

Serial 164  
Revenue Legislation Amendment Bill 2011  
Ms Lawrie

An Act to amend and repeal legislation administered by the Treasurer

NORTHERN TERRITORY OF AUSTRALIA

REVENUE LEGISLATION AMENDMENT BILL 2011

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Act No. [ ] of 2011

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# NORTHERN TERRITORY OF AUSTRALIA

Act No. [ ] of 2011

An Act to amend and repeal legislation administered by the Treasurer

[Assented to [ ] 2011]  
[Second reading [ ] 2011]

The Legislative Assembly of the Northern Territory enacts as follows:

## Part 1 Preliminary matters

### 1 Short title

This Act may be cited as the *Revenue Legislation Amendment Act 2011*.

### 2 Commencement

- (1) Part 2 is taken to have commenced on 3 May 2011.
- (2) The remaining provisions of this Act commence on 1 July 2011.

## Part 2 Amendment of first home owner grant and stamp duty legislation to change residence and occupancy requirements

### Division 1 Amendment of First Home Owner Grant Act

#### 3 Act amended

This Division amends the *First Home Owner Grant Act*.

#### **4 Section 3 amended**

Section 3, definition *residence requirements*

*omit*

(1), (1A) and (1B)

#### **5 Section 12 replaced**

Section 12

*repeal, insert*

#### **12 Criterion 5 – Residence requirements**

- (1) An applicant for a first home owner grant must occupy the home to which the application relates as the applicant's principal place of residence unless the applicant is exempt under subsection (3)(b).
- (2) That occupation of the home must:
  - (a) start within 12 months after completion of the eligible transaction, or a longer period approved under subsection (3)(a)(i); and
  - (b) continue for a continuous period of at least 6 months, or a shorter period approved under subsection (3)(a)(ii).
- (3) If satisfied there are special reasons to do so, the Commissioner may:
  - (a) approve either or both of the following for an applicant:
    - (i) a longer period for subsection (2)(a);
    - (ii) a shorter period for subsection (2)(b); or
  - (b) exempt an applicant from the requirement under subsection (1).

#### **6 Section 17 amended**

Section 17(3)

*omit*

Where an applicant has not been exempted under section 12(2) from compliance with the residence requirements, the

*insert*

The

## **7       Section 30A inserted**

After section 30, in Part 3, Division 1

*insert*

### **30A     Granting of approvals and exemptions**

- (1) If a provision of this Act allows the Commissioner to approve an extension of the time within which something is required to be done or to occur, the Commissioner may grant the approval even if the time within which the thing is required to be done or to occur has expired.
- (2) If a provision of this Act allows the Commissioner to approve a shorter period as the period for which a person is required to occupy a home as a principal place of residence, the Commissioner may grant the approval even if the person's occupation of the home as a principal place of residence has already ceased.
- (3) If a provision of this Act allows the Commissioner to exempt a person from a requirement, the Commissioner may grant the exemption even if the person has already failed to comply with the requirement.

## **Division 2       Amendment of Stamp Duty Act**

### **8       Act amended**

This Division amends the *Stamp Duty Act*.

### **9       Section 89 amended**

- (1)       Section 89(1)(k)(ii)

*omit*

subsection (11)(c)

*insert*

subsection (12)

- (2)       Section 89(2)

*omit*

(3)           Section 89(11)

*omit, insert*

(11) If satisfied there are special reasons to do so, the Commissioner may:

(a) approve either or both of the following for a conveyee:

(i) an extension of the period for occupancy;

(ii) a reduction of the prescribed period; or

(b) exempt a conveyee from the requirement under subsection (1)(i).

(12) If satisfied there are special reasons to do so, the Commissioner may approve an extension of the period in which a conveyee is required under subsection (1)(k) to become entitled to possession of the land.

**10           Section 89A amended**

(1)           Section 89A(1)(i)(ii)

*omit*

subsection (11)(c)

*insert*

subsection (11A)

(2)           Section 89A(2)

*omit*

(3)           Section 89A(11)

*omit, insert*

(11) If satisfied there are special reasons to do so, the Commissioner may:

(a) approve either or both of the following for a conveyee:

(i) an extension of the period for occupancy;

(ii) a reduction of the prescribed period; or

(b) exempt a conveyee from the requirement under subsection (1)(g).

