

NORTHERN TERRITORY OF AUSTRALIA
TAXATION (ADMINISTRATION) AMENDMENT ACT 1988

No. 4 of 1988

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NORTHERN TERRITORY OF AUSTRALIA

No. 4 of 1988

AN ACT

to amend the *Taxation (Administration) Act*

[Assented to 21 March 1988]

BE 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 1988*.

2. COMMENCEMENT

This Act shall come into operation on a date to be fixed by the Administrator by notice in the *Gazette*.

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 inserting in the definition of "Commissioner" after "includes" the words ", subject to this Act, the Deputy Commissioner of Taxes and";
- (b) by omitting from the definition of "insurance" the words "re-insurance effected with another insurer" and substituting the following:

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" -

- (a) re-insurance effected with another insurer;
- (b) the insurance of the hull of a floating vessel that is being used primarily for commercial purposes; or
- (c) the insurance of goods or merchandise or the freight of goods or merchandise, carried by sea, land or air";
- (c) by inserting in the definition of "return" after "64," the expression "69N,"; and
- (d) by inserting after the definition of "return" the following:

"'secondary mortgage market' means a market declared to be a secondary mortgage market pursuant to section 56B;"

5. COMMISSIONER OF TAXES

Section 5 of the Principal Act is amended by adding at the end the following:

"(3) For the purposes of -

- (a) this Act;
- (b) the *Stamp Duty Act*;
- (c) the *Pay-roll Tax Act*;
- (d) the *Business Franchise Act*; and
- (e) the *Energy Resource Consumption Levy Act*,

the Commissioner is authorized to perform the functions of a State taxation officer under Part IIIA of the *Taxation Administration Act 1953* of the Commonwealth."

6. NEW SECTIONS

The Principal Act is amended by inserting after section 5 the following:

"5A. DEPUTY COMMISSIONER OF TAXES AND ASSISTANT COMMISSIONERS

"(1) There may, pursuant to the *Public Service Act*, be appointed -

- (a) a Deputy Commissioner of Taxes; and

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- (b) such Assistant Commissioners of Taxes as are required to assist the Commissioner in the exercise of the Commissioner's powers and the performance of the Commissioner's functions.

"(2) Subject to section 5B, the Deputy Commissioner of Taxes -

- (a) shall perform such functions and exercise such powers as are delegated to the Deputy Commissioner pursuant to section 6; and
- (b) shall, during a vacancy in the office of Commissioner or during an illness, absence from duty or from the Territory or other temporary incapacity of the Commissioner, have and may perform all the functions and exercise all the powers of the Commissioner.

"5B. ACTING APPOINTMENTS

"(1) Notwithstanding that there may be a Deputy Commissioner of Taxes, the Minister may, by instrument in writing, appoint a person appointed or employed under the *Public Service Act* to act as Commissioner -

- (a) during a vacancy in the office of Commissioner; or
- (b) during any period, or during all periods, when the Commissioner is ill, or is absent from duty or from the Territory or is, for any other reason, unable to perform the functions of office,

but a person so appointed to act during a vacancy shall not continue to act for more than 12 months.

"(2) An appointment under subsection (1) may be expressed to have effect only in such circumstances as are specified in the instrument of appointment.

"(3) Where a person is acting as Commissioner in accordance with this section and the office of Commissioner becomes vacant, then, subject to subsection (2), that person may continue to act until the Minister otherwise directs, the vacancy is filled or a period of 12 months from the date on which the vacancy occurred expires, whichever first happens.

"(4) The Minister may at any time terminate the appointment of a person appointed under this section.

"(5) The appointment of a person under this section ceases to have effect if the person delivers a written resignation from the appointment to the Minister.

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"(6) The validity of anything done by a person purporting to act in accordance with this section shall not be called in question on the ground that the occasion for the appointment had not arisen, that there is a defect or irregularity in or in connection with the appointment, that the appointment had ceased to have effect or that the occasion to act had not arisen or had ceased."

7. **SECRECY**

Section 7(2)(b) of the Principal Act is amended by inserting after "taxation" the words "in accordance with Part VIIA".

8. **NEW SECTION**

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

"56B. **SECONDARY MORTGAGE MARKETS**

"(1) For the purposes of this Act, the Minister may, if he considers that there is, or is likely to be, a market in or out of the Territory for the buying, selling, offering for sale and issuing of, and offering to issue, mortgages of land or securities representing interests in mortgages of land, declare the market by notice in the Gazette to be a secondary mortgage market.

