

Serial 95
Revenue (Budget Initiatives) Amendment Bill 2007
Mr Stirling

**A BILL
for
AN ACT**

to amend the *Stamp Duty Act*, the *Taxation (Administration) Act*, and the *First Home Owner Grant Act*

NORTHERN TERRITORY OF AUSTRALIA
REVENUE (BUDGET INITIATIVES) AMENDMENT ACT 2007

Act No. [] of 2007

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NORTHERN TERRITORY OF AUSTRALIA

Act No. [] of 2007

AN ACT

to amend the *Stamp Duty Act*, the *Taxation (Administration) Act*, and the *First Home Owner Grant Act*

[Assented to [] 2007]
[Second reading [] 2007]

The Legislative Assembly of the Northern Territory enacts as follows:

PART 1 – PRELIMINARY

1. Short title

This Act may be cited as the *Revenue (Budget Initiatives) Amendment Act 2007*.

2. Commencement

(1) Part 2, Division 2 and Part 3, Division 2 are taken to have commenced on 1 May 2007.

(2) The remaining provisions of this Act commence on 1 July 2007.

PART 2 – AMENDMENT OF *STAMP DUTY ACT*

3. Act amended

This Part amends the *Stamp Duty Act*.

Division 1 – Abolition of duty on hiring arrangements

4. Amendment of Schedule 1

Schedule 1, items 9 and 9A

omit

Division 2 – Increase in first home owner concession

5. Amendment of section 8B (Concession for first home owners)

Section 8B(1), definition "first home owner concession", paragraph (b)

omit, substitute

- (b) the duty payable on a conveyance of land liable to ad valorem duty for a consideration, or unencumbered value, of \$350 000;

6. Repeal and substitution of Part 4

Part 4

repeal, substitute

PART 4 – TRANSITIONAL PROVISIONS

10. Definitions

In this Part:

"2007 amending Act" means the *Revenue (Budget Initiatives) Amendment Act 2007*;

"first home owner concession amendment" means the amendment made by the 2007 amending Act to section 8B;

"former transitional provisions" means the provisions of Part 4 of this Act as in force immediately before their substitution by this Part.

11. Preservation of effect of former transitional provisions

Despite the repeal of the former transitional provisions by the 2007 amending Act, the former transitional provisions (so far as they may have continuing relevance) continue in force.

12. First home owner concession

(1) The first home owner concession amendment applies to conveyances first executed on or after 1 May 2007.

(2) However, section 8B, as in force before the commencement of the first home owner concession amendment, applies to such a conveyance if:

- (a) the conveyance replaces an earlier conveyance, first executed before 1 May 2007, of the same or substantially similar land; or
- (b) the conveyee entered into a contract or option, before 1 May 2007, to purchase the land to which the conveyance relates, or substantially similar land; or
- (c) the conveyor had an option, granted before 1 May 2007, to require the conveyee to purchase the land to which the conveyance relates or substantially similar land.

Division 3 – Further amendment related to first home owner concession

7. Amendment of section 8B (Concession for first home owners)

Section 8B(1), definition "relevant interest"

omit, substitute

"relevant interest" means:

- (a) an interest (other than a non-conforming interest) that is a relevant interest under section 5 of the *First Home Owner Grant Act*; or
- (b) an interest in residential property in a State or another Territory of the Commonwealth that is a relevant interest (but not a non-conforming interest) under a law of that State or Territory corresponding to the *First Home Owner Grant Act*;

Division 4 – Abolition of duty on certain instruments

8. Amendment of Schedule 1

(1) Schedule 1, item 6

omit

(but not a deed that is the security for the repayment of money)

(2) Schedule 1, item 12(5)

omit

9. Amendment of Schedule 2

Schedule 2, item 38

omit, substitute

38. An instrument that secures the payment (or repayment) of money and is not liable to ad valorem duty on some other ground.

39. A deed:

(a) that:

(i) guarantees or otherwise secures the performance of a contractual or other obligation; or

(ii) indemnifies against non-performance of a contractual or other obligation; and

(b) that is not liable to ad valorem duty on some other ground.

PART 3 – AMENDMENT OF *TAXATION (ADMINISTRATION) ACT*

10. Act amended

This Part amends the *Taxation (Administration) Act*.

