

NORTHERN TERRITORY OF AUSTRALIA  
TAXATION (ADMINISTRATION) AMENDMENT ACT (No. 2) 1988

No. 53 of 1988

TABLE OF PROVISIONS

Section

1. Short title
2. Commencement
3. Principal Act
4. Interpretation
5. New section:

"17A. DUTY ACCOUNTED FOR BY RETURNS"

6. New Division:

*"Division 8A - Change of Control of Certain  
Land-owning Corporations and Unit Trusts"*

- "56C. INTERPRETATION
- "56D. LODGEMENT OF STATEMENTS BY TRUSTEES
- "56E. VALUATION OF REAL PROPERTY
- "56F. NOTICE MAY BE REGISTERED ON TITLE
- "56G. CHARGE ON REAL PROPERTY
- "56H. POWER OF SALE
- "56J. APPLICATION OF PROCEEDS OF SALE
- "56K. WHEN STATEMENT TO BE LODGED
- "56M. STATEMENT CHARGEABLE WITH DUTY
- "56N. CORPORATIONS TO WHICH THIS DIVISION  
APPLIES
- "56P. MEANING OF RELEVANT ACQUISITION
- "56Q. MEANING OF 'INTEREST', 'MAJORITY  
INTEREST' AND 'FURTHER INTEREST'
- "56R. HOW DUTIABLE VALUE DETERMINED
- "56S. LIABILITY FOR DUTY
- "56T. UNIT TRUST SCHEMES
- "56U. DIVISION NOT TO APPLY IN CERTAIN  
CIRCUMSTANCES"

7. Interpretation
8. Instrument to be made out
9. New Division:

*"Division 15 - Transactions Otherwise than  
by Dutiable Instruments"*

- "83A. APPLICATION
- "83B. PAYMENT OF DUTY ON STATEMENTS IN ABSENCE  
OF DUTIABLE INSTRUMENT
- "83C. SPLITTING OF TRANSACTIONS
- "83D. EFFECT OF EXECUTION OF DUTIABLE  
INSTRUMENTS
- "83E. AIDING AND ABETTING
- "83F. OFFENCES RELATING TO STATEMENTS"





## NORTHERN TERRITORY OF AUSTRALIA

---

No. 53 of 1988

---

### AN ACT

to amend the *Taxation (Administration) Act*

[Assented to 17 November 1988]

**B**E it enacted by the Legislative Assembly of the Northern Territory of Australia, with the assent as provided by the *Northern Territory (Self-Government) Act 1978* of the Commonwealth, as follows:

1. SHORT TITLE

This Act may be cited as the *Taxation (Administration) Amendment Act (No. 2) 1988*.

2. COMMENCEMENT

(1) Sections 1, 2, 3, 4 and 5 shall come into operation on the date on which the Administrator's assent to this Act is declared.

(2) Sections 6 and 9 shall be deemed to have come into operation on 17 August 1988.

(3) Sections 7 and 8 shall be deemed to have come into operation on 1 September 1988.

3. PRINCIPAL ACT

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

4. INTERPRETATION

Section 4(1) of the Principal Act is amended -

- (a) by omitting the definition of "debenture" and substituting the following:
-

Taxation (Administration) Amendment (No. 2)

"'debenture' includes debenture stock, bonds, notes and any other document evidencing or acknowledging indebtedness of a corporation in respect of money that is or may be deposited with or lent to the corporation, whether constituting a charge on property of the corporation or not, but does not include -

- (a) a document that merely acknowledges the receipt of money by a corporation in a case where, in respect of the money, the corporation issues, in compliance with section 97 of the *Companies (Northern Territory) Code*, a document prescribed by subsection (2) of that section and complies with the other requirements of that section;
- (b) an order for the payment of money;
- (c) a bill of exchange or a promissory note;
- (d) a document that merely evidences or acknowledges the indebtedness of a bank, a corporation that, under section 97(7)(b) of the *Companies (Northern Territory) Code* is declared, or shall be deemed to be declared, to be an authorized dealer in the short-term money market or a dealer in the unofficial short-term money market in respect of a deposit or a loan -
  - (i) for a term not exceeding 185 days;
  - (ii) repayable at call; or
  - (iii) for a term not exceeding 185 days and thereafter at call;
- (e) a document, not being an acknowledgement of indebtedness of a corporation in respect of money that is deposited with or lent to the corporation, that does not create indebtedness; or
- (f) a document that merely evidences or acknowledges the receipt of money by a bank or a registered building society or by a prescribed institution that lends money in the ordinary course of its business where -
  - (i) the money is deposited with, or lent to, the bank, society or institution by a person otherwise than in the course of a money-lending business or in the course of a money-lending

*Taxation (Administration) Amendment (No. 2)*

business if the only money-lending business carried on by that person is depositing money with or lending money to that bank, society or institution; and

(ii) the money is not so deposited or lent under an invitation to the public to deposit or lend moneys within a specified period;";

(b) by omitting from the definition of "mortgage" -

(i) "means" and substituting "includes";

(ii) in paragraph (a) "payable; or" and substituting "payable;";

(iii) in paragraph (b) "as the case may be," and substituting "as the case may be;"; and

(iv) "and includes -";

(c) by omitting from the definition of "return" the words "under section" and substituting "under section 17A(5),";

(d) by inserting after the definition of "tax" the following:

"'this Act' includes the *Stamp Duty Act*"; and

(e) by inserting after the definition of "trustee" the following:

"'unencumbered value', in relation to property (including an estate or interest in property), means full value without regard to -

(a) any encumbrance; or

(b) where the property is subject to a trust, not being a public unit trust, any debts or liability of the trustee,

whether certain or contingent;".

5. NEW SECTION

The Principal Act is amended by inserting in Division 1 of Part III, after section 17, the following:

"17A. DUTY ACCOUNTED FOR BY RETURNS

"(1) In this section 'approved person' means a person granted permission under subsection (3) to pay duty in respect of a class of instruments to which the permission relates.

