



ACT Revenue Office
Department of Treasury

Revenue Circular DAA007
Duties Act 1999
Concessional Duty—Corporate Reconstructions

Circular history

Circular number	Issued date	Dates of effect		Status
		From	To	
D5	2003	1 July 2003	-	Replaced by D15
D15	June 2003	1 July 2003	-	Re-issued as DAA007
DAA007	July 2008	1 July 2003	24 November 2015	Withdrawn – refer to the applicable guidelines under the <i>Duties Act 1999</i>

Preamble

1, Under the following provisions of the *Duties Act 1999* (the Act), the Commissioner for ACT Revenue (the Commissioner) may conditionally apply concessional duty on certain transactions, in accordance with guidelines determined by the Minister, in which the transferor and transferee corporations are members of the same corporate group:

- (a) sections 70A (Corporate reconstructions—concessional duty for dutiable transactions);
- (b) section 91A (Corporate reconstructions—concessional duty for relevant acquisitions); and
- (c) section 208AA (Corporate reconstructions—concessional duty for motor vehicle registration applications).

The current guidelines are at DI2003-178 (the Determination) at <http://www.legislation.act.gov.au/di/default.asp>.

2, The purpose of the concession is to provide relief from duty when property is transferred within a corporate group, in approved circumstances, where there is no change in the ultimate beneficial ownership of the property. 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 corporate parent's ownership and control of the member of the corporate group (clause 1 of the Determination).

3. This circular discusses the guidelines and the common conditions which the Commissioner may impose where a concession has been approved pursuant to sections 70A, 91A or 208AA of the Act.

Circular

Concession

4. A transaction or instrument will be approved under sections 70A (3), 91A (3) or 208AA (3) for concession under sections 70A (2), 91A (2) or 208AA (2) respectively, if the Commissioner is satisfied that the transaction or instrument arises from a corporate reconstruction.

5. Corporate reconstruction means an **'eligible transaction'** between **'eligible members'** of a **'corporate group'** (clause 2 of the Determination).

6. A transaction or instrument will not be granted concession if, in the Commissioner's opinion, a purpose of the transaction is to avoid any Commonwealth, State or Territory taxation (other than the duty for which concession is sought) (clause 10 of the Determination).

7. Approval for concession may be withdrawn if the transferor and/or transferee do not remain members of the corporate group for at least 12 months from the date of the eligible transaction (see paragraph 19 herein and clause 11 of the Determination). This also applies if 'stapled securities' become unstapled within 12 months of the date of the eligible transaction. The effect of withdrawal of approval is that the transaction is dutiable from the date on which the transaction occurred (clause 12 of the Determination).

8. Approval will not be withdrawn if 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 of a member of the corporate group (clause 11 of the Determination).

Corporate Group

9. A "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, under the guidelines, as "members" of the corporate group (clause 3 of the Determination).

10. Sections 70A (6), 91A (6) and 208AA (6) of the Act define "corporation" to include 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 under the guidelines (clause 4 of the Determination).

11. If the issued shares or units of a corporation are stapled to the issued shares or units of one or more other corporations, and such stapled securities are quoted on a stock exchange, each of those corporations will be treated as if they are subsidiaries of the same parent corporation in determining whether corporations constitute a corporate group. Consequently, each stapled corporation, and any subsidiaries that are at least 90% beneficially owned, either directly or indirectly, by those corporations, will be regarded as members of the same corporate group (clause 5 of the Determination).

Eligible Members

12. Clause 6 of the Determination specifies that 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 2 exceptions to these requirements:

- (a) subject to other conditions being met, a company that had not traded before the date it became a member of the corporate group is an eligible member; and
- (b) 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, a relevant acquisition, 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.

13. 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 (clause 7 of the Determination).

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 (clause 8 of the Determination).

Eligible Transactions

14. Clause 9 of the Determination specifies the following transactions and instruments as "eligible transactions":

- (a) section 70A (1), a dutiable transaction, and section 91A (1), the making of a relevant acquisition, apply if:
 - (i) by the transaction, property is:
 - A. transferred or agreed to be transferred by a member of a group of corporations to another member of the same group; or
 - B. vested in a member of the group, if the property was owned immediately before the vesting by another member of the same group; and
 - (ii) the transaction is approved by the commissioner; and
- (b) section 208AA (1), an application to register a motor vehicle, applies if:
 - (i) the application is made by a member of a group of corporations; and
 - (ii) immediately before the application was made, the vehicle was registered in the name of another member of the same group; and
 - (iii) the application is approved by the commissioner.

