

Australian Capital Territory

# Duties (Corporate Reconstruction Transaction Guidelines) Determination 2017 (No 1)

**Disallowable instrument DI2017–229**

made under the

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

## EXPLANATORY STATEMENT

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### Commencement

This instrument commences on 18 September 2017.

### Background

The *Duties Act 1999* (the Duties Act) imposes duty on a range of Territory transactions, including transfers and agreements to transfer dutiable property, the acquisition of interests in certain landholders, and the sale and transfer of motor vehicles.

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.

Section 232A (1) provides that duty is not payable 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 conditions. Section 232A (3) allows the Minister to determine, in writing, guidelines for the purpose of approvals granted under section 232A (2).

Section 232A (5) defines a *corporation* and also provides a definition of *corporate reconstruction transaction*, which include three types of transaction:

- a **dutiable transaction** (under chapter 2 of the Duties Act) where property is transferred (or agreed to be transferred) by a member of a group of corporations to another member of the same group, or vested in a member of the group, if the property was owned immediately before the vesting by another member of the same group;
- a **relevant acquisition** (under chapter 3), if by the acquisition property is transferred (or agreed to be transferred) by a member of a group of corporations to another member of the same group, or vested in a member of the group, if the property was owned immediately before the vesting by another member of the same group; or
- an **application to register a motor vehicle** (under chapter 9) if the application is made by a member of a group of corporations and immediately before the application was made, the vehicle was registered in the name of another member of the same group.

These provisions give 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. This determination sets those guidelines in accordance with the Duties Act.

## Guidelines

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.

## Updates

This instrument updates the *Duties (Corporate Reconstruction Guidelines) Determination 2015 (No 1)* DI2015-316 to reflect changes to the Duties Act made by the 2017 Act.

The 2017 Act makes extensive amendments to taxation legislation to adopt a ‘Barrier Free’ model for the collection of conveyance duty. Some amendments in the 2017 Act affect the operation of the exemption, including:

- modifying the timing of the conveyance duty process so that payment occurs after settlement;
- requiring the registration of dutiable instruments under the Land Titles Act; and
- authorising the Registrar-General to collect information on behalf of the Commissioner for the purpose of duty assessment.

The guidelines add a clarification that under the Barrier Free model there is no change to eligibility for duty relief or the time limit for lodging an application.

If a corporate reconstruction transaction exemption is claimed at the point that the transaction is lodged for registration with the Registrar-General, and an approval is not yet in force, an application must still be submitted within the relevant 12 month time limit for the exemption to apply.

In relation to an exemption application, the guidelines now make clear that a written undertaking must be lodged with the Commissioner at the time the application is made. The former practice was to require the undertaking after approval was given. Requesting the undertaking as part of the application form will streamline the process of seeking approval.

## **Penalties**

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*.

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.

## **Revocation**

These guidelines are applicable to relevant transactions under the Duties Act that occur on or after 18 September 2017.

DI2015-316, which is revoked by this instrument, continues to apply to transactions executed in the period that DI2015-316 is effective.

For more information about the handling of corporate reconstruction transactions with a transaction date before 18 September 2017, visit the ACT Revenue Office website at [www.revenue.act.gov.au](http://www.revenue.act.gov.au).

Authorised by the Treasurer  
Andrew Barr MLA

5 September 2017