

Serial 90
Taxation (Administration) Amendment Bill 2002
Ms Martin

A BILL
for

to amend the *Taxation (Administration) Act*

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NORTHERN TERRITORY OF AUSTRALIA
TAXATION (ADMINISTRATION) AMENDMENT ACT 2002

No. of 2002

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NORTHERN TERRITORY OF AUSTRALIA

No. of 2002

AN ACT

to amend the *Taxation (Administration) Act*

[Assented to 2002]

[Second reading 2002]

The Legislative Assembly of the Northern Territory enacts as follows:

1. Short title

This Act may be cited as the *Taxation (Administration) Amendment Act 2002*.

2. Commencement

(1) Sections 4(f), (g) and (h) and 19 are taken to have come into operation on 18 July 2002.

(2) Sections 4(a), (e), (i), (j), (k) and (m), 5, 6, 8, 9, 10, 12, 13, 14, 15, 16 and 21 are taken to have come into operation on 20 August 2002.

(3) The remaining provisions of this Act come into operation on the day on which the Administrator's assent to this Act is declared.

3. Principal Act

The *Taxation (Administration) Act* is in this Act referred to as the Principal Act.

4. Interpretation

Section 4 of the Principal Act is amended –

- (a) by omitting from the definition of "business undertaking" in subsection (1) "agreement or";
- (b) by inserting in the definition of "conveyance" in subsection (1) "acquisition of a partnership interest," after "foreclosure,";
- (c) by inserting in the definition of "conveyee" in subsection (1) "or a marketable security" after "property";
- (d) by omitting from the definition of "dutiabale property" in subsection (1) all the words after paragraph (j)(vii) and substituting "and includes an estate or interest (which may be a partnership interest) in dutiabale property;"
- (e) by inserting in subsection (1) after the definition of "financial market" the following:

" 'franchise' means the rights that a franchisee may use under a franchise arrangement;

'franchise arrangement' means an agreement or an arrangement by which a person authorises another person to use certain rights belonging to the first-mentioned person to engage in a business in a specified place for a specified period –

- (a) in accordance with a specified system or marketing plan; or
- (b) in a manner that will be substantially or materially associated with a trade mark, advertising or a commercial symbol that is –
 - (i) owned, used or licensed by the first-mentioned person; or
 - (ii) specified by the first-mentioned person;

'franchisee' means the person who is authorised under a franchise arrangement to use rights that belong to another person in accordance with the conditions specified in the franchise arrangement;

'franchisor' means the person who authorises another person under a franchise arrangement to use certain rights that belong to the first-mentioned person in accordance with the conditions specified in the franchise arrangement;"

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- (f) by omitting from paragraph (f) of the definition of "hiring arrangement" in subsection (1) "goods; or" and substituting "goods;"
- (g) by omitting from paragraph (g) of the definition of "hiring arrangement" in subsection (1) "person;" and substituting "person; or";
- (h) by inserting in subsection (1) after paragraph (g) of the definition of "hiring arrangement" the following:
 - "(h) an arrangement under which an operator is provided by or at the direction of the person hiring out the goods under the arrangement to operate the goods for the person who is hiring the goods under the arrangement;"
- (i) by omitting from the definition of "lease" in subsection (1) "sub-lease and" and substituting "sub-lease,"
- (j) by inserting in the definition of "lease" in subsection (1) "and a franchise arrangement to the extent that the business the subject of the arrangement is or is to be carried on in the Territory" before ", but";
- (k) by omitting from subsection (1) the definition of "lessee" and substituting the following:

"lessee' means –

 - (a) a person to whom a lease is granted or agreed to be granted; or
 - (b) a franchisee;"
- (l) by inserting in subsection (1) after the definition of "non-resident" the following:

" 'partnership interest' means a partnership interest within the meaning of Part III, Division 3;"
- (m) by omitting from subsection (1) the definition of "rent" and substituting the following:

" 'rent' includes –

 - (a) an amount paid or payable (whether directly or indirectly) for the grant, renewal or extension of the term of a franchise arrangement, and an amount paid or payable (whether directly or indirectly) during the term of a franchise arrangement for the franchise the subject of the franchise arrangement, to the extent that the amount is referable to the

business the subject of the arrangement that is or is to be carried on in the Territory; and

- (b) the amount of GST (if any) payable in relation to the supply of the property in respect of which rent is paid or payable,

but does not include an amount paid or payable in the nature of a penal rent or for reasonable outgoings in respect of a lease of land"; and

- (n) by omitting paragraph (a) of the definition of "unencumbered value" in subsection (1) and substituting the following:

"(a) without regard to –

- (i) any encumbrances;
- (ii) if the property is subject to a trust, not being a public unit trust – any debts or liability of the trustee; or
- (iii) if the property is held by the partners of a partnership – any debts or liability of the partnership,

whether certain or contingent; and".

