

Serial 96
Taxation (Administration)
Amendment (No. 2)
Mr Coulter

NORTHERN TERRITORY OF AUSTRALIA
TAXATION (ADMINISTRATION) AMENDMENT
BILL (NO. 2) 1991

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NORTHERN TERRITORY OF AUSTRALIA

A BILL for AN ACT

to amend the *Taxation (Administration) Act*

BE 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. SHORT TITLE

This Act may be cited as the *Taxation (Administration) Amendment Act (No. 2) 1991*.

2. PRINCIPAL ACT

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

3. INTERPRETATION

Section 4(1) of the Principal Act is amended -

(a) by inserting, after the definition of "broker", the following:

"'business undertaking' includes all business undertakings whether or not carried on with a view to profit including a business carried on under or in pursuance of a franchise agreement or arrangement;"

(b) by omitting the definition of "conveyance" and "conveyee" and substituting the following:

"'conveyance' includes a transfer or assignment (or an agreement to transfer or assign), grant, exchange, appointment, settlement, foreclosure, declaration of trust, a statement under section 83B and a decree, judgment or order of a court, whereby dutiable property is transferred to, vested in or accrues to a person, but does not include the grant of a lease;

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"'conveyee' means a person to whom dutiable property is conveyed;"

(c) by inserting, after the definition of "debenture", the following:

"'dutiable property' means -

- (a) land in the Territory, including -
 - (i) a lease of land;
 - (ii) a mining tenement under the *Mining Act*, including information relating to the tenement; and
 - (iii) a fixture to land (including land comprised in a lease or a mining tenement);
- (b) the goodwill of a business undertaking carried on or to be carried on in the Territory, or in the Territory and elsewhere, including any restraint of trade arrangement which, in the opinion of the Commissioner, enhances or is likely to enhance the value of the business;
- (c) a right to use in the Territory a business name, trading name or trade mark that is used in connection with such a business undertaking;
- (d) a right to use in the Territory a thing, system or process that is used in connection with such a business undertaking and is the subject of a patent, a registered design or copyright, or a right to use an adaption or modification of such a thing, system or process;
- (e) a right to use in the Territory information or technical knowledge connected with such a business undertaking;
- (f) a statutory licence or permission (Territory or Commonwealth) used in or in connection with such a business undertaking, including a licence or permission surrendered or relinquished or for which an application for renewal is not made and the licence or permission, or a similar licence or permission, is given, granted or issued to another person where, in the opinion of the Commissioner, the giving, grant or issue amounts to a transfer of the licence or permission;

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- (g) an option to purchase dutiable property or an interest in dutiable property; and
- (h) chattels, if part of a transaction in which other dutiable property is conveyed or the beneficial ownership is changed, other than -
 - (i) goods, wares or merchandise that are stock-in-trade;
 - (ii) materials held for use in manufacture;
 - (iii) goods under manufacture;
 - (iv) livestock;
 - (v) any motor vehicle in respect of which a motor vehicle certificate of registration is or will, in the opinion of the Commissioner, be issued;
 - (vi) cash or money in an account at call; or
 - (vii) negotiable instruments, and money on deposit with any person,

and includes an estate or interest in dutiable property.";
and

- (d) by omitting paragraph (c) from the definition of "motor vehicle certificate of registration" and substituting the following:

"(c) a motor vehicle certificate of registration in respect of a motor vehicle used exclusively for agricultural or pastoral purposes not being a vehicle designed primarily and principally for the transport of persons;"

4. NEW SECTION

The Principal Act is amended by inserting, after section 52, the following:

"52A. COMPUTATION OF DUTY WHERE 2 OR MORE INSTRUMENTS

"(1) This section applies to the following instruments:

- (a) an instrument by which, or evidencing a transaction or part of a transaction by which, dutiable property is conveyed;

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- (b) a statement under section 83B; and
- (c) a memorandum created for the purposes of section 94, where the memorandum relates to an instrument under paragraph (a) or the failure to lodge a statement under section 83B.

"(2) In this section, 'relevant transaction' means a transaction which is or should be evidenced by an instrument referred to in subsection (1)(b) or (c).

"(3) Where 2 or more instruments to which this section applies together form, or arise from, substantially one transaction or one series of transactions, those instruments shall, unless the Commissioner is satisfied that it would not be just and reasonable in the circumstances, be chargeable with *ad valorem* duty as a single transaction calculated at the rate appropriate to the dutiable property conveyed on the sum of the amounts by reference to which *ad valorem* duty on each of those instruments would, but for this subsection, have been calculated, and that duty shall be apportioned to the various instruments as determined by the Commissioner.

