unpaid. Therefore, penalty tax and interest may apply to the concessional amount, if the transaction is approved by the Commissioner for ACT Revenue for concessional duty. If the concession is not approved, or the approval for concession withdrawn, any applicable interest or penalty tax may be imposed on the full (non-concessional) duty liability.

7. These guidelines are applicable to transactions entered into on or after the date of notification of this instrument. The previous guidelines, which are revoked with this instrument, continue to apply to transactions between 1 July 2003 and the day prior to the notification of this instrument, inclusive.

Authorised by the Treasurer
Andrew Barr MLA