5. Unencumbered value: arrangements to reduce stamp duty

Section 4A of the Principal Act is amended –

- (a) by omitting from subsection (1)(a) and (b) "stamp duty payable on a conveyance" and substituting "value";
- (b) by omitting from subsection (1)(b) "otherwise) of reducing the stamp duty payable on the conveyance" and substituting "otherwise) of reducing the value of the property";
- (c) by inserting in subsection (3)(a) "or the acquisition of an interest that is a relevant acquisition within the meaning of section 56P" after "property"; and
- (d) by omitting subsection (3)(b) and substituting the following:

"(b) the nature of the relationship between –

- (i) the transferor and transferee of the property and a party to or affected by the agreement or arrangement; or
- (ii) persons who acquire, have acquired or will acquire an interest in a corporation and a party to or affected by the agreement or arrangement;"

6. New section

The Principal Act is amended by inserting after section 4B in Part II the following:

"4C. Duty assessable on certain franchise arrangements as if conveyance of dutiable property

"If—

- (a) a franchisee does not renew or extend the term of the franchise arrangement; and
- (b) another person enters into a franchise arrangement which authorises the other person to use the same or similar rights to engage in a business as under the franchise arrangement referred to in paragraph (a) and which, in the opinion of the Commissioner, by so authorising has the effect as if the franchise arrangement referred to in paragraph (a) were transferred to the other person,

the franchisee referred to in paragraph (a) is taken to have renewed or extended the term of the franchise arrangement referred to in that paragraph and then conveyed the dutiable property that is the subject of the franchise arrangement to the person who is the franchisee under the franchise arrangement first-mentioned in paragraph (b), and duty on the franchise arrangement first-mentioned in paragraph (b) is assessed—

- (c) as if it were a conveyance of that dutiable property from the franchisee referred to in paragraph (a) to the person who is the franchisee under it; and
- (d) as if it were a lease granted to the person who is the franchisee under it.

7. Secrecy

Section 7 of the Principal Act is amended—

- (a) by omitting from subsection (2)(ab)(ii) "or"; and
- (b) by inserting after subsection (2)(ab) the following:
 - "(ac) if the communication of the information or the production of a document is for the purposes of Part III, Division 9 – a person performing, in pursuance of employment by the Territory, a function under the *Motor Vehicles Act*; or".

8. Apportionment

Section 9BA of the Principal Act is amended –

- (a) by omitting "Where" and substituting "(1) Where"; and
- (b) by adding at the end the following:

"(2) Duty is payable in respect of the grant, renewal or extension of the term of a franchise arrangement that applies to a place within the Territory and a place outside the Territory on that proportion of the total rent payable under the franchise arrangement that relates to the business carried on in the Territory."

9. Apportioning certain dutiable property where business in Territory and elsewhere

Section 9BB of the Principal Act is amended by omitting from subsection (1) "9BA" and substituting "9BA(1)".

10. New section

The Principal Act is amended by inserting after section 9BB the following:

'9BC. Apportioning rent payable under franchise arrangement where business in Territory and elsewhere

"(1) In this section –

'business' means a business carried on under or in pursuance of a franchise arrangement;

'interstate customer' means a customer who takes delivery of the goods or receives the services provided elsewhere in Australia than the Territory;

'principal place of business', means –

- (a) the place where the head office of a business is located; or
- (b) the place from which overall control or management of a business emanates;

'Territory customer' means a customer who takes delivery of the goods or receives the services provided in the Territory.

