

NORTHERN TERRITORY OF AUSTRALIA
TAXATION (ADMINISTRATION) AMENDMENT ACT 2003

Act No. 34 of 2003

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NORTHERN TERRITORY OF AUSTRALIA

Act No. 34 of 2003

AN ACT

to amend the *Taxation (Administration) Act*

[Assented to 30 June 2003]
[Second reading 28 May 2003]

The Legislative Assembly of the Northern Territory enacts as follows:

1. Short title

This Act may be cited as the *Taxation (Administration) Amendment Act 2003*.

2. Commencement

(1) Sections 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22 and 28 are taken to have come into operation on 27 May 2003.

(2) Sections 4 and 23 come into operation on the date fixed by the Administrator by notice in the *Gazette*.

(3) The remaining provisions of this Act come into operation on 1 July 2003.

3. Principal Act

The *Taxation (Administration) Act* is in this Act referred to as the Principal Act.

4. Interpretation

Section 4 of the Principal Act is amended by inserting in subsection (1) after the definition of "lessee" the following:

" 'licenced motor vehicle dealer' means a licenced dealer within the meaning of Part 10 of the *Consumer Affairs and Fair Trading Act*;"

5. Exemption: conveyances and transfers between group corporations

Section 20 of the Principal Act is amended –

(a) by omitting from subsection (2)(c)(i) "group; or" and substituting "group;"

(b) by omitting subsection (2)(c)(ii) and substituting the following:

(ii) a group corporation in the same corporate group may provide any of the consideration for the conveyance or transfer other than in a manner specified in subsection (3); or

(iii) a group corporation is required to dispose of any of the consideration through a payment or other disposition to –

(A) a person other than a group corporation in the same corporate group; or

(B) a person other than by way of loan on ordinary commercial terms; and"; and

(c) by omitting from subsection (3) "subsection (2)(c)(ii)(A)" and substituting "subsection (2)(c)(ii)".

6. Reassessment for purposes of paying duty on a conveyance, transfer or relevant acquisition exempted under section 20 or 22

Section 23 of the Principal Act is amended –

(a) by omitting from subsection (4)(a) "has been deregistered under the Corporations Act 2001" and substituting "ceases to exist"; and

(b) by adding at the end the following:

"(5) For the purposes of subsection (4)(a), a corporation that is registered under the Corporations Act 2001 ceases to exist if it is deregistered under that Act."

7. Value of partnership acquisition

Section 29 of the Principal Act is amended –

- (a) by omitting from subsection (2) "In determining the unencumbered value of a partner's partnership acquisition," and substituting "Subject to sections 29AA and 29A, in determining the unencumbered value of a partner's partnership acquisition on the formation of a partnership,"; and
- (b) by inserting in subsection (3) "(other than an increase in the partner's partnership interest on the formation of a partnership)" before ", the acquisition".

8. New section

The Principal Act is amended by inserting after section 29 the following:

"29AA. Value of partnership acquisition if change in membership of partnership by admission of one or more new partners

"Where a new partnership is formed by a change in the membership of a partnership by the admission of one or more new partners, the unencumbered value of a partner's partnership acquisition on the formation of the new partnership is determined by –

- (a) applying the partner's partnership interest to the unencumbered value of all dutiable property held by the new partnership on its formation; and
- (b) deducting from that –
 - (i) if the partner was not a partner of the former partnership – the value that would be the unencumbered value of the partner's partnership acquisition in the new partnership on its formation if the dutiable property of the partnership comprised only the dutiable property (if any) that the partner contributed to it on its formation; or
 - (ii) if the partner was a partner in the former partnership – the lesser of the following:
 - (A) the value that would be the unencumbered value of the partner's partnership acquisition in the new partnership on its formation if the dutiable property of that partnership comprised only the dutiable property of the former partnership;

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- (B) the value that represents the unencumbered value of the partner's partnership interest in the former partnership before the formation of the new partnership."