"(4) Where a person conveys dutiable property to the same person (whether that person takes alone or with the same or different persons) by an instrument to which this section applies -

- (a) which has been, or appears to have been, executed within 12 months of -
 - (i) another such instrument; or
 - (ii) a relevant transaction; or
- (b) being a statement under section 83B or a memorandum under section 94 evidencing a relevant transaction which, in the opinion of the Commissioner, was entered into within 12 months of -
 - (i) another relevant transaction evidenced by such a statement or memorandum; or
 - (ii) the execution of an instrument referred to in paragraph (a),

it shall be presumed, unless the Commissioner is satisfied to the contrary, that the instruments arose out of one transaction or one series of transactions.

"(5) Where *ad valorem* duty has been paid in respect of an instrument referred to in subsection (3), the duty otherwise payable under that subsection shall be reduced by the amount of duty already paid.

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"(6) Except as provided by subsection (5), this section does not operate to reduce the duty payable on any instrument."

5. REPEAL AND SUBSTITUTION

Section 56A of the Principal Act is repealed and the following substituted:

"56A. REFUND OF DUTY WHERE TRANSACTION RESCINDED, &c.

"(1) Where duty has been paid or is payable in respect of -

- (a) a conveyance of dutiable property or the grant of a lease, and the conveyance or grant does not proceed or the entitlement to the dutiable property, as the result of the rescission, cancellation, annulment, abandonment or operation of the transaction whereby it was conveyed, is extinguished; or
- (b) a loan security under which no money has been advanced which, because of the abandonment of the financing facility, is of no effect,

the Commissioner shall remit the amount of duty payable or refund the duty, as the case may be.

"(2) Remission is not available, nor a refund payable, under subsection (1) to a person unless the person furnishes to the Commissioner, within 90 days after the rescission, cancellation, annulment, abandonment or relevant operation of the transaction to which that remission or refund relates -

- (a) an application in an approved form, together with such information as the Commissioner requires to enable him to determine that the transaction has been rescinded, cancelled, annulled or abandoned or operates as claimed; and
- (b) all instruments evidencing the transaction or loan security.

"(3) All instruments evidencing a transaction or loan security in respect of which duty has, in pursuance of this section, been remitted or refunded shall have a note of that fact endorsed on them by the Commissioner and, on being so endorsed, they shall have no effect in law or in equity to convey dutiable property or grant a lease or operate as a loan security.

"(4) This section does not apply to or in relation to a transaction where the Commissioner is of the opinion that a subsequent sale or other disposition of the dutiable property the subject of the transaction -

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- (a) is a sub-sale or a transaction having the effect of a sub-sale, notwithstanding that the subsequent conveyance is executed by the person who was the vendor in that first-mentioned transaction; or
- (b) is the result of a conveyance by direction, whether in writing or not, initiated by the conveyee in that transaction."

6. NOTICE MAY BE REGISTERED ON TITLE

Section 56F of the Principal Act is amended by omitting "Register Book" (wherever occurring) and substituting "Register".

7. COLLATERAL SECURITY

Section 69D of the Principal Act is amended by omitting subsection (3).

8. APPLICATION

Section 83A of the Principal Act is amended -

- (a) by omitting from subsection (1) all words after "beneficial ownership of" and substituting "dutiable property"; and
- (b) by omitting from subsections (2)(c) "Part VII of the *Companies (Northern Territory) Code*" and substituting "Chapter 5 of the Corporations Law".

9. PAYMENT OF DUTY ON STATEMENTS IN ABSENCE OF DUTIABLE INSTRUMENT

Section 83B of the Principal Act is amended -

- (a) by omitting from subsection (1)(a) and (c) "Real Property" and "real property" respectively and substituting "Dutiable Property" and "dutiable property" accordingly; and
- (b) by omitting from subsection (4)(a) "the property" and substituting "the dutiable property".

10. REPEAL

Section 83C of the Principal Act is repealed.

11. REPEAL AND SUBSTITUTION

Section 94 of the Principal Act is repealed and the following substituted:

"94. DEFAULT ASSESSMENTS

"Where -

- (a) a person liable to furnish a return or to lodge a statement under section 83B has failed to furnish the return or lodge the statement, has furnished a return or lodged a statement that is false or misleading in a material particular or has failed to include in a return or statement particulars required by or under this Act to be included;
- (b) a person has not complied with a requirement under section 86 in respect of a return or instrument; or
- (c) the Commissioner has reason to believe or suspect that a person is liable to pay duty or tax under this Act,

the Commissioner may make an assessment of the amount of duty or tax that, in his opinion, is payable and for that purpose may create a memorandum of a return, statement, instrument or other document, which memorandum shall be deemed to be an instrument for the purposes of this Act."

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