"(2) For the purposes of section 9BA(2), where the principal place of business of a business is in the Territory, the proportion of total rent payable under the franchise arrangement that relates to the business carried on in the Territory is calculated in accordance with the following formula:

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$$V \times \frac{(TS-IS)}{TS}$$

where –

- V is the total rent payable under the franchise arrangement;
- TS is the volume or gross value of goods supplied and services provided by the business to all its customers during the last 3 completed financial years; and
- IS is the volume or gross value of goods supplied and services provided by the business to its interstate customers during the last 3 completed financial years.

"(3) For the purposes of section 9BA(2), where the principal place of business of the business is outside the Territory, the proportion of the total rent payable under the franchise arrangement that relates to the business carried on in the Territory is calculated in accordance with the following formula:

$$V \times \frac{NTS}{TS}$$

where –

- V is the total rent payable under the franchise arrangement;
- NTS is the volume or gross value of goods supplied and services provided by the business to its Territory customers during the last 3 completed financial years; and
- TS is the volume or gross value of goods supplied and services provided by the business to all its customers during the last 3 completed financial years.

"(4) Despite subsections (2) and (3), the Commissioner may determine the proportion of rent payable under a franchise arrangement that relates to the business carried on in the Territory on another basis if satisfied that the other basis would be more appropriate in the particular circumstances."

11. New Divisions

Part III of the Principal Act is amended by inserting after section 17A the following:

"Division 2 – Exemptions for corporate re-constructions

"18. Definitions

"In this Division –

'corporate group' means a group of corporations that are related because each corporation in the group is the parent corporation or a subsidiary of another corporation in the group;

'dormant', in relation to a corporation, means the corporation has not, during a specified period –

- (a) had any assets or liabilities other than share capital for subscriber shares or shares issued to replace subscriber shares of the same value on their redemption;
- (b) been party to an agreement or a beneficiary or trustee of a trust; or
- (c) issued or sold any shares or rights relating to shares other than subscriber shares, rights relating to subscriber shares or shares issued to replace subscriber shares of the same value on their redemption;

'group corporation' means a corporation that is a member of a corporate group (whether because it is the parent corporation or subsidiary of another member of the group);

'parent corporation' means a corporation that owns at least 90% of the shares issued in, and has the voting control over, one or more other corporations, other than in the capacity of a trustee;

'subsidiary' means a corporation under the control of another corporation because at least 90% of its shares are owned, and voting control over it is held, by –

- (a) another corporation;
- (b) another corporation and one or more of its subsidiaries; or
- (c) one or more corporations that are subsidiaries of the same corporation,

other than in the capacity of a trustee.

"19. Exemption: interposing new corporation between existing corporation and its shareholders

"(1) In this section –

'interposed corporation' means a corporation that, because of a conveyance of shares referred to in subsection (2), becomes the parent corporation of a corporation that was already in existence before the conveyance;

'subsidiary' means a corporation that, because of a conveyance of shares referred to in subsection (2), becomes a subsidiary of an interposed corporation.

"(2) Subject to subsections (3) and (4), duty is not payable on a conveyance of shares from the shareholders of a corporation to another corporation which results in the first-mentioned corporation becoming a subsidiary of the second-mentioned corporation.

"(3) Subsection (2) does not apply unless –

- (a) the interposed corporation is a corporation with limited liability;
- (b) the interposed corporation was dormant from its registration until the resolution to become the parent corporation of the subsidiary;
- (c) the interposed corporation acquires at least 90% of the issued shares in, and the voting control over, the subsidiary as a result of the conveyance;
- (d) at least 90% of the consideration for the conveyance of the shares in the subsidiary consists of shares in the interposed corporation that are issued to the shareholders of the subsidiary;
- (e) the value of the consideration for the acquisition of the shares conveyed from a shareholder in the subsidiary is equal to the value of the shares held by the shareholder immediately before the shares were conveyed;
- (f) immediately after the conveyance of the shares in the subsidiary, at least 90% of the shares in the interposed corporation consists of the shares issued to the shareholders of the subsidiary as consideration for the acquisition of their shares; and
- (g) if, because of a conveyance of shares referred to in subsection (2), the interposed corporation becomes the parent corporation of more than one subsidiary – the same shareholders owned at least 90% of the issued shares in, and had voting control over, each of the

subsidiaries before the acquisition of the shares in the subsidiaries by the interposed corporation.

"(4) Subsection (2) does not apply if the conveyance is a tax avoidance scheme or part of a tax avoidance scheme.

