

NORTHERN TERRITORY OF AUSTRALIA  
BUSINESS FRANCHISE (TOBACCO) ACT 1981  
No. 67 of 1981  
TABLE OF PROVISIONS

Section

PART I - PRELIMINARY

1. Short title
2. Commencement
3. Interpretation
4. Act to bind Crown

PART II - APPLICATION TO BUSINESS GROUPS

5. Membership of group
6. Grouping of corporations
7. Grouping where employees used in another business
8. Grouping of commonly controlled businesses
9. Smaller groups subsumed into larger groups
10. Beneficiary under discretionary trust

PART III - LICENSING AUTHORITY

11. Powers of Commissioner, &c.
12. Power of Commissioner to require information
13. Delegations

PART IV - LICENCES TO SELL TOBACCO

14. Sellers of tobacco to be licensed
15. Application for licence
16. Grant of licence
17. Issue of licence
18. Premises to which licence applies
19. Duration of licence
20. Renewal of licence
21. Amendment of group tobacco licence
22. Transfer of licence

PART V - LICENCE FEES

23. Licence fees
24. Adjustment of licence fee
25. Recovery of fee from unlicensed person
26. Recovery of fee

PART VI - DUTY OF LICENSEES

27. Accounts to be kept by licensees
28. Endorsement of invoices

PART VII - OBJECTIONS AND APPEALS

- 29. Appeal against refusal to grant or transfer licence
- 30. Objections to assessments
- 31. Appeal after objection
- 32. Appeal not to affect recovery
- 33. Resolution of matter after appeal
- 34. Procedure on appeal

PART VIII - OFFENCES

- 35. Offences resulting from sales
- 36. Offences concerning licences

PART IX - MISCELLANEOUS

- 37. Certification of evidence
- 38. Regulations
- 39. Transitional

SCHEDULE



## NORTHERN TERRITORY OF AUSTRALIA

No. 67 of 1981

### AN ACT

To provide for the licensing of tobacco wholesalers and retailers

[Assented to 31 August 1981]

**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:

#### PART I - PRELIMINARY

##### 1. SHORT TITLE

This Act may be cited as the Business Franchise (Tobacco) Act 1981.

##### 2. COMMENCEMENT

This Act shall come into operation or be deemed to have come into operation, as the case may be, on 1 September 1981.

##### 3. INTERPRETATION

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

"Commissioner" means the person for the time being holding the office of Commissioner of Taxes under the Taxation (Administration) Act;

"corporation" has the same meaning as in the Companies Act;

"employee of the Commissioner" means an employee, within the meaning of the Public Service Act, who is employed in the office of the Commissioner;

"group tobacco licence" means a group tobacco licence which is in force under this Act and relates to a group -

(a) of wholesale tobacco merchants;

Business Franchise (Tobacco)

(b) of retail tobacconists; or

(c) comprising wholesale tobacco merchants and retail tobacconists;

"internal trade" means trade carried on in the Territory which is not trade or commerce between the Territory and the States within the meaning of section 49 of the Northern Territory (Self-Government) Act 1978 of the Commonwealth;

"licence" means a licence granted or renewed under this Act;

"licensed premises" means premises specified in a licence as premises which are to be used for or in connection with the business in respect of which a licensee is licensed;

"licensee" means the holder of a licence;

"person" includes a body or association, whether corporate or unincorporate, and a partnership;

"premises" includes a part of premises;

"relevant period", in relation to a licence which, if granted, would expire at the end of a month specified in column 1 of the Schedule, means the preceding month specified opposite that month in column 2 of the Schedule;

"tobacco" means tobacco prepared for consumption, and includes a mixture that contains tobacco and is intended to be consumed, and a wrapping, package or container in which tobacco is sold, purchased, received or handled;

"tobacco retailing" means the business of selling tobacco by retail in the course of internal trade, either alone or in conjunction with other merchandise, and includes such business carried on as part of, or in conjunction with, any other business;

"tobacco wholesaling" means the business of selling tobacco in the course of internal trade for the purpose of resale, either alone or in conjunction with other merchandise, and includes such business carried on as part of, or in conjunction with, any other business, but does not include the sale of tobacco by a person carrying on tobacco retailing to another person carrying on tobacco retailing;

"vending machine" means a machine, device or contrivance that is constructed to contain articles that may be obtained therefrom by an operation that involves the insertion in the machine, device or contrivance of a banknote, coin, token or similar object;

"voting share" has the same meaning as in the Companies Act.

## Business Franchise (Tobacco)

(2) A reference in this Act to premises includes a reference to a building or structure, including a building or structure that is of a temporary nature or that is capable of being moved or transported, and to a vehicle, vessel or aircraft.