9. Definitions

Section 37 of the Principal Act is amended –

- (a) by omitting "Commonwealth; or" from paragraph (a) of the definition of "Australian insurer" and substituting "Commonwealth;";
- (b) by omitting "Commonwealth;" from paragraph (b) of the definition of "Australian insurer" and substituting "Commonwealth; or"; and
- (c) by inserting at the end of the definition of "Australian insurer" the following:
 - "(c) the Territory;"

10. Repeal

Sections 51 and 52 of the Principal Act are repealed.

11. Interpretation

Section 56C of the Principal Act is amended –

- (a) by omitting from the definition of "interest" in subsection (1) "and a further interest";
- (b) by inserting in subsection (1) after the definition of "interest" the following:

" 'private unit trust scheme' means a unit trust scheme of which, at the time of an acquisition in the scheme, the deed –

- (a) has not been approved for the purposes of Chapter 5C of the Corporations Act 2001 or the corresponding provisions of the law in force in a State or another Territory of the Commonwealth; or
- (b) has been approved for the purposes of Chapter 5C of the Corporations Act 2001 or the corresponding provisions of the law in force in a State or another Territory of the Commonwealth but at least one of the following applies:
 - (i) no units have been issued to the public;

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- (ii) fewer than 50 persons are beneficially entitled to units under the scheme;
- (iii) 20 or fewer persons are beneficially entitled to 75% or more of the total issued units under the scheme;

'relevant period', in relation to a relevant acquisition, means –

- (a) the period of 3 years ending on the date of the relevant acquisition; or
- (b) if a person makes a relevant acquisition because the person acquires an interest by exercising a right to acquire the interest – the period commencing 3 years before the day on which the person or a related person acquired the right to acquire the interest and ending on the date of the relevant acquisition;"
- (c) by omitting from the definition of "share" in subsection (1) "meaning." and substituting "meaning;"
- (d) by inserting in subsection (1) after the definition of "share" the following:

" 'unit' means a right or interest, whether described as a unit or sub-unit or otherwise, of a beneficiary under a unit trust scheme, and includes an interest in a unit but does not include a unit acquired solely pursuant to an arrangement referred to in section 56U(b);

'unit trustee' means a trustee of a unit trust scheme.";

- (e) by inserting after subsection (1) the following:

"(1A) For the purposes of the definition of 'private unit trust scheme', in determining the number of persons beneficially entitled to units in a unit trust scheme –

- (a) the units to which –
 - (i) a corporation;
 - (ii) a person who is entitled to more than 50% of the issued share capital of the corporation; and
 - (iii) a related corporation (as defined in section 50 of the Corporations Act 2001) of the corporation,

are entitled are taken to be held by one person; and

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- (b) the units to which –
- (i) a trustee of a trust (including a unit trust scheme);
 - (ii) if the trust is a discretionary trust – a person who has an entitlement on the distribution of the trust; and
 - (iii) a person whose share or interest in the trust, whether vested or contingent, constitutes more than 50% of the trust property or of the issued units in the trust,
- are entitled are taken to be held by one person.";
- (f) by omitting from subsection (6) "(otherwise than as a creditor or other person to whom the corporation is liable)" and substituting "as a shareholder"; and
- (g) by adding at the end the following:
- "(9) For the purposes of this Division –
- 'land' does not include prescribed property within the meaning of section 8E(1) of the *Stamp Duty Act* if –
- (a) an interest that is a relevant acquisition in a corporation entitled to prescribed property is acquired from one or more natural persons by one or more other natural persons who are family members (within the meaning of section 8E(1) of the *Stamp Duty Act*) of the first-mentioned persons;
 - (b) no monetary consideration is given or agreed to be given for the acquisition of the interest;
 - (c) a person who acquires the interest will not hold the interest as a member of a body corporate or as an agent or trustee or otherwise for or on behalf of another person;
 - (d) each of the family members acquiring the interest in the corporation intends that the prescribed property to which the corporation is entitled will be used for farming purposes within the meaning of section 8E(1) of the *Stamp Duty Act*; and
 - (e) the person from whom the interest in the corporation is acquired did not acquire the interest within 5 years before the relevant acquisition or, if that person acquired the interest within that 5 year period, the land to which the corporation was entitled at the time when that person acquired the interest included the prescribed property."