*Taxation (Administration) Amendment (No. 2)*

"(2) A person may, in an approved form, apply to the Commissioner for permission to pay duty in respect of any class of instruments specified in the application (not being instruments in respect of which the person is required by any other provision of this Part to furnish returns to the Commissioner) in accordance with this section as an alternative to paying duty by the individual stamping of an instrument on which duty is payable.

"(3) The Commissioner may, in writing, grant or refuse permission applied for under subsection (2) and may at any time, in writing, revoke permission so granted.

"(4) Where permission is granted under subsection (3), the Commissioner shall in that permission specify the date on which the permission comes into force and the class of instruments to which it relates.

"(5) Subject to subsection (6), an approved person shall, within 15 days after the end of the month to which the return relates, lodge with the Commissioner -

(a) a return in an approved form; and

(b) if one or more instruments have been made during that month, a remittance for the amount of duty that, if the permission concerned had not been granted, would have been payable in respect of each individual instrument to which that return relates.

"(6) If no instruments of the class to which the Commissioner's permission relates are made in any one month, the approved person shall lodge with the Commissioner a nil return in respect of that month.

"(7) An approved person shall make a record, at such times and of such particulars relating to an instrument to which the permission concerned relates, as the Commissioner, in writing, requires.

"(8) An approved person shall endorse on every instrument of a class to which the permission concerned relates the words 'Northern Territory Stamp Duty Paid' and such other words or particulars (if any) as the Commissioner, in writing, requires.

"(9) An instrument bearing an endorsement made under subsection (8), details of which are to be included in a return lodged under subsection (5) with the Commissioner and on which duty is paid by a remittance made under that subsection, shall be deemed to be duly stamped.

*Taxation (Administration) Amendment (No. 2)*

"(10) An approved person paying duty in accordance with a permission granted under subsection (3) shall retain the records required to be made under subsection (7) for a period of 3 years from the date on which they were made and make those records available to the Commissioner or a person authorized by the Commissioner for that purpose for checking at all reasonable times within that period.

"(11) An approved person who -

- (a) fails to lodge a return in accordance with subsection (5);
- (b) lodges with the Commissioner a return which is false in a material particular; or
- (c) contravenes or fails to comply with any other requirement of or under this section,

is guilty of an offence.

Penalty: \$1,000."

6. NEW DIVISION

The Principal Act is amended by inserting in Part III, after Division 8, the following:

*"Division 8A - Change of Control of Certain Land-owning Corporations and Unit Trusts*

"56C. INTERPRETATION

"(1) In this Division, unless the contrary intention appears -

'acquire', in relation to an interest in a corporation to which this Division applies, includes acquire the interest by virtue of -

- (a) the allotment or issue of a share to the person or another person, not being the initial allotment of shares to a subscriber to a memorandum of the corporation;
- (b) the redemption, surrender or cancellation of a share by the corporation or by the person or another person; and
- (c) the variation, abrogation or alteration of a right pertaining to a share,

but does not include an acquisition -

(d) that occurs solely as the result of -

- (i) the appointment of a receiver or trustee in bankruptcy;

*Taxation (Administration) Amendment (No. 2)*

- (ii) the appointment of a liquidator;
- (iii) the making of a compromise or arrangement under Part VIII of the *Companies (Northern Territory) Code* which has been approved by the court; or
- (iv) the distribution of the estate of a deceased person, including an acquisition that occurs as the result of -
  - (A) a will, a codicil or an order of a court varying or modifying the provisions of a will or codicil; or
  - (B) an intestacy or an order of a court varying or modifying the application, in relation to the estate of a deceased person, of the provisions of a law relating to the distribution of the assets of persons who die intestate; or
- (v) an arrangement (whether entered into before or after the commencement of section 6 of the *Taxation (Administration) Amendment Act (No. 2) 1988*) relating to the provision of finance or the enforcement or termination of such an arrangement;

'corporation' has the same meaning as in the *Companies (Northern Territory) Code*;

'director' has the same meaning as in the *Companies (Northern Territory) Code*;

'discretionary trust' means -

- (a) a trust under which the vesting of the whole or a part of the capital of the trust property, or the whole or a part of the income from that capital, or both -
  - (i) is required to be determined by a person either in respect of the identity of the beneficiaries, or the quantum of interest to be taken, or both; or
  - (ii) will occur in the event that a discretion conferred under the trust is not exercised; or
- (b) a trust declared by the Regulations to be a discretionary trust for the purposes of this Division,



*Taxation (Administration) Amendment (No. 2)*

but does not include a trust that is -

- (c) solely a charitable trust; or
- (d) declared by the Regulations not to be a discretionary trust for the purposes of this Division;

'entitled' means beneficially entitled;

'interest' includes a majority interest and a further interest as defined in section 56Q;

'real property' includes an estate or interest in real property;

'share' means a share in the share capital of a corporation and includes stock and an interest in a share or stock, and 'shareholding' has a corresponding meaning.

"(2) For the purposes of section 56N -

- (a) the following are associated persons in relation to a corporation:
  - (i) a related corporation as defined in section 5 of the *Companies (Northern Territory) Code*;
  - (ii) a related person within the meaning in subsection (3);
  - (iii) a director or secretary of the corporation or a related corporation;
  - (iv) a person who is entitled to a shareholding in the corporation or a related corporation;
  - (v) a relative of a natural person referred to in subparagraph (ii), (iii) or (iv); and
  - (vi) a corporation in which the corporation or a person referred to in subparagraph (iii), (iv) or (v) is entitled to a shareholding;
- (b) in relation to a loan of money by a corporation or subsidiary, a person is not an associated person in relation to the corporation if the Commissioner is satisfied that the money was not lent to the person for the purpose of defeating the object of this Division; and
- (c) the following are relatives of a person for the purposes of paragraph (a)(v):
  - (i) a child or remoter lineal descendant of the person or the spouse of the person;

Taxation (Administration) Amendment (No. 2)

- (ii) a parent or remoter lineal ancestor of the person or the spouse of the person;
- (iii) a brother or a sister of the person or the spouse of the person; and
- (iv) the spouse of the person and a spouse of a person referred to in subparagraph (i), (ii) or (iii).

