AUSTRALIAN CAPITAL TERRITORY

DUTIES ACT 1999

EXEMPTION GUIDELINES FOR CORPORATE RECONSTRUCTIONS

INSTRUMENT NO. 90 OF 1999

Under section 232 of the *Duties Act 1999*, I DETERMINE the following guidelines for the purposes of subsection (1) and (2):

GUIDELINES FOR EXEMPTION UNDER SECTION 232 OF THE *DUTIES ACT 1999*

1. The purpose of section 232 of the *Duties Act 1999* (the Act) is to exempt from duty certain transactions within a corporate group where the ultimate beneficial ownership of the assets remains unchanged. That is, the assets or corporation owned by a member of the 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.

DEFINITIONS FOR THE PURPOSES OF THESE GUIDELINES

Corporate reconstruction

2. Corporate reconstruction means an **"eligible transaction"** between **"eligible members"** of a **"corporate group"**.

Corporate group

3. Corporate group means a corporate parent and subsidiary corporations that are at least 90% beneficially owned, either directly or indirectly, by the parent, and over which the parent or other subsidiaries have voting control. Indirect ownership includes a sub-subsidiary that is at least 90% owned by one or more other subsidiaries of that parent. The parent and subsidiary corporations are regarded, for the purposes of this determination, as members of the corporate group.

4. In section 232, corporation includes a unit trust scheme. A unit trust in which at least 90% of the units are beneficially owned by members of the same corporate group is taken to be a member of the corporate group for the purposes of these guidelines.

Eligible members

5. Members of a corporate group will be eligible members if the relevant corporations and unit trust schemes have been members of the same corporate group for at least 12 months prior to the date of the transaction, or since the date of incorporation (date of establishment of a unit trust scheme) where the corporation or unit trust is less than 12 months old. There are two exceptions to these requirements:

(i) a company that had not traded before the date it became a member of the corporate group is an eligible member; and
(ii) any member of the corporate group will also be an eligible member in respect of a transaction, to the extent that the transaction relates to dutiable property or motor

vehicles acquired by the corporation or unit trust after the date on which the corporation or unit trust became a member of the corporate group.

Non-eligible member

6. A member of a corporate group is not eligible to the extent that the property the subject of the transaction is or will be held as trustee of a discretionary trust, regardless of whether members of the corporate group are beneficiaries under the discretionary trust.

Discretionary trust

7. A discretionary trust is a trust the terms of which (such as the identity of income or capital beneficiaries, the amounts they might receive, the duration of the trusts, and the property in the trust fund) depend upon the exercise of, or the failure to exercise, powers bestowed by the trust deed upon the trustee.

Eligible Transaction

8. The following transactions and instruments are eligible transactions:

(a) a transfer of dutiable property between eligible members of a corporate group;
(b) an agreement for sale or transfer of dutiable property between eligible members of a corporate group;
(c) a vesting of dutiable property on a merger of corporations, being a merger specifically provided for by a statute or subordinate law of the Territory, a State or another Territory, where the property is held by an eligible member of a corporate group both before and after the vesting; and
(d) an application to register a motor vehicle as a result of a transfer of the vehicle between eligible members of a corporate group.

EXEMPTION

9. A transaction or instrument that arises from a corporate reconstruction will be approved for exemption by the Commissioner for ACT Revenue, subject to any conditions he or she might impose, except where a purpose of the transaction is to avoid any Commonwealth, State or Territory taxation.

10. An approval for an exemption will be withdrawn if the transferor and transferee do not remain members of the corporate group for at least 12 months from the date of the eligible transaction, except where the transferor or transferee cease to be members of the corporate group solely by virtue of the liquidation or deregistration of either of them (or winding up in the case of a unit trust) or by virtue of a public float.

11. The effect of the withdrawal of the exemption approval is that the transaction will be liable to duty from the date on which the transaction occurred.

PROCEDURAL

12. An application for exemption must be made in the form of a letter to the Commissioner for ACT Revenue addressing each of the issues specified in the guidelines that are relevant to the reconstruction. The application must:

(a) identify that the transaction or instrument arises from a corporate reconstruction;
(b) state the purpose of the corporate reconstruction (for example, whether for the purpose of the sale or liquidation of a company), including the anticipated benefits to the corporate group;
(c) indicate how the relevant corporations are eligible members of a corporate group;
(d) identify that the transactions are eligible transactions; and
(e) include an estimate of the value of all dutiable property and motor vehicles to which the application relates.

13. Applications may be made at any time prior to the relevant transaction, or within 1 year of the date of assessment of the transaction in respect of which the exemption is sought.

APPROVALS

14. Under subsection 232(3), the Commissioner may grant approval subject to such conditions as he or she determines, including:

(i) the applicant must, on entering into a transaction on which prior exemption approval has been given by the Commissioner for ACT Revenue, advise the Commissioner whether or not there have been any material changes in circumstances which might have resulted in the application not being approved;

(ii) the applicant (or such other person as determined by the Commissioner) must lodge a written undertaking to:
(a) advise the Commissioner if, within 12 months from the date of the eligible transaction, the immediate parent of the transferor or transferee corporations:
- transfers shares (or units) in the corporation, or
- enters into an agreement to transfer shares (or units) in the corporation, or
- enters into any other transaction (other than a liquidation, deregistration or float referred to in paragraph 10)

as a result of which the corporation will not remain a member of the corporate group; and
(b) pay the duty otherwise payable on the eligible transaction if approval is withdrawn under paragraph 10;

(iii) the applicant must enter into an undertaking to abide by the conditions of any approval given by the Commissioner for ACT Revenue, and to agree to pay all or part of the duty on the transaction on which approval was given, if any conditions included in the undertaking are not met within a specified time frame.

DATE OF COMMENCEMENT

15. This determination applies to transactions effected on or after 1 March 1999.

Date: 10/5/99

Kate Carnell
Treasurer