(11A) If satisfied there are special reasons to do so, the Commissioner may approve an extension of the period in which a conveyee is required under subsection (1)(i) to become entitled to possession of the land.

## **11    Section 90 amended**

(1)    Section 90(1)(g)(ii)

*omit*

subsection (8)(c)

*insert*

subsection (9)

(2)    Section 90(2)

*omit*

(3)    Section 90(8)

*omit, insert*

(8) If satisfied there are special reasons to do so, the Commissioner may:

(a) approve either or both of the following for a conveyee:

(i) an extension of the period for occupancy;

(ii) a reduction of the prescribed period; or

(b) exempt a conveyee from the requirement under subsection (1)(f).

(9) If satisfied there are special reasons to do so, the Commissioner may approve an extension of the period in which a conveyee is required under subsection (1)(g) to become entitled to possession of the land.



Part 2	Amendment of first home owner grant and stamp duty legislation to change residence and occupancy requirements
Division 2	Amendment of Stamp Duty Act

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## 12 Part 9 inserted

After section 104

*insert*

### Part 9 Transitional matters for Revenue Legislation Amendment Act 2011

#### 105 Occupancy requirements – Commissioner may reassess earlier conveyance

- (1) This section applies if, before 3 May 2011, duty was assessed on a conveyance of land on the basis that the conveyee or conveyees was or were not entitled to a home incentive concession or rebate merely because of a failure to satisfy an occupancy requirement.
- (2) On application by the conveyee or conveyees, the Commissioner may:
  - (a) exercise the Commissioner's powers under section 89, 89A and 90; and
  - (b) reassess duty on the conveyance under the *Taxation Administration Act*,

as if the occupancy amendments had commenced before the conveyance occurred.

- (3) In this section:

***home incentive concession or rebate*** means any of the following, or a corresponding concession or rebate under an earlier enactment:

- (a) the first home owner concession;
- (b) the senior, pensioner and carer concession;
- (c) the principal place of residence rebate.

***occupancy amendments*** means the amendments made by sections 9, 10 and 11 of the *Revenue Legislation Amendment Act 2011*.

***occupancy requirement***, for a conveyance of land, means a requirement that a conveyee:

- (a) occupy a home on the land as the conveyee's principal place of residence; or
  - (b) commence to occupy a home on the land as the conveyee's principal place of residence within a particular period; or
  - (c) occupy a home on the land as the conveyee's principal place of residence for a particular period.
- (4) A term defined in section 88 for Part 5, Division 2 has the same meaning in this section.

## Part 3                      Amendment of Payroll Tax Act

### 13                      Act amended

This Part amends the *Payroll Tax Act*.

### 14                      Section 3 amended

- (1) Section 3, definition ***share***

*omit*

within the meaning of section 139GCD of the *Income Tax Assessment Act 1936* (Cth)

- (2) Section 3

*insert (in alphabetical order)*

***granted***, for a share or option, see section 19(2).

### 15                      Section 18 amended

Section 18(1)

*omit, insert*

- (1) For this Act, ***wages*** include the grant of a share or an option to an employee by an employer in respect of services performed by the employee if the share or option:
- (a) is an ESS interest (within the meaning of section 83A-10 of the ITAA); and

- 
- (b) is granted to the employee under an employee share scheme (within the meaning of that section).

*Note for subsection (1)*

*A grant of a share or an option to an employee by an employer that is not an ESS interest will be taxable as a fringe benefit under Division 2 of this Part.*

## 16 Section 19 amended

- (1) Section 19(2), (3) and (4)

*omit, insert*

- (2) A share or option is **granted** to a person if:
- (a) another person transfers the share or option to that person (other than, in the case of a share, by issuing the share to that person); or
  - (b) for a share – another person allots the share to that person; or
  - (c) for an option – another person confers the option on, or otherwise creates the option in, that person; or
  - (d) the person otherwise acquires a legal interest in the share or option from another person; or
  - (e) the person acquires a beneficial interest in the share or option from another person.
- (2A) To avoid doubt, if an employee acquires a right to be granted a share or an option, or some other material benefit, at the election of the employer, the share or option is not granted until the employer elects to grant the share or option.
- (3) The **vesting date** in respect of a share is one of the following dates (whichever happens first):
- (a) the date on which the share vests in the employee (that is, when any conditions applying to the grant of the share have been met and the employee's legal or beneficial interest in the share cannot be rescinded);
  - (b) the date at the end of the period of 7 years from the date on which the share is granted to the employee.
- (4) The **vesting date** in respect of an option is one of the following dates (whichever happens first):
- (a) the date on which the share to which the option relates is granted to the employee;

- (b) the date on which the employee exercises a right under the option to have the share the subject of the option transferred to, allotted to or vested in the employee;
- (c) the date at the end of the period of 7 years from the date on which the option is granted to the employee.