"(3) For the purposes of this Division, the following persons are related:

- (a) natural persons who are spouses of each other or between whom the relationship is that of parent and child;
- (b) related corporations as defined in section 5 of the *Companies (Northern Territory) Code*;
- (c) a trustee and another trustee if there is any beneficiary common to the trusts of which they are trustees, whether the beneficiary has a vested share or is contingently entitled or may benefit from a discretionary trust;
- (d) a natural person and a corporation if the natural person is a majority shareholder, director or secretary of the corporation or a related corporation;
- (e) a natural person and a trustee if the natural person is a beneficiary under the trust of which the trustee is a trustee, whether the person has a vested share or is contingently entitled or may benefit from a discretionary trust;
- (f) a corporation and a trustee if -
  - (i) the corporation, a majority shareholder, director or secretary of the corporation is a beneficiary of the trust of which the trustee is a trustee; or
  - (ii) a related corporation to the corporation is a beneficiary of the trust of which the trustee is a trustee,  
whether any such beneficiary has a vested share or is contingently entitled or may benefit from a discretionary trust; and
- (g) persons who acquire interests in a corporation by virtue of acquisitions that together form or arise from substantially one transaction or one series of transactions.

*Taxation (Administration) Amendment (No. 2)*

"(4) For the purposes of subsection (3), persons are not related persons in relation to an acquisition of an interest in a corporation if the Commissioner is satisfied that the persons were not acting in concert in relation to the acquisition.

"(5) For the purposes of subsections (2) and (3) -

- (a) a spouse includes a *de facto* spouse; and
- (b) a majority shareholder, in relation to a corporation, is a person who has a substantial shareholding in the corporation in accordance with section 136 of the *Companies (Northern Territory) Code* as if the reference in that section to the prescribed percentage were a reference to 50%.

"(6) For the purposes of this Division, the entitlement of a person to participate (otherwise than as a creditor or other person to whom the corporation is liable) in the distribution of the property of a corporation on a winding up of the corporation is an entitlement to an amount calculated as if -

- (a) the winding up were carried out in accordance with the memorandum and articles of association of the corporation and the law relevant to the winding up, as the memorandum, articles and law exist at the time of the winding up; or
- (b) the person had, immediately before the winding up, exercised all powers and discretions exercisable by the person by reason of having acquired an interest in the corporation to -
  - (i) effect or compel an alteration to the memorandum or articles of association;
  - (ii) vary the rights conferred by shares in the corporation; or
  - (iii) effect or compel the substitution or replacement of shares in the corporation with other shares in the corporation,

in such manner as to maximize that amount,

whichever of the amounts under paragraph (a) or (b) results in the greater amount, unless the Commissioner determines, where the calculation under paragraph (b) results in the greater amount, that the amount of the entitlement should be calculated under paragraph (a).

"(7) For the purposes of this Division, the entitlement of a person on the distribution of a trust shall be determined as the greatest entitlement that the person could derive at any time from the trust whether by the fulfilment of a condition, the outcome of a

Taxation (Administration) Amendment (No. 2)

contingency or the exercise of a power or discretion or otherwise and, in particular, a person that may benefit from, or the trust property of another trust that may comprise or be augmented by a benefit from, a discretionary trust shall be deemed to be entitled to or comprise, or be augmented by -

- (a) the property subject to the discretionary trust, unless the Commissioner determines otherwise; or
- (b) such part of that property as the Commissioner determines.

"(8) For the purposes of this Division, if the acquisition of an interest in a corporation is, or is to be, evidenced by a transfer of shares, the acquisition shall be deemed to occur on the date the transfer is made.

"56D. LODGEMENT OF STATEMENTS BY TRUSTEES

"(1) If a person by a relevant acquisition acquires a majority interest or a further interest in a corporation to which this Division applies in the capacity of a trustee, the liability to prepare and lodge a statement under section 56K is not affected by the fact that the acquisition is not made by the person beneficially, and this Division applies as if the acquisition had been made beneficially.

"(2) Where the Commissioner considers that -

- (a) a person beneficially entitled to a share or interest in trust property, whether the person has a vested share or is contingently entitled or may benefit from a discretionary trust, is related to another person, within the meaning of section 56C(3), who has acquired an interest in a corporation; and
- (b) the beneficial interest of the beneficiary in the corporation, when taken with that of such a related person, amounts to a greater interest than the interest of the trustee of the trust and a person who is related to the trustee,

on payment of the duty payable on the statement required to be lodged under section 56K by the beneficiary any duty paid by the trustee in respect of the acquisition giving rise to the requirement for that statement to be lodged shall be refunded to the trustee.

"56E. VALUATION OF REAL PROPERTY

"(1) The Commissioner may -

- (a) require a person who is required to lodge a statement under section 56K to furnish a further statement in an approved form concerning the unencumbered value of any real property, or such

*Taxation (Administration) Amendment (No. 2)*

other evidence of that value as the Commissioner thinks fit; and

- (b) assess duty in accordance with the evidence of value referred to in paragraph (a).

"(2) Where the Commissioner is not satisfied with the evidence of value furnished under subsection (1), the Commissioner may assess the duty chargeable on the basis of a valuation made at the request of the Commissioner by the Valuer-General appointed under the *Valuation of Land Act* or a person authorized by the Valuer-General.

"56F. NOTICE MAY BE REGISTERED ON TITLE

"(1) Where in relation to the acquisition of an interest in a corporation -

- (a) a statement has been lodged under section 56K(1) with the Commissioner or ought to have been so lodged;
- (b) the Commissioner has made an assessment of duty payable under section 56M on the value of real property to which the corporation is entitled; and
- (c) the assessment has not been paid or has not been paid in full,

the Commissioner may, if the corporation or a subsidiary as defined in section 56N(5) is the registered proprietor of the real property, deliver to the Registrar-General a notice in the prescribed form relating to the duty and any penalty that is payable under this Act, and the Registrar-General shall make the appropriate entries in the Register Book kept under the *Real Property Act* to give effect to the notice.

