Australian Capital Territory

Duties (Corporate Reconstruction Guidelines) Determination 2015 (No 1)

Disallowable instrument DI2015-316

made under the

***Duties Act 1999*, s 232A (Corporate reconstruction transactions)**

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 a full duty exemption under section 232A of the Duties Act. The purpose of this section is to limit exemptions 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 Commissioner) the power to approve duty exemptions for certain eligible corporate reconstruction transactions, in accordance with guidelines for approval determined by the Minister (s 232A (2)). This determination sets those guidelines in accordance with the Duties Act:

- Section 232A (1) provides that duty is not chargeable on a corporate reconstruction transaction that is approved by the Commissioner in accordance with the guidelines determined under section 232A (3) (that is, 100 per cent duty relief is provided on eligible corporate transactions);

- Section 232A (2) allows the Commissioner to give approval subject to any conditions he or she determines;

- Section 232A (3) allows the Minister to determine, in writing, guidelines for the purpose of approvals granted under section 232A (2);

- Section 232A (4) states that a determination is a disallowable instrument which must be notified and presented to the Legislative Assembly under the *Legislation Act 2001*; and

- Section 232A (5) provides that a 'corporation' includes a unit trust scheme, and also provides that a 'corporate reconstruction transaction' includes:

- dutiable transactions and 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 (sections 232A (5) (a) and (b));

- applications 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 (section 232A (5) (c)).

4. The guidelines set out all the information required from corporate groups when applying to the Commissioner for an exemption, including information on the corporate group structure and membership, the benefits to the group of undertaking the reconstruction and identification of the relevant corporate reconstruction transactions.

5. This instrument includes minor amendments to the previous instrument, DI2014-288. However, there is no change to the eligibility for duty relief or the issues that must be addressed in a application to the Commissioner for relief. The instrument is now clearer on the procedural requirements of corporate groups lodging an exemption application.

6. As a result of the *Revenue Legislation Amendment Act 2015* (the Amendment Act) a full duty exemption will be provided on eligible corporate reconstructions that are approved by the Commissioner. This has necessitated reissuing of the guidelines.

7. The Amendment Act increased the duty exemption from 95 per cent to 100 per cent on eligible corporate reconstruction transactions. Prior to enactment of the Amendment Act, corporations were liable to pay 5 per cent duty of the normal duty in the case of eligible and approved corporate reconstructions. Removing the remaining 5 per cent duty liability harmonises the ACT with other jurisdictions who already provide 100 per cent duty relief, while reducing costs for eligible corporations carrying out reconstructions in the ACT.

8. These guidelines provide information on interest and penalty tax that may be imposed on any assessment of duty, in accordance with sections 25 and 30 of the *Taxation Administration Act 1999*. Interest may be applied if the Commissioner issues an assessment of duty (for example, if the conditions for corporate reconstruction exemption are not met), and 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*.

9. Interest and penalty tax may be applied to an amount of tax unpaid. If the exemption is not approved, or the approval for exemption is withdrawn, any applicable interest or penalty tax may be imposed on the full duty liability.

10. These guidelines are applicable to transactions entered into on or after 25 November 2015. The previous guidelines, which are revoked with this instrument, continue to apply to transactions between 14 November 2014 and 24 November 2015, inclusive.

Retrospective Commencement

11. Retrospective commencement of these guidelines is not prejudicial to any taxpayers and the commencement date accords with the non-prejudicial requirements of section 76 of the *Legislation Act 2001*.

a. These guidelines increase the amount of duty relief provided to eligible corporate groups from 95 to 100 per cent, presenting a financial benefit to affected taxpayers, as they are no longer required to pay 5 per cent duty on eligible transactions.

b. There are no adverse impacts on the rights of corporate groups by commencing these guidelines retrospectively, and the guidelines do not impose any liabilities on these groups as they present a financial and administrative benefit to these groups.

c. The retrospective date aligns with the commencement date of the Amendment Act.

Authorised by the Treasurer
Andrew Barr MLA