
TERRITORY REVENUE MANAGEMENT

Postal Address: Commissioner of Taxes, GPO Box 154, Darwin NT 0801
Office Location: Commissioner of Taxes, 38 Cavenagh Street, Darwin NT
Website: www.nt.gov.au/nt/revenue

Telephone: (08) 8999 7949
Facsimile: (08) 8999 5577
Email: ntrevenue.ntt@nt.gov.au

Purpose of this Circular

1. This circular provides general information on proposed amendments to the *Taxation (Administration) Act* and the *Stamp Duty Act* relating to stamp duty imposed on conveyances and miscellaneous instruments. Most of the amendments take effect from 1 July 2000, however, a number of integrity and anti-avoidance measures have also been introduced that take effect from 16 May 2000 (the date of announcement in the Northern Territory Budget). The circular also provides information on other changes to improve the administration of the legislation.

Proposed Changes

2. In summary, the measures:
 - a) clarify that stamp duty is imposed on the purchase price or market value inclusive of GST for conveyances of property;
 - b) clarify the stamp duty exemption available to certain charitable institutions;
 - c) rationalise the categories of nominal stamp duty;
 - d) ensure that the stamp duty 'land rich provisions' apply to mining tenements and mining information relating to such tenements;
 - e) ensure that ad valorem stamp duty applies to certain declarations of trust;
 - f) counter the use of put and call option schemes for avoiding or delaying payment of stamp duty;
 - g) ensure that certain agreements or arrangements are disregarded for the purposes of determining the unencumbered value of property transferred;
 - h) ensures that a share buy-back is subject to marketable securities duty; and
 - i) a number of miscellaneous administrative amendments.

Stamp Duty on Conveyances and GST

3. The amendments clarify that the dutiable value for calculating conveyance duty is the GST-inclusive value of the consideration payable or market value.

Stamp Duty Exemption for Charitable Bodies

4. The *Stamp Duty Act* provides a broad stamp duty exemption for public benevolent institutions, religious institutions, public hospitals and public education institutions.

5. The exemption currently applies to commercial dealings. While it is understood that the proceeds of such dealings benefit these institutions, the exemption provides them with a competitive advantage over other competing businesses.
6. The amendment will restrict the exemption to a lease or an acquisition of property that is not used for commercial purposes. However, the exemption will still apply to the purchase or lease of premises that are to be used as sheltered workshops and community opportunity shops that are run by these institutions.
7. This limitation on the exemption is consistent with similar exemptions in the *Pay-roll Tax Act* and *Financial Institutions Duty Act*.

Rationalisation of the Categories of Nominal Duty.

8. Stamp duty is imposed on a wide range of miscellaneous documents with amounts that range from \$5 to \$50. To rationalise these duties, nominal duty will now be removed on some of these documents and a single amount of duty based on cost recovery principles will be imposed on the remaining documents.
9. Duty on mining agreements, guarantees and letters or powers of attorney will be abolished. However, depending on their form (eg. a deed) they may fall within another head of duty.
10. Duty of \$20 will apply to all other nominal duty categories, except for copies and transfers that are in conformity with a conveyance that has been already stamped with ad-valorem duty. These documents will continue to be stamped at the existing rate of \$5.
11. The new \$20 charge applies to trust deeds (currently \$50) and leases not subject to ad-valorem duty. It will also apply to partitions of land, deeds generally, instruments of appointment of trustees, instruments to correct errors and instruments relating to managed investment schemes (currently \$5).

Application of the "land-rich" provisions to mining tenements and mining information

12. This measure relates to the stamp duty 'land rich provisions' and how they apply to mining tenements and mining information relating to such tenements.
13. Normally, stamp duty applies at the conveyance duty rate of 5.4% where ownership of land is conveyed directly between buyer and seller. However, where a company or private unit trust holds land, it is possible to transfer ownership of the land indirectly by transferring the shares in the company or the units in the unit trust. Such a share or unit transfer will incur duty at a rate of 0.6% which is significantly less than the conveyance duty rate.
14. The 'land rich provisions' provide a mechanism to cause the transfer of the majority interest of shares in a "land rich" corporation or units in a private unit trust to be subject to duty at the higher conveyance duty rate as if the land were transferred directly.
15. A "land rich" corporation or trust is characterised by the majority of the assets of the company or trust comprising real property subject to certain criteria.
16. A direct conveyance of a mining tenement and mining information is also subject to stamp duty at conveyance duty rates. However, it is arguable as to whether mining tenements and mining information are caught within the 'land rich provisions'. Given the

lack of clarity, the past practice of this office has been to disregard mining tenements when determining the application of the land-rich provisions.

