

STAMP DUTY EXEMPTION FOR 'IN SPECIE' DISTRIBUTIONS Anti-avoidance Measures (2001-02 Budget)

Taxation (Administration) Act / Stamp Duty Act

Issued: May 2001

Revenue Circular: SD 016

TERRITORY REVENUE MANAGEMENT

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Purpose of this Circular

1. This circular provides information on proposed measures announced in the 2001-02 Budget to counter the use of the exemption for the transfer of property to a shareholder on the winding up of the company to avoid stamp duty.
2. The measures commence from 29 May 2001 (being the date they were announced in the Budget).
3. Revenue Circular RA001, which sets out information on the revenue circular system, is incorporated into and is to be read as one with this circular.

Background

4. Item 9 of Schedule 2 to the *Stamp Duty Act* provides an exemption from stamp duty on a transfer during the winding up of a company of its property to a shareholder of the company where the shareholder is entitled to the property on a distribution '*in specie*'.
5. Under the proposed amendments, the exemption will now be conditional upon the Commissioner being satisfied that the transfer is not part of a tax avoidance scheme. This circular sets out the matters that the Commissioner may have regard to when considering whether a transfer is, or is part of, a tax avoidance scheme.

Tax Avoidance Scheme

6. A tax avoidance scheme is a scheme that, in the opinion of the Commissioner, has or is intended to have a collateral purpose of obtaining the benefit of an exemption from stamp duty. In this instance, it applies to the exemption provided for an '*in specie*' distribution of the company's dutiable property and marketable securities to a shareholder on the winding up of the company.
7. In considering whether the transfer of such company property to a shareholder is or is part of a tax avoidance scheme, the Commissioner may have regard to:
 - a) the length of time the shareholder has held shares in the company;
 - b) the class of shares the shareholder has held in the company and the rights of each class of shares;
 - c) whether or not the shareholder held shares in a related company of the company that owned the dutiable property or marketable securities before it was owned by the company;
 - d) the length of time the dutiable property or marketable securities has been owned by the company or a related company;

- e) any dealings in any shares of the company or a related company by the shareholder or a related company of the shareholder or by the previous owner of the dutiable property or marketable securities; and
- f) the reasons (commercial and otherwise) for the transfer in addition to any intention of the shareholder to obtain the benefit of the stamp duty exemption.

8. The Commissioner may also have regard to any other matter he considers relevant.

Other information

9. In addition to the information that may be required to consider whether a tax avoidance scheme exists, other standard information is required to determine whether the exemption applies. Reference should be made to the Stamp Duty Lodgement Guide (in particular, section 5.2.2) which sets out the standard information required by the Commissioner.

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Reference should be made to the *Taxation (Administration) Amendment Bill 2001* and the *Stamp Duty Amendment Bill 2001* for precise details on the proposed amendments. For further information, please contact this office on ☎ (08) 8999 7949 or ☎ 1300 305 353.

COMMISSIONER OF TAXES