

## Guidelines for duty relief in relation to corporate reconstructions

### Revenue Ruling DA.009

#### Replaces SD.079

CEASED 13 December 2006. Please refer to our website for details

For transfers occurring after 31 December 2003, any duty exemption will be determined in accordance with the provisions contained in section 250 of the Duties Act 2000 and Revenue Ruling DA.025.

### Preamble

Revenue Ruling SD.079 has been revised to reflect the commencement of the *Duties Act 2000* (the Duties Act) from 1 July 2001.

Relief from duty costs that may be incurred in a corporate reconstruction may be sought under section 250 of the Duties Act. The legislation provides that such applications may be considered under guidelines approved by the Treasurer of Victoria.

The purpose of this ruling is to outline the revised guidelines approved by the Treasurer pursuant to section 250 of the Duties Act. They establish the conditions under which instruments or transfers of dutiable property are of a class that arise from a bona fide corporate reconstruction. Such instruments or transfers of dutiable property are exempt to an extent determined by the Treasurer.

### Ruling

#### Determinations

- 1 Pursuant to section 250(1) of the Duties Act, the Treasurer has approved these guidelines and has determined that the extent of the exemption shall be subject to the conditions specified in these guidelines.
- 2 These guidelines are effective from 1 July 2001.
- 3 All instruments or transfers of dutiable property arising out of a bona fide corporate reconstruction shall be fully exempt from duty provided the Commissioner is satisfied the conditions in these guidelines have not been contravened.
- 4 An instrument or a transfer of dutiable property arises out of a bona fide corporate reconstruction if the Commissioner is satisfied that the conditions in these guidelines have been met and will not be contravened.

- 5 The Commissioner shall:
  - (a) if satisfied that the conditions are met and will not be contravened, denote an instrument or transfer of dutiable property exempt after an application for the exemption has been made; or
  - (b) if not satisfied that the conditions are met, refuse the exemption.
- 6 The Commissioner shall issue assessments and issue proceedings to recover any money payable if false or misleading information has resulted in denoting an instrument or transfer of dutiable property exempt.

#### Conditions

- 7 The relevant instruments must give effect to, or directly arise from, a corporate reconstruction.
- 8 The corporate reconstruction must not be designed for the purpose of avoiding Victorian taxes, duties or licence fees.
- 9 Application must either be made to the Commissioner seeking the Commissioner's approval that the relevant instruments arise from a corporate reconstruction and will be exempted before the relevant instruments are executed or within 12 months of their execution.
- 10 The applicant must provide the Commissioner with all information materially relevant to the corporate reconstruction, accompanied by such statutory declarations as the Commissioner requires, and all information provided must be complete, true and correct.
- 11 An applicant may regard the written approval of the Commissioner as binding on the Commissioner provided:
  - (a) the relevant instruments described at application are submitted to the Commissioner for denoting within four months of the date of approval;
  - (b) between the approval and the execution of the relevant instruments, there has been no material change in the circumstances described at application; and
  - (c) an undertaking, if required by the Commissioner, is given prior to denoting the relevant instruments.

- 12 In the case of relevant instruments that transfer assets, the assets must only be transferred to associated corporations.
- 13 Corporations are associated corporations if:
- (a) of two corporations one is the beneficial owner of at least 90 per cent of the issued share capital of the other corporation and has voting control over the other corporation; or
  - (b) a third corporation is the beneficial owner of at least 90 per cent of the issued share capital of each of two corporations and has voting control over each corporation; and such association has existed:
    - (i) for three years prior to the date of execution of the relevant instruments; or
    - (ii) if one or more of the corporations has been incorporated within the last three years, from the date of incorporation of those corporations; or
    - (iii) prior to the date an associated corporation came into possession of an asset which that corporation proposes to transfer in the corporate reconstruction.
- 14 The ultimate beneficial ownership of any land in the possession of either of the associated corporations at the time relevant instruments are executed, must not be altered for three years after the execution of the relevant instruments, unless the ownership is changed by an instrument or a transfer of dutiable property upon which duty at transfer rates has been paid or by a means which is otherwise exempt from duty under the Duties Act. This condition shall not apply to land that, at the time relevant instruments are executed, is legally owned by a corporation, shares in the capital of which are quoted on the Australian Stock Exchange Limited.
- 15 If the Commissioner so requires, persons the Commissioner deems appropriate must give an undertaking in the form of a deed which secures payment to the Commissioner of:
- (a) an amount equivalent to duty at transfer rates for land ownership changes which breach the condition at 14 above; and
  - (b) the amount of any assessment that the Commissioner may issue in relation to relevant instruments denoted exempt as a result of false or incorrect information.
- 16 The terms used in these guidelines shall have the same meaning as provided in the Duties Act, except as follows:
- (a) **“Corporate reconstruction”** means asset transfers between associated corporations, where the ultimate beneficial ownership of the asset remains unchanged.
  - (b) **“Ultimate beneficial ownership”** means that an asset or a corporation legally owned by a member of a group of associated corporations, is subject to the indirect ownership and voting control of the parent corporation of that group by virtue of the parent corporation’s ownership and voting control of that associated corporation, provided the parent corporation is itself an associated corporation in that group.
  - (c) **“Relevant instrument”** means any instrument or transfer of dutiable property that would usually attract duty under the Duties Act and gives effect to, or directly arises from, a corporate reconstruction for which exemption is sought.
  - (d) **“Asset”** means any property, marketable securities or entitlements the transfer or assignment of which would normally attract duty.
  - (e) **“Voting control”** means the ability to cast (or control the casting of) at least 90 per cent of the maximum number of votes that might be cast at a general meeting of a corporation.
  - (f) **“Application”** means the process of seeking in writing the Commissioner’s approval that relevant instruments be denoted exempt from duty payable under the Duties Act. The process will be to identify to the Commissioner the relevant instruments and the amount of duty otherwise payable for each, give the Commissioner a statutory declaration from a person the Commissioner considers appropriate as to the conditions in these guidelines, provide the Commissioner with details about the structure of the corporate group and the assets to be transferred, and provide any other information or declarations the Commissioner requires.
  - (g) **“Applicant”** means a corporation seeking exemption under these guidelines or persons acting on behalf of that corporation.
- Please note that rulings do not have the force of law. Each decision made by the State Revenue Office is made on the merits of each individual case having regard to any relevant ruling. All rulings must be read subject to Revenue Ruling GEN.01.

**Commissioner of State Revenue  
October 2001**