(3) The presence on premises of a vending machine from which tobacco may be obtained, shall be deemed to constitute the carrying on of tobacco retailing on those premises by the occupier thereof, unless the machine is owned and operated by a licensee in accordance with his licence.

(4) A reference in this Act to a person who -

(a) sells tobacco; or

(b) carries on the business of selling tobacco,

does not extend to a person who, as an agent or employee of such a person, sells tobacco or carries on such a business.

(5) A reference in this Act to -

(a) a holder of a group tobacco licence includes a reference to each person whose name is, under section 17(3), specified in a group tobacco licence; and

(b) the application for or grant of a licence includes a reference to the application for the renewal or the renewal of, a licence.

(6) Where, pursuant to a sale made outside the Territory, tobacco is delivered in the course of internal trade within the Territory, that sale shall, for the purposes of this Act, be deemed to have been made within the Territory.

### 4. ACT TO BIND CROWN

This Act binds the Crown.

## PART II - APPLICATION TO BUSINESS GROUPS

### 5. MEMBERSHIP OF GROUP

(1) For the purposes of this Act, a person is a member of a group of -

(a) wholesale tobacco merchants;

(b) retail tobacconists; or

(c) wholesale tobacco merchants and retail tobacconists,

if -

(d) he is one of the persons who constitute the group; and

Business Franchise (Tobacco)

(e) there is not in force a determination under sub-section (2) or (4) to the effect that the person is not a member of the group.

(2) The Commissioner may, by writing under his hand, determine that a person who would, but for the determination, be a member of a group referred to in sub-section (1) is not a member of the group for the purposes of this Act if the Commissioner is satisfied that the person -

(a) has continuously carried on, and intends to continue to carry on, the business of selling tobacco in the course of internal trade independently of the group; and

(b) is not subject to control by another member of the group.

(3) The Commissioner shall not make a determination under sub-section (2) so as to exclude a person from a group if that person is or was, on the date of the determination, a corporation which, by reason of section 6(5) of the Companies Act, is to be deemed, for the purposes of that Act, to be related to another corporation which is a member of that group.

(4) The Commissioner may, by writing under his hand, determine that a person who would, but for the determination, be a member of a group referred to in sub-section (1) is not a member of any group for the purposes of this Act if the Commissioner is satisfied that the person is not carrying on, and has no intention of carrying on, the business of selling tobacco in the course of internal trade.

(5) A determination made under sub-section (2) or (4) shall come into force at the time when it is made and shall continue in force until it is revoked by the Commissioner and notice of the revocation has been served on the person in respect of whom the determination was made.

(6) Notice of a determination made under sub-section (2) or (4) shall be given by the Commissioner to the person in respect of whom the determination was made and to every member of the group concerned who the Commissioner considers is carrying on tobacco wholesaling or tobacco retailing.

(7) The Commissioner may, at any time, revoke a determination made under sub-section (2) or (4).

(8) Notice of the revocation of a determination made under sub-section (2) or (4) shall be given by the Commissioner to the person in respect of whom the determination was made and to every member of the group who the Commissioner considers is carrying on tobacco wholesaling or tobacco retailing.

Business Franchise (Tobacco)

6. GROUPING OF CORPORATIONS

For the purposes of this Act, 2 corporations constitute a group if they are, by reason of section 6(5) of the Companies Act, to be deemed, for the purposes of that Act, to be related to each other.

7. GROUPING WHERE EMPLOYEES USED IN ANOTHER BUSINESS

(1) For the purposes of this Act, if -

- (a) an employee of an employer, or 2 or more employees of an employer, performs or perform duties solely or mainly for or in connection with a business carried on by that employer and another person or other persons or by another person or other persons; or
- (b) an employer has, in respect of the employment of or the performance of duties by one or more of his employees, an agreement with another person or other persons relating to a business carried on by that other person or those other persons, whether alone or together with another person or other persons,

that employer and -

- (c) each such other person; or
- (d) both or all of those other persons,

constitute a group.

(2) In sub-section (1)(b), an agreement includes an agreement, arrangement or undertaking -

- (a) whether formal or informal;
- (b) whether expressed or implied; and
- (c) whether or not the agreement, arrangement or undertaking includes provisions in respect of the supply of goods or services or goods and services.

8. GROUPING OF COMMONLY CONTROLLED BUSINESSES

(1) A reference in this section to 2 businesses does not include a reference to 2 businesses both of which are owned by the same person, not being a trustee, or by the trustee or trustees of a trust.

(2) For the purposes of this Act, where the same person has, or the same persons have together, a controlling interest, as referred to in sub-section (3), in each of 2 businesses, the persons who carry on those businesses constitute a group.

