

AUSTRALIAN CAPITAL TERRITORY

DUTIES ACT 1999

EXEMPTION GUIDELINES FOR CORPORATE RECONSTRUCTIONS

INSTRUMENT NO. 246 OF 2001

EXPLANATORY STATEMENT

1. The *Duties Act 1999* imposes stamp duty on a range of Territory related documents and transactions including:
 - transfers of Crown leases, subleases, shares and trust units and of businesses operating in the ACT;
 - leases of land (other than Crown leases);
 - insurance policies (both general and life)
 - hiring of goods; and
 - sale and transfer of motor vehicles.
2. Chapter 11 provides general exemptions from duty. Section 232, “Corporate reconstructions - exemptions”, exempts from duty certain eligible transactions within a corporate group. Its purpose is to limit such exemptions to transactions 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.

It vests in the Commissioner the power to approve certain eligible transactions as being exempt from duty, in accordance with guidelines determined by the Minister. This determination sets those guidelines in accordance with the Duties Act:

- section 232 (1) applies to dutiable transactions and the making of relevant acquisitions within the meaning of section 86 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;
- section 232 (2) allows this section to apply 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;
- section 232 (3) allows an exemption from duty for the transactions or motor vehicle registration applications to which sections 232 (1) and (2) apply, to be approved by the Commissioner in accordance with guidelines determined by the Minister;
- section 232 (4) allows the Commissioner to give approval subject to any conditions he or she determines;
- section 232 (5) allows the Minister, by instrument, to determine guidelines for the purposes of subsection (3);
- section 232 (6) states that a guideline is a disallowable instrument which must be notified and presented to the Legislative Assembly; and

- section 232 (7) states that, for this section, a corporation includes a unit trust scheme.

3. This Instrument differs to the revoked Instrument No.193 of 2001 by:

- (i) including a relevant acquisition within the meaning of section 86 as a transaction for which duty is not charged if it falls within these guidelines. This applies to certain interests in landholding corporations under part 2 of chapter 3 of the Duties Act which were previously required to apply for a waiver of duty under section 65 of the *Financial Management Act 1996*; and
- (ii) removing reference to “vesting on merger of corporations” to reflect the inclusion of “vesting” in the definition of “transfer”.

4. This Determination applies from the commencement date of the *Duties Amendment Act 2001 (No 2)* which introduces the abovementioned changes.

Circulated by the authority of the Treasurer.