"20. Exemption: conveyances and transfers between group corporations

"(1) Subject to subsections (2) and (4), duty is not payable on a conveyance of dutiable property or a marketable security, or a transfer of a motor vehicle certificate of registration, from one group corporation to another group corporation.

"(2) Subsection (1) does not apply unless –

- (a) the conveyer or transferor did not hold, and the conveyee or transferee will not hold, the property as trustee;
- (b) the conveyer and conveyee, or the transferor and transferee, of the property are group corporations in the same corporate group;
- (c) the conveyance or transfer has not been made pursuant to an arrangement under which –
 - (i) part or all of the consideration for the conveyance or transfer has or is to be provided or received, directly or indirectly, by a person who is not a group corporation in the same corporate group; or
 - (ii) a group corporation may –
 - (A) provide the consideration or a part of the consideration for the conveyance or transfer other than in a manner specified in subsection (3); or
 - (B) dispose of any of the consideration through a payment or other disposition to a person other than a group corporation in the same corporate group by way of loan on ordinary commercial terms; and
- (d) the property conveyed or transferred is, at the time of the conveyance or transfer, group property within the meaning of section 21.

"(3) For the purposes of subsection (2)(c)(ii)(A), consideration for the conveyance or transfer may be provided –

- (a) by a financial institution by way of loan on ordinary commercial terms;

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- (b) by a group corporation in the same corporate group; or
- (c) under an offer and sale of shares to the public in the circumstances specified in section 23(4)(b).

"(4) Subsection (1) does not apply if the conveyance or transfer is a tax avoidance scheme or part of a tax avoidance scheme.

"21. Meaning of 'group property' in section 20

"For the purposes of section 20, property that is conveyed or transferred is group property if –

- (a) the conveyer and conveyee, or the transferor and transferee, were group corporations in the same corporate group before, and at all times since, the property was first wholly owned by a group corporation in the same corporate group (which may have been the conveyer or transferor or another group corporation);
- (b) one of the following conditions applies:
 - (i) that the conveyer or transferor is the interposed corporation (within the meaning of section 19) and the conveyee or transferee is the subsidiary (within the meaning of that section);
 - (ii) that the conveyee or transferee is the interposed corporation (within the meaning of section 19) and the conveyer or transferor is the subsidiary corporation (within the meaning of that section);
- (c) the conveyee or transferee is the parent corporation of the conveyer or transferor and duty under Division 8A has been paid for by the conveyee or transferee acquiring its shares in the conveyer or transferor;
- (d) the conveyer and conveyee, or the transferor and transferee, have been group corporations in the same corporate group for at least 3 years; or
- (e) the conveyance or transfer is between 2 corporations of which one is the parent corporation and the other its subsidiary and both of the following conditions apply:
 - (i) that the corporation that is the parent corporation became the parent corporation of the subsidiary either –
 - (A) on the parent corporation's registration; or

(B) after the parent corporation's registration and, if so, the subsidiary has been dormant since that registration;

(ii) that the parent corporation has remained the parent corporation of the subsidiary since the parent corporation's registration or becoming the parent corporation of the subsidiary until the conveyance or transfer of the property.

"22. Exemption from payment of duty imposed under Division 8A for transactions referred to in section 19 or 20

"(1) Duty referred to in Division 8A is not payable in respect of a relevant acquisition within the meaning of that Division if, and to the extent that, the relevant acquisition is the result of a conveyance or transfer exempted under section 19 or 20.

"(2) Subsection (1) applies –

- (a) to a conveyance of shares in a corporation that is not referred to in section 67(a) as if the conveyance of the shares were a conveyance of shares in a corporation referred to in section 67(a); and
- (b) to a conveyance of units in a unit trust scheme that is not referred to in section 67(c) as if the conveyance of the units were a conveyance of units referred to in section 67(c).

"23. Reassessment for the purposes of paying duty on a conveyance, transfer or relevant acquisition exempted under section 19, 20 or 22

"(1) If –

- (a) duty has been assessed on a conveyance, transfer or relevant acquisition on the basis that it is exempt from duty under section 19, 20 or 22; and
- (b) within 3 years after the conveyance, transfer or relevant acquisition –
 - (i) the conveyor and conveyee, or the transferor and transferee, cease to be in to the same corporate group; or
 - (ii) part or all of the consideration for the property conveyed or transferred, or for the relevant acquisition, is provided or received other than in accordance with section 19 or 20,

the Commissioner must make an assessment of the duty payable on the conveyance, transfer or relevant acquisition as if the exemption from duty under

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section 19, 20 or 22 had never applied to the conveyance, transfer or relevant acquisition.