Division 1 – Abolition of duty on hiring arrangements

11. Amendment of section 4 (Interpretation)

(1) Section 4(1), definitions "hire-purchase agreement", "hiring arrangement", "lender", "registered lender" and "user"

omit

(2) Section 4(1), definition "return"

omit, substitute

"return" means a return under this Act;

(3) Section 4(2), (2A) and (2B)

omit

12. Amendment of section 57 (Owner to pay duty)

Section 57(2)(b)

omit, substitute

- (b) during that period has been available for hire or lease to the public from a person carrying on the business of hiring or leasing motor vehicles (without provision of a driver) to the public;

13. Repeal of Part III, Division 13

Part III, Division 13

repeal

14. Amendment of section 123A (Regulatory offences)

Section 123A

omit

57, 59(5), 71, 74, 75 or 76

substitute

57 or 59(5)

15. Amendment of section 126 (Books, accounts etc.)

Section 126(1)

omit, substitute

- (1) A person registered (or formerly registered) under this Act must:
- (a) keep proper books and accounts in the English language containing full particulars of the matters on which duty is (or was) imposed; and
- (b) preserve those books and accounts for 5 years after the completion of those matters; and
- (c) preserve any documents or papers relating to those matters (including copies of instruments) for 5 years after the completion of those matters.

Maximum penalty: 100 penalty units.

16. New Part XII

After Part XI

insert

PART XII – TRANSITIONAL MATTERS FOR *REVENUE (BUDGET INITIATIVES) AMENDMENT ACT 2007*

144. Transitional provision

(1) In this section:

"amending Act" means the *Revenue (Budget Initiatives) Amendment Act 2007*;

"relevant amendment" means an amendment to this Act made by the amending Act.

(2) This Act, as in force before the commencement of a relevant amendment continues to apply in relation to instruments and transactions that were entered into, took effect, or became legally effective, before the commencement of the relevant amendment.

(3) However, a person who was a registered lender immediately before 1 July 2007 is not required to lodge a return, or to pay tax, in respect of amounts paid or payable to the registered lender, after that date, under hiring arrangements entered into before that date.

Division 2 – Amendments relating to tax avoidance

17. Amendment of section 19 (Exemption: interposing new corporation between existing corporation and its shareholders)

Section 19(4)

omit, substitute

(4) Subsection (2) does not apply if:

(a) the conveyance is a tax avoidance scheme, or part of a tax avoidance scheme; or

(b) the Commissioner is of the opinion that the conveyance is a scheme, or part of a scheme, of which a purpose (collateral or otherwise) is to frustrate the recovery of duty, tax or royalty that is payable to the Territory.

18. Amendment of section 20 (Exemption: conveyances and transfers between group corporations)

Section 20(4)

omit, substitute

- (4) Subsection (1) does not apply if:
- (a) the conveyance or transfer is a tax avoidance scheme, or part of a tax avoidance scheme; or
 - (b) the Commissioner is of the opinion that the conveyance or transfer is a scheme, or part of a scheme, of which a purpose (collateral or otherwise) is to frustrate the recovery of duty, tax or royalty that is payable to the Territory.

Division 3 – Miscellaneous stamp duty amendments

19. Amendment of section 4 (Interpretation)

- (1) Section 4(1), definitions "land" and "unencumbered value"

omit

- (2) Section 4(1)

insert (in alphabetical order)

"land" means land in the Territory and includes:

- (a) an estate or interest in land; and
- (b) a lease of land or mining tenement (or an interest in a lease of land or mining tenement); and
- (c) a fixture to land (including a tenant's fixture or a fixture associated with mining operations conducted, or formerly conducted, on the land);

"mining tenement" means a statutory licence, lease or authorisation to recover or exploit resources (such as minerals or geothermal resources) to be found in or under the surface of the earth (but does not include an exploration licence or an exploration retention licence under the *Mining Act*);

"unencumbered value" of property, see section 4A;

20. Amendment of section 4A (Unencumbered value – arrangements to affect stamp duty)

- (1) Section 4A, heading

omit, substitute

Unencumbered value

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

omit, substitute

(1) The unencumbered value of property is the full value of the property free from encumbrances (including any GST payable on the supply of the property).

