

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)***

## **EXPLANATORY STATEMENT**

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1. The *Duties Act 1999* (Duties Act) imposes duty on a range of Territory related documents and transactions including the transfer and agreement to transfer dutiable property, the acquisition of interests in certain landholders, leases of land (other than Crown leases), insurance policies, hiring of goods and the sale and transfer of motor vehicles.
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). 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% 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 condition 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; and

- Sections 70A (6) and 208AA (6) state that a corporation includes a unit trust, and section 91A (6) states that a corporation includes a unit trust instrument and defines a relevant acquisition.
4. This instrument differs to the revoked Instrument No 246 of 2001 only to the extent of the duty to be paid. Instead of an exemption from duty, the same transactions by the same corporate bodies are now subject to concessional duty of 5% of the amount that would, apart from these provisions, be payable.
  5. In making this change, the exemption that was provided for by section 232 has been omitted, and three new sections, 70A, 91A and 208AA, have been introduced to apply concessional duty to eligible dutiable transactions, relevant acquisitions and motor vehicle registration applications respectively.
  6. This determination applies from the commencement date of the *Revenue Legislation Amendment Act 2003* which introduces the abovementioned changes.

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