"(2) The Commissioner must make an assessment under subsection (1) even if –

- (a) the limitation period under section 97(1) has expired; or
- (b) he or she has made a ruling under section 26 that the exemption from duty under section 19, 20 or 22 applies to the conveyance, transfer or relevant acquisition.

"(3) If the Commissioner makes an assessment under subsection (1), all the group corporations that belonged to the same corporate group as the conveyer and conveyee, or the transferor and transferee, when the property was conveyed or transferred, or the relevant acquisition was made, are jointly and severally liable to pay the duty and penalty (if any) assessed.

"(4) This section does not apply –

- (a) if the conveyer or conveyee, or transferor or transferee, has been deregistered under the Corporations Act 2001 (but only if not a tax avoidance scheme or part of a tax avoidance scheme);
- (b) if –
 - (i) the conveyer or conveyee, or transferor or transferee, ceases to be a group corporation in the same corporate group because its shares, or the shares of another corporation (which becomes a parent corporation) interposed between the conveyer and conveyee, or the transferor and transferee, are offered and sold to the public; and
 - (ii) the shares are quoted on a recognised financial market within 1 year after the offer to the public; or
- (c) if the conveyer or transferor ceases to be a group corporation in the same corporate group as the conveyee or transferee, or the conveyee or transferee ceases to be a group corporation in the same corporate group as the conveyer or transferor, in circumstances where the corporation ceasing to be in the corporate group has, immediately before doing so, no assets or no assets other than cash, money in an account at call or on deposit with any person or a negotiable instrument.

"24. Time for parties to give notice that require reassessment

"If an event specified in section 23(1)(b) occurs in relation to a conveyance, transfer or relevant acquisition referred to in section 23(1)(a), a party

to the conveyance, transfer or relevant acquisition must, within 30 days of the event occurring –

- (a) give notice in the approved form to the Commissioner that the event has occurred; and
- (b) lodge with the Commissioner all documents necessary for the Commissioner to assess the duty payable on the property conveyed or transferred, or on the relevant acquisition.

Penalty: 500 penalty units.

"25. Application for ruling regarding proposed corporate re-construction

"(1) A corporation that proposes to be a party to a conveyance, transfer or relevant acquisition referred to in section 19, 20 or 22 may apply to the Commissioner for a ruling whether the proposed conveyance, transfer or relevant acquisition would be exempt from duty under that section.

"(2) The application is to –

- (a) be in the approved form; and
- (b) be accompanied by sufficient information to enable the Commissioner to make a ruling.

"(3) The Commissioner must give the applicant written notice of his or her ruling.

"26. Application for exemption regarding corporate re-construction

"(1) The parties to a conveyance, transfer or relevant acquisition referred to in section 19, 20 or 22 may apply to the Commissioner for an exemption under that section from the payment of duty.

"(2) An application under subsection (1) is to –

- (a) be in the approved form; and
- (b) be accompanied by sufficient information to enable the Commissioner to determine whether duty is payable.

"(3) On considering the application, the Commissioner must put an impressed stamp on the instrument or instruments evidencing the conveyance, transfer or relevant acquisition in accordance with section 17(2) if –

- (a) the Commissioner is satisfied that the conveyance, transfer or relevant acquisition is exempt from duty under section 19, 20 or 22; or

- (b) subject to subsection (4) – the Commissioner has made a ruling under section 25 that the conveyance, transfer or relevant acquisition would be exempt from duty under section 19, 20 or 22.
- "(4) Subsection (3)(b) does not apply if –
- (a) the information that accompanies the application under subsection (1) differs in a material particular to the information that accompanied the application for the ruling;
 - (b) the circumstances relating to the conveyance, transfer or relevant acquisition are materially different from those referred to in the application for the ruling and the information that accompanied the application for the ruling; or
 - (c) the application for the ruling or the information that accompanied the application for the ruling was false or misleading in a material particular.

"Division 3 – Partnerships

'27. Interpretation: partnership property and partnership interest

"(1) A reference in this Division to a partnership is a reference to the holding of property by the partners of a partnership for the partnership.

