

NORTHERN TERRITORY OF AUSTRALIA  
TAXATION (ADMINISTRATION) AMENDMENT ACT 2004

Act No. 41 of 2004

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# NORTHERN TERRITORY OF AUSTRALIA

Act No. 41 of 2004

## AN ACT

to amend the *Taxation (Administration) Act*

[Assented to 6 July 2004]

[Second reading 20 May 2004]

The Legislative Assembly of the Northern Territory enacts as follows:

### PART 1 – PRELIMINARY

#### 1. Short title

This Act may be cited as the *Taxation (Administration) Amendment Act 2004*.

#### 2. Commencement

(1) This Part comes into operation on the day on which the Administrator's assent to this Act is declared.

(2) Part 2 is taken to have come into operation on 18 May 2004.

(3) Parts 3, 4 and 5 come into operation on 1 July 2004.

(4) Part 6 is taken to have come into operation on 23 June 2004.

#### 3. Principal Act

A reference in a Part of this Act to the Principal Act is a reference to the *Taxation (Administration) Act* as in force immediately before the commencement of that Part.

**PART 2 – DUTY PAYABLE ON TRANSACTIONS RELATING TO CORPORATIONS AND UNIT TRUSTS**

**4. Unencumbered value: arrangements to reduce stamp duty**

Section 4A of the Principal Act is amended by omitting from subsection (2)(c) "56C(3)(a) to (g) (inclusive)" and substituting "56C(3)(a) to (i) (inclusive)".

**5. Tax avoidance schemes**

Section 4B of the Principal Act is amended by omitting subsection (2) and substituting the following:

"(2) For this Act, a tax avoidance scheme is a scheme that, in the opinion of the Commissioner, has or is intended to have a collateral purpose of –

- (a) reducing the tax or duty otherwise payable under this Act; or
- (b) obtaining the benefit of an exemption or concession under this Act,

in respect of any of the following:

- (c) a conveyance of dutiable property or marketable securities;
- (d) the addition of a beneficiary or class of beneficiaries under a discretionary trust to which Part III, Division 8AAA applies;
- (e) a change in control of a beneficiary under, and a change of or in control of a trustee of, a discretionary trust to which Part III, Division 8AAA applies;
- (f) an acquisition to which Part III, Division 8A applies;
- (g) a change in the beneficial ownership of dutiable property to which Part III, Division 15 applies that occurs as the consequence of the issue or redemption of units in a unit trust scheme."

**6. Interpretation**

Section 56C of the Principal Act is amended –

- (a) by omitting from paragraph (c) of the definition of "acquire" in subsection (1) "share; and" and substituting "share;";
- (b) by inserting after paragraph (ca) of the definition of "acquire" in subsection (1) the following:

"(cb) a declaration of trust to which Division 8AA applies;

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- (cc) the addition of a beneficiary or class of beneficiaries under a discretionary trust to which Division 8AAA applies;
  - (cd) a change in control of a beneficiary under, and a change of or in control of a trustee of, a discretionary trust to which Division 8AAA applies; and
  - (ce) a statutory vesting to which Division 8B applies;"
- (c) by omitting paragraph (d)(iii) of the definition of "acquire" in subsection (1) and substituting the following:
- "(iii) the making of a compromise or arrangement under Part 5.1 of the Corporations Act 2001 that –
    - (A) has been made with the corporation's creditors or a class of them;
    - (B) has been approved by the court; and
    - (C) is not a tax avoidance scheme or part of a tax avoidance scheme;"
- (d) by omitting from the definition of "unit" in subsection (1) "but does not include a unit acquired solely pursuant to an arrangement referred to in section 56U(b)";
- (e) by omitting from subsection (3)(f) "trust; and" and substituting "trust;"
- (f) by inserting after subsection (3)(g) the following:
- "(h) in relation to an acquisition of an interest in a corporation by virtue of a declaration of trust to which Division 8AA applies – the trustees of, and the beneficiaries under, the trust, whether any beneficiary has a vested share or is contingently entitled or may benefit from a discretionary trust;
  - (i) in relation to an acquisition of an interest in a corporation by virtue of the addition of a beneficiary or class of beneficiaries under a discretionary trust to which Division 8AAA applies – the trustees of, and the additional beneficiary or class of beneficiaries under, the trust."; and
- (g) by inserting after subsection (9) the following:
- "(10) For this Division, if an interest or a shareholding in a corporation is acquired by virtue of a declaration of trust to which Division 8AA applies –

