



2004-05 Budget Amendments Various Stamp Duty Measures

This Circular provides information on proposed amendments to the Taxation (Administration) Act and the Stamp Duty Act to implement the various stamp duty measures announced as part of the 2004-05 Budget.

Summary of measures commencing 18 May 2004

In summary, the amendments are as follows.

- (a) The exemption for conveyances of property to effect a change of trustee of a trust has been conditioned to ensure the exemption only applies where the retiring trustee paid stamp duty, unless duty was not payable, when the trust acquired the property that is now being conveyed.
- (b) The exemption for conveyances and acquisitions arising from compromises and arrangements under the *Corporations Act* has been limited to Court approved compromises and arrangements made with a corporation's creditors or a class of creditors, which the Commissioner of Taxes is satisfied are not made for the purpose of avoiding tax.
- (c) The land rich stamp duty definition of "acquire" has been amended to align it more closely with the treatment of direct conveyances.
- (d) An exception to the land rich stamp duty provisions has been clarified so that it does not apply to certain types of acquisitions, and will only apply where the land that a land rich entity is entitled to could be conveyed directly to the person making the acquisition without incurring conveyance stamp duty.

Summary of measures commencing 1 July 2004

- (a) The exemption for conveyances of property to effect a change of trustee of a trust has been broadened to include the addition of trustees, subject to the same conditions that exist when there is an exempt change of trustee.
- (b) New stamp duty exemptions have been provided for a statutory vesting that occurs under certain provisions of the *Administration and Probate Act*, the *Associations Act* and the *Local Government Act*.
- (c) The land rich stamp duty provisions have been amended to provide a stamp duty credit for an acquisition that was exempted from land rich stamp duty under the corporate reconstruction provisions.

Change of trustee

A stamp duty exemption is available for the conveyance of property on the appointment of a new trustee to replace a retiring trustee. This exemption has the following three conditions:

- the conveyance is for no other purpose;
- no beneficial interest passes in the property conveyed; and
- the addition of the trustee is not part of a stamp duty avoidance scheme involving a discretionary trust (see Revenue Circular SD015 for more information).

Notwithstanding these conditions, this and similar exemptions have been exploited in the Territory and elsewhere through the use of complex stamp duty avoidance schemes.

2004-05 Budget Amendments

Various stamp duty measures - cont'd

Change of trustee cont'd

From 18 May 2004 the change of trustee exemption has been amended to ensure that it only applies where the trust acquired the property being conveyed by virtue of an instrument on which stamp duty was actually paid, has been exempted from duty or was not otherwise dutiable. In addition, minor changes have also been made to this exemption that ensure anti-avoidance provisions relating to discretionary trusts operate as intended.

Compromises and arrangements under the Corporations Act

The *Taxation (Administration) Act* provides that no stamp duty is payable on conveyances of dutiable property and marketable securities, including under the land rich stamp duty provisions, made by corporations pursuant to Court approved compromises or arrangements under the Commonwealth *Corporations Act*.

This concession was initially provided in the late 1980s in recognition of the fact that transfers of assets under compromises and arrangements were made mostly with creditors to settle a debt, and it would not be appropriate in such an instance to charge stamp duty. However, due to considerable corporations law reform, compromises and arrangements can now be used for numerous purposes and are often used, for example, to facilitate corporate takeovers. As a consequence, the conveyance of assets resulting from a takeover effected by a compromise or arrangement could be made stamp duty free, whereas buying a corporation using traditional means would be subject to stamp duty.

In order to ensure that the original policy intent of the concession is maintained, from 18 May 2004, the stamp duty concession applying to compromises and arrangements under the *Corporations Act* only applies to Court approved compromises and arrangements:

- made with a corporation's creditors or a class of creditors, and
- that the Commissioner of Taxes is satisfied is not a tax avoidance scheme or part of a tax avoidance scheme.

Land rich stamp duty definition of "acquire"

Conveyance stamp duty is payable on certain transactions relating to dutiable property (such as land and goodwill) and to marketable securities, as if those transactions were conveyances of the dutiable property or marketable securities. While the land rich provisions cover a wide range of circumstances that can result in a person obtaining an interest of 50 per cent or more in a corporation or unit trust, the provisions had not kept up with legislative changes relating to direct conveyances (see revenue circular SD 026 for more details on land rich stamp duty).

From 18 May 2004, the land rich provisions have been more closely aligned with the provisions for direct conveyances to ensure that the following four types of transactions, which are already treated as conveyances, are acquisitions for the purposes of the land rich provisions:

- declarations of trust (see Revenue Circular SD 007 for more information);
- the addition of a beneficiary or class of beneficiaries to a discretionary trust (see Revenue Circular SD 015);
- a change of, or in the control of, a trustee of a discretionary trust that occurs within 12 months of a change in control of a beneficiary of that trust (see Revenue Circular SD 015 for more information); and
- a statutory vesting (see Revenue Circular SD 025 for more information).

