NORTHERN TERRITORY TREASURY

CONVEYANCE DUTY & MISCELLANEOUS STAMP DUTIES
2001-02 Budget Amendments

Taxation (Administration) Act / Stamp Duty Act

Issued: May 2001 **Revenue Circular: SD 017**

TERRITORY REVENUE MANAGEMENT

Postal Address:	Commissioner of Taxes, GPO Box 154, Darwin NT 0801	Phone:	(08) 8999 7949 / 1300 305 353
Office Location:	Commissioner of Taxes, 38 Cavenagh Street, Darwin NT	Facsimile:	(08) 8999 5577
Internet Address:	www.nt.gov.au/ntt/revenue	Email:	ntrevenue.ntt@nt.gov.au

Purpose of this Circular

1. This circular provides information on proposed amendments to the *Taxation (Administration) Act* and the *Stamp Duty Act* to implement stamp duty changes announced in the 2001-02 Northern Territory Budget.

2. 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.

Commencement

3. Most measures commence from 1 July 2001. However, the anti-avoidance measures (regarding discretionary trusts and *'in specie'* distributions on a company winding up) take effect from 29 May 2001 (being the date of their announcement in the Budget).

Proposed Changes

4. In summary, the Budget measures:

   a) counter arrangements that use vestings and distributions to non-family members from discretionary trusts to avoid stamp duty on the transfer of dutiable property;

   b) restrict the stamp duty exemption for *'in specie'* distributions of company property;

   c) clarify the method of apportionment for a conveyance of certain dutiable property (eg. intangible property) situated in the Territory or related to a business undertaking carried on in the Territory;

   d) change the due date for the lodgement and payment of stamp duty to 60 days from the date of execution of the instrument;

   e) clarify that an application to transfer a fishing licence or rights relating to that licence must be stamped prior to registration;

   f) ensure that all Territory statutory licences are subject to duty whether or not they are used in connection with a business undertaking in the Territory;

   g) ensure that the value of all mining tenements, rights of a similar nature and mining information, held by a company or a private unit trust outside the Territory is taken into account when determining whether the company / private unit trust is “land rich”;

   h) remove the imposition of stamp duty on the transfer of corporate debt securities; and

   i) provide two miscellaneous administrative amendments.

Discretionary Trusts - anti-avoidance measures

5. These measures are aimed at countering 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. More detail is set out in Revenue Circular SD 015 (Conveyance duty & Discretionary trusts - anti-avoidance measures).

Limiting the exemption for '*in specie'* distributions from a company

6. Item 9 of Schedule 2 to the *Stamp Duty Act* provides an exemption from stamp duty on a transfer during the winding up of a company of its property to a shareholder of the company where the shareholder is entitled to the property on a distribution 'in specie'. That exemption will now be conditional upon the Commissioner being satisfied that the transfer is not part of a tax avoidance scheme. More detail is set out in Revenue Circular SD 016 (Stamp duty exemption for *'in specie'* distributions).

Apportionment of Intellectual and Industrial Property

7. Section 9BA of the *Taxation (Administration) Act* provides for stamp duty to be assessed on the proportion of dutiable property situated in the Territory or related to a business undertaking carried on in the Territory.

8. For the purposes of this section, the following statutory formulae are provided to give further direction as to how much industrial and intellectual property (such as goodwill) is situated in the Territory or related to the business undertaking carried on in the Territory. This measure will present greater certainty in determining the stamp duty payable in the Territory when, for example, a national business is sold.

9. Where the principal place of business is <u>in the Territory</u>, the proportion of dutiable property is to be calculated in accordance with the following formula:

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

where:

V is the greater of the consideration for or the unencumbered value of all the industrial and intellectual property conveyed that would have been dutiable property had that property been wholly situated in the Territory or wholly related to the business undertaking carried on in the Territory;

TS is the volume or gross value of goods supplied and services provided by the business undertaking to <u>all its customers</u> during the last 3 completed financial years; and

IS is the volume or gross value of goods supplied and services provided by the business undertaking to its <u>interstate customers</u> during the last 3 completed financial years.

