

THE NORTHERN TERRITORY OF AUSTRALIA

No. 72 of 1979

AN ACT

To amend the Taxation (Administration) Act

[Assented to 26 June 1979]

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. This Act may be cited as the <u>Taxation (Administration) Act 1979</u> . | Short title |
| 2. The <u>Taxation (Administration) Act</u> is in this Act referred to as the Principal Act. | Principal Act |
| 3.(1) Section 4(1) of the Principal Act is amended - | Interpretation |
| (a) by omitting from the definition of "conveyance" the words "a lease" (first occurring); and | |
| (b) by omitting from the definition of "conveyance" the words "vested in or accrues to a person" and substituting "vested in or accrues to a person, but does not include a lease". | |
| (2) Section 4(1) of the Principal Act is amended by omitting the definition of "hire-purchase agreement" and substituting the following definition: | |
| "hire-purchase agreement' means a hire-purchase agreement within the meaning of the <u>Hire-Purchase Act</u> where - | |
| (a) the agreement is entered into in the Territory; | |
| (b) the goods which are the subject of the agreement are supplied, delivered or agreed to be supplied or delivered in the Territory; or | |
| (c) the goods which are the subject of the agreement may be used in the Territory;" | |

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(3) Section 4(1) of the Principal Act is amended by inserting in paragraph (f) of the definition of "hiring arrangement" after "under a lease" the words "of real property".

(4) Section 4(1) of the Principal Act is amended by omitting "in" from paragraph (b) of the definition of "insurance" and substituting "or".

(5) Section 4(1) of the Principal Act is amended by omitting the definition of "marketable security" and substituting the following definition:

"marketable security' means a share in the capital of, or a debenture of, a company and includes -

(a) a right, whether existing or future and whether contingent or not, of a person to have issued to him such a share or debenture, whether on payment of money or other consideration or not; and

(b) any right or interest (whether described as a unit, sub-unit or otherwise) of a beneficiary under a unit trust scheme;"

(6) Section 4(1) of the Principal Act is amended by adding after the definition of "trustee" the following definition:

"unit trust scheme' means any arrangements made for the purpose, or having the effect, of providing, for persons having funds available for investment, facilities for the participation by them, as beneficiaries under a trust, in any profits or income arising from the acquisition, holding, management or disposal of any property whatsoever pursuant to that trust."

When duty
payable

4. Section 9 of the Principal Act is amended by inserting after sub-section (1) the following sub-section:

"(1A) Except where other express provision is made by this Act or any other Act, a person who is liable with respect to an instrument chargeable with duty shall cause it to be duly stamped -

(a) where duty on the instrument is to be denoted by an adhesive stamp - upon execution of the instrument; or

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(b) where duty on the instrument is to be denoted by an impressed stamp -

(i) within 30 days after it has been first executed in the Territory or after it has been first received in the Territory where it was first executed at any place outside the Territory; or

(ii) within 30 days after its receipt in the Territory where it is first executed in the Territory and is sent out of the Territory for execution by another party."

5. Section 17(5) of the Principal Act is amended by omitting "made subsequently to give effect to the agreement," and substituting "made subsequently to give effect to the agreement where that lease, transfer or assignment is in conformity with the agreement,".

Instrument on which no duty is payable

6. Section 18(2)(b) of the Principal Act is amended by omitting "additional duty" (twice occurring) and substituting "additional tax".

Authority to bankers to supply printed cheque forms

7. Section 32 of the Principal Act is amended by inserting after sub-section (2) the following sub-sections:

Returns by registered hire-purchase owners

"(3) Where the registered owner is a person resident outside the Territory, whether or not such registered owner is also resident in the Territory, sub-sections (1) and (2) apply to that person in respect of a hire-purchase agreement -

(a) if the hire-purchase agreement is entered into in the Territory; or

(b) if the goods are supplied or delivered, or agreed to be supplied or delivered in the Territory, and stamp duty or duty of a like nature has not been paid or is not payable in accordance with the provisions of a law of the Commonwealth, a State or of a Territory (other than the Territory) on the hire-purchase agreement.