Business Franchise (Tobacco)

(3) For the purposes of sub-section (2), the same person has, or the same persons have together, a controlling interest in each of 2 businesses if that person has, or those persons have together, a controlling interest under any of the following paragraphs in one of the businesses and a controlling interest under the same or another of the following paragraphs in the other business:

- (a) a person has, or persons have together, a controlling interest in a business, being a business carried on by a corporation, if the directors, a majority of the directors or one or more of the directors, being a director or directors who is or are entitled to exercise a majority in voting power at meetings of the directors of the corporation are or is accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of that person or of those persons acting together;
- (b) a person has, or persons have together, a controlling interest in a business, being a business carried on by a corporation that has a share capital, if that person or those persons acting together could, whether directly or indirectly, exercise, control the exercise of, or substantially influence the exercise of, 50% or more of the voting power attached to voting shares issued by the corporation;
- (c) a person has, or persons have together, a controlling interest in a business, being a business carried on by a partnership, if that person or those persons -
  - (i) owns, or own together, (whether beneficially or not) 50% or more of the capital of the partnership; or
  - (ii) is, or are together, entitled (whether beneficially or not) to 50% or more of the profits of the partnership;
- (d) a person has, or persons have together, a controlling interest in a business, being a business carried on under a trust, if that person (whether or not as the trustee of another trust) is the beneficiary, or those persons (whether or not as the trustees of another trust) are together the beneficiaries, in respect of 50% or more of the value of the interests in the first-mentioned trust;
- (e) a person has a controlling interest in a business if, whether or not he is a trustee of a trust, he is the sole owner of the business, or persons, being 2 or more trustees of a trust, have a controlling interest in a business if they are the owners of the business.

(4) Where a corporation has a controlling interest under sub-section (3) in a business, it shall be deemed to have a controlling interest in any other business in which another corporation that is, by reason of section 6(5) of the Companies Act, to be deemed for the purposes of that Act to be related to it, has a controlling interest.



## Business Franchise (Tobacco)

(5) Where -

- (a) a person has, or persons have together, a controlling interest under sub-section (3) in a business; and
- (b) the person or persons who carries or carry on that business has or have such a controlling interest in another business,

the person or persons referred to in paragraph (a) shall be deemed to have a controlling interest in the business referred to in paragraph (b).

(6) Where -

- (a) a person is a beneficiary under a trust; or
- (b) two or more persons together are beneficiaries under a trust,

in respect of 50% or more of the value of the interests in that trust and the trustee or trustees of that trust has or have, under sub-section (3), a controlling interest in a business, that beneficiary or those beneficiaries shall, for the purposes of sub-section (3), be deemed to have a controlling interest in that business.

### 9. SMALLER GROUPS SUBSUMED INTO LARGER GROUPS

(1) Notwithstanding any other provision of this Act, other than sub-section (2), where a person is, whether or not by virtue of this section, a member of 2 or more groups (each of which is in sub-section (2) referred to as a smaller group), all of the members of those groups constitute, for the purpose of this Act, one group.

(2) Except for the purpose of determining whether a group is constituted under sub-section (1), a group which, but for this sub-section, would be a smaller group, ceases to be a group if its members are members of a group constituted under sub-section (1).

### 10. BENEFICIARY UNDER DISCRETIONARY TRUST

A person who, as the result of the exercise of a power or discretion by a trustee of a discretionary trust, by another person or by that trustee and another person, may benefit under that trust shall be deemed, for the purposes of this Act, to be a beneficiary in respect of 50% or more of the value of the interests in that trust.

## PART III - LICENSING AUTHORITY

### 11. POWERS OF COMMISSIONER, &c.

(1) The Commissioner or an employee of the Commissioner authorized by him in that behalf may, at any reasonable time -

Business Franchise (Tobacco)

- (a) enter and remain on premises at which, or at which the Commissioner or his authorized employee, as the case may be, reasonably suspects, the business of selling tobacco is carried on or which is, or which he reasonably suspects is, being used for the storage or custody of accounts, records, books or documents relating to the sale or purchase of tobacco;
- (b) take copies of, or extracts or notes from, accounts, records, books or documents relating to the sale or purchase of tobacco; or
- (c) request a person found in or upon premises used for the sale or purchase of tobacco or on which tobacco is stored for sale or purchase -
  - (i) to produce accounts, records, books or documents which relate to, or which the Commissioner or his authorized employee, as the case may be, reasonably suspects relate to, the sale or purchase of tobacco and which, at the time of the request, are in the possession or under the control of that person; and
  - (ii) to answer a question with respect to such accounts, records, books or documents or the sale or purchase of tobacco.
- (2) A person shall not -
  - (a) hinder or obstruct the Commissioner or an employee of the Commissioner authorized by the Commissioner in the exercise of his powers under sub-section (1);
  - (b) fail to comply with a request under sub-section (1)(c) of the Commissioner or an employee of the Commissioner authorized by the Commissioner; or
  - (c) furnish to the Commissioner or an employee of the Commissioner authorized by the Commissioner, information which is false or misleading in a material particular.

