

REVENUE RULING NO. SD 020

COMPANY RECONSTRUCTIONS - GUIDELINES FOR DETERMINING ELIGIBILITY FOR STAMP DUTY RELIEF

PREAMBLE

The Minister for Finance has approved new guidelines for providing relief from stamp duty on company reconstructions. These new guidelines replace all previous guidelines and instructions on the subject.

RULING

Guidelines

- Stamp duty relief may be granted by the Minister in respect of the reconstruction of company groups other than reconstructions involving trustee companies, where property is to be transferred from one company to a related company if the Minister is satisfied that there will be a public benefit as a result of the transfer.
- In assessing the public benefit the Minister may have regard to such matters as:
 - (a) the estimated cost to Government revenue;
 - (b) the savings in administrative costs of Government bodies;
 - (c) the employment effects of the reconstruction;
 - (d) the effects of the reconstruction on profitability and future growth of the corporate group, and in particular:
 - (i) the estimated savings in administrative costs of the transferee company;
 - (ii) the estimated improvements in efficiency of the assets transferred;
 - (iii) the estimated improvements in operational aspects of the companies concerned;
 - (e) whether or not the proposed restructuring was in accordance with Government policies;
 - (f) whether or not the proposed restructuring is at the request of

or supported by the Government or a public or semi-government authority; and

(g) any other public or private costs and benefits.

- Except as provided in paragraph 4 below, the Minister shall not grant stamp duty relief:

(a) if a purpose of the transfer is to avoid any Commonwealth or State taxation;

(b) unless the benefits of the proposed restructuring cannot be substantially obtained without incurring stamp duty;

(c) unless ad valorem duty was paid on the value of the assets when acquired by the transferor;

(d) where the reconstruction involves the transfer of property between subsidiaries of a parent company, **unless** the subsidiaries are at least 95% per cent owned by the parent company and have been so owned for at least three years prior to the date of application for relief, or since the date of incorporation where the subsidiary is less than three years old;

(e) where the reconstruction involves a transfer of property from a subsidiary company to its parent company, unless the subsidiary company is at least 95% owned by the parent company and has been so owned for at least three years prior to the date of application for relief; or

(f) if any person who controls at least 20 per cent of the issued capital or voting rights of the ultimate parent company has not held a minimum of 20 per cent of the issued capital or voting rights for at least three years prior to the date of application for relief;

- The Minister may grant stamp duty relief, notwithstanding that one or more of the conditions in paragraph 3 above have not been fully met, if in the opinion of the Minister the benefit to the public is sufficient to justify the granting of relief.
- The extent of relief provided shall be the amount of stamp duty payable or paid.
- Before relief is granted the transferee company shall agree to Pay the stamp duty plus interest at the rate of 20 per cent per annum if ultimate ownership or control of the property changes within eighteen months of the date of execution of the instrument or the date of approval for relief, whichever is the later unless a change in control occurs which is beyond the ultimate holding company's control.
- An application for relief must be made within one month of first execution of the instrument in respect of which relief is sought or at any time prior to the execution of such instrument.
- Where approval is granted prior to the execution of an instrument, the applicant must, on execution thereof satisfy the Minister that there have not been any changes in circumstances which, if the

application had been made after execution of the instrument, would have resulted in the application not being approved.

APPLICATIONS

Written applications for relief from stamp duty should be lodged with the Secretary, Department of Finance. All information which is relevant to the guidelines should be supplied with the application.

For further information on this matter, please contact the Senior Legislation and Policy Officer, Policy and Planning Division of the Department of Finance.

A.D. CLYNE,
Secretary.
10 FEBRUARY, 1986

Last Updated: 20-Sep-2001