17. However, as part of the 2000-01 Territory Budget, that position has changed with effect from 16 May 2000. Legislative amendments have been introduced to ensure that mining tenements and mining information relating to such tenements are considered when applying the 'land rich provisions'.
18. This measure commences from 16 May 2000 - the date of announcement in the Budget.

Declarations of Trust

19. This measure is aimed at countering stamp duty avoidance practices involving the declaration of trust over property for trust with discretionary objects.
20. A declaration of trust, where the property is to be held for a specified person (ie. a fixed trust) is liable to ad valorem conveyance duty. However, it has been unclear to date whether a declaration made in respect of a trust with discretionary objects is liable for duty. The amendments ensure that ad valorem duty will apply in these circumstances. It is irrelevant whether the declaration of trust is made in writing or otherwise.
21. This measure commences from 16 May 2000 being the date of announcement in the Budget.

Put and Call Options

22. This measure relates to a stamp duty avoidance scheme whereby a seller and a purchaser of property enter into simultaneous put and call options to avoid or delay the payment of stamp duty.
23. The amendments counter such schemes by deeming such an arrangement to be subject to stamp duty as if the property over which the put and call options are made, was transferred between the parties. That is, it will be assessed as if it were an agreement for the sale of the property. Duty will be assessed on the total consideration payable for the grant and exercise of the options (including any option fee), or the market value of the property, whichever is the greater.
24. However, where the options expire without being exercised, the parties may, within 90 days, apply for a reassessment of the duty. Where this occurs, the agreement will be subject to stamp duty as an option and not as a transfer of dutiable property. As such, any excess stamp duty paid will be refunded where necessary.
25. This measure commences from 16 May 2000, being the date of announcement in the Budget.

Unencumbered Value

26. This measure is a response to a decision in the Supreme Court of Victoria (*Commissioner of State Revenue (Victoria) v. Bradney Pty Ltd* 96 ATC 5138), which held that a lease was not an encumbrance for the purposes of determining the "unencumbered value" of dutiable property. The amendments counter an avoidance method that would otherwise enable the parties to reduce the value of the property by first entering into a lease with nominal rent.

27. The amendments ensure that the entry into any arrangement (including a lease for less than market rental) which has the effect of reducing the value of dutiable property shall be disregarded for the purpose of calculating the duty payable.
28. The Commissioner may allow such an arrangement where the arrangement is between unrelated parties and there are commercial reasons for the arrangement other than for the reduction of stamp duty.
29. This measure commences from 16 May 2000 being the date of announcement in the Budget.

Stamp duty and share buy-backs

30. This measure arises from a decision in the Court of Appeal of Victoria (*Coles-Myer Ltd v Commissioner of State Revenue* 97 ATC 4110) which held that a share buy-back was not subject to marketable securities duty in relation to the Victorian stamp duty legislation. The decision cast doubt on the applicability of Northern Territory stamp duty in similar circumstances. As such, the amendments clarify that past and future share buy-backs are subject to duty.

Miscellaneous Amendments

31. A number of miscellaneous changes have been made to improve the administrative operation of the stamp duty legislation.
32. The first measure provides legislative fine-tuning for the operation of the "conveyance by return" or "CBR" scheme. The CBR scheme allows conveyancing agents and solicitors to self assess stamp duty payable on conveyances of real property and leases. More information on the scheme is available by contacting the telephone number provided below.
33. The second measure will allow the Commissioner to extend the period to lodge an objection against a decision of the Commissioner and making an application for a refund of duty arising from the early cancellation of a lease or rescission of a contract. In both circumstances there must be a reasonable excuse to extend the time period.
34. The third measure will allow interest to be paid where a taxpayer has paid tax that is subsequently refunded as a consequence of an objection being allowed or an appeal being upheld. The interest will be calculated from the date the tax was paid to the date the refund is made. The interest will be payable at the same rate as that payable in similar circumstances under the *Income Tax Assessment Act* of the Commonwealth. Interest will only be payable in relation to objections lodged on or after 1 July 2000.
35. Finally the amendments will allow electronic documents to be admitted as admissible evidence in Court proceedings.

Reference should be made to the *Taxation (Administration) Amendment Bill 2000*, *Stamp Duty Amendment Bill 2000* and the *Financial Relations Agreement (Consequential Provisions) Bill 2000* for precise details. For general information, please contact this office on (08) 8999 7949.

COMMISSIONER OF TAXES