Penalty: \$200.

(3) A person is not guilty of an offence against sub-section (2)(b) by reason of his failure to answer a question if he proves to the satisfaction of the court that he did not know, and could not with reasonable diligence have ascertained, the answer to the question.

(4) A person is not excused from answering a question, if required to do so under sub-section (1)(c), on the ground that the answer might tend to criminate him or make him liable to a penalty, but the information furnished by him shall not be admissible against him in any proceedings, civil or criminal, other than proceedings for an offence against sub-section (2).

Business Franchise (Tobacco)

12. POWER OF COMMISSIONER TO REQUIRE INFORMATION

(1) The Commissioner may, by notice in writing, require a person -

- (a) to furnish him with such information as the Commissioner requires; or
- (b) to attend and give evidence before the Commissioner or before an employee of the Commissioner authorized by the Commissioner in that behalf,

for the purpose of inquiring into or ascertaining that or any other person's liability or entitlement under this Act, and may require that person to produce all books, documents and other papers in his custody or under his control relating thereto.

(2) The Commissioner may require information or evidence referred to in sub-section (1) to be given on oath, or to be given by statutory declaration, and, for that purpose, he or the employee of the Commissioner so authorized by him may administer an oath.

(3) The Regulations may prescribe scales of expenses to be allowed to persons required under this section to attend before the Commissioner or an employee of the Commissioner authorized by the Commissioner.

(4) A person who fails or neglects duly to furnish information or to comply with a requirement under this section of the Commissioner or employee of the Commissioner authorized by the Commissioner, is guilty of an offence.

Penalty: \$500.

(5) The Commissioner may communicate -

- (a) to the Commissioner, Second Commissioner or a Deputy Commissioner under a law of the Commonwealth relating to taxation or to a person authorized by such Commissioner, Second Commissioner or Deputy Commissioner; or
- (b) to the Commissioner or any other officer of a State or Territory administering a law of that State or Territory relating to taxation or to a person authorized by such Commissioner or other officer,

information disclosed or obtained under this Act relating to the affairs of a person.

13. DELEGATIONS

(1) The Commissioner may, by instrument in writing, delegate to a person any of his powers and functions under this Act, other than this power of delegation.

## Business Franchise (Tobacco)

(2) A power or function delegated under this section, when exercised or performed by the delegate shall, for the purposes of this Act, be deemed to have been exercised or performed by the Commissioner.

(3) A delegation under this section does not prevent the exercise of a power or the performance of a function by the Commissioner.

### PART IV - LICENCES TO SELL TOBACCO

#### 14. SELLERS OF TOBACCO TO BE LICENSED

(1) Subject to section 39, a person shall not carry on tobacco wholesaling unless he is the holder of a wholesale tobacco merchant's licence or group tobacco licence.

Penalty: \$1,000.

(2) Subject to section 39, a person who is not the holder of a retail tobacconist's licence or a group tobacco licence shall not, in the course of carrying on tobacco retailing, purchase tobacco except -

- (a) from the holder of a wholesale tobacco merchant's licence or group tobacco licence; or
- (b) from a person carrying on tobacco retailing who -
  - (i) holds a retail tobacconist's licence; or
  - (ii) has purchased that tobacco, either directly or indirectly, from the holder of a licence.

Penalty: \$1,000.

#### 15. APPLICATION FOR LICENCE

An application for -

- (a) a wholesale tobacco merchant's licence;
- (b) a retail tobacconist's licence; or
- (c) a group tobacco licence,

shall be made to the Commissioner in a form approved by him and shall be accompanied by the fee required by this Act to be paid in respect of the licence applied for.

#### 16. GRANT OF LICENCE

(1) Upon receiving an application under section 15, the Commissioner may grant, or refuse to grant, a licence to the applicant and he shall notify the applicant of his decision within 14 days after receipt of the application.

## Business Franchise (Tobacco)

(2) If the Commissioner refuses to grant a licence he shall, as soon as practicable after so refusing, refund to the applicant the fee referred to in section 15.

### 17. ISSUE OF LICENCE

(1) The Commissioner shall issue a licence to a person to whom he has granted a licence under section 16.

(2) The form of a licence shall be as approved by the Commissioner.

(3) In the case of a group tobacco licence -

(a) the Commissioner may issue a licence to each member of the group; and

(b) the licence shall specify the name of each person who is a member of the group.

### 18. PREMISES TO WHICH LICENCE APPLIES

(1) A licence issued under section 17 shall specify the premises which are to be used for or in connection with the business carried on under the licence.