"(2) For the purposes of this Division, a person makes a partnership acquisition if the person acquires a partnership interest, within the meaning of subsection (3), in a partnership that holds dutiable property.

"(3) A partner's partnership interest is –

- (a) if the partner has a partnership entitlement in a partnership under which, in the ordinary course of determining the partner's entitlement to share in the profits of the partnership or obligation to contribute to the capital or losses of the partnership, the entitlement to share in the profits or obligation to contribute to capital or losses varies or may vary from time to time – the percentage that represents the proportion that the value of the partner's entitlement as a partner bears to the value of the entitlements of all the partners in the partnership;
- (b) if the partner is entitled only to share in the profits of the partnership and has given or is required to give consideration, or has made or is required to make a contribution to the capital of the partnership, for the entitlement to share in the profits – the percentage that represents the proportion that the partner's entitlement to the profits of the partnership bears to the entitlements

to the profits of the partnership of all the partners in the partnership;
or

- (c) if the percentage referred to in paragraph (a) or (b) does not apply, the greater of –
 - (i) the percentage of the capital of the partnership the partner has contributed or is obliged to contribute; or
 - (ii) the percentage of the losses of the partnership the partner is required to bear.

"28. Acquiring a partnership interest

"(1) A person acquires a partnership interest if –

- (a) a partnership (of which he or she becomes a partner) is formed; or
- (b) the person's partnership interest increases.

"(2) For the purposes of subsection (1) –

- (a) a partnership may be formed by a change in the membership of a partnership or the merger of 2 or more partnerships;
- (b) a person's partnership interest may increase –
 - (i) under the terms of a partnership agreement;
 - (ii) on the retirement of a partner from a partnership; or
 - (iii) on a change in the terms of a partnership agreement effecting a change in the interests of the partners; and
- (c) a partner's partnership entitlement referred to in section 27(3)(a) does not increase if –
 - (i) the person's entitlement to share in the profits of the partnership or obligation to contribute to the capital or losses increases by reason only of the person's performance as a partner; and
 - (ii) there is no arrangement stating the extent of the future variation to the partner's entitlement to share in the profits of the partnership or obligation to contribute to the capital or losses or the consideration for the variation.

"29. Value of partnership acquisition

"(1) Subject to subsections (2) and (3), the unencumbered value of a partner's partnership acquisition is determined by applying the partner's partnership interest to the unencumbered value of all the dutiable property held by the partnership.

"(2) In determining the unencumbered value of a partner's partnership acquisition, the unencumbered value of any dutiable property the partner contributed to the partnership on its formation is to be disregarded.

"(3) In determining the unencumbered value of a partner's partnership acquisition that is an increase in the partner's partnership interest, the acquisition is taken to be the increase in the partner's partnership interest.

"29A. Value of partnership acquisition where merger of 2 or more partnerships

"(1) This section applies if –

- (a) a person first makes a partnership acquisition on the merger of 2 or more partnerships;
- (b) immediately before the merger, the person had a partnership interest in one of the former partnerships; and
- (c) the unencumbered value of that partnership interest included all or part of the unencumbered value of the dutiable property of the former partnership which, on the merger, becomes dutiable property of the merged partnership.

"(2) The unencumbered value of the person's acquisition on the merger of the partnerships must be reduced by the lesser of –

- (a) the value that would be the unencumbered value of the person's partnership acquisition in the merged partnership if the dutiable property of the merged partnership comprised only the dutiable property of the former partnership of which the person was a partner; or
- (b) the value that represents the unencumbered value of the person's partnership interest in the former partnership that becomes the dutiable property of the merged partnership.

"29B. Reduction of dutiable value of dutiable property if conveyed to partner on retirement or dissolution of partnership

"(1) This section applies if, because a person ceases to be a partner in a partnership because he or she retires from the partnership or the partnership is

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dissolved, dutiable property of the partnership is conveyed or agreed to be conveyed to the person.

"(2) The unencumbered value of the dutiable property conveyed to the person is to be reduced by an amount determined by applying the person's partnership interest in the partnership to the unencumbered value of the dutiable property of the partnership immediately before the person's retirement or the partnership's dissolution.

