

Serial 230
Taxation (Administration) Amendment Bill 2004
Mr Stirling

**A BILL
for
AN ACT**

to amend the *Taxation (Administration) Act*

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NORTHERN TERRITORY OF AUSTRALIA
TAXATION (ADMINISTRATION) AMENDMENT ACT 2004

No. of 2004

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NORTHERN TERRITORY OF AUSTRALIA

No. of 2004

AN ACT

to amend the *Taxation (Administration) Act*

[Assented to 2004]
[Second reading 2004]

The Legislative Assembly of the Northern Territory enacts as follows:

PART 1 – PRELIMINARY

1. Short title

This Act may be cited as the *Taxation (Administration) Amendment Act 2004*.

2. Commencement

(1) This Part comes into operation on the day on which the Administrator's assent to this Act is declared.

(2) Part 2 is taken to have come into operation on 18 May 2004.

(3) Parts 3, 4 and 5 come into operation on 1 July 2004.

3. Principal Act

A reference in a Part of this Act to the Principal Act is a reference to the *Taxation (Administration) Act* as in force immediately before the commencement of that Part.

**PART 2 – DUTY PAYABLE ON TRANSACTIONS RELATING TO
CORPORATIONS AND UNIT TRUSTS**

4. Unencumbered value: arrangements to reduce stamp duty

Section 4A of the Principal Act is amended by omitting from subsection (2)(c) "56C(3)(a) to (g) (inclusive)" and substituting "56C(3)(a) to (i) (inclusive)".

5. Tax avoidance schemes

Section 4B of the Principal Act is amended by omitting subsection (2) and substituting the following:

"(2) For this Act, a tax avoidance scheme is a scheme that, in the opinion of the Commissioner, has or is intended to have a collateral purpose of –

- (a) reducing the tax or duty otherwise payable under this Act; or
- (b) obtaining the benefit of an exemption or concession under this Act,

in respect of any of the following:

- (c) a conveyance of dutiable property or marketable securities;
- (d) the addition of a beneficiary or class of beneficiaries under a discretionary trust to which Part III, Division 8AAA applies;
- (e) a change in control of a beneficiary under, and a change of or in control of a trustee of, a discretionary trust to which Part III, Division 8AAA applies;
- (f) an acquisition to which Part III, Division 8A applies;
- (g) a change in the beneficial ownership of dutiable property to which Part III, Division 15 applies that occurs as the consequence of the issue or redemption of units in a unit trust scheme."

6. Interpretation

Section 56C of the Principal Act is amended –

- (a) by omitting from paragraph (c) of the definition of "acquire" in subsection (1) "share; and" and substituting "share;";
- (b) by inserting after paragraph (ca) of the definition of "acquire" in subsection (1) the following:

"(cb) a declaration of trust to which Division 8AA applies;

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- (cc) the addition of a beneficiary or class of beneficiaries under a discretionary trust to which Division 8AAA applies;
 - (cd) a change in control of a beneficiary under, and a change of or in control of a trustee of, a discretionary trust to which Division 8AAA applies; and
 - (ce) a statutory vesting to which Division 8B applies,";
- (c) by omitting paragraph (d)(iii) of the definition of "acquire" in subsection (1) and substituting the following:
- "(iii) the making of a compromise or arrangement under Part 5.1 of the Corporations Act 2001 that –
 - (A) has been made with the corporation's creditors or a class of them;
 - (B) has been approved by the court; and
 - (C) is not a tax avoidance scheme or part of a tax avoidance scheme;"
- (d) by omitting from the definition of "unit" in subsection (1) "but does not include a unit acquired solely pursuant to an arrangement referred to in section 56U(b)";
- (e) by omitting from subsection (3)(f) "trust; and" and substituting "trust;"
- (f) by inserting after subsection (3)(g) the following:
- "(h) in relation to an acquisition of an interest in a corporation by virtue of a declaration of trust to which Division 8AA applies – the trustees of, and the beneficiaries under, the trust, whether any beneficiary has a vested share or is contingently entitled or may benefit from a discretionary trust;
 - (i) in relation to an acquisition of an interest in a corporation by virtue of the addition of a beneficiary or class of beneficiaries under a discretionary trust to which Division 8AAA applies – the trustees of, and the additional beneficiary or class of beneficiaries under, the trust."; and
- (g) by inserting after subsection (9) the following:
- "(10) For this Division, if an interest or a shareholding in a corporation is acquired by virtue of a declaration of trust to which Division 8AA applies –

- (a) the interest or shareholding vested or to be vested in the declarant is taken to be the interest or shareholding acquired;
- (b) the declarant is taken to be the person who acquired the interest or shareholding; and
- (c) the acquisition is taken to have occurred at the time the declaration is made.

"(11) For this Division, if an interest or a shareholding in a corporation is acquired by virtue of the addition of a beneficiary or class of beneficiaries under a discretionary trust to which Division 8AAA applies –

- (a) the interest or shareholding over which the trust is declared is taken to be the interest or shareholding acquired;
- (b) the trustees are taken to be the persons who acquired the interest or shareholding; and
- (c) the acquisition is taken to have occurred at the time of the addition.