"(2) While the entries under subsection (1) are in the Register Book, the Registrar-General shall not register an instrument affecting the real property unless -

- (a) the instrument relates to a security interest in the property arising under an agreement entered into before the entries were made or that was lodged with the Registrar-General within 5 business days after the entries were made;
- (b) the instrument is a duly stamped conveyance -
  - (i) that was executed under an agreement entered into before the entries were made;
  - (ii) made as a result of a sale of real property under section 56H; or

*Taxation (Administration) Amendment (No. 2)*

(iii) made as a result of a sale of real property by the holder of a security interest in the property registered before the entries were made or a security interest referred to in paragraph (a); or

(c) the Commissioner consents in writing.

"(3) An instrument registered in accordance with subsection (2)(a) has effect, in relation to the entries made under subsection (1), as if it had been registered before the entries were made.

"(4) Where an instrument referred to in subsection (2)(b) affecting real property is registered by the Registrar-General, the entries made in accordance with subsection (1) shall be deemed to be cancelled on the registration of the instrument and the Registrar-General shall make the appropriate entries to give effect to the cancellation.

"(5) When -

(a) the duty and penalty (if any) in respect of which an entry has been made in the Register Book has been paid; or

(b) the Commissioner determines to withdraw a notice given under subsection (1),

the Commissioner shall deliver to the Registrar-General a notice to that effect.

"(6) The Registrar-General shall make the appropriate entries in the Register Book to give effect to the notice under subsection (2) and thereupon the real property ceases to be subject to that subsection.

"(7) If the Commissioner delivers a notice under subsection (1) to the Registrar-General relating to real property of which a corporation or subsidiary is the registered proprietor, the Commissioner shall send a copy of the notice to the corporation or subsidiary with a direction that the corporation or subsidiary send a copy of the notice to each person the corporation or subsidiary believes may be affected by the operation of this section.

"(8) The Commissioner shall not deliver a notice in relation to a corporation or subsidiary under subsection (1) or, where the Commissioner has delivered such a notice, shall withdraw the notice if, on an application in accordance with subsection (9), the Commissioner determines that the application of the proceeds of sale of the property under section 56H would reduce the value of the interest of the holder of an interest in the corporation or subsidiary.

*Taxation (Administration) Amendment (No. 2)*

"(9) An application for the purposes of subsection (8) may be made by the holder of an interest in the corporation or subsidiary where the holder is not related to a person acquiring a majority interest or further interest in the corporation or subsidiary and the application is made within 60 days after the copy of the notice under subsection (7) is given to the corporation or subsidiary.

"(10) A person aggrieved by a decision under subsection (8) of the Commissioner may appeal against the decision to the Supreme Court and Part V, with the necessary changes, shall apply as if the decision of the Commissioner were an assessment made.

"56G. CHARGE ON REAL PROPERTY

"Where an entry has been made under section 56F in the Register Book in relation to the certificate of title to real property, any duty and penalty to which the notice relates is a charge on the real property and the charge continues in force until the duty and penalty (if any) is paid, the Commissioner withdraws the notice given under section 56F(1) or the entry is cancelled, whichever first occurs.

"56H. POWER OF SALE

"(1) Where -

- (a) duty has been assessed on the value of real property in accordance with section 56M;
- (b) the duty and penalty (if any) has not been paid at the expiration of one year from the date of the assessment; and
- (c) an entry has been made under section 56F in the Register Book in relation to the certificate of title to the real property,

the Commissioner may, despite any judgment against the person liable to pay the duty and penalty (if any), cause to be published in the *Gazette* a notice specifying the real property, and the amount of duty and penalty (if any) payable, and stating that if such amount is not paid within 6 months from the publication of the notice the Commissioner intends to apply to the Supreme Court for an order for the sale of the real property.

"(2) A copy of a notice under subsection (1) shall be served on the registered proprietor of the real property and such other persons as appear by the Register Book to be affected, which service may be effected by posting the document on the real property if service cannot reasonably be effected in the Territory by other means.

*Taxation (Administration) Amendment (No. 2)*

"(3) The Commissioner may apply to the Supreme Court for the sale of so much of the real property described in the notice under subsection (1) as may be necessary, and the Court shall, on being satisfied by affidavit or otherwise that the amount is lawfully due and that all things required by this Act to be done by the Commissioner have been done, order the sale of the real property and that the proceeds be applied in accordance with section 56J(a).

"56J. APPLICATION OF PROCEEDS OF SALE

"Where real property has been sold under section 56H -

- (a) the purchase money arising from the sale shall be applied in accordance with section 135 of the *Real Property Act* as if the relevant entry under section 56F in the Register Book were a registered encumbrance to which section 135 of the *Real Property Act* applies and the Commissioner were the encumbrancee for the purposes of that section;
- (b) the conveyance shall be executed by the officer of the Court nominated by the Court for such purpose to the purchaser, in such form as approved by the Court; and
- (c) the conveyance shall vest the real property sold in the purchaser as completely and effectually as if the conveyance had been executed by the owner of the real property freed and discharged from all liability on account of the charge and any mortgage, charge or encumbrances registered or notified in the Register Book subsequent thereto; and
- (d) the Registrar-General shall, on production of the conveyance, register it and, notwithstanding any provision of the *Real Property Act* to the contrary, production of the duplicate certificate of title shall not be required but, for the purposes of registration, the Registrar-General shall, if necessary, do and perform all such acts and things as are provided for in the case of dealings with real property where the duplicate certificate of title is lost or not produced, in which case a new certificate of title for such real property shall be issued.

"56K. WHEN STATEMENT TO BE LODGED

"(1) Where by a relevant acquisition a person acquires a majority interest or a further interest in a corporation to which this subdivision applies, that person shall prepare and lodge with the Commissioner a statement in respect of that acquisition.