10. Where the principal place of business is <u>outside the Territory</u>, the proportion of dutiable property is to be calculated in accordance with the following formula:

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

where:

V and TS have the same meaning as provided in the paragraph 9 above; and

NTS is the volume or gross value of goods supplied and services provided by the business undertaking in relation to its <u>Territory customers</u> during the last 3 completed financial years.

11. The Commissioner is also able to determine the proportion of dutiable property on another basis if he is satisfied that it is more appropriate in the particular circumstances.

Due Date for Lodgement and Payment of Stamp Duty

12. The *Taxation (Administration) Act* currently requires a dutiable instrument to be lodged with the Commissioner for stamping within 30 days of its execution. Upon the Commissioner assessing the instrument, stamp duty is payable within 30 days of its assessment.

13. The new scheme condenses these time frames into one 60-day period. That is, an instrument is to be lodged with the Commissioner for assessment and duty paid within 60 days of the date of execution of the instrument. However, the Commissioner can allow for additional time to pay the duty where there are circumstances beyond the control of the taxpayer that have prevented lodgement and payment by the due date.

Application to Transfer a Fishing Licence

14. The *Taxation (Administration) Act* prohibits registration of a transfer instrument chargeable with duty unless it is stamped. The Budget measures ensure this requirement also applies to an application to transfer a fishing licence or a share, unit or other right attaching to that licence.

Territory Statutory Licences

15. Currently, the conveyance of Commonwealth and Territory statutory licences and permissions used in connection with a business undertaking carried on (or to be carried on) in the Territory or in the Territory and elsewhere are subject to stamp duty. However, there are instances where a statutory licence is issued in the Territory, but the business undertaking relating to the licence is carried on in another State or the ACT.

16. The measures ensure the conveyance of a statutory licence and permission given, granted or issued under a law of the Territory is subject to duty irrespective of where the business undertaking is carried on.

17. Commonwealth statutory licences and permissions will remain dutiable where they are issued in respect of a business undertaking in the Territory.

Application of the “Land Rich” Provisions

18. The “land rich” provisions provide a mechanism to cause the transfer of the majority interest in shares in a company or units in a private unit trust that is “land rich”, to be subject to duty at the higher conveyance rate of duty as if the land were transferred directly. Generally, a “land rich” company or trust is characterised by at least 60% of the assets of the company or trust comprising <u>land anywhere</u>, with the value of the land in the Territory being at least $500,000.

19. The measures extend the land rich provisions to ensure that the value of all mining tenements, rights and interests of a similar nature and mining information, held in and <u>outside</u> the Territory is to be taken into account when determining whether a company or unit trust is “land rich”. This is a technical correction to the measures introduced in May 2000 which included mining tenements in the "land rich" determination.

Corporate Debt Securities

20. Marketable securities duty will not be imposed on the transfer of corporate debt securities such as bonds, notes and other instruments that acknowledge the indebtedness of a company.

Miscellaneous Amendments

21. The miscellaneous measures:

    a) allow the Commissioner to waive stamp duty that is less than $5; and

    b) set the required period for retaining tax records for stamp duty accounted for by returns (including returns for duty on hiring arrangements, policies of insurance, and electronic debits) to 5 years. This aligns these duties with other Territory taxes.

Other Amendments

22. The Budget also proposed other stamp duty related changes. Details on these changes is set out in the following circulars:

    a) changes to stamp duty on hiring arrangements (see Revenue Circular SD 012)

    b) changes to stamp duty on policies of insurance (see Revenue Circular SD 013);

    c) removal of stamp duty exemptions from Government Business Divisions (see Revenue Circular SD 014);

    d) anti-avoidance measures to counter schemes that use discretionary trusts to avoid conveyance duty (see Revenue Circular SD 015);

    e) anti-avoidance measures to restrict the stamp duty exemption for *'in specie'* distributions of property upon a company winding up (see Revenue Circular SD 016).

23. Finally, under national tax reform arrangements between the Commonwealth and States, stamp duty on <u>quoted</u> marketable securities is being abolished from 1 July 2001. More detail on the extent of the abolition is set out in Revenue Circular SD 011.

****

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