2004-05 Budget Amendments

Various stamp duty measures - cont'd

Land rich stamp duty exception

The land rich stamp duty provisions (see Revenue Circular SD026 for more details on land rich duty) do not apply where property owned by a land rich entity could have been conveyed directly to the person acquiring an interest in the entity without incurring a conveyance stamp duty liability.

The intent of this exception is to ensure that land rich stamp duty is not payable where a person could have directly acquired ownership in all of the land to which the land rich entity is entitled without conveyance stamp duty being payable. However, the exception requires clarification as to its scope and its operation.

From 18 May 2004, this condition has been clarified so that an acquisition of an interest in a land rich entity will not be subject to land rich duty if all of the land to which the entity is entitled, either directly or through its subsidiaries, could be conveyed to the person making the acquisition without incurring conveyance stamp duty.

However, this exception will not apply where:

- a conveyance of all of the land to which a land rich entity is entitled could only be exempted by operation of the corporate reconstruction exemption (see Revenue Circular SD 023 for more information). This is because the corporate reconstruction provisions are provided to enable efficient restructuring of businesses and it is necessary that such conveyances of land actually take place in conformity with that exemption to ensure that there is a genuine corporate reconstruction; or
- the acquisition in the land rich entity is made by way of a declaration of trust, the addition of beneficiaries to a discretionary trust, or a change in control of a discretionary trust. This is necessary to reduce stamp duty avoidance opportunities.

Addition of trustees

A stamp duty exemption is available for the conveyance of property on the appointment of a new trustee to replace a retiring trustee (refer to the "Change of Trustee" topic earlier in this Circular).

Prior to 1 July 2004 this exemption did not apply where an additional trustee is appointed to a trust and property is conveyed to them without the retirement of another trustee. From 1 July 2004, the change of trustee exemption is broadened to also apply to a conveyance made for the purpose of the appointment of an additional trustee. Of note, the four conditions that apply to the change of trustee exemption continue to apply.

In addition, a minor amendment that applies from 1 July 2004 has been made to an anti-avoidance provision relating to discretionary trusts as a consequence of this measure. The effect of the amendment is to ensure that a change of or in control of a trustee of a discretionary trust includes the addition of a trustee.

Exempt statutory vesting

Amendments were introduced as part of the 2003-04 Budget to clarify that a conveyance occurs where an entity is considered the successor in law of, or the continuation of or the same entity as, another entity in which property was previously vested (see Revenue Circular SD 025 for more information).

2004-05 Budget Amendments

Various stamp duty measures - cont'd

Exempt statutory vesting - cont'd

It is recognised, however, that it is not always appropriate for stamp duty to be paid where such a vesting occurs. Accordingly, exemptions are provided from 1 July 2004 where a statutory vesting arises on the:

- incorporation of an association, where property held by a person on behalf of the association vests in the association under the *Associations Act*;
- death of a person, where their property vests in the executor or the administrator of his or her estate under the *Administration and Probate Act*; and
- establishment of, or the variation to the area of, a community government council, where property that was owned by another council vests in the community government council under the *Local Government Act*.

Land rich stamp duty credit

Before determining the amount of land rich stamp duty payable on a "relevant acquisition", credits are provided for any marketable securities duty paid, duty paid on earlier acquisitions and interests acquired when a corporation was quoted on a stock exchange or when a unit trust was not a private unit trust (see Revenue Circular SD026 for more details on land rich duty).

It is possible to acquire an interest in a land rich entity that is exempt from land rich stamp duty because the acquisition is part of an exempt corporate reconstruction (see Revenue Circular SD023 for more information). However, if a further interest is acquired in a land rich entity after a corporate group is reconstructed, land rich duty may become payable on the total interest acquired, including the previously exempted acquisition.

To rectify this anomaly, from 1 July 2004, the land rich stamp duty provisions provide a credit for the duty payable in respect of an interest that has been acquired as part of a transaction that was exempted from land rich stamp duty under the corporate reconstruction provisions.

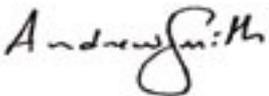
Other tax changes

Detail on other tax changes in the 2004-05 Budget can be found in the following circulars:

- PRT 012 for the pay-roll tax changes
- DT 001 for the debits tax changes

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.

Refer to the Taxation (Administration) Amendment Bill 2004 and the Stamp Duty Amendment Bill (No. 2) 2004 for precise details of the changes. For general information, please contact Territory Revenue Management on 1300 305 535.



Authorised by
the Commissioner of Taxes
June 2004