*Taxation (Administration) Amendment (No. 2)*

"(2) Where a requirement under subsection (1) arises in circumstances where a person acquires a majority interest or a further interest by reason of acquisitions by that person and a related person or related persons being aggregated, one of those persons shall prepare and lodge a statement under that subsection of all acquisitions on behalf of all those persons.

"(3) The statement under subsection (1) shall be lodged within 3 months after the occurrence of the relevant acquisition.

"(4) The statement under subsection (1) shall be in an approved form and shall include -

- (a) the name and address of the person who has acquired a majority interest or a further interest and of any related person referred to in subsection (2);
- (b) the date of the acquisition;
- (c) particulars of the interest acquired and all interests previously acquired by the person or a related person in the corporation;
- (d) the person's estimate of the unencumbered value of all real property in the Territory to which the corporation is entitled as at that date; and
- (e) the person's estimate of the unencumbered value of the assets of the corporation as at that date.

"(5) A statement under subsection (1) shall be deemed, for the purposes of this Act, to be an instrument executed on the day on which the relevant acquisition occurred.

"56M. STATEMENT CHARGEABLE WITH DUTY

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

- (a) where the statement relates to a relevant acquisition under section 56P(1)(a) - on the dutiable value determined under section 56R(2); and
- (b) where the statement relates to a relevant acquisition under section 56P(1)(b) -
  - (i) on the dutiable value determined under section 56R(3)(a);

Taxation (Administration) Amendment (No. 2)

- (ii) reduced by the amount of duty determined on the dutiable value calculated under section 56R(3)(b).

"(2) There shall be deducted from the duty chargeable on a statement lodged under section 56K the amount (if any) paid under item 5 in Schedule 1 to the *Stamp Duty Act* in respect of any instrument effecting or evidencing the acquisition of an interest which is taken into account in determining liability under section 56K to lodge that statement, except duty previously deducted under this subsection in respect of a statement previously lodged under that section.

"56N. CORPORATIONS TO WHICH THIS DIVISION APPLIES

"(1) This Division applies to a relevant acquisition of shares in a corporation that is -

- (a) a corporation, other than a corporation shares in the capital of which are listed on a recognized stock exchange within the meaning of the *Securities Industry (Northern Territory) Code*; and
- (b) 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 real property in the Territory and the unencumbered value of the real property is not less than \$1,000,000 or it is entitled to real property in the Territory as a co-owner of the freehold or of a lesser estate in the real property and the value of the whole of the freehold or lesser estate is not less than \$1,000,000; and
- (b) the value of all real property to which the corporation is entitled, whether in the Territory or elsewhere, (other than primary production land) is 80% or more of the value of all property to which it is entitled, other than property directed to be excluded by subsection (4) but including primary production land.

"(3) In subsection (2) 'primary production land', in relation to a relevant acquisition, means, where the relevant acquisition is an acquisition of an interest in a corporation by a person from a lineal ancestor or lineal descendant of that person, real property used primarily for -

- (a) cultivation for the purpose of selling the product of cultivation;

Taxation (Administration) Amendment (No. 2)

- (b) the maintenance of animals or poultry for the purpose of selling them or their natural increase or their produce;
- (c) the keeping of bees for the purpose of selling their honey;
- (d) commercial fishing, including the preparation for commercial fishing, or the storage or preservation of fish or fishing gear; or
- (e) the cultivation or propagation for sale of plants, seedlings, mushrooms or orchids.

"(4) There shall not be included, for the purpose of calculating the value of property under subsection (2)(b), any property of a corporation or a subsidiary within the meaning of subsection (5) that is -

- (a) cash or money in an account at call;
- (b) a negotiable instrument or money on deposit with any person;
- (c) money lent by the corporation or a subsidiary to a person -
  - (i) who, in relation to the corporation, is an associated person; or
  - (ii) at call or on terms that require or allow full repayment to the company within 12 months after the money is lent;
- (d) where the corporation is a holding company within the meaning of section 7 of the *Companies (Northern Territory) Code* the shareholding of that corporation in a subsidiary corporation within the meaning of that section, but without limiting subsection (5);
- (e) in the case of a corporation - property consisting of a share or interest in a trust referred to in subsection (5); or
- (f) any property prescribed for the purpose of this paragraph, unless it is shown to the Commissioner's satisfaction that a reason for the corporation's ownership is not for the purpose of defeating the object of this Division.

"(5) Without limiting the meaning of 'entitled', a corporation shall be deemed to be entitled to real property or property at the time of a relevant acquisition to the extent that a subsidiary is entitled to that real property or property, and for the purposes of this subsection 'subsidiary' means -

*Taxation (Administration) Amendment (No. 2)*

- (a) a subsidiary corporation within the meaning of section 7 of the *Companies (Northern Territory) Code*;
- (b) the trustee of a trust if the corporation or a subsidiary corporation of the corporation, as defined in paragraph (a) -
  - (i) is entitled to a share or interest in the trust, whether vested or contingent; or
  - (ii) in the case of a discretionary trust, may benefit from that trust,

and, at the time of the relevant acquisition, the corporation or subsidiary is entitled to more than 50% of the value of the property held by the trustee as trustee of the trust (being the value determined on the basis of a distribution of the property at that time);

- (c) any other corporation, if the trustee of a trust to which paragraph (b) applies in which the corporation or a subsidiary corporation -
  - (i) is entitled to a share or interest, whether vested or contingent; or
  - (ii) in the case of a discretionary trust, may benefit from that trust,

would be entitled if the other corporation were to be wound up, after the time of the relevant acquisition, to participate (otherwise than as a creditor or other person to whom the other corporation is liable) in a distribution of the property of the other corporation to an extent greater than 50% of the value of the property distributable to all of the holders of shares in the other corporation; or

- (d) any other corporation or the trustee of any other trust that would, by an application of this subsection, be a subsidiary of a corporation that is a subsidiary of the first-mentioned corporation in this subsection.

