



Office of State Revenue
NSW TREASURY
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Revenue Ruling No. DUT 3

Exemption from Duties - Corporate Reconstructions

Ruling history

Ruling no.	Issued date	Dates of effect		Status
		From	To	
DUT 3	01 July 1998	01 July 1998	10 November 1998	Replaced by DUT 9

Preamble

- Section 281 of the Duties Act states that duty is not chargeable on certain transactions between the members of a group of corporations. Exemption may be approved by the Chief Commissioner in accordance with guidelines approved by the Treasurer.
- The purpose of this exemption 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.
- This ruling outlines the guidelines approved by the Treasurer. The guidelines apply to transaction effected on or after 1 July 1998.

Ruling

Members of a group of corporations

- For the purposes of these guidelines, a 'corporate group' means a corporate parent and subsidiary corporations which are at least 90% beneficially owned and controlled by such parent or other such subsidiaries. The parent and subsidiary corporations are regarded, for the purposes of this ruling, as 'members' of the corporate group.
- To be eligible for exemption, the corporations must have been members of the same corporate group for at least 3 years prior to the date of the transaction, or since the date of incorporation where the corporation is less than 3 years old.
- A unit trust in which at least 90% of the units are beneficially owned and controlled by members of the same corporate group, is taken to be a member of the corporate group for the purposes of these guidelines.

Eligible transactions

- The following transactions and instruments are eligible for exemption:
 - a transfer of dutiable property between members of a corporate group;
 - an agreement for sale or transfer of dutiable property between members of a corporate group; and
 - an application to register a motor vehicle as a result of a transfer of the vehicle between members of a corporate group.
- An eligible transaction may result in an acquisition of an interest in a land-rich private corporation which is subject to duty under Part 2 of Chapter 3 of the Duties Act. If

exemption is approved for a transaction under section 281, the Chief Commissioner will determine any such acquisition to be an exempt acquisition under section 119 (3).

9. Exemption will be approved in the following cases:
 - (a) upon liquidation of a member of a corporate group and the transfer of the assets to another member of the corporate group; or
 - (b) upon the closing of a branch of an overseas company and the transfer of assets from the branch to a subsidiary incorporated in New South Wales.
10. A transaction may also be eligible for an exemption if the Chief Commissioner is satisfied that the reconstruction will not proceed unless an exemption from NSW duty is granted, and there will be a net benefit accruing to NSW if the exemption is granted. [Note. the requirements that the transaction would not otherwise proceed and the 'net benefit' test arise from Commonwealth Grants Commission determinations on the revenue "forgone" by NSW in granting an exemption for a corporate reconstruction.]

Net benefit

11. In assessing whether a net benefit will accrue to NSW for the purposes of paragraph 10, the Chief Commissioner will have regard to:
 - (a) the estimated amount of duties revenue which would be forgone as a result of granting the exemption;
 - (b) the cost to NSW in terms of reduced Commonwealth Financial Assistance Grants (being the amount by which such grants will be reduced in relation to revenue forgone);
 - (c) the estimated savings in administrative costs of Government bodies;
 - (d) economic and financial implications for the State if the reconstruction goes ahead, including the estimated impact on:
 - (i) administrative costs, efficiency and profitability of the group;
 - (ii) employment, growth and capital investment; and
 - (iii) State revenue from duties, pay-roll tax, land tax and any other source;
 - (e) economic and financial implications for the State of proposals for expansion of the group, other than proposals which form a direct part of the proposed corporate reconstruction, including the estimated impact on:
 - (i) employment and capital investment; and
 - (ii) State revenue;
 - (f) economic and financial implications for the State if the proposed corporate reconstruction does not proceed, including the estimated impact on:
 - (i) employment and capital investment; and
 - (ii) State revenue;
 - (g) whether the proposed restructuring is consistent with policies of (or is at the request of or supported by) the Government of New South Wales or of any other State, Territory or the Commonwealth;
 - (h) any other public or private costs and benefits.

Ineligible transactions

12. A corporate reconstruction will not be granted exemption if:
 - (a) the relevant dutiable property is transferred (or agreed to be sold or transferred) to or from persons who are not members of the same corporate group; or
 - (b) in the Chief Commissioner's opinion, a principal purpose of the transaction is to avoid any Commonwealth, State or Territory taxation (other than the duty from which exemption is sought), including any possible or actual liability under Part 2 of Chapter 3 of the Duties Act (the 'land-rich' provisions); or
 - (c) the reconstruction is part of an arrangement to sell the transferor or transferee company (or unit trust) outside the group, or there is an intention by the corporate board to sell either entity.

Approvals

13. Where approval is granted prior to the transaction occurring, the applicant must, on entering into the transaction, advise the Chief Commissioner whether or not there have been any material changes in circumstances which might have resulted in the application not being approved.
14. Under section 281 (3), the Chief Commissioner may grant partial approval, or approval subject to certain conditions.
15. Partial approval may be in respect of specified types of duties, or parts of a proposed application (eg, specified transfers, or transfers from or to specified companies). A partial exemption may be granted on the condition that non-exempt parts of the proposed reconstruction will proceed.
16. If the Chief Commissioner grants approval subject to specified conditions being met, one such condition may be that the applicant enter into an undertaking to abide by the conditions, and to agree to pay all or part of the duty to which the exemption applies if any conditions included in the undertaking are not met within a specified time frame.

Applications

17. Applications are to be made in the form of a letter to the Chief Commissioner addressing each of the issues specified in the guidelines that are relevant to the reconstruction.
18. An application for exemption under paragraph 9 (liquidation or closing of a branch) may be made at any time prior to the relevant transaction or within 5 years of assessment of the transaction in respect of which exemption is sought. An application for exemption under paragraph 10 (net benefit) must be made before the transaction in respect of which exemption is sought occurs.

B Buchanan

Chief Commissioner of State Revenue
1 July 1998