NORTHERN TERRITORY
TREASURY

CONVEYANCE DUTY & DISCRETIONARY TRUSTS

Anti-avoidance Measures (2001-02 Budget)

Taxation (Administration) Act / Stamp Duty Act

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Purpose of this circular

1. This circular provides information on proposed measures announced in the 2001-02 Budget to counter the use of discretionary trusts to avoid stamp duty. The proposed measures are aimed at stamp duty avoidance practices involving the manipulation of discretionary trusts to acquire, or acquire the use of, trust property through the addition of an unrelated beneficiary or a person gaining control of the trust.
2. The measures commence from 29 May 2001 (being the date they were announced).
3. Revenue Circular RA001, which sets out information on the revenue circular system, is incorporated into and is to be read as one with this Circular.

Discretionary Trusts

4. The proposed measures apply in relation to:
   - the addition of a beneficiary;
   - a change in control of a beneficiary and trustee; and
   - the stamp duty exemption for trust distributions for no consideration.

The Addition of a Beneficiary

5. Stamp duty is payable on the dutiable property and marketable securities vested in the trustee or trustees of a discretionary trust where a new beneficiary (or class of beneficiaries) is added to the trust that is not a member of the family that the discretionary trust was intended to benefit.
6. Stamp duty is payable as if the trust property was conveyed to the beneficiary or class of beneficiaries that were added to the trust.
7. A family member has been broadly defined to include:
   a) children (including adopted and step children) and grandchildren of a beneficiary;
   b) brothers, sisters (and their children) of a beneficiary; and
   c) a spouse of a beneficiary or the above.
8. However, to ensure that there are no unforeseen circumstances, the new arrangements will not apply if the Commissioner is satisfied that the addition is <u>not</u> part of a scheme that has a <u>collateral purpose</u> of avoiding stamp duty.

Change in Control of a Beneficiary and Trustee

9. Stamp duty is payable on the dutiable property and marketable securities vested in the trustee or trustees of a discretionary trust where the same person(s) <u>obtain control</u> of:
   a) an incorporated beneficiary of the trust; **and**
   b) the trustee, **and**

   the change in control of the beneficiary or trustee has occurred within a 12 month period.

10. A person obtains control over an incorporated beneficiary or trustee by obtaining the ability to directly or indirectly exercise or substantially influence the exercise of:
    a) the majority of voting power at meetings of directors of the incorporated body; or
    b) more than 50% of the voting power of shares on issue by the incorporated body.
11. A change in control of a trustee includes:
    a) the appointment of a new trustee;
    b) a change of the person, or change in control of the person, who has the power to appoint and revoke the appointment of the trustee;
    c) a variation in, or the transfer or other disposition of, that power; or
    d) a change of a person, or change in control of a person, who is in a position to influence (directly or indirectly) a determination by the trustee to vest the whole or part of the trust property.
12. Stamp duty is payable as if the trust property was conveyed to the person or persons who obtained control of the beneficiary and the trustee.
13. Again, to ensure that there are no unforeseen circumstances, the new arrangements will not apply if the Commissioner is satisfied that the changes are <u>not</u> part of a scheme that has a <u>collateral purpose</u> of avoiding stamp duty that would otherwise be payable on the transaction.

Trust Distributions

14. The *Stamp Duty Act* currently provides an exemption from stamp duty on the distribution of trust property from a trustee to a beneficiary where the distribution is not made for valuable consideration.
15. In relation to discretionary trusts, this exemption will now be limited to the circumstance where the beneficiary is a natural person who is <u>not</u> acting in a fiduciary capacity. This means that the exemption will not apply in relation to a distribution to an incorporated beneficiary or to a beneficiary who receives the property as trustee of another trust.
16. Furthermore, the proposed amendments clarify that the meaning of valuable consideration (as used for the purposes of the exemption) includes money or moneys worth and the forgiveness or release from a debt, gift or legal obligation (including the trustee's right of indemnity and exoneration against a beneficiary).

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Reference should be made to the *Taxation (Administration) Amendment Bill 2001* and the *Stamp Duty Amendment Bill 2001* for precise details on the proposed amendments. For further information, please contact this office on ☎ (08) 8999 7949 or ☎ 1300 305 353.

COMMISSIONER OF TAXES