

# Duties (Intergenerational Rural Transfer Guidelines) Determination 2017 (No 1)

## Disallowable instrument DI2017–230

made under the

***Duties Act 1999, s 230 (Inter-generational rural transfers)***

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### 1 Name of instrument

This instrument is the *Duties (Intergenerational Rural Transfer Guidelines) Determination 2017 (No 1)*.

### 2 Commencement

This instrument commences on 18 September 2017.

### 3 Introduction

Section 230 of the Act provides a full duty exemption for certain transactions involving the transfer of farming properties to younger generations.

The exemption is limited by reference to the use of the land, the parties to the transaction, and other requirements contained in these guidelines.

This instrument determines guidelines for section 230 (1) (c) and (d) of the Act.

### 4 Definitions

In this instrument:

***descendant*** means—

- (a) a child, stepchild, grandchild, sibling, niece or nephew; or
- (b) the domestic partner of a person mentioned in paragraph (a).

***eligible transfer*** means any of the following transactions:

- (a) a transfer of land;
- (b) an agreement for the sale or transfer of land;
- (c) a lease of the land;
- (d) a transfer or assignment of a lease or permit in respect of land.

*eligible transferee* means a transferee, assignee or lessee who is a descendant of the eligible transferor in accordance with section 5. The eligible transferee must be an individual.

*eligible transferor* includes a transferor, assignor or lessor. The eligible transferor may be an individual, a corporation or a trustee.

*intergenerational rural transfer* means an eligible transfer of land used for primary production from an eligible transferor to an eligible transferee. If a transaction relates to land used for primary production and other property liable for duty, the intergenerational rural transfer includes the property that is an integral part of the business of primary production.

## 5 Eligible parties

For section 230 (1) (c) of the Act, if the eligible transferor is listed in column 1 of table 1 below, the eligible transferee must be the type of descendant listed in column 2 opposite that transferee.

**Table 1 Eligible parties**

<b>column 1 eligible transferor</b>	<b>column 2 eligible transferee</b>
Individual	Descendant of the eligible transferor
Proprietary limited company	Descendant of a shareholder or shareholders: (a) who hold the shares beneficially; (b) who are entitled to vote at meetings of the company; and (c) who were entitled as shareholder(s) to 25 per cent of the assets of the company on winding up, being an entitlement which existed for at least 3 years prior to the date of the eligible transfer, unless the company was incorporated within 3 years of that date
Trustee of a bare trust for named beneficiaries	Descendant of a named beneficiary of the trust
Trustee of a discretionary trust	Descendant of a person or people who are entitled (as takers in default of appointment) to a 25 per cent interest in the capital of the trust fund

column 1 eligible transferor	column 2 eligible transferee
Trustee of a private unit trust	Descendant of a unitholder or unitholders: <ul style="list-style-type: none"> <li>(a) who hold the units beneficially;</li> <li>(b) who are entitled to vote at meetings of the company; and</li> <li>(c) who were entitled as unitholder(s) to 25 per cent of the assets of the unit trust on winding up, being an entitlement which existed for at least 3 years prior to the date of the eligible transfer, unless the trust was established within 3 years of that date</li> </ul>

## 6 Other requirements

Section 230(1)(a) and (b) of the Act require that:

- (a) the land must be land used for primary production by the transferor, lessor or assignor immediately before the transaction or the date of first execution of the instrument; and
- (b) the land must continue to be land used for primary production by the transferee, lessee or assignee.

For section 230 (1) (d) of the Act, the eligible transfer must satisfy these requirements:

- (a) the eligible transferee must take full legal and beneficial ownership of the land used for primary production; and
- (b) if the business of primary production is leased at the time of the eligible transfer, it must be leased to a descendant.

Provided that full ownership is transferred to the eligible transferee, the eligible transferor may continue to occupy or use all or part of the land used for primary production (such as the farm house).

## 7 Procedure

The eligible transferee must claim the exemption while lodging the intergenerational rural transfer with the Registrar-General for registration under the *Land Titles Act 1925*.

An application form to the Commissioner for ACT Revenue (the Commissioner) or supporting documents are not required at the time of lodgement. However, the Commissioner may contact the eligible transferee after registration to request access to records and verify the transferee's eligibility for the exemption.

Late applications for exemption will be subject to section 40 of the *Taxation Administration Act 1999*.

## **8 Required records**

The eligible transferee is required to keep proper records of the intergenerational rural transfer for a minimum of 5 years under part 8 of the *Taxation Administration Act 1999*.

The types of records that must be kept include (at a minimum):

- (a) documentation relating to the intergenerational rural transfer;
- (b) records relating to the value of the land used for primary production and all other property that is an integral part of the business of primary production;
- (c) if the eligible transferor is a corporation—copies of the constitution and the latest balance sheet of the corporation at the time of the eligible transfer, together with a certified copy of the share register;
- (d) if the eligible transferor is a trustee of a discretionary trust or a trust for a named beneficiary—a copy of the trust deed and any amendments, and evidence that duty in relation to the trust deed has been paid (see section 250 of the Act);
- (e) if the eligible transferor is trustee of a unit trust—copies of the trust deed, the latest balance sheet of the unit trust at the time of the eligible transfer, and evidence that duty in relation to the trust deed has been paid (see section 250 of the Act).

## **9 Revocation**

This instrument revokes *Duties Intergenerational Rural Transfer Guidelines 1999* DI1999-91.

## **10 Transitional**

DI1999-91 continues to apply to a transaction or instrument mentioned in section 230 (1) of the Act first executed in the period 1 March 1999 to 17 September 2017, inclusive.

Andrew Barr MLA  
Treasurer

5 September 2017