"(4) In the case of a hire-purchase agreement where the registered owner is a person resident outside the Territory or is not bound by the provisions of this Act, the hirer, if he is resident or domiciled in the Territory, shall, unless duty has been paid on the hire-purchase agreement in accordance with the pro-

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visions of this Act or in accordance with the provisions imposing duty of a like nature by a law of the Commonwealth, a State or of a Territory (other than the Territory) -

(a) furnish to the Commissioner a return setting out -

(i) the full names and addresses of the registered owner and the hirer under the agreement;

(ii) a description of the goods sufficient to indicate their nature; and

(iii) the purchase price of the goods; and

(b) pay the same duty as if the return were a hire-purchase agreement.

"(5) A return under sub-section (4) shall -

(a) be in accordance with an approved form; and

(b) be furnished and the duty paid within 2 months of the making of the agreement.

"(6) No person shall contravene or fail to comply with a provision of this section.

Penalty: \$200."

Application 8.(1) Section 35 of the Principal Act is amended by omitting "in the Territory".

(2) Section 35 of the Principal Act is amended by adding at the end thereof the following sub-section:

"(2) For the purposes of this Division, an instrument constituting or evidencing the terms and conditions of a hire-purchase agreement shall, notwithstanding anything contained in the definition of 'execute' in section 4(1), be deemed to be first executed at the time when the agreement is made."

9. Sections 36 and 37 of the Principal Act are repealed and the following sections substituted:

Instrument to be made out "36.(1) Subject to sub-section (4), the owner under a hire-purchase agreement in relation to which this Division applies shall make out an instrument at the time of the making of the agreement.

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"(2) An instrument referred to in sub-section (1) shall include -

- (a) the full names and addresses of the owner and the hirer under the agreement;
- (b) a description of the goods sufficient to indicate their nature; and
- (c) the purchase price of the goods.

"(3) An instrument made out under this section shall -

- (a) be marked 'Original Instrument' on the first page of that instrument;
- (b) be stamped by the owner as a hire-purchase agreement; and
- (c) be retained by the owner for a period of 12 months from the date of the last payment made under the agreement.

"(4) This section shall not apply where an instrument constituting or evidencing the terms and conditions of a hire-purchase agreement has been duly stamped as a hire-purchase agreement.

"(5) Where the owner is a person resident outside the Territory, whether or not such owner is also resident in the Territory, sub-sections (1), (2) and (3) apply to that person in respect of a hire-purchase agreement -

- (a) if the hire-purchase agreement is entered into in the Territory; or
- (b) if the goods are supplied or delivered, or agreed to be supplied or delivered in the Territory, and stamp duty or duty of a like nature has not been paid or is not payable in accordance with the provisions of a law of the Commonwealth, a State or of a Territory (other than the Territory) on the hire-purchase agreement.

"(6) In the case of a hire-purchase agreement where the owner is a person resident outside the Territory or is not bound by the provisions of this Act, the hirer, if he is resident or domiciled in the Territory, shall, unless duty has been paid on the hire-purchase agreement in accordance with the provisions of this Act or in accordance with the pro-

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visions imposing duty of a like nature by a law of the Commonwealth, a State or of a Territory (other than the Territory) -

- (a) furnish a return setting out the information referred to in sub-section (2); and
- (b) pay the same duty as if the return were a hire-purchase agreement.

"(7) A return under sub-section (6) shall -

- (a) be in accordance with an approved form; and
- (b) be furnished and the duty paid within 2 months of the making of the agreement.

"(8) No person shall contravene or fail to comply with a provision of this section.

Penalty: \$200.

How duty
denoted

"37. The duty on a hire-purchase agreement in relation to which this Division applies shall be denoted by an adhesive stamp which is to be affixed -

- (a) in the case of an instrument relating to such a hire-purchase agreement made out in accordance with section 36 - at the time of making out such instrument; or
- (b) in the case of an instrument constituting or evidencing the terms and conditions of such a hire-purchase agreement - at the time such instrument is first executed or is deemed to be first executed."