12. Lodgement of statements by trustees

Section 56D of the Principal Act is amended by omitting from subsection (1) "a majority interest or a further interest" and substituting "an interest".

13. Notice may be registered on title

Section 56F of the Principal Act is amended by omitting from subsection (9) "acquiring a majority interest or a further interest" and substituting "making a relevant acquisition".

14. When statement to be lodged

Section 56K of the Principal Act is amended –

- (a) by omitting from subsection (1) all the words before "applies," and substituting "Where, by a relevant acquisition, a person acquires an interest in a corporation to which this Division";
- (b) by inserting after subsection (1) the following:

"(1A) Subsection (1) does not apply if, at the time the person acquires the interest in the corporation, the corporation –

- (a) is quoted on a recognised financial market; or
- (b) is a unit trust scheme that is not a private unit trust scheme.";
- (c) by omitting from subsection (2) "acquires a majority interest or a further interest by reason of acquisitions" and substituting "makes a relevant acquisition by reason of interests held";
- (d) by omitting from subsection (4)(a) "acquired a majority interest or a further interest" and substituting "made the relevant acquisition";
- (e) by inserting in subsection (4)(b) "relevant" before "acquisition";
- (f) by omitting from subsection (4)(c) "or a related person in the corporation" and substituting "and related persons in the corporation and the date on which each of those interests was acquired";
- (g) by omitting from subsection (4)(d) "in the Territory";
- (h) by omitting from subsection (4)(d) "that date; and" and substituting "the date of the relevant acquisition and as at the date of the acquisition of each interest acquired in the corporation by the person and any related persons within the relevant period in relation to the relevant acquisition;"

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- (i) by omitting from subsection (4)(e) "that date." and substituting "the date of the acquisition of each interest acquired in the corporation by the person and any related persons before 27 May 2003, but within the relevant period in relation to the relevant acquisition; and"; and
- (j) by inserting at the end of subsection (4) the following:
 - "(f) details of any duty paid under this Division in respect of each interest acquired before the date of the relevant acquisition, but within the relevant period in relation to the relevant acquisition."

15. Statement chargeable with duty

Section 56M of the Principal Act is amended by omitting subsections (1) and (2) and substituting the following:

"(1) A statement lodged under section 56K is chargeable, in accordance with section 56R, with duty at the rate provided for in Schedule 1, item 5(1) to the *Stamp Duty Act* calculated on the dutiable value determined under section 56R(3).

"(2) However, there is to be deducted from the duty chargeable on a statement lodged under section 56K –

- (a) the amount, if any, paid under Schedule 1, item 20 to the *Stamp Duty Act* in respect of any instrument effecting or evidencing the acquisition of an interest in the corporation within the relevant period in relation to the relevant acquisition, except duty –
 - (i) previously deducted under –
 - (A) this subsection as in force before 27 May 2003; or
 - (B) this paragraph on or after 27 May 2003; or
 - (ii) paid in respect of the acquisition of an interest referred to in paragraph (c);
- (b) the amount, if any, paid under this Division (but not refunded) on another statement lodged under section 56K in respect of the portion of the dutiable value of the relevant acquisition specified in that other statement that relates to the dutiable value of the acquisition of an interest in the corporation by the person or any related persons within the relevant period in relation to the relevant acquisition; and
- (c) the amount payable under this Division in respect of the acquisition of an interest in the corporation by the person or any related persons in any of the following circumstances:

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- (i) where the interest is acquired within the relevant period in relation to the relevant acquisition, but while the corporation was a corporation whose shares were quoted on a recognised financial market;
- (ii) if the corporation is a unit trust scheme – where the interest is acquired within the relevant period in relation to the relevant acquisition, but while the unit trust scheme was not a private unit trust scheme;
- (iii) where the interest is acquired before 20 August 2001, but only if the relevant acquisition is not made because of the exercise of a right to acquire an interest, being a right acquired by the person or a related person within 12 months before or 3 years after the acquisition of the interest first-mentioned in this subparagraph;
- (iv) where the interest is acquired before 27 May 2003, but within the relevant period in relation to the relevant acquisition, while the corporation was not a land-holder referred to in section 56N(2)(b) as in force immediately before 27 May 2003."

16. Corporations to which this Division applies

(1) Section 56N of the Principal Act is amended –

(a) by omitting subsections (1), (2), (3) and (4) and substituting the following:

"(1) This Division applies to a relevant acquisition in a corporation that is a land-holder within the meaning of subsection (2).

"(2) A corporation is a land-holder for the purposes of this Division if, at the time of a relevant acquisition –

- (a) it is entitled to land, including land that is subject to an agreement for the sale or purchase of the land by the corporation, and the unencumbered value of the land is not less than \$500 000; or
- (b) it is entitled to land, including land that is subject to an agreement for the sale or purchase of the land by the corporation, as a co-owner of the freehold or a lesser estate in the land and the unencumbered value of the land is not less than \$500 000."

(b) by omitting from subsection (5) "the subsidiary, or property at the time of a relevant acquisition to the extent that a subsidiary is entitled to that land or property," and substituting "a subsidiary, at the time of a relevant acquisition to the extent that the subsidiary is entitled to that land,";

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- (c) by omitting from subsection (5)(c) "(otherwise than as a creditor or other person to whom the corporation is liable)" and substituting "as a shareholder"; and
- (d) by omitting subsection (7).

(2) Subject to subsection (3), if an interest in a corporation is acquired on or after 27 May 2003 and before 1 January 2004 pursuant to an agreement entered into before 27 May 2003, the Principal Act as in force before 27 May 2003 applies to the acquisition of that interest.

(3) If, after the acquisition of the interest referred to in subsection (2), a further interest is acquired in the corporation (but other than on or after 27 May 2003 and before 1 January 2004 pursuant to an agreement entered into before 27 May 2003) and aggregated to the interest referred to in subsection (2) (together with any other interests in the corporation) and, as a result, there is a relevant acquisition, the Principal Act as in force at the date of the acquisition of the further interest applies to the acquisition of the interests comprising the relevant acquisition.

17. Repeal and substitution

Sections 56P and 56Q of the Principal Act are repealed and the following substituted:

"56P. Meaning of relevant acquisition

"An acquisition of an interest in a corporation by a person is a relevant acquisition for the purposes of this Division –

- (a) if it is an acquisition that alone constitutes a majority interest in the corporation;
- (b) if, when aggregated with other interests in the corporation held by the person, or the person and related persons, it constitutes a majority interest in the corporation; or
- (c) if, by the acquisition, a person who has a majority interest in the corporation or an interest referred to in paragraph (b) acquires a further interest in the corporation.

"56Q. Meaning of interest and majority interest in a corporation

"(1) A person has an interest in a corporation if the person has or would have, on the winding up of the corporation, an entitlement as a shareholder to a distribution of the corporation's property.

"(2) A person has a majority interest in a corporation if the person has an interest in the corporation of 50% or more.

"(3) A person's interest in a corporation is the person's entitlement expressed as a percentage of the value of all of the corporation's property that would be distributed if the corporation were wound up immediately after the person acquires the interest."