(2) The unencumbered value of land is to be determined with regard to:

(a) the use of the land that would best enhance its commercial value; and

(b) commercial advantages (such as goodwill) that:

(i) attach to the location or other aspects of the land; and

(ii) would affect the price that a reasonable purchaser would be willing to pay for the land; and

(c) information about the land that would, if known to a reasonable purchaser, affect the price the purchaser would be willing to pay for the land.

Examples

1. *The value that accrues to premises because they have been licensed or approved for a particular commercial purpose would be taken into account under paragraph (b) in valuing the premises.*

2. *Information about the results achieved from exploratory or other operations in the area of a mining tenement would be taken into account under paragraph (c) in valuing the tenement.*

(3) Information relevant to the value of property will, for the purposes of valuation, be regarded as an attribute of the property and not as a separate form of property to which an independent value can be attributed.

(3A) An encumbrance includes:

(a) a mortgage or charge; or

- (b) a debt or liability that might give rise to a right of recourse against the property; or
- (c) any agreement or arrangement (including a lease) that has the effect of reducing the value of the property unless:
 - (i) the parties to the agreement or arrangement are not related; and
 - (ii) the Commissioner is satisfied that the agreement or arrangement was not made for a purpose (collateral or otherwise) of reducing the value of the property;

but does not include an easement or restrictive covenant unless the Commissioner is of the opinion that it was created or entered into for a purpose (collateral or otherwise) of reducing the value of the property.

(3B) Parties to an agreement or arrangement are related if:

- (a) one is a corporation and the other is an associated person as described in subsection (4); or
- (b) one is a natural person and the other is a relative; or
- (c) a relationship of a kind described in section 56C(3) exists between them.

21. Amendment of section 56C (Interpretation)

Section 56C(1)

insert (in alphabetical order)

"land" includes anything fixed to the land (irrespective of whether it would be regarded as a fixture at common law);

PART 4 – AMENDMENT OF *FIRST HOME OWNER GRANT ACT*

22. Act amended

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

23. Amendment of section 18 (Amount of grant)

Section 18(a)

omit, insert

- (a) the amount of consideration actually paid for the eligible transaction;

24. Amendment of section 41 (Power to recover amount paid in error)

(1) Section 41(1) to (3B)

omit, substitute

(1) This section applies to a person on whose application a first home owner grant was paid if:

- (a) the person was ineligible for the grant; or
- (b) the grant was paid in anticipation of compliance with the residence requirements and the person fails to comply with those requirements; or
- (c) the Commissioner imposed a condition on the grant under section 5(5) or 20 and the person breaches the condition; or
- (d) an overpayment of the amount to which the person was entitled occurs.

(2) A person to whom this section applies must notify the Commissioner, in writing, of the person's ineligibility, failure or breach, or of the amount of the overpayment, and must pay to the Commissioner the amount of the grant or the overpayment (as the case requires) within:

- (a) in the case of ineligibility – 30 days after the grant was paid; or
- (b) in the case of non-compliance with the residence requirements – 30 days after the earlier of the following:
 - (i) the date by which the person was to have occupied the home;
 - (ii) the date on which it first became apparent that the residence requirements would not be complied with during the period allowed for compliance; or
- (c) in the case of breach of a condition or an overpayment – 30 days after the breach or overpayment occurred.

(3) If a person to whom this section applies fails to pay an amount as required by subsection (2):

- (a) the person in default must pay interest on the amount in default from the date liability to make the payment fell due until the date payment is actually made; and
- (b) the Commissioner may, by notice in writing to the person:

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- (i) state why the amount in default must be paid; and
 - (ii) require payment of the amount in default within 30 days after the date of the notice; and
 - (iii) impose a penalty equivalent to the amount in default; and
- (c) if the amount in default (together with interest and penalty) is not paid within 30 days from the date of the notice, then, as from the end of that period, interest accrues on the penalty (in addition to the interest already accruing on the amount originally in default).

(2) Section 41(12)

omit, substitute

(12) For subsections (3) and (6), interest accrues daily at an annual rate determined by:

- (a) taking the monthly average yield (expressed as an annual rate) on 90-day bank accepted bills published by the Reserve Bank of Australia for the month of May in the financial year immediately preceding the financial year in which the liability arose; and
- (b) adding 7%.