"(6) A corporation that is a co-owner of an estate in real property is not a co-owner for the purposes of subsection (2) if the Commissioner is satisfied that the reason for the corporation being a co-owner is not for the purpose of defeating the object of this Division.

"56P. MEANING OF RELEVANT ACQUISITION

"(1) An acquisition by a person is a relevant acquisition for the purposes of this Division -

- (a) where it -

*Taxation (Administration) Amendment (No. 2)*

- (i) is an acquisition of an interest that alone constitutes a majority interest in the corporation; or
  - (ii) together with acquisitions by the person of interests in the corporation during the 12 months immediately preceding the day on which the acquisition occurs, constitutes a majority interest in the corporation; or
- (b) where, by the acquisition, a person who has a majority interest in the corporation (and in acquiring that majority interest the person became subject to section 56K) acquires a further interest in the corporation,

other than an interest acquired -

- (c) before 17 August 1988; or
- (d) as a result of an agreement entered into before 17 August 1988.

"(2) For the purposes of subsection (1)(a)(ii), if a person acquires an interest in a corporation and within 12 months before or after the acquisition became or becomes entitled to a right to acquire a further shareholding in the corporation and that right is exercised, that person shall be deemed to acquire that further shareholding in the corporation within the period of 12 months after the first-mentioned acquisition, notwithstanding that the right is exercised after the expiration of that period.

"56Q. MEANING OF 'INTEREST', 'MAJORITY INTEREST' AND 'FURTHER INTEREST'

"(1) For the purpose of section 56K, a person acquires an interest in a corporation if the person, or the person and a related person, acquires on or after 17 August 1988, otherwise than as a result of an agreement entered into before 17 August 1988, a shareholding in the corporation that would entitle the person, or the person and a related person, if the corporation were to be wound up after the shareholding was acquired, to participate (otherwise than as a creditor or other person to whom the corporation is liable) in a distribution of the property of the corporation.

"(2) For the purposes of section 56K, a person acquires a majority interest in a corporation if the person, or the person and a related person, acquires on or after 17 August 1988, otherwise than as a result of an agreement entered into before 17 August 1988, a shareholding in the corporation that would entitle the person, or the person and a related person, if the corporation were to be wound up after the shareholding was acquired, to participate (otherwise than as a creditor or other

*Taxation (Administration) Amendment (No. 2)*

person to whom the corporation is liable) in a distribution of the property of the corporation to an extent greater than 50% of the value of the property distributable to all of the holders of shares in the corporation.

"(3) For the purposes of section 56K, a person acquires a further interest in a corporation if the person, or the person and a related person -

- (a) has a majority interest in the corporation;
- (b) in acquiring that majority interest became subject to section 56K; and
- (c) acquires a further shareholding in the corporation that would entitle the person, or the person and a related person, if the corporation were to be wound up after the shareholding was acquired, to participate further (otherwise than as a creditor or other person to whom the corporation is liable) in a distribution of the property of the corporation.

"56R. HOW DUTIABLE VALUE DETERMINED

"(1) Where section 56M(1) applies, duty is chargeable in accordance with this section on the basis of the unencumbered value (in this section called 'the dutiable value') of the real property in the Territory to which the corporation is entitled.

"(2) Where by a relevant acquisition a person acquires a majority interest in a corporation, the dutiable value is the same proportion of the unencumbered value of the real property in the Territory to which the corporation is entitled, as provided by subsection (4), at the time of the acquisition, as the proportion of the property of the corporation which the person, or the person and a related person, would be entitled, as provided in subsection (5), after the acquisition.

"(3) Where the relevant acquisition is under section 56P(1)(b), the dutiable value -

- (a) for the purposes of section 56M(1)(b)(i) - is the same proportion of the unencumbered value of the real property in the Territory to which the corporation is entitled, as provided by subsection (4), at the time of the acquisition, as the proportion of the property of the corporation to which the person, or the person and a related person, would be entitled, as provided in subsection (5), after the further acquisition; and
- (b) for the purposes of section 56M(1)(b)(ii) - is the same proportion of the unencumbered value of the real property in the Territory to which the

*Taxation (Administration) Amendment (No. 2)*

corporation is entitled, as provided by subsection (4), at the time of the acquisition, as the proportion of the property of the corporation to which the person, or the person and a related person, would have been entitled, as provided in subsection (5), at the time of the immediately proceeding relevant acquisition by that person, or a related person.

"(4) For the purposes of subsections (2) and (3), the unencumbered value of the real property to which a corporation is entitled at any time is the sum of -

- (a) in the case of real property to which the corporation is entitled without reference to section 56N(5) - the unencumbered value of the real property at that time; and
- (b) in the case of real property to which a subsidiary is entitled as mentioned in section 56N - the amount to which, if the property of a subsidiary or of all subsidiaries in the chain of relationships were to be distributed at that time (in the case of a corporation, on the basis of a winding up), without having regard to any liabilities of the subsidiary or subsidiaries, the first-mentioned corporation in this subsection would be entitled in respect of the unencumbered value at that time of real property to which the subsidiary is, or all subsidiaries are, entitled.

"(5) For the purposes of subsections (2) and (3), the property of a corporation to which a person, or the person and a related person, would be entitled is the property to which the person, or the person and a related person, would be entitled (otherwise than as a creditor or other person to whom the corporation is liable) if the corporation were to be wound up after the acquisition.

"56S. LIABILITY FOR DUTY

"(1) Where a statement is required to be lodged under section 56K -

- (a) the person who is required to lodge the statement;
- (b) the corporation in which the interest is acquired; and
- (c) where the acquisition is a relevant acquisition by reason of a person and a related person acquiring an interest in the corporation, the related person,

are jointly and severally liable for the duty chargeable under this Division.

Taxation (Administration) Amendment (No. 2)

"(2) A person, other than a related person, may recover as a debt due and payable to the person from the person required to lodge the statement under section 56K or a related person required to lodge such a statement, the amount of any duty chargeable under this Division and penalty (if any) paid by the first-mentioned person.