Life insurer 10. Section 49 of the Principal Act is amended by
may recover omitting "(1)".
duty from
person paying
premiums

Heading to 11. The heading to Division 8 of Part III of the
Division 8 Principal Act is omitted and the following heading
of Part III substituted:

"Division 8 - Conveyances and Leases".

Persons 12.(1) Section 50(1) of the Principal Act is
liable to amended -
pay duty

- (a) by inserting after "a transfer" (twice occurring) the words "or conveyance";

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(b) by inserting after "the transferee" the words "or conveyee,"; and

(c) by inserting after "to be transferred" the words "or conveyed".

(2) Sections 50(3), 52(4), (5), (6) and (7) are amended by omitting "transfer" (wherever occurring) and substituting "transfer, conveyance".

(3) Sections 50(3), 52(4) and (6) are amended by omitting "the transferee" (wherever occurring) and substituting "the transferee, conveyee".

(4) Sections 50(3), 52(5) and (7) are amended by omitting "to be transferred" (wherever occurring) and substituting "to be transferred, conveyed".

13. Section 51 of the Principal Act is amended by inserting after "conveyances" (twice occurring) the words "or leases".

How duty
denoted

14.(1) Section 52 of the Principal Act is amended by omitting sub-section (1) and substituting the following sub-section:

Instrument
of convey-
ance to be
stamped or
lodged for
assessment

"(1) Within 30 days after the execution of a transfer or conveyance of an estate in fee simple in land or of a Crown lease for a term exceeding 5 years, or of an agreement for such a transfer or conveyance, being a transfer, conveyance or agreement on which duty is imposed, the transferee, conveyee or person to whom the estate or lease is to be so transferred or conveyed shall lodge the instrument of transfer or conveyance, or the agreement with the Commissioner for assessment.

Penalty: \$20."

(2) Section 52(5) of the Principal Act is amended by omitting "with 30 days after the execution" and substituting "within 30 days after the execution".

15.(1) Section 54 of the Principal Act is amended -

Increase in
rent by
instrument

(a) by inserting after "the rent that has been reserved by a lease" the words "(in this section referred to as an original lease)"; and

(b) by omitting "whether or not that lease" and substituting "whether or not that original lease".

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(2) Section 54 of the Principal Act is amended by adding at the end thereof the following sub-section:

"(2) Where, apart from this sub-section, an original lease would be liable to additional duty by reason of an increase in rent of a description referred to in sub-section (1), no additional duty is payable on that original lease."

16. After section 56 of the Principal Act the following section is inserted in Division 8 of Part III:

Refund
of duty
where
agreement
rescinded,
&c.

"56A.(1) Where duty has been paid on an agreement to grant a lease or to transfer an estate in fee simple or a lease and the agreement is afterwards rescinded, cancelled or annulled, the Commissioner shall refund to the party to the agreement by whom or on whose behalf the duty was paid an amount equal to the amount of the difference between the amount of the duty so paid and the amount which would have been payable if the agreement were a lease or a transfer made subsequently to and in conformity with a duly stamped agreement for a lease or for a transfer of an estate in fee simple or a lease, as the case may be.

"(2) A refund under this section is not payable to a person unless he furnishes to the Commissioner, within 90 days after the rescission, cancellation or annulment of the agreement, an application in accordance with an approved form together with such information as the Commissioner requires to enable him to determine the amount of the refund.

"(3) This section shall not apply if the Commissioner is of the opinion that a subsequent sale of the property is a sub-sale or a transaction having the effect of a sub-sale, notwithstanding that the subsequent conveyance or transfer is executed by the person who was the vendor in the rescinded, cancelled or annulled contract."

17. After Division 11 of Part III of the Principal Act the following Division is inserted:

"Division 11A - Loan Securities

Interpret-
ation

"69A.(1) For the purposes of this Division, unless the contrary intention appears, a reference to a loan security includes a loan security executed before 1 July 1978.