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- (a) the interest or shareholding vested or to be vested in the declarant is taken to be the interest or shareholding acquired;
- (b) the declarant is taken to be the person who acquired the interest or shareholding; and
- (c) the acquisition is taken to have occurred at the time the declaration is made.

"(11) For this Division, if an interest or a shareholding in a corporation is acquired by virtue of the addition of a beneficiary or class of beneficiaries under a discretionary trust to which Division 8AAA applies –

- (a) the interest or shareholding over which the trust is declared is taken to be the interest or shareholding acquired;
- (b) the trustees are taken to be the persons who acquired the interest or shareholding; and
- (c) the acquisition is taken to have occurred at the time of the addition.

"(12) For this Division, if an interest or a shareholding in a corporation is acquired by virtue of a change in control of a beneficiary under, and a change of or in control of a trustee of, a discretionary trust to which Division 8AAA applies –

- (a) the interest or shareholding over which the trust is declared is taken to be the interest or shareholding acquired;
- (b) the trustees are taken to be the persons who acquired the interest or shareholding; and
- (c) the acquisition is taken to have occurred at the time of the later of the changes.

"(13) For this Division, if an interest or a shareholding in a corporation is acquired by virtue of a statutory vesting to which Division 8B applies –

- (a) the interest or shareholding that vests in the person or body concerned is taken to be the interest or shareholding acquired;
- (b) the person or body in whom the interest or shareholding vests is taken to be the person or body who acquired the interest or shareholding; and
- (c) the acquisition is taken to have occurred at the time the law by or under which the vesting occurs determines when the interest or shareholding vests in the person or body."

**7. Statement chargeable with duty**

Section 56M of the Principal Act is amended by inserting after subsection (2)(c)(iv) the following:

- "(v) if the interest is acquired within the relevant period by virtue of the vesting of marketable securities under a declaration of trust to which Division 8AA applies and duty has already been paid under this Division in respect of an acquisition of that interest by virtue of the declaration of trust having been made when the marketable securities were to be vested in the declarant;
- (vi) if the interest is acquired within the relevant period by virtue of the addition of a beneficiary or class of beneficiaries under a discretionary trust to which Division 8AAA applies and either of the following applies:
  - (A) the existing beneficiaries and the additional beneficiary, or the members of the existing classes of beneficiaries and the members of the additional class of beneficiaries, are family members within the meaning of section 56BAA;
  - (B) the addition is not a tax avoidance scheme or part of a tax avoidance scheme;
- (vii) if the interest is acquired within the relevant period by virtue of a change in control of a beneficiary under, and a change of or in control of a trustee of, a discretionary trust to which Division 8AAA applies and the changes are not a tax avoidance scheme or part of a tax avoidance scheme;
- (viii) if the interest is acquired within the relevant period and the person who acquires the interest could have acquired the land to which the corporation is entitled, including –
  - (A) land to which each of the corporation's subsidiaries within the meaning of section 56N(5) is entitled; and
  - (B) land subject to an agreement for sale or purchase by the corporation or any of those subsidiaries,

without ad valorem duty being payable under Schedule 1, item 5 of the *Stamp Duty Act* other than by virtue of Part III, Division 2 of this Act, but not including the acquisition of an interest in the corporation that is the result of –

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- (C) a declaration of trust to which Division 8AA applies;
  - (D) the addition of a beneficiary or class of beneficiaries under a discretionary trust to which Division 8AAA applies; or
  - (E) a change in control of a beneficiary under, and a change of or in control of a trustee of, a discretionary trust to which Division 8AAA applies;
- (ix) if the interest is acquired within the relevant period and is units in a unit trust scheme – the units were acquired solely pursuant to an arrangement entered into or carried out by any of the parties to the arrangement for the sole purpose of enabling the unit trust scheme or a related person to –
- (A) obtain finance (whether by way of renewal or otherwise);
  - (B) obtain an extension of the period for which finance was obtained under an earlier arrangement; or
  - (C) enforce or terminate an arrangement for the provision of finance."