"(3) If the unencumbered value of dutiable property is reduced under subsection (2) to a value that is more than the consideration for the dutiable property, the amount of duty payable on the conveyance of the dutiable property is –

- (a) subject to paragraph (b) – the amount of duty determined to be payable on the reduced unencumbered value of the dutiable property; or
- (b) if the amount of duty determined to be payable on the reduced unencumbered value of the dutiable property is less than \$20 – \$20."

12. Interpretation

Section 56C of the Principal Act is amended –

- (a) by omitting from the definition of "acquire" in subsection (1) all the words before and including paragraph (c) and substituting the following:

" 'acquire', in relation to an interest or a shareholding in a corporation to which this Division applies, includes acquire the interest or shareholding by virtue of –

- (a) the allotment or issue of a share to the person or another person, not being the issue of a share to a member on registration of the corporation;
 - (b) the redemption, surrender or cancellation of a share by the corporation or by the person or another person;
 - (c) the variation, abrogation or alteration of a right pertaining to a share; and
 - (ca) the payment of an amount owing for a share,"; and
- (b) by inserting in subsection (6)(b) "paid up any uncalled amount for the shares in the corporation and" before "exercised".

13. Corporations to which this Division applies

Section 56N of the Principal Act is amended –

- (a) by omitting subsection (2)(a) and substituting the following:
 - "(a) it is entitled to land in the Territory, including land that is subject to an agreement for the sale or purchase of the land by the corporation, and the unencumbered value of the land is not less than \$500 000 or it is entitled to land, including land that is subject to an agreement for the sale or purchase of the land by the corporation, in the Territory as a co-owner of the freehold or of a lesser estate in the land and the unencumbered value of the land is not less than \$500 000;"
- (b) by omitting from subsection (2)(b) "value of all land" and substituting "unencumbered value of all land";
- (c) by omitting from subsection (2)(b) "value of all property" and substituting "unencumbered value of all property";
- (d) by omitting from subsection (4) "value of property" and substituting "unencumbered value of property";
- (e) by omitting subsection (4)(f) and substituting the following:
 - "(f) any other property in respect of which it is not shown to the satisfaction of the Commissioner that the reason or reasons for the corporation's ownership of the property does not include the purpose of defeating the object of this Division.";
- (f) by inserting in subsection (5) ", including land that is subject to an agreement for the sale or purchase of the land by the subsidiary," after "deemed to be entitled to land";
- (g) by omitting from subsection (7) "value of land" and substituting "unencumbered value of land";
- (h) by omitting from subsection (7)(a) "included; and" and substituting "included;"
- (i) by omitting from subsection (7)(b) "account." and substituting "account; and"; and
- (j) by inserting after subsection (7)(b) the following:
 - "(c) the unencumbered value of all land (whether in the Territory or elsewhere) that is subject to an agreement for the sale or purchase

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of land by the corporation is taken into account (whether or not the sale or purchase is completed).".

14. Meaning of relevant acquisition

"Section 56P of the Principal Act is amended –

(a) by omitting subsection (1)(a) and substituting the following:

"(a) where –

- (i) it is an acquisition of an interest that alone constitutes a majority interest in the corporation;
- (ii) if the interest is acquired before 20 August 2002 – it, together with acquisitions by the person of interests in the corporation during the 12 months immediately preceding the day on which the acquisition occurs, constitutes a majority interest in the corporation;
- (iii) if the interest is acquired on or after 20 August 2002, but before 1 January 2003, pursuant to an agreement entered into before 20 August 2002 – it, together with acquisitions by the person of interests in the corporation during the 12 months immediately preceding the day on which the acquisition occurs, constitutes a majority interest in the corporation;
- "(iv) if the interest (not being an interest referred to in subparagraph (iii)) is acquired on or after 20 August 2002 – it, together with acquisitions by the person of interests in the corporation since 20 August 2001 or, if the interest is acquired on or after 20 August 2004, within 3 years before the interest is acquired, constitutes a majority interest in the corporation; or";

(b) by omitting from subsection (2) "(1)(a)(ii)" and substituting "(1)(a)(ii) and (iii)";

(c) by inserting in subsection (2) "3 years" before "after the acquisition";

(d) by omitting from subsection (2) ", notwithstanding that the right is exercised after the expiration of that period" and substituting "(whether or not that right is exercised within that period)"; and

(e) by adding at the end the following:

"(3) For the purposes of subsection (1)(a)(iv), if a person acquires an interest in a corporation and, within the period ascertained in accordance with that

subparagraph by reference to the day on which the person acquires the interest or within 3 years after the acquisition, became or becomes entitled to a right to acquire a further shareholding in the corporation and that right is exercised, that person is taken to acquire that further shareholding in the corporation within 3 years after the first-mentioned acquisition (whether or not that right is exercised within that period)."

