STATE REVENUE OFFICE VICTORIA
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Duty Exemptions for Corporate Reconstructions
Revenue Ruling DA.025

Section 250
Duties Act 2000

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

Preamble

Exemption from duty costs that may arise from a *Corporate Reconstruction* is available from 1 January 2004 under section 250 of the *Duties Act 2000* ('the Act').

From 1 January 2004, section 250 of the Act provides the criteria for the exemption and establishes the conditions under which duty imposed on instruments and/or transfers of assets will be exempt where the instrument or transfer arises from a *Corporate Reconstruction*.

The *Corporate Reconstruction* exemption was introduced into the Act to:

- give business greater certainty and consistency;
- remove cost impediments for *Corporate Reconstructions*; and
- reduce disadvantages for Victorian and Australian businesses competing internationally.

The purpose of this ruling is to clarify aspects of section 250 of the Act and to outline the manner in which the Commissioner will administer the exemption.

Commencement

This Revenue Ruling has effect from 1 January 2004 and applies to all transfers of assets occurring on or after 1 January 2004.

For transfers arising from a *Corporate Reconstruction* occurring prior to 1 January 2004, any duty exemption will be determined in accordance with the Treasurer's Guidelines shown in Revenue Ruling DA.009.

Corporate Reconstructions

A *Corporate Reconstruction* arises where a *Corporate Group* reorganizes its business structure including the transfer of assets between Corporations that are members of the *Corporate Group*.

Common reasons for a *Corporate Reconstruction* are to:

- align business operations with the appropriate legal entity;
- improve the balance sheet of a subsidiary seeking finance;
- respond to restructuring by a foreign parent;
- remove expensive and dated structures in complex groups; and
- prepare for a public float.

Instruments and asset transfers between group members usually attract duty. The *Corporate Reconstruction* exemption removes the duty liability that arises from eligible transactions resulting from legitimate reconstructions of *Corporate Groups*.

Corporate Group

1. A "Corporate Group" in section 250(1) of the Act includes the parties to the transaction and every *Corporation* necessary to establish a direct or indirect connection between those parties.

   For example, an indirect connection between members of a group arises when an entity has 90% of the beneficial interest and voting rights in another entity that has 90% of the beneficial interest and voting rights in a further entity - all three entities would be considered to form a Corporate Group.

   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 the Australian Stock Exchange or a recognised stock exchange, those corporations and all of the respective 90% or more subsidiaries of each of those corporations constitute a *Corporate Group* and each member of that *Corporate Group*.

2. "Corporation" is defined in section 3(1) of the Act as '*a body corporate, whether incorporated in this State or elsewhere*'.

   For the purposes of the exemption the Commissioner shall accept as a Corporation, a unit trust scheme that satisfies the criteria in section 250(1)

2 (a). "Corporation" for the purposes of the *Corporate Reconstruction* exemption does not include a *Corporation* acting as trustee of a trust(s). The trust or *Corporation* for which the trustee is acting will constitute part of the *Corporate Group*.

Eligible Transactions

An eligible transaction is defined in Section 250A of the Act to include:

- transfers of assets from one member of a *Corporate Group* to another;
- vesting of dutiable property, arising from a court order, from one member of a *Corporate Group* to another;
- an application to transfer registration of a motor vehicle transferred from one member of a *Corporate Group* to another; and
- a dutiable transaction to which section 14 of the Act applies between members of a *Corporate Group*;
- a relevant acquisition to which section 80 of the Act applies by a member of a *Corporate Group* from another member of the group.

Revocation of the Exemption

The Commissioner may exercise his discretion under section 250D of the Act to revoke an exemption from duty arising from a corporate reconstruction:

- when the members of the *Corporate Group* do not remain members of the group for at least 3 years after the date of the transaction for which an exemption from duty was provided;
- when the instrument or transfer is not, or does not arise out of an eligible transaction;
- circumstances change such that the transaction for which exemption has been granted is no longer an eligible transaction;
- the exemption was granted on the basis of false or misleading information being provided by the *Corporate Group;*
- when the eligible transaction arises from a scheme devised solely for the purposes of taking advantage of the exemption for *Corporate Reconstructions* provided in section 250B of the Act

The Commissioner will not revoke an exemption arising from a *Corporate Reconstruction* if there is an 'unstapling' of the *Corporate Group* to enable one or more members of the *Corporate Group* to be liquidated, wound-up, dissolved or deregistered, or where a member ceases to be a member of the *Corporate Group* by virtue of a public float that occurred within 12 months after the day on which the transaction occurred

For the purposes of section 250D of the Act "Public Float" is defined as meaning a share float or a public unit trust scheme:

- the shares or units of which are quoted on a recognized stock exchange and are offered to the public generally; and
- the issue of the shares or units to the public does not give any person(s) (other than the *Corporate Group* that instituted the float) a combined beneficial interest in the floated entity of greater than 20%; and
- the float is not part of a scheme for minimising duty.

Applications

An application for an exemption from duty arising from a *Corporate Reconstruction* may be made to the Commissioner under Section 250B of the Act by any member of a *Corporate Group*.

Applications must be made within 3 years of the date of the eligible transaction.

When making an application, the applicant must provide the Commissioner with all information materially relevant to the *Corporate Reconstruction* detailing:

i. the instruments or transfers of assets for which the exemption is sought;
ii. the market value of each of the assets being transferred;
iii. the pre and post reconstruction structure and ownership of the *Corporate Group;*

iv. full reasons for the *Corporate Reconstruction* and the various steps taken to achieve it; and
v. ASIC company extracts for all *Corporations* (or the foreign equivalent if the *Corporation* is registered overseas) that are members of the *Corporate Group* and unit trust deeds and unit registers for all unit trusts that are members of the *Corporate Group*.

The Commissioner has developed a standard application form to assist with the process of applying for an exemption. Applications not made on this application form should be made in the form of a statutory declaration providing the information detailed above.

Applications for exemption may be made before or after the execution of the eligible transaction(s).

All information provided must be complete, true and correct.

An applicant may regard the written approval of the exemption from the Commissioner as binding provided:

(a) the eligible transaction/s described in the application are submitted to the Commissioner for denoting as soon as is practically possible (preferably within four months) after the approval of the exemption; and
(b) that between the approval of the exemption and the execution of the eligible transaction(s), there has been no material change in the circumstances described in the initial application.

Refunds of Duty Paid

Applicants should be aware that when seeking a refund of duty paid on transfers arising from a legitimate Corporate Reconstruction, that the Commissioner is restricted, by section 19 of the Taxation Administration Act 1997, to refunding only amounts received within 3 years of the date of receipt of a refund application.

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

March 2004

State Government Victoria