**17 Section 23 amended**

- (1) Section 23(1)

*omit*

market

- (2) Section 23(2) to (5)

*omit, insert*

- (2) The value of a share or an option is:
- (a) the market value; or
  - (b) the amount determined as provided for by the Commonwealth income tax provisions.
- (3) The employer may elect the method by which the value of a share or an option is determined in any return lodged under this Act.
- (4) However, the Commissioner may determine the method by which the value of a share or an option is determined if the grant of the share or option is not included as wages in a return lodged by an employer as required by this Act.
- (5) In determining the market value of a share or option, anything that would prevent or restrict conversion of the share or option to money is to be disregarded.
- (6) The Commonwealth income tax provisions apply with the following modifications, and any other necessary modifications:
- (a) the value of an option is to be determined as if it were a right to acquire a beneficial interest in a share;
  - (b) a reference to the acquisition of a beneficial interest in a share or right is to be read as a reference to the grant of a share or an option.

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(7) In this section:

***Commonwealth income tax provisions*** means section 83A-315 of the *ITAA* and the regulations made for that section.

*Note for definition **Commonwealth income tax provisions***

*See Division 83A of the Income Tax Assessment Regulations 1997 (Cth) for the relevant regulations.*

## **18 Section 24 amended**

(1) Section 24(1)

*omit, insert*

(1) For this Act, **wages** include the grant of a share or an option by a company to a director of the company who is not an employee of the company by way of remuneration for the appointment or services of the director.

(2) After section 24(3)

*insert*

(4) However, if wages referred to in this section are fringe benefits, the value of the wages is to be determined in accordance with Division 2 of this Part (and not this Division).

## **19 Section 80 amended**

Section 80(2)(a) and (3)(a)

*omit*

\$1 250 000

*insert*

\$1 500 000

## **20 Section 86 amended**

(1) Section 86(1)(a) and (b)

*omit*

\$24 030

*insert*

the weekly threshold amount

---

(2) After section 86(1)

*insert*

(1A) For subsection (1), the ***weekly threshold amount*** is to be worked out using the following formula (disregarding any amount in cents):

$$\frac{TA}{N} \times 7$$

where:

***N*** is the number of days in the financial year.

***TA*** is the threshold amount for the financial year as defined in Schedule 1, clause 1.

## **21 Part 10 heading amended**

Part 10, heading, after "provisions"

*insert*

for Payroll Tax Act 2009

## **22 Part 12 inserted**

After section 113

*insert*

## **Part 12 Transitional matters for Revenue Legislation Amendment Act 2011**

### **114 Assessment and payment of payroll tax in relation to employee shares and options**

Anything done or omitted to be done by an employer in connection with the assessment and payment of payroll tax, in respect of a month occurring after June 2009 and before July 2011, that would have been validly done or omitted to be done had the amendments made to this Act by the *Revenue Legislation Amendment Act 2011* been in force, is taken to have been validly done or omitted.

*Note for section 114*

*This provision validates a decision by an employer to treat the grant of a share or an option to an employee that is not an ESS interest as a fringe benefit under Part 3, Division 2 and to determine the value of those fringe benefits in accordance with those provisions, rather than by reference to Part 3, Division 4.*

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**115 Determination of vesting date and value of employee shares and options**

- (1) Part 3, Division 4 continues to apply in relation to a share or an option granted before 1 July 2011 that constituted wages under old section 18, whether or not the grant of the share or option would constitute wages under new section 18, if the relevant day in relation to the grant of the share or option is not a day occurring before 1 July 2011.