"(12) For this Division, if an interest or a shareholding in a corporation is acquired by virtue of a change in control of a beneficiary under, and a change of or in control of a trustee of, a discretionary trust to which Division 8AAA applies –

- (a) the interest or shareholding over which the trust is declared is taken to be the interest or shareholding acquired;
- (b) the trustees are taken to be the persons who acquired the interest or shareholding; and
- (c) the acquisition is taken to have occurred at the time of the later of the changes.

"(13) For this Division, if an interest or a shareholding in a corporation is acquired by virtue of a statutory vesting to which Division 8B applies –

- (a) the interest or shareholding that vests in the person or body concerned is taken to be the interest or shareholding acquired;
- (b) the person or body in whom the interest or shareholding vests is taken to be the person or body who acquired the interest or shareholding; and
- (c) the acquisition is taken to have occurred at the time the law by or under which the vesting occurs determines when the interest or shareholding vests in the person or body."

7. Statement chargeable with duty

Section 56M of the Principal Act is amended by inserting after subsection (2)(c)(iv) the following:

- "(v) if the interest is acquired within the relevant period by virtue of the vesting of marketable securities under a declaration of trust to which Division 8AA applies and duty has already been paid under this Division in respect of an acquisition of that interest by virtue of the declaration of trust having been made when the marketable securities were to be vested in the declarant;
- (vi) if the interest is acquired within the relevant period by virtue of the addition of a beneficiary or class of beneficiaries under a discretionary trust to which Division 8AAA applies and either of the following applies:
 - (A) the existing beneficiaries and the additional beneficiary, or the members of the existing classes of beneficiaries and the members of the additional class of beneficiaries, are family members within the meaning of section 56BAA;
 - (B) the addition is not a tax avoidance scheme or part of a tax avoidance scheme;
- (vii) if the interest is acquired within the relevant period by virtue of a change in control of a beneficiary under, and a change of or in control of a trustee of, a discretionary trust to which Division 8AAA applies and the changes are not a tax avoidance scheme or part of a tax avoidance scheme;
- (viii) if the interest is acquired within the relevant period and the person who acquires the interest could have acquired the land to which the corporation is entitled, including –
 - (A) land to which each of the corporation's subsidiaries within the meaning of section 56N(5) is entitled; and
 - (B) land subject to an agreement for sale or purchase by the corporation or any of those subsidiaries,

without ad valorem duty being payable under Schedule 1, item 5 of the *Stamp Duty Act* other than by virtue of Part III, Division 2 of this Act, but not including the acquisition of an interest in the corporation that is the result of –

- (C) a declaration of trust to which Division 8AA applies;
 - (D) the addition of a beneficiary or class of beneficiaries under a discretionary trust to which Division 8AAA applies; or
 - (E) a change in control of a beneficiary under, and a change of or in control of a trustee of, a discretionary trust to which Division 8AAA applies;
- (ix) if the interest is acquired within the relevant period and is units in a unit trust scheme – the units were acquired solely pursuant to an arrangement entered into or carried out by any of the parties to the arrangement for the sole purpose of enabling the unit trust scheme or a related person to –
- (A) obtain finance (whether by way of renewal or otherwise);
 - (B) obtain an extension of the period for which finance was obtained under an earlier arrangement; or
 - (C) enforce or terminate an arrangement for the provision of finance."

8. Repeal of section 56U

Section 56U of the Principal Act is repealed.

9. Application

Section 83A of the Principal Act is amended by omitting subsection (2)(c) and substituting the following:

- "(c) the making of a compromise or arrangement under Part 5.1 of the Corporations Act 2001 that –
- (i) has been made with the corporation's creditors or a class of them;
 - (ii) has been approved by the court; and
 - (iii) is not a tax avoidance scheme or part of a tax avoidance scheme;"

10. No judicial review of certain decisions

Section 105B of the Principal Act is amended by inserting after subsection (1)(b) the following:

- "(c) under section 56M(2)(c)(vi)(B) that the addition of a beneficiary or class of beneficiaries under a discretionary trust to which Division 8AAA applies is or is not a tax avoidance scheme or part of a tax avoidance scheme;
- (d) under section 56M(2)(c)(vii) that a change in control of a beneficiary under, and a change of or in control of a trustee of, a discretionary trust to which Division 8AAA applies are or are not a tax avoidance scheme or part of a tax avoidance scheme."

PART 3 – CHANGE IN BENEFICIARY AND TRUSTEE

11. Imposition of duty where change in beneficiary and trustee under discretionary trust

Section 56BAC of the Principal Act is amended –

- (a) by omitting from subsection (4) "includes –" and substituting "includes the following:";
- (b) by omitting from subsection (4)(b) "power; and" and substituting "power;"; and
- (c) by inserting after subsection (4)(c) the following:
 - "(d) the appointment of an additional trustee."

PART 4 – CREDIT FOR INTEREST ACQUIRED BY EXEMPT CORPORATE RECONSTRUCTION

12. Statement chargeable with duty

Section 56M of the Principal Act is amended by inserting after subsection (2)(c)(ix) the following:

- "(x) if the interest is acquired within the relevant period in relation to the relevant acquisition and duty is not payable in respect of the interest by virtue of section 22."

PART 5 – STATUTORY VESTING

13. Definition

Section 56V of the Principal Act is amended by omitting "Division" and substituting "Division and for Schedule 2, item 8A of the *Stamp Duty Act*".

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