(2) A licensee may, by notice to the Commissioner in writing in a form approved by the Commissioner, specify additional premises which are to be used for or in connection with the business carried on under his licence or which are no longer to be so used, and on receipt of such a notice, together with the licence document, the Commissioner shall amend the licence accordingly.

### 19. DURATION OF LICENCE

A licence shall be in force on and from the date specified in the licence as the date for the licence to come into force until and including, unless it sooner ceases to have effect, the last day of the month for which it is granted.

### 20. RENEWAL OF LICENCE

(1) Subject to this section, a licensee shall, not later than the fifteenth day of the month for which the licence is granted, apply to the Commissioner for the renewal of the licence.

(2) An application under sub-section (1) shall be accompanied by the fee required by this Act to be paid in respect of the period to which the application relates.

(3) Upon receiving an application under and in accordance with sub-section (1) and the fee referred to in sub-section (2), the Commissioner may renew the licence for a further month which shall expire, unless the licence sooner ceases to have effect, at the end of the last day of the month for which the licence is renewed.

## Business Franchise (Tobacco)

(4) If a licensee applies for a renewal of his licence in accordance with sub-section (1) and pays the fee required by this Act to be paid, but the Commissioner has not renewed the licence or otherwise made a decision in respect of the application before the licence expires, the licence shall be deemed to have been renewed for a period, not exceeding 28 days, expiring at the end of the day when the Commissioner determines the application for renewal.

(5) If the Commissioner refuses to renew a licence on an application made under this section he shall, as soon as practicable, refund to the applicant the fee referred to in sub-section (2).

(6) An application under this section may be made to the Commissioner by properly addressing and posting it to him by prepaid post, and the Commissioner shall be deemed to have received it at the time at which it would be delivered in the ordinary course of post.

### 21. AMENDMENT OF GROUP TOBACCO LICENCE

If, during a period when a group tobacco licence is in force, the composition of the group alters, each member of the group as so altered shall, without delay, furnish to the Commissioner information, to the satisfaction of the Commissioner, concerning the alteration unless, to the member's knowledge, another member of the group has sooner furnished the information to the Commissioner.

Penalty: \$500.

### 22. TRANSFER OF LICENCE

(1) A licensee and a person to whom the licensee proposes to transfer his licence may apply to the Commissioner to transfer the licence to be effective on and from the date specified in the application, and the Commissioner may authorize or refuse to authorize the transfer.

(2) An application under sub-section (1) shall be in a form approved by the Commissioner and be accompanied by the licence the subject of the application.

(3) Subject to sub-section (4), the transfer of a licence does not take effect until the Commissioner authorizes the transfer, or such other date as the Commissioner specifies.

(4) Where a person, immediately before his death, held a licence, the licence shall be deemed to have been transferred under this section to his personal representative, and the transfer shall be deemed to have taken effect, on the date of the person's death.

## PART V - LICENCE FEES

### 23. LICENCE FEES

(1) Subject to this section and to section 39, the fee to be paid for a licence is -

Business Franchise (Tobacco)

- (a) in the case of a wholesale tobacco merchant's licence - an amount equal to 12% of the value of tobacco sold by the applicant in the course of internal trade during the relevant period (other than tobacco sold to the holder of a wholesale tobacco merchant's licence or a group tobacco licence);
  - (b) in the case of a group tobacco licence - an amount equal to 12% of the value of tobacco sold or purchased, as the case may be, by all members of the group in the course of internal trade during the relevant period (other than tobacco sold to the holder of a wholesale tobacco merchant's licence or group tobacco licence); and
  - (c) in the case of a retail tobacconist's licence - an amount equal to 12% of the value of tobacco purchased by the applicant in the course of tobacco retailing during the relevant period (other than tobacco purchased in the course of internal trade from the holder of a wholesale tobacco merchant's licence, group tobacco licence or another tobacco retailer for the purposes of resale).
- (2) For the purposes of sub-section (1) and section 39(2), the value of tobacco sold or purchased shall be determined by the Commissioner as the amount, including any duties thereon, for which, in his opinion, the tobacco would ordinarily be expected to be sold to or purchased by, as the case may be, persons engaged in tobacco retailing.
- (3) Where an application is made for a licence and the applicant carried on the business in respect of which the application for the licence was made during the whole of the relevant period and the Commissioner is of the opinion that he is unable accurately to assess the fee payable under this section, the fee payable in respect of the licence shall be such amount as is assessed by the Commissioner as being just and reasonable in the circumstances of the case, having regard to the tobacco that, in the opinion of the Commissioner, was sold to or purchased by, as the case may be, the applicant during that period, and the relevant principles of determining fees under sub-section (1).
- (4) Where a licence is transferred under section 22, tobacco sold by the transferor of the licence during the relevant period shall, for the purposes of assessing the fee payable under this section for the renewal of the licence, be deemed to have been sold by the transferee of the licence.
- (5) Where an application is made for a wholesale tobacco merchant's licence, group tobacco licence or retail tobacconist's licence and the applicant did not carry on tobacco wholesaling or tobacco retailing during the whole of the relevant period, the fee payable by the applicant in respect of the licence shall be such amount as is assessed by the Commissioner as being just and reasonable in the circumstances of the case, having regard to -