"56T. UNIT TRUST SCHEMES

"(1) In this section -

'private unit trust scheme' means a unit trust scheme if, at the time of the acquisition of a unit, the deed relating to the scheme -

- (a) has not been approved for the purposes of Division 6 of Part IV of the *Companies (Northern Territory) Code* or the corresponding provisions of the law in force in a State or another Territory of the Commonwealth; or
- (b) has been so approved but -
  - (i) no units have been issued to the public;
  - (ii) fewer than 50 persons are beneficially entitled to units under the scheme; or
  - (iii) 20 or fewer persons are beneficially entitled to 75% or more of the total issued units under the scheme;

'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 private unit trust scheme.

"(2) For the purposes of the definition of 'private unit trust scheme' and determining the number of persons beneficially entitled to units -

- (a) units to which -
  - (i) a corporation;
  - (ii) a person who is entitled to more than 50% of the issued share capital of the corporation; or
  - (iii) a related corporation,



*Taxation (Administration) Amendment (No. 2)*

is entitled shall be deemed to be held by one person; and

- (b) units to which -
  - (i) a trustee of a trust (including a unit trust scheme);
  - (ii) where the trust is a discretionary trust - a person who has an entitlement on the distribution of that trust; or
  - (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,

is entitled shall be deemed to be held by one person.

"(3) This Division applies to a private unit trust scheme as if -

- (a) the private unit trust scheme were a corporation;
- (b) a unit in the private unit trust scheme were a share in a corporation;
- (c) the acquisition of units in the private unit trust scheme were the acquisition of shares in a corporation;
- (d) a reference to the memorandum and articles of association of a corporation were a reference to the constituent documents of a private unit trust scheme; and
- (e) a reference to a winding up of a corporation were a reference to a termination of a private unit trust scheme.

"(4) Where a unit trustee has a majority interest in another corporation or private unit trust scheme, all real property situated in the Territory to which the corporation or private unit trust scheme is beneficially entitled for the purposes of this Division shall be deemed to be an undivided share in real property held by the unit trustee.

"(5) The extent of the undivided share in real property referred to in subsection (4) is the same proportion of the value of the real property situated in the Territory to which the corporation or private unit trust scheme is beneficially entitled for the purposes of this Division as the proportion of the property of the corporation or the private unit trust scheme which the trustee would be entitled to claim in a distribution of

*Taxation (Administration) Amendment (No. 2)*

property, as provided in section 56C(5), if the corporation or the private unit trust scheme were to be wound up or terminated, as the case may be, at the time of the acquisition effected or evidenced by the relevant transfer or instrument.

"(6) A unit trustee has a majority interest in another corporation or private unit trust scheme if the trustee has a shareholding in the corporation or unit holding in the private unit trust scheme that would entitle the trustee, if the corporation or the private unit trust scheme were to be wound up or terminated, as the case may be, at the time of the acquisition effected or evidenced by the relevant transfer or instrument, to participate (otherwise than as a creditor or other person to whom the corporation is liable) in a distribution of the property of the corporation or private unit trust scheme as provided in section 56C(5), to an extent greater than 50% of the value of the property distributable to all the holders of shares in the corporation or units in the private unit trust scheme.

"56U. DIVISION NOT TO APPLY IN CERTAIN CIRCUMSTANCES

"This Division does not apply to or in relation to -

- (a) an acquisition by a person of an interest in a corporation relating to property if a conveyance of the property to the person would not have been liable to duty under item 5 of Schedule 1 to the *Stamp Duty Act*; or
- (b) an acquisition of units in a private unit trust scheme within the meaning of section 56T if the units were acquired solely pursuant to an arrangement (whether entered into before or after the commencement of section 6 of the *Taxation (Administration) Amendment Act (No. 2) 1988*) entered into or carried out by any of the parties to the arrangement for the sole purpose of enabling the private unit trust scheme or a related person to -
  - (i) obtain finance (whether by way of renewal or otherwise);
  - (ii) obtain an extension of the period for which finance was obtained under an earlier arrangement; or
  - (iii) enforce or terminate an arrangement for the provision of finance."

Taxation (Administration) Amendment (No. 2)

7. INTERPRETATION

Section 80A of the Principal Act is amended -

- (a) by omitting from the definition of "accommodation house" the words "caravan park" and substituting "caravan park in which there are accommodation units"; and
- (b) by omitting from the definition of "accommodation unit" all words after "caravan park," and substituting "other than a vacant site let for transient use or a site occupied by a tent only;".

8. INSTRUMENT TO BE MADE OUT

Section 80D of the Principal Act is amended by omitting subsection (2).

9. NEW DIVISION

The Principal Act is amended by inserting in Part III, after Division 14, the following:

*"Division 15 - Transactions Otherwise than  
by Dutiable Instruments*

"83A. APPLICATION

"(1) This Division applies to a transaction which, on or after 17 August 1988, causes or results in a change in the beneficial ownership of an estate or interest in -

- (a) land in the Territory;
- (b) goods, wares or merchandise situated in the Territory being goods, wares or merchandise sold or conveyed with other property situated in the Territory;
- (c) a lease of land situated in the Territory;
- (d) an interest in a partnership, in so far as the interest relates to property of the partnership, being property of the kind referred to in paragraph (a), (b), (c) or (e) or prescribed, or of a class prescribed, for the purposes of this subsection;
- (e) shares or rights to shares of a corporation incorporated in the Territory, or of a corporation incorporated outside the Territory which is registered on a register of members of the corporation kept in the Territory; or
- (f) property prescribed, or of a class prescribed, for the purposes of this subsection.

Taxation (Administration) Amendment (No. 2)

"(2) A reference to a change in beneficial ownership in subsection (1) does not include a reference to a change in beneficial ownership occurring as the consequence of -

- (a) the appointment of a receiver or trustee in bankruptcy;
- (b) the appointment of a liquidator;
- (c) the making of a compromise or arrangement under Part VIII of the *Companies (Northern Territory) Code* which has been approved by the Court;
- (d) the issue or redemption of units in a unit trust scheme;
- (e) the surrender of a lease;
- (f) the transfer or conveyance of an estate or interest in property as a security, including the pledging or charging of property; or
- (g) the release or termination of an option for the purchase of property.

