

AUSTRALIAN CAPITAL TERRITORY

DUTIES ACT 1999

EXEMPTION GUIDELINES FOR CORPORATE RECONSTRUCTIONS

INSTRUMENT NO. 193 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, “Members of a group of corporations”, exempts from duty certain dutiable 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 dutiable transactions as being exempt from duty, in accordance with guidelines determined by the Minister. This determination sets those guidelines in relation to:
 - section 232 (1), which allows the exemption for a dutiable transaction by which dutiable 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
 - section 232 (2), which exempts from duty 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.

3. This Instrument differs to the revoked Instrument No. 90 of 1999 by broadening the definition of a “corporate group”. Listed corporations which have their shares or units quoted as being stapled to each other on a stock exchange, and their subsidiaries, will be recognised as a “corporate group”. The rationale for broadening the definition of “corporate group” is that the transfer of assets within such corporate groups does not change the beneficial ownership of the assets. For example, Company A is listed and has its shares quoted on a stock exchange as being stapled to listed Company B’s quoted shares and listed Company C’s quoted units. Therefore, Companies A, B and C and their subsidiaries are recognised as a “corporate group” for the purposes

of this Determination. Subsidiaries must be at least 90% owned directly or indirectly by Companies A, B and C, jointly or separately. Furthermore, this instrument will allow for a 'claw back' of an exemption if such corporate groups' shares or units are no longer stapled within 12 months of an exemption being given. For example, if Company A's shares are no longer quoted as being stapled to Company B's shares within 12 months of an exemption given, then the exemption will be withdrawn and duty will be payable by the applicants.

4. This Determination applies retrospectively from 4 June 2001, the date the Treasurer agreed in principle to broaden the definition of "corporate group" as per clause 5 of the Determination. The retrospective operation of this Determination, which provides an exemption for certain companies undertaking corporate reconstructions, should have no detrimental effect on taxpayers.

Circulated by the authority of the Treasurer.