*Example for subsection (1)*

*A share granted before 1 July 2011 that is not an ESS interest continues to be treated as wages under Part 3, Division 4 if the vesting date for the share did not occur before 1 July 2011 and the employer did not elect to treat the date of the grant as the relevant day.*

- (2) The assessment amendments apply in respect of any such share or option.
- (3) Accordingly, the vesting date and the value of the share or option are to be determined in accordance with the assessment amendments.
- (4) This section does not apply in respect of a share or an option granted before 1 July 2011 if the liability for payroll tax in respect of the grant is determined in accordance with Part 3, Division 2 (as permitted by section 114).
- (5) In this section:

***assessment amendments*** means the amendments made by Part 3 of the *Revenue Legislation Amendment Act 2011*.

***new section 18*** means section 18 as amended by the *Revenue Legislation Amendment Act 2011*.

***old section 18*** means section 18 as in force immediately before 1 July 2011.

***relevant day***, see section 18(3).

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**23 Schedule 1 amended**

- (1) Schedule 1, clause 1, definition *R*

*omit*

5.9%

*insert*

5.5%

- (2) Schedule 1, clause 1, definition *TA* or *threshold amount*

*omit*

\$1 250 000

*insert*

\$1 500 000

- (3) Schedule 1, clause 3

*insert (in alphabetical order)*

**AD** or **annual deduction** means the following:

- (a) if the amount worked out in accordance with the following formula is zero or a negative amount – zero;
- (b) otherwise – the amount worked out in accordance with the following formula:

$$AD = TA - \left( \frac{TW + IW - TA}{4} \right)$$

- (4) Schedule 1, clause 5, formula

*omit*

TA

*insert*

AD

- (5) Schedule 1, clause 7

*insert (in alphabetical order)*

**AD** or **annual deduction** means the following:

- (a) if the amount worked out in accordance with the following formula is zero or a negative amount – zero;



- (b) otherwise – the amount worked out in accordance with the following formula:

$$AD = TA - \left( \frac{GTW + GIW - TA}{4} \right)$$

- (6) Schedule 1, clause 9(2), formula

*omit*

TA

*insert*

AD

## **24 Schedule 2 amended**

- (1) Schedule 2, clause 3

*omit*

5.9%

*insert*

5.5%

- (2) Schedule 2, clauses 6(1) and 10(1)

*omit*

\$104 166.66

*insert*

an amount not exceeding \$125 000 as determined in a manner approved by the Commissioner

- (3) Schedule 2, clause 14(2), formula

*omit*

TA

*insert*

AD

(4) Schedule 2, clause 14(2), all the words after the formula

*omit, insert*

(3) In this clause:

**AD** or **annual deduction** means the following:

- (a) if the amount worked out in accordance with the following formula is zero or a negative amount – zero;
- (b) otherwise – the amount worked out in accordance with the following formula:

$$AD = TA - \left( \frac{GTW + GIW - TA}{4} \right)$$

**C** is the number of days in the relevant financial year in respect of which at least 1 member of the group paid or was liable to pay (as a member of the group) taxable wages or interstate wages.

**FY** is the number of days in the financial year.

**GIW** is the total interstate wages paid or payable by the members of the group during the relevant financial year.

**GTW** is the total taxable wages paid or payable by the members of the group during the relevant financial year.

**R** is 5.5%.

**TA** or **threshold amount** is \$1 500 000.

*Note for clause 14*

*For the calculation of the payroll tax payable for a financial year by an employer who is a member of a group of which there is no designated group employer, see clause 12 of Schedule 1.*

## Part 4 Amendment of stamp duty legislation

### Division 1 Amendment of Stamp Duty Act

#### 25 Act amended

This Division amends the *Stamp Duty Act*.

**26 Section 4 amended**

After section 4(4)

*insert*

- (5) Despite subsection (4), a policy of insurance or a life policy is duly stamped when:
- (a) the duty imposed in relation to the policy has been paid; or
  - (b) the policy is exempt from, or otherwise not liable for duty, under this Act or another law in force in the Territory.

**27 Section 56M amended**

Section 56M(2A)(b)

*omit, insert*

- (b) would not be liable to duty because of an order or binding agreement under Part VIII, VIIIA or VIIIAB of the *Family Law Act 1975* (Cth) in circumstances where both of the following apply:
- (i) the order or agreement relates to the marriage (including a void marriage or former marriage) or de facto relationship (including a former de facto relationship) of the person who held the interest and the person who acquired the interest;
  - (ii) the person who acquired the interest is not an agent or trustee of another person.