## Business Franchise (Tobacco)

- (a) the tobacco that, in the opinion of the Commissioner, would have been handled by the applicant had he been carrying on the business in respect of which the application for the licence was made during the whole of the relevant period;
- (b) the relevant principles of determining fees under sub-section (1); and
- (c) where the application is made in respect of a licensing period that is less than one month - the period that the licence will be in force.

(6) The value of tobacco sold for delivery and consumption outside the Territory shall be disregarded in determining the fees payable under this section.

### 24. ADJUSTMENT OF LICENCE FEE

(1) Where, in the opinion of the Commissioner, the fee assessed in respect of a licence was assessed incorrectly, the Commissioner may, at any time, reassess the fee in accordance with the principles for assessing fees set out in section 23.

(2) Where, on a reassessment under sub-section (1) of a fee, the fee is reduced, the amount overpaid shall be refunded by the Commissioner in accordance with sub-section (3).

(3) For the purposes of sub-section (2), where, during the whole of the period during which a licence in respect of which the licence fee was reassessed (whether or not the licence has ceased to be in force) has been or was in force, it was held by -

- (a) one person - the amount to be refunded shall be refunded to that person; or
- (b) two or more persons - the amount to be refunded shall be refunded to those persons in proportion to the periods, in days, for which they held the licence.

(4) Where, on a reassessment of a fee under sub-section (1), the fee is increased, the additional amount payable by virtue of the reassessment shall be due and payable in accordance with sub-sections (5) and (6).

(5) For the purposes of sub-section (4), where, during the whole of the period during which a licence in respect of which the licence fee was reassessed (whether or not the licence has ceased to be in force) has been or was in force, it was held by -

- (a) one person - the additional amount shall be due and payable by that person within 14 days after notice of the reassessment is served on that person; or



## Business Franchise (Tobacco)

- (b) two or more persons - the additional amount shall be due and payable, within 14 days after notice of the reassessment is served on them, by those persons in proportion to the periods, in days, for which they held the licence,

unless, in respect of that additional amount or any part of that additional amount so due and payable by that person or any of those persons, approval has been given under sub-section (6) for the payment of that additional amount or part by instalments.

(6) A person by whom an additional amount is payable under sub-section (5) may, within 14 days after the service on him of the notice of the reassessment by virtue of which the additional amount became so payable by him, apply to the Commissioner for approval to pay that amount by instalments and, if the Commissioner approves of the amount or part being so paid, it shall be due and payable by that person by such instalments payable at such times as are specified in the instrument of approval.

(7) For the purposes of making the apportionment referred to in sub-section (3)(b) or (5)(b), where the licence has not ceased to be in force the period, in days, for which the licensee who was the holder of the licence at the time of the reassessment has held the licence, together with the unexpired period, in days, of the licence, shall be deemed to be the period for which that licensee held the licence.

### 25. RECOVERY OF FEE FROM UNLICENSED PERSON

(1) Where a person was required by this Act to hold a licence in respect of a period but did not do so, the person is liable to pay to the Commissioner a fee equal to the fee that would have been payable if the person had applied for and been granted and issued a licence.

(2) The Commissioner may assess the fee referred to in sub-section (1) as if the person had applied for a licence, and an assessment shall be for the period in respect of which the person was required by this Act to hold a licence, or for 5 years, whichever is the lesser.

(3) As soon as practicable after an assessment is made under sub-section (2), a notice of the assessment shall be served by the Commissioner on the person assessed.

### 26. RECOVERY OF FEE

(1) A fee payable under this Act is a debt due and payable to the Territory.

(2) A fee payable under this Act but unpaid may be sued for and recovered on behalf of the Territory in a court of competent jurisdiction by the Commissioner suing in his official name.

Business Franchise (Tobacco)

(3) A fee payable under this Act for a group tobacco licence is a debt due and payable jointly and severally by each person who is a member of the group during the period for which the licence is granted.

PART VI - DUTY OF LICENSEES

27. ACCOUNTS TO BE KEPT BY LICENSEE

(1) Subject to sub-section (2), a person who carries on tobacco wholesaling or tobacco retailing shall keep such accounts, records, books and documents, containing such particulars, as are prescribed and shall preserve each of those accounts, records, books and documents for a period of 5 years after the last entry was made in it.