"(2) A transfer or assignment of a mortgage of land to or by a person who is considered by the Commissioner to be or likely to be a dealer in a secondary mortgage market is, for the purpose of the *Stamp Duty Act*, a transfer or assignment of a mortgage of land relating to a secondary mortgage market."

9. **NEW DIVISION**

The Principal Act is amended by inserting after section 69J the following:

*"Division 11B - Disposition of Marketable
Securities by Registered Trustees*

"69K. **INTERPRETATION**

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

'broker' means a person, firm or corporation who or which is a member of The Stock Exchange;

'corresponding law' means a law of a State or of another Territory declared under subsection (3) to be a corresponding law for the purposes of this Division;

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'jobber' means a person, firm or corporation who or which is recognized as a jobber according to the rules and practices of The Stock Exchange;

'person to whom this Division applies' means a person in respect of whom a declaration under subsection (2) is in force;

'relevant transaction' means a disposition of marketable securities or rights in respect of shares of a municipal or other corporation, company or society which has a register in the Territory made or effected by a person to whom this Division applies as trustee for any person to the first-mentioned person as trustee for another person;

'The Stock Exchange' means The Stock Exchange of the United Kingdom.

"(2) The Administrator may, by notice in the Gazette, declare a person -

- (a) who is a trustee; and
- (b) who carries on business in the Territory,

to be a person to whom this Division applies.

"(3) The Administrator may, by notice in the Gazette, declare a law of a State or of another Territory to be a corresponding law for the purposes of this Division.

"69M. DEEMED DISPOSITION OF MARKETABLE SECURITY

"Where a person to whom this Division applies -

- (a) is notified of a disposition to another person of a right or interest in a marketable security or right in respect of shares which the first-mentioned person holds as trustee on behalf of a person; or
- (b) is directed to hold a marketable security or right in respect of shares on behalf of a person other than a person on behalf of whom the first-mentioned person holds that security or right,

there shall be deemed to have been made or effected by the first-mentioned person a disposition of that marketable security or right to the first-mentioned person as trustee for that other person.

"69N. RETURNS AND PAYMENT

"Within 15 days after the expiry of each month, a person to whom this Division applies shall -

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- (a) furnish to the Commissioner a return in an approved form, verified in an approved manner, setting out the prescribed particulars of relevant transactions made or effected or deemed to have been made or effected by the person during the preceding month; and
- (b) pay to the Commissioner as stamp duty on that return a sum equal to the total amount of stamp duty which would have been payable if each such relevant transaction had been made or effected by an instrument of transfer subject to duty under this Part.

Penalty: \$500.

"69P. APPLICATION OF SECTION 69N

"Section 69N does not apply to or in respect of a relevant transaction where the disposition to which the relevant transaction relates -

- (a) would, if that disposition had been made or effected by an instrument transferring marketable securities, be exempt from duty under items 13, 15 to 20 inclusive and 22 of Schedule 2 to the *Stamp Duty Act*;
- (b) is, in accordance with the rules and practices of The Stock Exchange, a stock loan transaction;
- (c) is made or effected by a jobber to a broker who acquired the marketable securities or rights in respect of shares as principal where, within 10 clear days (not including any day on which The Stock Exchange is closed for business) after acquisition, the broker disposed of the broker's beneficial interest in those securities or rights;
- (d) is made or effected by a broker as principal within 10 clear days (not including any day on which The Stock Exchange is closed for business) after the broker acquired those marketable securities or rights in respect of shares as principal -
 - (i) to a jobber; or
 - (ii) to another broker as principal where, within 10 such clear days after the acquisition, the other broker disposed of the other broker's beneficial interests in those securities or rights;
- (e) is made or effected by or to a person who is a Northern Territory dealer, being a person who is a member of a stock exchange in the Territory or is an agent of that person; or

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(f) is made or effected by a jobber to another jobber.

"69Q. BOOKS AND RECORDS

"A person to whom this Division applies shall, for the purposes of this Act, keep such books as are necessary to give a true indication of the relevant transactions made or effected by the person and shall retain those books for a period of 3 years after the completion of the transactions to which they relate."