18. How dutiable value determined

Section 56R of the Principal Act is amended –

(a) by omitting from subsection (1) "in the Territory";

(b) by omitting subsections (2) and (3) and substituting the following:

"(2) The dutiable value of an interest in a corporation is the amount calculated by multiplying the interest by the unencumbered value of the land to which the corporation is entitled, as provided by subsection (4), at the date the interest is acquired.

"(3) Where a person acquires an interest in a corporation that is a relevant acquisition, the dutiable value of the acquisition is the aggregate of the amounts, severally calculated as provided by subsection (2), of the value of that interest and of the value of each other interest acquired by the person or a related person within the relevant period in relation to the relevant acquisition.";

(c) by omitting from subsection (4) "subsections (2) and (3)" and substituting "subsection (2)";

(d) by omitting from subsection (4)(a) ", including land that is subject to an agreement for the sale or purchase of the land by the corporation,";

(e) by inserting in subsection (4)(a) ", including land that is subject to an agreement for sale or purchase by the corporation" after "56N(5)";

(f) by omitting from subsection (4)(b) ", including land that is subject to an agreement for the sale or purchase of the land by the corporation,";

(g) by omitting from subsection (4)(b) "56N" and substituting "56N(5), including land that is subject to an agreement for sale or purchase by the subsidiary";

(h) by omitting from subsection (4)(b) "entitled." and substituting "entitled (including land that is subject to an agreement for sale or purchase by the subsidiary or subsidiaries)."; and

(i) by omitting subsection (5).

19. Liability for duty

Section 56S of the Principal Act is amended by inserting in subsection (3)(a) and (b) "or subsidiary" before "owned the land".

20. Unit trust schemes

Section 56T of the Principal Act is amended –

- (a) by omitting subsections (1) and (2);
- (b) by omitting from subsection (3) "private" (all references);
- (c) by omitting from subsection (4) "private unit trust scheme, all land situated in the Territory" and substituting "unit trust scheme, all land";
- (d) by omitting from subsection (4) "corporation or private" and substituting "corporation or";
- (e) by omitting from subsection (5) "situated in the Territory";
- (f) by omitting from subsection (5) "private" (all references);
- (g) by omitting from subsection (5) "section 56C(5)" and substituting "section 56C(6) and (7)";
- (h) by omitting from subsection (6) "private" (all references);
- (i) by omitting from subsection (6) "(otherwise than as a creditor or other person to whom the corporation is liable)" and substituting "as a shareholder or holder of units"; and
- (j) by omitting from subsection (6) "section 56C(5)" and substituting "section 56C(6) and (7)".

21. Division not to apply in certain circumstances

Section 56U of the Principal Act is amended –

- (a) by omitting "duty under item 5 of Schedule 1" and substituting "ad valorem duty under Schedule 1, item 5";
- (b) by omitting from paragraph (b) "private unit trust scheme within the meaning of section 56T" and substituting "unit trust scheme"; and
- (c) by omitting from paragraph (b) "enabling the private unit" and substituting "enabling the unit".

22. New Division

The Principal Act is amended by inserting after section 56U the following:

"Division 8B – Imposition of duty on statutory vesting

"56V. Definition

"In this Division –

'statutory vesting' means the vesting of dutiable property or marketable securities by or under a law of the Commonwealth, a State or Territory of the Commonwealth or a jurisdiction outside Australia (including the vesting of dutiable property or marketable securities by or under a law that states that it is continuing a person or body in existence or establishing a new person or body that is the successor in law of a person or body in which the property or securities were previously vested).

"56W. Imposition of duty

"(1) Duty is payable on a statutory vesting as if it were a conveyance of dutiable property or marketable securities.

"(2) For the purposes of subsection (1) –

- (a) the dutiable property that vests or marketable securities that vest in the person or body concerned is or are taken to be the property or securities that is or are conveyed;
- (b) the person or body in whom the dutiable property vests or marketable securities vest is taken to be the conveyee; and
- (c) the conveyance is taken to occur at the time the law by or under which the vesting occurs determines when the dutiable property vests or marketable securities vest in the person or body."