Penalty: \$1,000.

(2) Sub-section (1) shall not apply so as to require the preservation of any accounts, records, books or documents -

(a) in respect of which the Commissioner has certified that preservation is not required; or

(b) of a company which has gone into liquidation and which has been wound up.

28. ENDORSEMENT OF INVOICES

(1) A holder of a wholesale tobacco merchant's licence or a group tobacco licence shall endorse or cause to be endorsed on every invoice issued by him for or in relation to the sale of tobacco the words "SOLD BY LICENSED WHOLESALER - LICENCE NO. " followed by the number of his licence.

Penalty: \$500.

(2) A person shall not issue an invoice which bears -

(a) the words "SOLD BY LICENSED WHOLESALER", or words conveying a similar meaning, unless he is the holder of a wholesale tobacco merchant's licence or a group tobacco licence; or

(b) the words "LICENCE NO.", or words conveying a similar meaning, followed by a number, unless he is the holder of a wholesale tobacco merchant's licence bearing that number.

Penalty: \$1,000.

Business Franchise (Tobacco)

PART VII - OBJECTIONS AND APPEALS

29. APPEAL AGAINST REFUSAL TO GRANT OR TRANSFER LICENCE

(1) A person who is dissatisfied with a decision made by the Commissioner in the exercise of a discretion conferred on him by section 16, 20(3) or 22 may, within 6 weeks after being informed of the decision or within such further time as the Treasurer allows, post to or lodge with the Treasurer an appeal in writing stating the grounds on which he relies.

(2) The Treasurer shall, as soon as practicable after he receives it, consider an appeal posted to or lodged with him under sub-section (1), and may either disallow the appeal or, for reasonable cause shown by the appellant, allow the appeal.

(3) The Treasurer shall give to an appellant and the Commissioner notice in writing of his decision under sub-section (2) and that decision shall be final.

30. OBJECTIONS TO ASSESSMENTS

(1) A person who is dissatisfied with the assessment of a fee by the Commissioner may, within 28 days after being informed of the assessment, send by post to, or lodge with, the Commissioner an objection in writing stating fully and in detail the grounds upon which he relies.

(2) The Commissioner shall consider an objection made under sub-section (1) and either disallow it or allow it either wholly or in part, and shall serve on the objector, by post or otherwise, notice in writing of his decision.

(3) Notwithstanding the making of an objection under sub-section (1), a licence shall not be granted under this Act without the payment of the fees as assessed under section 23.

31. APPEAL AFTER OBJECTION

(1) A person who is dissatisfied with a decision of the Commissioner on an objection made under section 32 by him may, within 28 days after service on him of notice of that decision or within such further time as the Commissioner allows, appeal to the Supreme Court against the decision, and the Supreme Court shall hear and determine the appeal.

(2) On an appeal made under sub-section (1) -

(a) the objector shall be limited, on the hearing of the appeal, to the grounds stated in the objection;

(b) the burden of proving that an assessment objected to is incorrect lies on the objector; and

## Business Franchise (Tobacco)

- (c) where the appellant's liability or assessment has been reduced on objection, the reduced liability or assessment shall be the liability or assessment appealed against.

### 32. APPEAL NOT TO AFFECT RECOVERY

The fact that an appeal under section 31 has been made shall not, until the appeal has been determined, interfere with or affect the liability or assessment the subject of the appeal, and an outstanding fee may be recovered as if no appeal were pending.

### 33. RESOLUTION OF MATTER AFTER APPEAL

(1) Where an appeal has been made under section 31, the Supreme Court may remit the matter to the Commissioner for reassessment, and the Commissioner shall reassess the matter accordingly.

(2) Where an assessment is varied on an appeal made under section 31 or under sub-section (1) by the Commissioner as the result of an appeal, the Commissioner shall -

- (a) cause the appropriate adjustment to be made to the liability or assessment the subject of the appeal; and
- (b) cause notice in writing of the varied liability or assessment to be given to the appellant.

(3) Where a liability or assessment is varied on an appeal under section 31 or under sub-section (1) by the Commissioner as a result of an appeal -

- (a) an amount of fee not paid or underpaid is recoverable from the person liable, under the assessment as varied, to pay the fee; and
- (b) an amount of fee overpaid shall be refunded.

### 34. PROCEDURE ON APPEAL

Rules of court may be made regulating the practice and procedure applicable to appeals under section 31 and, pending the making of rules, a judge of the Supreme Court may give such directions as to the practice and procedure applicable to the hearing of an appeal as he thinks fit.