"(2) Subject to sub-section (3), for the purposes of this Division, a loan security of a description referred to in sub-section (1) shall be deemed to have

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been duly stamped on 1 July 1978 in respect of the amount secured or recoverable by or under the loan security at that date or \$15,000, whichever is the greater.

"(3) For the purposes of section 69B, where, before the commencement of the Taxation (Administration) Act 1979, duty, as duty on a loan security has been paid in respect of an increase in the amount secured or recoverable by or under a loan security executed before 1 July 1978, sub-section (2) does not apply to or in relation to that loan security.

"69B.(1) Where -

- (a) the total amount secured or to be ultimately recoverable by or under a loan security is expressed in the loan security to be limited to a definite and certain sum of money or is expressed to be so limited and, pursuant to the loan security, that total amount may be increased; and
- (b) that total amount is increased, whether or not pursuant to the loan security,

Stamp duty
where total
secured is
increased
or not a
definite
sum

then -

- (c) if that total amount is increased pursuant to the loan security, that loan security; or
- (d) if that total amount is increased pursuant to any other instrument, that other instrument,

shall be stamped as a loan security with the duty, if any, equal to the difference between -

- (e) the duty, as duty on a loan security, that would be payable if a loan security were executed in respect of the sum of the amounts payable or repayable under or secured by the first-mentioned loan security and the amount of that increase and any previous increases; and
- (f) the duty (including any duty which is deemed to have been paid by virtue of section 69A), as duty on a loan security, paid on the first-mentioned loan security or on any such instrument relating to the first-mentioned loan security.

"(2) A loan security for the payment or repayment of money to be lent, advanced or paid, or which may become due upon an account current either with or

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without money previously due, not being a mortgage otherwise chargeable with duty as a loan security, shall be stamped, where the total amount secured or to be ultimately recoverable is expressed in the loan security to be limited to a definite and certain sum of money, with the same duty as a loan security for the amount so expressed.

"(3) Where the total amount secured or to be ultimately recoverable by or under a loan security is not expressed in the loan security to be limited to a definite and certain sum of money, then -

- (a) that loan security is enforceable as a loan security only to the extent of the amount in respect of which duty (including any duty which is deemed to have been paid by virtue of section 69A), as duty on a loan security, has been paid on the loan security;
- (b) if that total amount is increased in excess of the amount referred to in paragraph (a), the loan security shall be stamped as a loan security with the duty, if any, equal to the difference between -
 - (i) the duty, as duty on a loan security, that would have been payable if a loan security were executed in respect of the sum of the amounts payable or repayable under or secured by the first-mentioned security immediately before the increase and the amount of that increase and any previous increases; and
 - (ii) the duty (including any duty which is deemed to have been paid by virtue of section 69A), as duty on a loan security, paid on the first-mentioned loan security; and
- (c) an increase referred to in paragraph (b) shall, for the purposes only of section 9, be deemed to be made pursuant to a new and separate loan security executed on the day on which the increase is made.

"(4) Sub-section (3) does not apply to a loan security that is not the subject of duty under the Stamp Duty Act.

"(5) Where an original loan security is deposited in the office of the Registrar-General, any duplicate or counterpart of that original loan security may be

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stamped with any additional duty which may become payable by reason of an increase, referred to in sub-section (5), in the total amount secured or to be ultimately recoverable by or under the loan security and that stamping shall have the same effect as if the stamp had been impressed upon or affixed to the original loan security.

"69C. A loan security for the payment of any rent charge, annuity or periodical payments, by way of repayment or in satisfaction or discharge of any loan, advance or payment intended to be so repaid, satisfied or discharged, is to be charged with the same duty as a similar security for the payment of the sum of money so lent, advanced or paid.

Charging of
loan secur-
ities for re-
payment by
periodical
payments

"69D.(1) A loan security which is a collateral security for the same moneys as are secured by a primary loan security shall, unless the primary loan security or any other collateral security for the same moneys as are secured by that primary loan security is duly stamped, be liable to duty, as duty on a loan security, as if it were the primary loan security and the primary loan security had been executed when the collateral security was executed.