"(3) This Division does not apply to a transaction or property which is prescribed, or is of a class prescribed, for the purposes of this subsection.

"(4) Notwithstanding anything to the contrary in any other Act, a regulation made for the purposes of subsection (3) may take effect from 17 August 1988 or a later date.

"83B. PAYMENT OF DUTY ON STATEMENTS IN ABSENCE OF DUTIABLE INSTRUMENT

"(1) A person, being a party to a transaction to which this Division applies which is not effected or evidenced by an instrument chargeable with *ad valorem* duty in accordance with Schedule 1 to the *Stamp Duty Act* -

- (a) item 5, under the heading "*Conveyance of Real Property*";
- (b) item 20, under the heading "*Transfer of Marketable Securities*"; or
- (c) any other heading whereby duty is charged as on a conveyance of real property,

shall, if the person would have been liable to pay such *ad valorem* duty in respect of the transaction had such an instrument been executed, lodge with the Commissioner a statement in respect of the transaction.

*Taxation (Administration) Amendment (No. 2)*

"(2) A person, being a party to a transaction -

- (a) which causes or results in a change in the beneficial ownership of an estate or interest in the shares of a corporation incorporated in the Territory which are registered on a register of members of the corporation kept outside the Territory; and
- (b) which is not effected or evidenced by an instrument which is chargeable with stamp duty (or duty of a like nature) in accordance with the law of the place at which the register is kept,

shall lodge with the Commissioner a statement in respect of the transaction.

"(3) A statement under this section shall -

- (a) be lodged within 2 months after the change in beneficial ownership which is caused by or results from the transaction;
- (b) be in an approved form; and
- (c) for the purposes of this Act be deemed -
  - (i) to be an instrument effecting the transaction to which it relates and is chargeable with the *ad valorem* duty referred to in subsection (1) appropriate to the transaction; and
  - (ii) to have been first executed on the date on which the change in beneficial ownership occurs.

"(4) The *ad valorem* duty with which a statement under this section is chargeable shall be charged on -

- (a) the unencumbered value of the property the subject of the transaction as at the date on which the change in beneficial ownership occurs; or
- (b) the amount of the consideration in respect of the transaction,

whichever is the greater, and shall be paid at the time of lodgement of the statement with the Commissioner by the person required to lodge the statement.

Taxation (Administration) Amendment (No. 2)

"83C. SPLITTING OF TRANSACTIONS

"(1) Where -

- (a) 2 or more transactions to which this Division applies; or
- (b) at least one transaction to which this Division applies and at least one instrument liable to *ad valorem* duty under this Act,

are entered into or executed, as the case may be -

- (c) in relation to separate parts of, or separate estates or interests in, the same property;
- (d) between the same parties or between one party and other parties, where the other parties are not at arms' length from each other; and
- (e) within, or apparently within, 12 months of each other,

the transactions or the transactions and instruments, as the case requires, shall, unless the Commissioner is satisfied that it would not be just and reasonable in the circumstances, be deemed to constitute a single transaction relating to the whole of the property concerned and *ad valorem* duty shall be chargeable on -

- (f) the unencumbered value of the whole of that property as at the date on which the change in beneficial ownership occurs; or
- (g) the total amount of the consideration in respect of the whole of that property,

whichever is the greater.

"(2) Where *ad valorem* duty has been paid in respect of a transaction or instrument referred to in subsection (1), the duty payable under that subsection shall be reduced by the amount of duty so paid.

"83D. EFFECT OF EXECUTION OF DUTIABLE INSTRUMENTS

"(1) An instrument executed for the purpose of effecting or evidencing, or apparently for the purpose of effecting or evidencing, a transaction to which this Division applies, being a transaction in respect of which a statement has been duly stamped in accordance with section 83B, is not chargeable with duty under this Act to the extent to which duty has been paid on the statement.

Taxation (Administration) Amendment (No. 2)

"(2) Where, within 2 months after a change in beneficial ownership occurs as the result of a transaction to which this Division applies, an instrument chargeable with *ad valorem* duty (not being a statement under section 83B) is executed for the purpose of effecting or evidencing, or apparently for the purpose of effecting or evidencing, the transaction, section 83B ceases to apply to the transaction.

"(3) For the purposes of section 9, an instrument referred to in subsection (2) shall be deemed to have been first executed on the date on which the change in beneficial ownership occurs.

"83E. AIDING AND ABETTING

"A person who -

- (a) directly or indirectly, aids, abets, counsels or procures another person to enter into a transaction to which this Division applies; or
- (b) is, in any way, by act or omission, directly or indirectly concerned in, or party to, the entry by another person into a transaction to which this Division applies,

knowing or believing that the other person does not intend to lodge a statement under section 83B and pay duty in accordance with this Division in respect of the transaction, is guilty of an offence.

Penalty: \$5,000.

"83F. OFFENCES RELATING TO STATEMENTS

"(1) A person who, in respect of a transaction to which this Division applies -

- (a) fails or refuses to lodge a statement under section 83B within 6 months after the date on which a change in beneficial ownership occurs as a result of the transaction; or
- (b) lodges a statement under section 83B which is false or misleading in a material particular,

is guilty of an offence.

Penalty: \$5,000.

"(2) Proceedings for an offence against subsection (1) -

- (a) may not be instituted without the consent of the Minister;

*Taxation (Administration) Amendment (No. 2)*

- (b) may, subject to that consent, be instituted at any time; and
  - (c) may be disposed of -
    - (i) before a Local Court constituted by a Magistrate sitting alone; or
    - (ii) before the Supreme Court in its summary jurisdiction.
- "(3) The consent of the Minister to the institution of proceedings for an offence against this section shall be presumed unless the contrary is proved."
-