

REVENUE CIRCULAR

RC-GEN-002:

2006-07 Budget amendments

Purpose

This Circular provides information on amendments to the *Taxation (Administration) Act* (TAA), the *Stamp Duty Act* (SDA), the *Pay-roll Tax Act* (PTA), and the *Mineral Royalty Act* (MRA) that implement the 2006-07 Budget revenue measures announced by the Treasurer on 2 May 2006.

Summary of measures

From 1 July 2006, the measures:

- a) abolish stamp duty on conveyances of unquoted marketable securities;
- b) abolish stamp duty on rent paid for the grant and renewal of leases and franchises;
- c) allow a refund of stamp duty on the issue or transfer of a motor vehicle certificate of registration completed solely to rectify an error;
- d) clarify the method for valuing conveyances of part interests in property for stamp duty purposes;
- e) clarify that a surrender of dutiable property is dutiable as a conveyance and define certain types of actions as surrenders for the purposes of stamp duty;
- f) abolish the sale and use of adhesive duty stamps;
- g) clarify that stamp duty and payroll tax assessments and decisions are not susceptible to court challenges other than through the objection and appeal process;
- h) remove the prohibition against recovering penalties where a person is prosecuted under the TAA;
- i) allow a stamp duty assessment to be reactivated following a refund or remission of stamp duty for a transaction that was not completed, where there is a subsequent sub-sale or conveyance of property by direction;
- j) allow the Minister to appoint a person to the statutory position of Mineral Royalty 'Secretary' under the MRA;
- k) increase the payroll tax exemption threshold from \$1 million to \$1.25 million; and
- l) ensure that indirect payments made to company directors and members of the governing body of a company are subject to payroll tax.

These measures are explained in more detail below.

The 2006-07 Budget measures also include a number of changes to the stamp duty 'land rich' provisions and to the Territory's first home owner grant, stamp duty first home owner concession and stamp duty principal place of residence rebate provisions. Further detail on these changes is provided in Revenue Circulars RC-SD-001 and RC-HI-002 respectively.

These circulars can be obtained from Territory Revenue Management website (www.revenue.nt.gov.au) or by contacting Territory Revenue Management using the contact details provided on page 5 of this circular.

Stamp duty on conveyances of unquoted marketable securities

The Treasurer, as part of the Territory's response to National tax reform, announced in the 2005-06 Budget that the Government would abolish the application of stamp duty on unquoted marketable securities from 1 July 2006.

Accordingly, from 1 July 2006 the conveyance of shares and units of corporations and trusts that are not quoted on a recognised financial market will no longer be subject to stamp duty.

Stamp duty on rent paid for the grant and renewal of leases and franchises.

Also as part of national tax reform, the Treasurer announced in the 2005-06 Budget that Government would abolish duty on rent paid for the grant and renewal of leases and franchises ('lease duty') from 1 July 2006.

While lease duty is to be abolished, conveyance stamp duty will continue to apply to:

- the conveyance of a franchise or a lease of land; and
- the grant of a lease of land where non-rent consideration, or only nominal consideration, is paid for that lease.

The continued imposition of duty at conveyance rates for certain lease and franchise transactions is in line with the approach adopted by other states that have already abolished lease duty.

A refund of lease duty will not be available for the portion of any lease or franchise that extends beyond 1 July 2006, irrespective of when the lease or franchise was entered into. This approach ensures that all grants of leases executed prior to the abolition of lease duty are treated in the same manner and is consistent with the other states that have already abolished lease duty.

A stamp duty refund will not be available for the cancellation of leases executed prior to 1 July 2006 where the lessee or an 'associate' of the lessee remains in occupation of the leased property. This provision prevents a person from attempting to avoid or reduce the amount of duty that they are required to pay on leases executed prior to 1 July 2006, by either determining or cancelling the lease in order to obtain a refund or remission of duty.

From 1 July 2006, leases with unascertainable rent will no longer be required to be resubmitted for 'upstamping' where the rent actually paid under the lease differs from that on which stamp duty has been paid. However, lessees retain the ability to resubmit their lease in order to obtain a refund of overpaid duty resulting from the lessee paying less rent than was estimated by the Commissioner of Taxes.

Motor vehicle certificates of registration that rectify errors

A stamp duty exemption is now available for the issue or transfer of a motor vehicle certificate of registration completed solely to rectify an error in another motor vehicle certificate of registration. This is consistent with the stamp duty treatment of other instruments that are executed solely to correct an error contained in an earlier instrument on which full stamp duty has been paid.

Valuation of part interest in property

The Commissioner of Taxes' current practice of determining the value of conveyances of part interests in property has been codified. This approach is to determine the unencumbered value of the whole property and then apportion it according to the interest that is being conveyed.

For example, a parcel of land has an unencumbered value of \$1 million, and is held by persons A and B as tenants in common in equal shares. If person A was to convey their interest in the parcel to person B, the unencumbered value of person A's interest in the land would be \$500 000 (that is, half of \$1 million).

Surrenders of dutiable property are conveyances for stamp duty purposes

A surrender of dutiable property is one transaction that, prior to 1 July 2006, was not specifically set out in the statutory definition of 'conveyance' in section 4(1) of the TAA, but nonetheless was generally understood to be a conveyance under the common law, and so liable to stamp duty.