10. NEW PART

The Principal Act is amended by inserting after Part VII the following:

"PART VIIA - RECIPROCAL POWERS

"116A. INTERPRETATION

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

'book' includes a register or other record of information and any accounts or accounting records, however compiled, recorded or stored, and also includes an instrument;

'Corresponding Commissioner', in relation to a Taxation Act, means the holder of an office declared under subsection (2) to be a corresponding office in relation to the office of Commissioner under that Act;

'corresponding law', in relation to a Taxation Act, means a law of the Commonwealth or of a State or of another Territory declared under subsection (2) to be a corresponding law;

'relevant goods' means tobacco, petroleum products or other goods to which a corresponding law applies;

'Taxation Act' means -

- (a) this Act;
- (b) the *Stamp Duty Act*;
- (c) the *Pay-roll Tax Act*;
- (d) the *Business Franchise Act*; or
- (e) the *Energy Resource Consumption Levy Act*.

"(2) The Administrator may, by notice in the Gazette, declare -

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- (a) a law of the Commonwealth or of a State or of another Territory that -
 - (i) corresponds to this Part; or
 - (ii) is a Commonwealth, State or Territory Taxation Act within the meaning of an Act of the Commonwealth, the State or the other Territory corresponding to this Part, to be a corresponding law for the purposes of this Part in relation to a Taxation Act; and
- (b) an office under such a law to be a corresponding office for the purposes of this Part in relation to the office of Commissioner.

"116B. INVESTIGATIONS BY CORRESPONDING COMMISSIONERS

"(1) If the Commissioner has given approval in writing to a proposed investigation by a Corresponding Commissioner, the Corresponding Commissioner may, while the approval is in force and subject to and in accordance with any conditions of that approval, exercise, or authorize in writing a person to exercise, any power referred to in section 116D that the Corresponding Commissioner, or a person authorized by the Corresponding Commissioner, may exercise under the corresponding law.

"(2) The Commissioner may, in writing given to the Corresponding Commissioner, vary or revoke an approval, or any condition of an approval, given under subsection (1).

"116C. INVESTIGATIONS ON BEHALF OF CORRESPONDING COMMISSIONERS

"If a Corresponding Commissioner in writing requests the Commissioner to exercise on behalf of the Corresponding Commissioner any power referred to in section 116D that the Corresponding Commissioner, or person authorized by the Corresponding Commissioner, may exercise under the corresponding law, the Commissioner, or a person authorized in writing by the Commissioner for that purpose, may, for and on behalf of the Corresponding Commissioner, exercise that power subject to and in accordance with -

- (a) conditions specified by the Corresponding Commissioner whether in the request or at any later time; and
- (b) conditions determined by the Commissioner.

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"116D. INVESTIGATION POWERS

"(1) For the purposes of and in accordance with sections 116B and 116C, a Corresponding Commissioner or the Commissioner or other person authorized under either of those sections (in this section called an 'inspector') may, in relation to a corresponding law -

- (a) at any reasonable time, on production of a certificate under the hand of the Corresponding Commissioner or the Commissioner, as the case may be, of the authority of the inspector -
 - (i) require a person to produce for inspection any books in that person's possession or under that person's control, the inspection of which may show whether or not the provisions of the corresponding law are being or have been complied with; or
 - (ii) enter land under section 127, and the provisions of that section apply accordingly; or
- (b) if the corresponding law relates to relevant goods, at any reasonable time, on production of a certificate under the hand of the Corresponding Commissioner or the Commissioner, as the case may be, of the authority of the inspector -
 - (i) require a person to produce for inspection any books in that person's possession or under that person's control, the inspection of which may show whether or not the provisions of the corresponding law are being or have been complied with;
 - (ii) enter and remain in any place at or on which the inspector reasonably suspects the business of selling relevant goods is carried on or which is, or which the inspector reasonably suspects is, being used for the storage or custody of relevant goods or of any books relating to the sale or purchase of relevant goods, and the provisions of section 127 apply accordingly;
 - (iii) seize any such relevant goods; or
 - (iv) request any person holding a licence under the corresponding law or any person reasonably believed by the inspector to be involved in the sale, purchase or storage of relevant goods -

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- (A) to produce any books which relate to, or which the inspector reasonably suspects relate to, the sale or purchase of relevant goods and which at the time of the request are in the possession or under the control of that person; and
- (B) to answer any question with respect to any such books or the sale or purchase of any relevant goods.

"(2) In accordance with sections 116B and 116C, a Corresponding Commissioner or the Commissioner may, by notice in writing, require a person -

- (a) to furnish the Corresponding Commissioner or, as the case may be, the Commissioner with such information as is required; or
- (b) to attend and give evidence before the Corresponding Commissioner or, as the case may be, the Commissioner or a person authorized in that behalf by the relevant Commissioner -

for the purpose of inquiring into or ascertaining the first person's or any other person's liability or entitlement under the corresponding law and may require the person to produce all books in the person's possession or under the person's control relating to that liability or entitlement.