**8. Repeal of section 56U**

Section 56U of the Principal Act is repealed.

**9. Application**

Section 83A of the Principal Act is amended by omitting subsection (2)(c) and substituting the following:

- "(c) the making of a compromise or arrangement under Part 5.1 of the Corporations Act 2001 that –
- (i) has been made with the corporation's creditors or a class of them;
  - (ii) has been approved by the court; and
  - (iii) is not a tax avoidance scheme or part of a tax avoidance scheme;"

**10. No judicial review of certain decisions**

Section 105B of the Principal Act is amended by inserting after subsection (1)(b) the following:



- "(c) under section 56M(2)(c)(vi)(B) that the addition of a beneficiary or class of beneficiaries under a discretionary trust to which Division 8AAA applies is or is not a tax avoidance scheme or part of a tax avoidance scheme;
- (d) under section 56M(2)(c)(vii) that a change in control of a beneficiary under, and a change of or in control of a trustee of, a discretionary trust to which Division 8AAA applies are or are not a tax avoidance scheme or part of a tax avoidance scheme."

### **PART 3 – CHANGE IN BENEFICIARY AND TRUSTEE**

#### **11. Imposition of duty where change in beneficiary and trustee under discretionary trust**

Section 56BAC of the Principal Act is amended –

- (a) by omitting from subsection (4) "includes –" and substituting "includes the following:";
- (b) by omitting from subsection (4)(b) "power; and" and substituting "power;"; and
- (c) by inserting after subsection (4)(c) the following:
  - "(d) the appointment of an additional trustee."

### **PART 4 – CREDIT FOR INTEREST ACQUIRED BY EXEMPT CORPORATE RECONSTRUCTION**

#### **12. Statement chargeable with duty**

Section 56M of the Principal Act is amended by inserting after subsection (2)(c)(ix) the following:

- "(x) if the interest is acquired within the relevant period in relation to the relevant acquisition and duty is not payable in respect of the interest by virtue of section 22."

### **PART 5 – STATUTORY VESTING**

#### **13. Definition**

Section 56V of the Principal Act is amended by omitting "Division" and substituting "Division and for Schedule 2, item 8A of the *Stamp Duty Act*".

**PART 6 – DUTY PAYABLE ON CONVEYANCES OF OPTIONS**

**14. Refund or remission of duty if transaction does not proceed or is rescinded, cancelled etc.**

Section 56A of the Principal Act is amended by inserting in subsection (1)(a) "(other than a conveyance to which Division 8AB applies)" after "securities".

**15. Repeal and substitution of Part III, Division 8AB**

Part III, Division 8AB of the Principal Act is repealed and the following substituted:

*"Division 8AB – Options to convey dutiable property or marketable securities*

**"56BB. Definitions**

"In this Division –

'call option' has the meaning in section 56BC(1)(a);

'option property' means the dutiable property or marketable securities that is common to the call option and the put option;

'put option' has the meaning in section 56BC(1)(b).

**"56BC. Duty payable on call and put option**

"(1) This section applies if –

(a) there is a conveyance to a person ('the first person') of an option ('the call option') to require another person ('the second person') to convey to the first person, or to a person with whom the first person has an agreement, arrangement or understanding ('a third person'), dutiable property or marketable securities; and

(b) the second person has an option ('the put option') to require the first person or a third person referred to in paragraph (a) to be the conveyee in a conveyance of the dutiable property or marketable securities from the second person.

"(2) The conveyance of the call option is taken to be a conveyance of the option property from the second person to the first person and duty is payable by the first person accordingly.