Collateral
security

"(2) No loan security executed on or after 1 July 1978 which is a collateral security shall be enforceable unless either the primary loan security or that collateral security or any other collateral security, executed before that first-mentioned collateral security was executed, for the same moneys as are secured by that primary loan security is duly stamped.

"(3) The provisions of sub-sections (1) and (2) do not apply to or in respect of a loan security which is issued or made in a State or a Territory (other than the Territory) and which is collateral security for the same moneys as are secured by a loan security which is issued or made in a State or a Territory (other than the Territory) which security is not chargeable with duty in the Territory.

"(4) For the purposes of this section, 'collateral security' includes any additional or substituted security and any legal mortgage executed pursuant to any agreement, contract or covenant referred to in paragraph (f) of the definition of 'mortgage'.

"69E. Where a subsequent mortgage contains a covenant which confers upon the mortgagee a right, whether absolute or contingent, to pay to a prior mortgagee the amount owing under a prior mortgage and providing that any payment so made will be

Subsequent
mortgages

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directly secured by the subsequent mortgage, the subsequent mortgage shall in the first instance be charged with duty, as duty on a loan security, without regard to the provisions of such covenant, but in the event of a payment being made under the covenant, the subsequent mortgage shall be deemed to be a new and separate mortgage first executed on the day on which the payment was made and shall be chargeable with duty, as duty on a loan security, on the amount of the payment.

Duty on "69F.(1) Where a corporation is or will be under a
subscrip- liability to repay any money received or to be received
tions under by it in respect of debentures of the corporation and
instruments there is an instrument of trust relating to the debentures to which the corporation is a party, the corporation and the trustee for the holders of the debentures may give an undertaking in an approved form to the Commissioner and thereupon the instrument of trust and any mortgage executed by the corporation protecting the interests of the holders of the debentures shall not be liable to duty as duty on a loan security, and any such debenture issued in respect of any amount subscribed for in the Territory shall be deemed to be duly stamped and any such debenture issued in respect of any amount subscribed for outside the Territory shall not, subject to sub-section (3), be chargeable with duty.

"(2) The undertaking to be given by the corporation and the trustee for the holders under sub-section (1) shall be under seal and -

- (a) shall bind the corporation and the trustee to lodge with the Commissioner in the month of July in each year a statutory declaration setting out the total amount subscribed for in the Territory in respect of the debentures referred to in sub-section (1) during the year ending on 30 June then last past; and
- (b) shall bind the corporation to pay the same duty as if the return were a loan security to secure an amount equal to that total amount referred to in paragraph (a).

"(3) Where a person resident or domiciled in the Territory becomes the holder of a debenture referred to in sub-section (1) which was subscribed for outside the Territory that person is liable, on the day on which he becomes the holder of the debenture, to duty, as duty on a loan security, for an amount equal to the duty payable on a loan security for the amount to be repaid under the debenture except where stamp

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duty or duty of a like nature has been paid or is payable in accordance with the provisions of a law of the Commonwealth, a State or of a Territory (other than the Territory) in respect of the issue of or the subscription to the debenture.

"69G. Notwithstanding any other provision of this Act, where -

Debentures
not liable
to duty if
mortgage
duly stamped

(a) the repayment of any debentures is secured on a mortgage referred to in paragraph (g) of the definition of 'mortgage', not being an instrument of trust, and the amount secured is not less than the amount repayable in respect of those debentures; or

(b) the interests of the holders of any debentures to which a mortgage so referred to, being an instrument of trust, relates are protected by the mortgage to an extent not less than the amount repayable in respect of the debentures,

and the mortgage is duly stamped as a loan security, the debentures are not liable to duty, as duty on a loan security."

18.(1) Section 71(6) of the Principal Act is amended by omitting "a law of the Commonwealth or of a State" and substituting "a law of the Commonwealth, a State or of a Territory (other than the Territory)".

Instrument
to be made
out

(2) Section 71(7) of the Principal Act is amended by omitting "sub-section (3)" and substituting "sub-section (6)".