"(3) For the purposes of subsection (2), the Corresponding Commissioner or the Commissioner or the authorized person may require the information or evidence to be given on oath or affirmation, and either orally or in writing, or to be given by statutory declaration, and for that purpose the Corresponding Commissioner or the Commissioner or authorized person may administer an oath or take an affirmation.

"(4) The Regulations may prescribe scales of expenses to be allowed to persons who attend and give evidence under subsection (2).

"(5) If a person records or stores any matters by means of a mechanical, electronic or other device, a duty imposed by this Part to produce a book containing those matters shall be construed as a duty to make the matters available in written form in the English language or to provide a document containing a clear reproduction in writing in the English language of the matters.

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"(6) A person must not fail, neglect or refuse to comply with a request made under this section by a Corresponding Commissioner or the Commissioner or a person authorized by a Corresponding Commissioner or the Commissioner or delay or obstruct a Corresponding Commissioner or the Commissioner or a person so authorized in exercising their powers under this section.

Penalty: \$1,000.

"116E. DISCLOSURE OF INFORMATION TO COMMONWEALTH, STATE OR TERRITORY OFFICERS

"(1) Notwithstanding anything to the contrary in a Taxation Act, the Commissioner and any person authorized by the Commissioner may communicate information respecting the affairs of a person disclosed or obtained under a Taxation Act to -

- (a) the Commissioner, Second Commissioner or a Deputy Commissioner under a law of the Commonwealth relating to taxation or to a person authorized by the Commissioner, Second Commissioner or Deputy Commissioner;
- (b) the Commissioner or other officer of a State or other Territory of the Commonwealth administering a law of the State or Territory relating to taxation or to a person authorized by the Commissioner or other officer;
- (c) the National Crime Authority or a person authorized by it; or
- (d) the National Companies and Securities Commission or a person authorized by it.

"(2) If the Commissioner gives consent to the communication of information respecting the affairs of a person disclosed to, or obtained under this Act by, a Corresponding Commissioner under a corresponding law, the Corresponding Commissioner and any person authorized by the Corresponding Commissioner, may, subject to and in accordance with the terms of the consent, communicate the information -

- (a) to a person referred to in subsection (1); and
- (b) to a person to whom they are permitted under the corresponding law to communicate information disclosed or obtained under the corresponding law.

"(3) If a Corresponding Commissioner under a corresponding law gives consent to the communication of information respecting the affairs of a person disclosed to, or obtained under the corresponding law by the

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Commissioner, the Commissioner and any person authorized by the Commissioner, may, subject to and in accordance with the terms of the consent, communicate the information -

- (a) to a person referred to in subsection (1); and
- (b) to a person to whom the Commissioner is permitted under a Taxation Act to communicate information disclosed or obtained under that Taxation Act.

"(4) Except as provided in subsection (2) or (3), a person shall not -

- (a) make a record of, divulge or communicate to any person or publish any information or book that is or was acquired by the person under this Part or under a corresponding law for the purposes of a Taxation Act, by reason of being, or having been, employed for the purposes of or in connection with the administration or execution of a corresponding law; or
- (b) be required to produce in court any book connected with the administration or execution of a corresponding law acquired by the person under this Part or under a corresponding law for the purposes of a Taxation Act, or to divulge or communicate to any court any matter or thing coming under the notice of the person under this Part or such a corresponding law -

unless the recording, divulgence, communication, publication or production is made -

- (c) with the consent of the person from whom the information or book was obtained;
- (d) in connection with the administration or execution of this Part, a Taxation Act or a corresponding law for the purposes of a Taxation Act and in accordance with any consent given by the Commissioner or the Corresponding Commissioner under the corresponding law to the communication of the information; or
- (e) for the purpose of any legal proceedings arising out of this Part, a Taxation Act or the corresponding law or any report of any such proceedings.

Penalty: \$5,000 or imprisonment for 12 months.

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"(5) For the purposes of subsection (4), a person shall be deemed to have divulged or communicated information in contravention of that subsection if the person divulges or communicates that information to any Minister, Minister of State of the Commonwealth or any State Minister.

"116F. EVIDENCE

"The production of a document purporting to be certified by a Corresponding Commissioner as a copy of, or extract from, a document furnished to, or issued by, the Corresponding Commissioner is, for all purposes, sufficient evidence of the matter contained in the document, without production of the original."