15. How dutiable value determined

Section 56R of the Principal Act is amended –

- (a) by omitting "after the acquisition" from subsection (2) and substituting "because of the relevant acquisition and other acquisitions of interests (if any) by the person, or the person and a related person, in the corporation within the period ascertained in accordance with section 56P(1)(a) by reference to the day on which the relevant acquisition occurs"; and
- (b) by inserting in subsection (4)(a) and (b) ", including land that is subject to an agreement for the sale or purchase of the land by the corporation," after "in the case of land".

16. Liability for duty

Section 56S of the Principal Act is amended by adding at the end the following:

"(3) If–

- (a) an agreement to purchase land by a corporation or a subsidiary of a corporation is not completed but duty has been assessed and imposed under this Division as if the corporation owned the land; or
- (b) an agreement to sell land by a corporation or a subsidiary of a corporation is completed but duty has been assessed and imposed under this Division before the completion of the agreement as if the corporation owned the land,

the Commissioner must amend the assessment of duty imposed and, in doing so, must disregard the land for the purposes of determining whether the corporation is a land-holder and assessing duty payable.

"(4) Section 97 applies to and in relation to the amending of an assessment under subsection (3).

"(5) Subsection (3) does not apply if an agreement referred to in that subsection is a tax avoidance scheme or part of a tax avoidance scheme."

17. New section

The Principal Act is amended by inserting before section 71 in Part III, Division 13 the following:

'70. Meaning of 'special hiring arrangement'

"In this Division –

'special hiring arrangement' means a written agreement for a hiring arrangement –

- (a) that describes the goods in such a way as to enable the nature or character of the goods to be clearly and readily identified, including the number of items; and
- (b) that does not include –
 - (i) an arrangement under which the goods may, at any time, be replaced in whole or in part by other goods, except to the extent that the agreement allows replacement if the goods –
 - (A) are lost, destroyed or stolen;
 - (B) fail or malfunction in the normal course of operation or use;
 - (C) are temporarily replaced during the servicing, maintenance or repair of the goods; or
 - (D) are otherwise not fit for the purpose for which they are hired; or
 - (ii) an arrangement under which other goods, whether of the same or a different type, may be additionally provided."

18. Returns in respect of hiring arrangements

Section 75 of the Principal Act is amended by inserting after subsection (1) the following:

"(1A) A registered lender may elect to pay the duty payable on a special hiring arrangement by lodging an instrument under section 71 and, if the registered lender elects to do so, returns under this section in respect of the special hiring arrangement are not necessary."

19. New section

The Principal Act is amended by inserting after section 75AA of the Principal Act the following:

"75AB. No duty payable on certain payments under hiring arrangements

"No duty is payable on an amount paid on or after 18 July 2002 by a person who is hiring goods under an arrangement entered into before that day under which an operator is provided by or at the direction of the person hiring out the goods for the person who is hiring the goods."

20. Application

Section 83A of the Principal Act is amended –

- (a) by inserting in subsection (2)(e) "of land" after "lease"; and
- (b) by adding at the end the following:

"(5) To avoid doubt, this Division applies to a transfer of property for the purposes of a voluntary transfer of business under Part 3 of the *Financial Sector (Transfer of Business) Act 1999* of the Commonwealth and to a transfer of property to which section 10(4) of the *Financial Sector Reform (Northern Territory) Act* applies."

21. Amended assessment

Section 97 of the Principal Act is amended –

- (a) by omitting from subsection (5) "was entitled to a concession" and substituting "was or has become entitled to a concession";
- (b) by inserting in subsection (5) "or 8C" after "8B"; and
- (c) by omitting from subsection (5) "was entitled to have received" and substituting "was entitled to receive or has become entitled to receive".

22. Regulatory offences

Section 123A of the Principal Act is amended by inserting "24," before "29J,".

