



Office of State Revenue
NSW TREASURY
ISO 9001-Quality Certified

Revenue Ruling No. DUT 9

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
DUT 9	03 December 1998	11 November 1998	12 October 2000	Replaced by DUT20

Preamble

1. Section 281 of the *Duties Act 1997* 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.
2. 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.
3. The previous guidelines published in Revenue Ruling [DUT 003](#) contained a requirement that the transaction would not proceed unless the exemption was granted, and a 'net benefit' test. These arose from Commonwealth Grants Commission determinations on the revenue 'forgone' by New South Wales in granting an exemption for a corporate reconstruction. The Commonwealth Grants Commission has now advised that the revenue 'forgone' as a result of granting exemptions for corporate reconstructions will not be taken into consideration in determining financial assistance grants to the States. As a result, the guidelines have been revised, and the 'net benefit' test has been deleted.
4. This ruling replaces Revenue Ruling [DUT 003](#).

Ruling

5. The attached guidelines apply to transactions effected on or after 11 November 1998.
6. In addition to the transactions referred to in the attached guidelines, a corporate restructure can involve a transaction that is not a 'dutiabale transaction' in New South Wales, but which triggers a liability under Part 2 of Chapter 3 (land-rich duty). Such a transaction will be considered for exemption under section 119 (3) of the Duties Act, on the basis that it would not be just and reasonable to impose duty.

B Buchanan

Chief Commissioner of State Revenue
3 December 1998

Guidelines for exemption under section 281 of the Duties Act 1997

Corporate reconstruction

1. The purpose of section 281 is to exempt from duty certain transactions within a corporate group where the ultimate beneficial ownership of the assets remains unchanged. 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 parent's ownership and control of the member of the corporate group.
2. For the purposes of these guidelines, a 'corporate reconstruction' is an 'eligible transaction' between 'eligible members' of a 'corporate group'.

Exemption

3. Subject to paragraph 4, a transaction or instrument will be approved for exemption if the Chief Commissioner is satisfied that the transaction or instrument arises from a corporate reconstruction.
4. A transaction or instrument will **not** be granted exemption if, in the Chief Commissioner's opinion, a purpose of the transaction is to avoid any Commonwealth, State or Territory taxation (other than the duty from which exemption is sought).
5. Approval for exemption may be withdrawn if the transferor and transferee do not remain members of the corporate group for at least 12 months from the date of the eligible transaction (see paragraph 19). The effect of withdrawal of approval is that the transaction will be liable to duty from the date on which the transaction occurred. The premium component of any interest incurred under section 21 of the *Taxation Administration Act 1996* prior to the date of withdrawal of approval may be remitted.
6. Approval will not be withdrawn under paragraph 5 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.

Eligible members of a corporate group

7. For the purposes of these guidelines, 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, for the purposes of these guidelines, as 'members' of the corporate group.
8. In section 281, 'corporation' includes 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 for the purposes of these guidelines.
9. 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) A company that had not traded before the date it became a member of the corporate group is an eligible member.

- (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 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.
10. 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. For the purposes of these guidelines, 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.

Eligible transactions

11. The following transactions and instruments are 'eligible transactions':

- a transfer of dutiable property between eligible members of a corporate group
- an agreement for sale or transfer of dutiable property between eligible members of a corporate group
- a vesting of dutiable property by or as a consequence of a court order, where the property is held by an eligible member of a corporate group both before and after the vesting
- an application to register a motor vehicle as a result of a transfer of the vehicle between eligible members of a corporate group.

12. An eligible transaction may result in an acquisition of an interest in a land-rich private corporation that is subject to duty under Part 2 of Chapter 3 of the *Duties Act 1997*. 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).

Applications

13. 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. The application should:

- (a) identify that the transaction or instrument arises from a corporate reconstruction (see paragraph 2)
- (b) state the purpose of the corporate reconstruction (for example, whether for the purpose of the sale or liquidation of a company), including the anticipated benefits to the corporate group (paragraphs 4 - 6)
- (c) indicate how the relevant corporations are eligible members of a corporate group (paragraphs 7 – 10)
- (d) identify that the transactions are eligible transactions (paragraphs 11 & 12)
- (e) include an estimate of the value of all dutiable property and motor vehicles to which the application relates.

14. Applications may be made at any time prior to the relevant transaction, or within 5 years of the date of assessment of the transaction in respect of which exemption is sought.

Approvals

15. Under section 281 (3), the Chief Commissioner may grant partial approval, or approval subject to certain conditions.
16. 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.
17. 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), or may be limited to specified property (such as the property referred to in paragraph 9(b)). Partial exemption may be granted on the condition that non-exempt parts of the proposed reconstruction will proceed.
18. 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 on the transactions on which approval was given if any conditions included in the undertaking are not met within a specified time frame.
19. In most cases, one such condition of approval will be that the applicant (or such other person as determined by the Chief Commissioner) lodge a written undertaking:
 - (a) to advise the Chief Commissioner if, within 12 months from the date of the eligible transaction, the immediate parent of the transferor or transferee corporations:
 - transfers shares (or units) in the corporation, or
 - enters into an agreement to transfer shares (or units) in the corporation, or
 - enters into any other transaction (other than a liquidation, deregistration or float referred to in paragraph 6)
as a result of which the corporation will not remain a member of the corporate group; and
 - (b) to pay the duty otherwise payable on the eligible transactions if approval is withdrawn under paragraph 5.

November 1998