23. Liability to pay duty

(1) Section 57 of the Principal Act is amended by omitting subsection (1) and substituting the following:

"(1) Subject to subsection (1A), if a motor vehicle certificate of registration in respect of a motor vehicle is, on issue, liable to duty, the person who applied for the certificate is liable to pay the duty.

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"(1A) If a motor vehicle certificate of registration is issued on the transfer of the registration of a motor vehicle from a licenced motor vehicle dealer, the licenced motor vehicle dealer and the person who applied for the certificate are jointly and severally liable to pay the duty.

"(1B) If a motor vehicle certificate of registration is issued on the transfer of the registration of a motor vehicle from a licenced motor vehicle dealer and a person paid to the licenced motor vehicle dealer an amount to be paid by the licenced motor vehicle dealer to satisfy the obligation to pay the duty payable on the motor vehicle certificate of registration, the person who applied for the certificate is, to the extent of the value of the amount the person paid to the licenced motor vehicle dealer, relieved from liability for the duty payable on the certificate.

"(1C) A person who is liable to pay duty under this section must, before the issue of the motor vehicle certificate of registration concerned, pay to the Registrar an amount equal to the duty payable on the certificate.

Penalty: 100 penalty units."

(2) However, a licenced motor vehicle dealer is not liable to pay the duty payable on a motor vehicle certificate of registration issued in respect of a motor vehicle that is purchased from the licenced motor vehicle dealer before the commencement of this section.

24. New section

The Principal Act is amended by inserting after section 59 the following:

"59A. Refund of duty if sale of motor vehicle cancelled

"The Commissioner must refund the amount of duty paid on a motor vehicle certificate of registration if the Commissioner is satisfied that –

- (a) the transaction to which the motor vehicle certificate of registration relates has been cancelled;
- (b) the motor vehicle the subject of the transaction has been returned to the person from whom it was purchased; and
- (c) all money refundable on the cancellation of the transaction (other than the amount of duty paid) has been refunded to the person who purchased the vehicle."

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25. Commissioner may exempt lender

Section 78A of the Principal Act is amended –

- (a) by omitting from subsection (1)(a) "\$36 000" and substituting "\$90 000"; and
- (b) by omitting from subsection (1)(b) "\$3 000" and substituting "\$7 500".

26. Automatic revocation of exemption

Section 78B of the Principal Act is amended –

- (a) by omitting from subsection (1)(a) "\$36 000" and substituting "\$90 000"; and
- (b) by omitting from subsection (1)(b) "\$3 000" and substituting "\$7 500".

27. Tax remitted or refunded where receipts do not exceed \$90 000 per year or \$7 500 per month

Section 78C of the Principal Act is amended –

- (a) by omitting from subsection (1)(a) "\$36 000" and substituting "\$90 000"; and
- (b) by omitting from subsection (1)(b) "\$3 000" and substituting "\$7 500".

28. Application

Section 83A of the Principal Act is amended –

- (a) by omitting from subsection (1B)(a) "trustees; and" and substituting "trustees;"
- (b) by omitting from subsection (1B)(b) "occurred." and substituting "occurred; and";
- (c) by inserting at the end of subsection (1B) the following:

"(c) a statutory vesting referred to in Division 8B is taken to cause or result in a change in the beneficial ownership of all of the dutiable property or marketable securities that is taken to have been conveyed under section 56W(2)(a) and, for the purposes of section 83B, that change in the beneficial ownership is taken to have occurred on the date the conveyance of the dutiable property or marketable securities is taken to occur under section 56W(2)(c).";

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- (d) by inserting in subsection (2)(d) "where the issue or redemption of units is not a tax avoidance scheme or part of a tax avoidance scheme" after "trust scheme"; and
- (e) by omitting subsection (5).

29. Regulatory offences

Section 123A of the Principal Act is amended by omitting "52,".
