

REVENUE CIRCULAR

RC-GEN-003:

2007-08 Budget amendments

Purpose

This Circular provides information on amendments to the *Taxation (Administration) Act* (TAA), the *Stamp Duty Act* (SDA), and the *First Home Owner Grant Act* (FHOGA) that implement the 2007-08 Budget revenue measures announced by the Treasurer on 1 May 2007.

Summary of measures

From 1 May 2007, the measures:

- a) increase the stamp duty First Home Owner Concession (FHOC) from the first \$225 000 of a property's value (a concession of up to \$8015.60) to the first \$350 000 of a property's value (a concession of up to \$15 312.50); and
- b) put in place a revenue protection measure to prevent the stamp duty corporate reconstruction exemption being utilised to frustrate the recovery of duty, tax or royalty that is payable to the Territory.

From 1 July 2007, the measures:

- a) abolish stamp duty on hiring arrangements;
- b) abolish stamp duty on the grant of a lease for nil or nominal consideration;
- c) exempt all types of guarantees from duty;
- d) ensure that anything that is physically fixed to land is regarded as 'land' for the purposes of the land holder provisions;
- e) clarify that stamp duty is imposed on the full value and best use of the land, which includes having regard to information that enhances the value of the land;
- f) clarify the stamp duty treatment of mining information in relation to mines that are not subject to the *Mining Act*;
- g) clarify that a person who has previously owned a home interstate under a long-term lease cannot qualify for the FHOC for a subsequent home purchase;
- h) clarify that consideration needs to actually have been paid for the purchase of a home prior to an applicant receiving the First Home Owner Grant (FHOG); and
- i) clarify that the amount of a FHOG overpaid to an otherwise eligible grant recipient can be recovered.

These measures are explained in more detail below.

Increase in the FHOC

The FHOC is increased from the first \$225 000 of a property's value (a stamp duty concession of up to \$8015.60) to the first \$350 000 of a property's value (a concession of up to \$15 312.50) for instruments executed on or after 1 May 2007.

There are measures to ensure that conveyances secured prior to 1 May 2007, including by a contract or an option agreement, will not be eligible for the increased concession. These transitional provisions will cause the lower FHOC of up to \$8015.60 in force prior to 1 May 2007 to apply in relation to instruments effecting a conveyance that are executed on or after 1 May 2007 if:

- that instrument replaces an instrument executed before 1 May 2007 to effect the conveyance of the same or substantially similar land; or
- the conveyee had an option, granted before 1 May 2007, to purchase the land (whether or not that option is exercised); or
- the conveyor had an option, granted before 1 May 2007, to require the conveyee or conveyees to purchase the land (whether or not that option is exercised).

For more detailed information on the FHOC please refer to Commissioner's Guideline CG-HI-001: *First Home Owner Concession and Principal Place of Residence Rebate*. This guideline can be obtained from the Territory Revenue Office website (www.revenue.nt.gov.au) or by contacting the Territory Revenue Office using the contact details provided on page 6 of the circular.

Corporate reconstruction exemption

From 1 May 2007, a condition is imposed on the stamp duty corporate reconstruction exemption. This condition causes the exemption to not be available if the Commissioner of Taxes is of the opinion that a purpose (collateral or otherwise) of the reconstruction is to avoid or frustrate the recovery of stamp duty, tax or royalty that is payable to the Territory.

The corporate reconstruction exemption is provided to remove stamp duty as an impediment to companies forming into efficient corporate structures. However, it was possible for a corporate group to utilise the exemption to move assets from a company with a taxation liability to another company and thereby 'strand' the taxation debt in a company with no assets.

Accordingly, the new condition prevents the corporate reconstruction exemption from being utilised in this manner.

Abolition of stamp duty on hiring arrangements

As part of the Territory's commitment to national tax reform that was announced in the 2005-06 Budget, stamp duty on hiring arrangements will be abolished from 1 July 2007.

This will mean that no stamp duty is payable on amounts received after 30 June 2007 by registered lenders who pay hiring duty on a returns basis. However, for other taxpayers where stamp duty has been paid or is payable upfront on an instrument subject to hiring duty, no refund will be available for amounts received after 30 June 2007 or that relate to the unexpired term of the arrangement. This treatment is consistent with that of other states and territories that have already legislated for the abolition of stamp duty on hiring arrangements.

Transitional provisions provide for the continued operation of the repealed hiring duty provisions of the TAA and SDA in respect of hiring arrangements made prior to 1 July 2007. The transitional provisions:

- require taxpayers who pay hiring duty on a monthly returns basis to still submit their June 2007 returns by 21 July 2007 and pay duty on those returns;
- require taxpayers to keep records in respect of hiring arrangements for five (5) years; and
- will retain current investigation powers to audit taxpayers in respect of stamp duty on hiring arrangements.

Abolition of stamp duty on the grant of a lease for nil or nominal consideration

Stamp duty will no longer be imposed on the grant of a lease for nominal consideration. This follows on from the abolition of stamp duty on rent paid for the grant and renewal of leases, which occurred on 1 July 2006.