## PART VIII - OFFENCES

### 35. OFFENCES RESULTING FROM SALES

(1) Subject to this section and section 39, a person shall not sell tobacco in the course of internal trade unless -

- (a) he is the holder of a licence; or

## Business Franchise (Tobacco)

- (b) the sale is made in the course of tobacco retailing and is a sale of tobacco purchased in the course of internal trade either directly or indirectly from the holder of a licence.

Penalty: \$1,000.

(2) Where tobacco is sold on premises otherwise than by a licensee, the occupier of the premises shall be deemed to have sold the tobacco, unless it is shown -

- (a) that the sale took place without his knowledge or consent; and
- (b) that he took all such steps as are reasonable in the circumstances to prevent the sale being made.

(3) Subject to section 39, a licensee who carries on the business of tobacco wholesaling or tobacco retailing on premises which are not specified in his licence as premises to be used for that business is guilty of an offence.

Penalty: \$250.

### 36. OFFENCES CONCERNING LICENCES

(1) A person who makes or delivers an application or other document to the Commissioner which is false in a particular or makes a false answer, whether orally or in writing, to a question duly put to him by the Commissioner or an employee of the Commissioner duly authorized by the Commissioner to put that question, is guilty of an offence.

Penalty: \$500.

(2) A person who, in furnishing information, giving a notification or keeping records required to be kept by or under this Act makes or causes to be made a statement or representation that is false or misleading in a material particular, is guilty of an offence.

Penalty: \$500.

(3) Where a licensee is convicted of an offence against this section his licence ceases to have effect.

(4) Proceedings for an offence against this Act may be brought by the Commissioner or a person authorized in writing by the Commissioner so to do.

## PART IX - MISCELLANEOUS

### 37. CERTIFICATION OF EVIDENCE

In proceedings for an offence against this Act or the Regulations, a certificate that is purported to be signed by the Commissioner

## Business Franchise (Tobacco)

certifying that on a date, or during a period, specified in the certificate a person named in the certificate held or did not hold a licence, or held or did not hold a licence of a particular kind, shall be accepted as evidence of the matter so certified.

### 38. REGULATIONS

(1) The Administrator may make regulations, not inconsistent with this Act, prescribing all matters required or permitted by this Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) Without limiting the generality of sub-section (1), the Regulations may make provision for or in relation to -

- (a) the records to be kept by licensees;
- (b) the display of licences or duplicate licences on licensed premises;
- (c) the issue of duplicate licences; and
- (d) the fixing and imposing of penalties, not exceeding a fine of \$200, for offences against the Regulations.

### 39. TRANSITIONAL

(1) The fee to be paid for a licence in respect of each of the months of September and October 1981 by a person required by this Act to hold a licence is \$5.

(2) The fee to be paid for a licence in respect of the month of November 1981 by a person required by this Act to hold a licence is -

- (a) in the case of a wholesale tobacco merchant's licence - an amount equal to 12% of the value of tobacco sold by the applicant for the licence in the course of internal trade during the relevant period (other than tobacco sold to the holder of a wholesale tobacco merchant's licence or a group tobacco licence);
- (b) in the case of a group tobacco licence - an amount equal to 12% of the value of tobacco sold or purchased, as the case may be, by all members of the group in the course of internal trade during the relevant period (other than tobacco sold to the holder of a wholesale tobacco merchant's licence or a group tobacco licence); and
- (c) in the case of a retail tobacconist's licence - an amount equal to 12% of the value of tobacco purchased by the applicant for the licence in the course of tobacco retailing during the relevant period (other than tobacco purchased in the course

Business Franchise (Tobacco)

of internal trade from the holder of a wholesale tobacco merchant's licence, group tobacco licence or another tobacco retailer for the purposes of resale).

(3) A person who was, immediately before the commencement of this Act, carrying on tobacco wholesaling or tobacco retailing on premises shall not be guilty of an offence against section 14 or 35 in respect of his continuing to carry on that business on those premises after the commencement of this Act during the period of 7 days after that commencement or, where, during that period, he applied for a licence in respect of that business and premises, until the application has been granted or refused under section 16.

(4) For the purposes of sub-section (2), "relevant period" means the period from and including 25 August 1981 to and including 30 September 1981.

SCHEDULE

RELEVANT PERIODS FOR WHOLESALE TOBACCO MERCHANT'S  
LICENCES, RETAIL TOBACCONIST'S LICENCES AND  
GROUP TOBACCO LICENCES

Section 3(1)

| Column 1            | Column 2                                |
|---------------------|---|
| Licence period      | Period on which licence<br>fee is based |
| For the months of - |   |
| March               | January                                 |
| April               | February                                |
| May                 | March                                   |
| June                | April                                   |
| July                | May                                     |
| August              | June                                    |
| September           | July                                    |
| October             | August                                  |
| November            | September                               |
| December            | October                                 |
| January             | November                                |
| February            | December                                |