"(3) The conveyance of the option property is taken to have occurred when the later of the conveyance of the call option occurs or the put option comes into existence.

"(4) Duty is payable by the first person under subsection (2) –

- (a) regardless of when the call option or the put option is exercisable; and
- (b) even though the call option or the put option is exercisable over dutiable property or marketable securities in addition to the option property.

"(5) The duty imposed is payable on the greater of –

- (a) the sum of the consideration for the conveyance of the call option over the option property and the consideration for the exercise of the call option over the option property; or
- (b) the unencumbered value of the option property.

"(6) If, as a result of the exercise of the call option or the put option, the option property is conveyed from the second person to the first person, the ad valorem duty payable on the conveyance is reduced by the amount of duty paid or payable by the first person under subsection (2).

"(7) Subject to section 17(5), if the option property is conveyed to a third person referred to in subsection (1)(a) (whether as a result of the exercise of the call option or the put option or otherwise), ad valorem duty is payable by the third person on the conveyance even though duty has been paid or is payable by the first person under subsection (2).

**"56BD. Duty payable if neither option exercised**

"(1) This section applies if –

- (a) both the call option and the put option expire without being exercised;
- (b) the failure to exercise either option is not a tax avoidance scheme or part of a tax avoidance scheme; and
- (c) the option property has not been conveyed to a third person referred to in section 56BC(1)(a) (whether as a result of the exercise of the call option or the put option or otherwise).

"(2) Duty is payable on the last conveyance of the call option as an option to purchase the dutiable property or marketable securities the subject of the call option.

"(3) The duty imposed is payable by the last conveyee of the call option.

"(4) However, the conveyee liable to pay duty under subsection (3) is entitled to a remission or refund of an amount equal to the difference between –

- (a) the amount of duty paid or payable on the call option by the conveyee under section 56BC(2); and
- (b) the amount of duty paid or payable on the call option by the conveyee under subsection (3).

"(5) The remission is not available or the refund is not payable unless a person furnishes to the Commissioner, within 90 days after the expiry of the call option or the put option (whichever occurs last) or within the further period allowed under subsection (6), an application in an approved form and the information that the Commissioner requires to determine the amount of the remission or refund.

"(6) The Commissioner may allow a further period to furnish the application or information if satisfied that the person has a reasonable excuse for not furnishing the application or information within the 90-day period.

**"56BE. Circumstances in which duty is not payable**

"(1) Duty is not payable on a conveyance under section 56BC if the conveyance of the call option occurred, and the put option came into existence, before 23 June 2004.

"(2) Duty is not payable under section 56BC(2) if the Commissioner is satisfied that –

- (a) the call option and the put option are part of a scheme of call options and put options granted by the proprietors of a business, the only purpose of which is to facilitate the continuation of the business by one or some of the proprietors ('the continuing proprietors');
- (b) the call options and put options forming the scheme are only exercisable on the occurrence of a specified event that would cause the continuing proprietors to seek to acquire the interest in the business of another of the proprietors; and
- (c) the call option and the put option are not a tax avoidance scheme or part of a tax avoidance scheme.

"(3) In subsection (2) –

'proprietor', of a business, means a natural person who is –

- (a) if the business is a partnership – a partner in the business;

- (b) if the business is a company – a shareholder in the business;
- (c) if the business is a unit trust scheme – a unit holder in the business; or
- (d) if (a), (b) and (c) do not apply – a person determined by the Commissioner to be a proprietor of the business."

**16. Application**

Section 83A of the Principal Act is amended –

- (a) by omitting from subsection (1B)(b) "occurred; and" and substituting "occurred;";
- (b) by omitting from subsection (1B)(c) "section 56W(2)(c)." and substituting "section 56W(2)(c); and"; and
- (c) by inserting after subsection (1B)(c) the following:
  - "(d) a conveyance referred to in section 56BC(2) is taken to cause or result in a change in the beneficial ownership of the dutiable property or marketable securities the subject of the conveyance and, for section 83B, that change in beneficial ownership is taken to have occurred on the date the conveyance is taken to have occurred under section 56BC(3)."