**28 Part 5, Division 3 replaced**

Part 5, Division 3

*repeal, insert*

**Division 3 Property settlements on breakdown of relationship**

**91 Exemption from duty**

- (1) A conveyance of dutiable property is exempt from duty if:
- (a) the parties to the conveyance are or were parties to a marriage or de facto relationship under the *Family Law Act 1975* (Cth); and

- (b) within 12 months after the date of the conveyance, an order is made by the Family Court for the distribution of property between the parties to the conveyance under Part VIII or VIIIAB of the *Family Law Act 1975* (Cth); and
  - (c) the terms of the conveyance are consistent with the order.
- (2) A conveyance of dutiable property is exempt from duty if:
- (a) the parties to the conveyance are or were parties to a marriage or de facto relationship under the *Family Law Act 1975* (Cth); and
  - (b) the conveyance occurred after the irretrievable breakdown of the marriage or de facto relationship; and
  - (c) within 12 months after the date of the conveyance, a binding financial agreement for the distribution of property between the parties to the conveyance is made under Part VIIIA or VIIIAB of the *Family Law Act 1975* (Cth); and
  - (d) the terms of the conveyance are consistent with the agreement.
- (3) Except as otherwise provided by the *Taxation Administration Act*, the Commissioner must refund any duty paid on a conveyance before it becomes exempt under subsection (1) or (2).

## **29 Schedule 1 amended**

- (1) Schedule 1, clause 1(2)  
*omit*  
at the ad valorem rate
- (2) Schedule 1, clause 1(2)(b)  
*omit, insert*
- (b) if the dutiable value exceeds \$525 000 but is less than \$3 000 000, the duty is 4.95% of the dutiable value;
  - (c) if the dutiable value is \$3 000 000 or more, the duty is 5.45% of the dutiable value.

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**Division 2          Amendment of Taxation (Administration)  
Amendment Act 2003****30          Act amended**

This Division amends the *Taxation (Administration) Amendment Act 2003*.

*Note for section 30*

*The Taxation (Administration) Amendment Act 2003 amends the Act now called the Stamp Duty Act, which was formerly called the Taxation (Administration) Act. The short title was changed by the Revenue Law Reform (Stamp Duty) Act 2007.*

**31          Sections 4 and 23 repealed**

Sections 4 and 23

*repeal*

**Part 5                  Amendment of Taxation Administration Act****32          Act amended**

This Part amends the *Taxation Administration Act*.

**33          Section 41 amended**

Section 41(3), after "reduction"

*insert*

of

**34          Section 56 amended**

After section 56(4)

*insert*

- (4A) However, if satisfied that it is appropriate to do so, the Commissioner may remit, in whole or part, interest payable under an instalment arrangement.

**35          Part 9, Division 1 heading**

Part 9, Division 1, heading

*omit*

**maters**

*insert*

**matters**

**Part 6 Other matters**

**36 Repeals**

The Acts specified in the Schedule are repealed.

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**Schedule Repealed Acts**

section 36

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<i>Debits Tax Act 1990</i>	Act No. 55 of 1990
<i>Debits Tax Amendment Act 1993</i>	Act No. 44 of 1993
<i>Debits Tax Amendment Act 2001</i>	Act No. 46 of 2001
<i>Debits Tax Amendment Act 2002</i>	Act No. 54 of 2002
<i>Debits Tax Amendment Act 2004</i>	Act No. 37 of 2004
<i>Energy Resource Consumption Levy Act 1985</i>	Act No. 53 of 1985
<i>Energy Resource Consumption Levy Amendment Act 1992</i>	Act No. 42 of 1992
<i>Energy Resource Consumption Levy Amendment Act 1995</i>	Act No. 29 of 1995
<i>Energy Resource Consumption Levy (Waiver of Levy) Act 1998</i>	Act No. 74 of 1998
<i>Financial Institutions Duty Act 1989</i>	Act No. 65 of 1989
<i>Financial Institutions Duty Amendment Act 1991</i>	Act No. 24 of 1991
<i>Financial Institutions Duty Amendment Act 1992</i>	Act No. 53 of 1992
<i>Fuel Subsidies Act 1998</i>	Act No. 95 of 1998

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