19. Section 73(4) of the Principal Act is amended by omitting "hirer" and substituting "lender".

Registration

20. Section 75 of the Principal Act is amended by omitting sub-section (1) and substituting the following sub-section:

Returns in
respect of
hiring
arrangements

"(1) A registered lender shall, within 21 days after the expiration of each month of each year -

(a) furnish to the Commissioner a return of the total amount received by him with respect to hiring arrangements during that month; and

(b) pay tax on that total amount of an amount calculated at the same percentage rate of duty as would be chargeable if the return were a hiring arrangement.

Penalty: \$50."

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Total amount not readily ascertainable 21. Section 78 of the Principal Act is amended by omitting sub-section (2).

Lender may recover duty from user 22. Section 79 of the Principal Act is amended by omitting "in respect of duty if imposed" and substituting "in respect of duty is imposed".

Penalty additional to duty on default assessments 23. Section 96(2) of the Principal Act is amended by omitting all the words and figures after "in respect of that return or instrument," and substituting "\$20 or an amount calculated at the rate of 1.5 per cent per month upon the amount of that duty or tax, whichever is the greater."

Objections to assessments 24. Section 100 of the Principal Act is amended by omitting sub-section (5).

25. Sections 101, 102 and 103 of the Principal Act are repealed and the following sections substituted:

Appeal to Supreme Court "101.(1) An objector who is dissatisfied with a decision of the Commissioner on his objection may, within 30 days after service on him of notice of that decision or within such further time as the Commissioner may allow, appeal to the Supreme Court.

"(2) On appeal -

(a) the objection shall be limited to the grounds stated in the objection; and

(b) the burden of proving that any assessment objected to is excessive lies on the objector.

"(3) If a person's liability or assessment has been reduced on objection, the reduced liability or assessment shall be the liability or assessment appealed against.

Appeal pending not to affect liability or assessment "102.(1) The fact that an appeal is pending with respect to any liability or assessment shall not in the meantime interfere with or affect the liability or assessment the subject of that appeal, and the duty or tax may be recovered as if no appeal were pending.

"(2) If the liability or assessment is altered on appeal, a due adjustment shall be made, for which purpose amounts in excess shall be refunded and amounts short paid shall be recoverable as arrears."

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26.(1) Section 107(1) of the Principal Act is amended by omitting all the words and figures after "or any other amount payable" and substituting "by way of penalty under this Act, \$20 or an amount calculated at the rate of 1.5 per cent per month upon the amount of that duty or tax, whichever is the greater."

Additional
penalty for
failure to
pay duty or
tax on time

(2) Section 107 of the Principal Act is amended by inserting after sub-section (1) the following sub-section:

"(1A) For the purposes of sub-section (1), the amount calculated at the percentage specified in that sub-section shall be computed for the period commencing on the day, or the last day of the period within which, the person is required to pay the duty or tax and ending on the day upon which it is paid."

27. After section 108 of the Principal Act the following section is inserted:

"108A. No unstamped instrument in respect of the execution or making of which a penalty has been imposed upon a person shall be stamped until the amount of the penalty and costs (if any awarded) has been paid by or on behalf of the person liable to the penalty."

Instrument
not to be
stamped
until
penalty paid

28. Section 119 of the Principal Act is amended by omitting sub-section (1) and substituting the following sub-section:

"(1) Upon the production of an instrument on which duty or tax is payable as evidence in any court of civil judicature, notice shall be taken by the judge of any omission or insufficiency of the duty or tax thereon and, if the instrument is one which may legally be stamped after execution, it may, on payment to an officer of the court of the amount of the unpaid duty or tax and the fine payable by law, be received in evidence, saving all just exceptions on other grounds."

Terms on
which un-
stamped or
insufficiently
stamped
instruments
may be
received in
evidence

29. Section 121 of the Principal Act is amended by omitting from paragraph (b) "property situate" and substituting "property situated".

Instruments
not duly
stamped
inadmissible