Exemption for all types of guarantees from nominal stamp duty of \$20

Guarantees, such as security for repayment, are not subject to duty as there is no mortgage duty in the Territory. However, there is an anomaly in that where a guarantee is in the form of a deed it is subject to nominal duty of \$20. All guarantees in the form of a deed will be exempted from the nominal stamp duty of \$20 in order to be consistent with guarantees that are not in the form of a deed. However the exemption will only apply where such deeds do not also provide for another matter that is liable to ad valorem duty.

This ensures the consistent treatment of guarantees whether executed in the form of a deed or not, while also reducing business compliance costs.

Things physically fixed to land to be regarded as 'land' for the purposes of the land holder stamp duty provisions

The land holder stamp duty provisions seek to levy duty where a person obtains 50 per cent or more of an interest in a company or 20 per cent or more of an interest in a private unit trust that is entitled to land in the Territory that has a value of \$500 000 or more. These provisions are aimed at ensuring stamp duty is paid where the ownership of land is transferred indirectly through changing the ownership of the land holding company or trust.

Under the current land holder stamp duty laws, only land and fixtures to land are subject to stamp duty, but chattels are not. This is in contrast with direct conveyances, where many forms of property (including chattels when conveyed with other dutiable property) are subject to stamp duty.

The current law that determines whether a structure is a fixture to land or a chattel is in some circumstances unclear, which can lead to protracted and expensive valuation and legal disputes about the proper classification of buildings and other substantial structures on land.

Consequently, the meaning of 'land' has been amended to clarify this area by causing anything physically fixed to land that the land-holding corporation or trust is entitled, to be considered to be land for the purposes of the land holder stamp duty provisions. This occurs irrespective of whether the thing would not be considered to be a fixture through the application of the common law.

Full value and best use of the land

The stamp duty legislation has been amended to clarify that the best use and all the commercial advantages of the land, including information that enhances the value of the land, are taken into account when determining the unencumbered value of the land. This clarifies that the ordinary valuation principle of determining the highest and best use of the land is to be used in determining the encumbered value of the land.

The unencumbered value of land is determined by having regard to:

- the use of the land that would best enhance its commercial value; and
- commercial advantages (such as goodwill or licences) that attach to the location or other aspects of the land and would affect what a reasonable purchaser would be willing to pay for the land; and
- 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.

The provision assumes that a reasonable purchaser possesses knowledge of all existing information relating to the land. As a result, the value of the land will not be reduced by what may otherwise be the cost to reproduce or acquire this information.

Additionally when a taxpayer separately attributes a value to information that is relevant to the value of dutiable property, regard will be had to this in ascertaining the full value of the dutiable property. For instance, if separate amounts were attributed by a taxpayer to a mining tenement and to mining information, the value attributed to this information will be included in the value of the tenement.

Consistent treatment of mining information

The stamp duty legislation ensures that mining information will be taken into account when valuing a mine to assess the stamp duty payable on the conveyance of that mine. This amendment clarifies that this treatment of mining information occurs irrespective of whether the mine is or is not subject to the *Mining Act*.

Previous home owned interstate under a long term lease to cause ineligibility for the FHOC

The stamp duty legislation is amended to clarify that a person who has previously owned a home interstate under a long-term lease cannot qualify for the FHOC for a subsequent home purchase.

This change aligns the treatment of prior home ownership under long-term Crown leases granted by the Northern Territory or the Australian Government with such leases granted by other states or territories. It also aligns with the treatment of long-term leases under the FHOGA, on which the rules of the FHOC are based.

Consideration needs to have been paid prior to receipt of the FHOG

For a home buyer to receive the full \$7000 FHOG, the consideration for the purchase of the home must be at least \$7000. This is not an issue for nearly all first home buyers, as they usually provide substantially more consideration than \$7000. However, uncertainty could arise in transactions between related parties, such as parents and their children, about whether a home has been purchased or whether it has been provided as a gift.

There is also an issue relating to related party transactions, where a 'vendor-finance' arrangement can be entered into to disguise the fact that the home has been provided as a gift. In these situations, repayment of the 'finance' is never enforced or the 'loan' is cancelled once the FHOG has been received.

Consequently an amendment has been made to the FHOGA to clarify that consideration must actually be paid for the purchase of a home, prior to an applicant receiving the FHOG. This ensures that the FHOG can only be paid when a home is purchased and not when it has been gifted.

Recovery of an amount of a FHOG overpaid

It is clear under current legislation that ineligible FHOG applicants are required to repay the whole amount of the grant, however it is not sufficiently clear that an overpayment to an applicant, who was otherwise eligible to receive the grant, could be recovered.

Accordingly, the legislation is amended to make it clear that any overpayment of the FHOG can be recovered. For example, if a person was paid \$7000, but was only entitled to a grant of \$5000, it will now be clear that the \$2000 overpayment can be recovered. This reflects how the legislation was intended to operate.

Commissioner's Guideline CG-GEN-001, which sets out information on the revenue publication system, is incorporated into and is to be read as one with this Circular.

Refer to the *Revenue (Budget Initiatives) Amendment Act 2007* for precise details of the amendments.



Craig Vukman

COMMISSIONER OF TAXES

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For further information, contact the Territory Revenue Office

GPO BOX 1974

Darwin NT 0801

Email: ntrevenue.ntt@nt.gov.au

Phone: 1300 305 353

Fax: 08 8999 6395

Website: www.revenue.nt.gov.au