Applications

15. Clause 13 of the Determination requires that applications for corporate reconstruction concessions are to be made in the form of a letter to the Commissioner addressing each of the issues specified in the guidelines in relation to the reconstruction.

The application must:

- (a) identify that the transaction or instrument arises from a corporate reconstruction as set out in paragraphs 4 and 5 above;
- (b) state the purpose and anticipated benefits of the corporate reconstruction for the corporate group as set out in paragraphs 6 to 8 above;
- (c) indicate how the relevant corporations are eligible members of a corporate group including diagrams of the corporate group structure before and after the corporate reconstruction as set out in paragraphs 9 to 13 above;
- (d) identify that the transactions are eligible transactions as set out in paragraph 14 above;
- (e) include an estimate of the value of all dutiable property, relevant acquisitions (see paragraph (f) below), and motor vehicles to which the application relates, including the basis on which the estimate is made and relevant documents to support the calculation of that estimate;
- (f) include a statement as to whether any private corporation involved in the relevant acquisition has an interest in ACT land within the meaning of part 2 of chapter 3 of the Act, and include the unencumbered value of any such land;
- (g) show they are eligible members (see clause 6 of the Determination). If they have been a member of the group for less than 12 months, include a statutory declaration from the relevant directors:
 - (i) stating that the company had not traded before it became a member of the corporate group; and
 - (ii) listing any dutiable property, relevant acquisitions, and motor vehicles that had been acquired since the company has become a member of the corporate group.

Note that transactions relating to acquisitions made prior to becoming a member of the corporate group cannot be eligible transactions for corporate reconstruction if the company has been a member for less than 12 months.

- (h) include ASIC historical company extracts/searches, or other documents that demonstrate:
 - (i) at least 90% beneficial ownership, either directly or indirectly, by the parent;
 - (ii) that the parent company has voting control of the eligible members;
 - (iii) the dates and places of incorporation of the eligible members; and
 - (iv) the company numbers and registered addresses of eligible members; and
 - (v) identify the form of the execution clause/signature block of the ultimate parent company for the signing of any deed that may be required.

16. 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 concession is sought (clause 14 of the Determination).

Conditional Approvals

17. Under sections 70A (3), 91A (3) and 208AA (3) of the Act, approvals may be granted subject to such conditions as the Commissioner determines. The conditions specified in clause 15 of the Determination do not exclude the Commissioner from modifying them or imposing any other conditions.

18. Where approval is granted prior to the transaction occurring, the applicant must, on entering into the transaction, advise the Commissioner whether or not there have been any material changes in circumstances which might have resulted in the application not being approved (clause 15 (i) of the Determination).

19. If the Commissioner grants approval (before or after the transactions) it is subject to specified conditions, in particular, requiring the applicant (or such other person as determined by the Commissioner) to 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:
 - (i) transfers shares (or units), or
 - (ii) enters into an agreement to transfer shares (or units), or
 - (iii) stapled shares or units are no longer stapled; or
 - (iv) enters into any other transaction (other than a liquidation, deregistration or float referred to in paragraph 8 herein), 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 transactions if approval is withdrawn (see paragraph 7 herein).

20. Undertakings, Unconditional deeds of undertaking or bank guarantees will be required from relevant parties. The type of undertaking or guarantee will depend upon the circumstances.

21. This circular applies from 1 July 2008 and replaces Circular D15 which still applies to Corporate Reconstruction transactions completed between 1 July 2003 and 30 June 2008.

Transitional arrangements

22. Circular D15 and DI2003-178 which allow corporate reconstruction exemptions under sections 70A, 91A and 208AA of the Duties Act will continue to apply where transactions are executed between 1 July 2003 and 30 June 2008.

SIGNED

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Commissioner for ACT Revenue
30 June 2008

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Withdrawn