Following a decision of the Queensland Supreme Court (*McDonald's Australia Holdings Ltd & Anor v Commissioner of State Revenue* 2004 ATC 4970) doubt was cast on whether the extinguishment of certain rights to dutiable property is a conveyance at common law that is subject to stamp duty.

Accordingly, the definition of conveyance has been amended to clarify that the surrender of dutiable property is a conveyance under the stamp duty legislation. In addition, the term 'surrender' has been defined to include certain types of actions such as the abandonment, abrogation, cancellation, extinguishment, forfeiture, redemption or relinquishment of rights to dutiable property. The amendments also establish that where a surrender amounts to, or has the same effect as, a conveyance of dutiable property, it will be treated as such a conveyance.

Sale and use of adhesive duty stamps

In recent years stamp duty has been abolished on all but two types of documents upon which adhesive stamps may be used, namely deeds and instruments appointing trustees. From 1 July 2006, the sale or use of adhesive stamps is abolished, which means that all dutiable instruments are now required to be stamped by the Commissioner of Taxes or an authorised representative.

Refunds are available for unused stamps, spoilt stamps or stamps affixed in error. Applications for refunds must be made before 1 July 2007 and be accompanied by the stamps for which a refund is sought.

Prevent attempts to circumvent the objection and appeal process

The TAA and the PTA provide for the review of taxation decisions and assessments by a process of objection. Where a taxpayer is dissatisfied with the objection decision they have a further right of appeal to either the Taxation and Royalty Appeals Tribunal or to the Supreme Court.

All other Australian jurisdictions (including the Commonwealth) have provisions in their taxation legislation which provide that tax assessments are not susceptible to challenge except in proceedings under the appeal and review mechanisms provided by that legislation. It has always been considered that the Territory's law also operated in this manner.

However, the TAA and the PTA have been amended to remove doubt that assessments and decisions are not susceptible to challenge except under the legislated objection and appeal process.

Removal of prohibition against recovering penalties where prosecution commenced

The prohibition against recovering penalties that have been imposed in an assessment by the Commissioner of Taxes where a person is prosecuted has been removed. This change applies to prosecutions that have commenced on or after 1 July 2006, irrespective of when an offence is allegedly committed. This treatment recognises that an offence may allegedly have been committed prior to 1 July 2006, but was not identified until after that date or that prosecution action did not commence until after that date.

Further, as a consequence of allowing these prosecutions to occur, the offence provisions relating to evasion and providing false and misleading information have been amended so that the Court will no longer be able to impose a penalty amount that is based on the amount of tax or duty evaded or attempted to be evaded. However, the Court will still be able to impose the requisite penalty generally applied for this type of offence. This change is made in recognition that such penalties should be imposed by the Commissioner, and that it would be unfair for the both the Commissioner and the Court to impose a penalty in relation to the same subject matter.

Reinstatement of assessments following a refund or remission of duty where there has been a sub-sale or conveyance by direction

The Commissioner of Taxes must provide a remission or refund of the stamp duty paid on certain documents where the transaction to which they relate has been cancelled or rescinded.

The stamp duty refund and remission provisions have been amended to allow the Commissioner to reinstate an assessment, as if the refund or remission had never occurred, in circumstances where the Commissioner provides a refund or remission and then subsequently forms the opinion that there was a sub-sale or conveyance by direction of the property underlying the original assessment.

The amendment also allows the Commissioner to reinstate the assessment at any time, irrespective of the limitation period usually placed on reassessments of stamp duty.

This recognises that stamp duty has been avoided in these circumstances, and that no limitation should exist to prevent the Commissioner from recouping duty that is rightfully payable.

Appointment of mineral royalty Secretary

The *Mineral Royalty Act* has been amended to allow the Minister responsible for that Act to appoint a person to be the mineral royalty Secretary. This will allow for the alignment of the statutory position of 'Secretary' with that of the Commissioner of Taxes, such that the person who is the Commissioner can also become the mineral royalty Secretary. The need for this change will facilitate the reassignment of the responsibility for the position of mineral royalty Secretary within Northern Territory Treasury to provide for the more efficient administration of mineral royalties.

Payroll tax exemption threshold increased to \$1.25 million

From 1 July 2006, the payroll tax general exemption threshold increased to \$1.25 million. Consequently, an employer's fixed monthly general exemption threshold will increase from a maximum of \$83 333 to a maximum of \$104 167. This means that an employer who pays or is liable to pay total Australian wages in excess of \$24 030 in a week (where some of those wages are Territory wages) is required to register with the Commissioner of Taxes as an employer.

Where the total Australian wages of an employer (or designated group employer for a group) exceed the general exemption threshold, payroll tax is payable on the Territory component of the wages (currently at a rate of 6.2 per cent). Where an employer pays wages in the Territory only, payroll tax is only payable on the component of the wages that exceed the general exemption threshold. Where an employer pays wages in the Territory and interstate, the general exemption threshold is reduced proportionately based on the employer's ratio of Territory to interstate wages. For example, if an employer pays 30 per cent of its wages in the Territory and 70 per cent interstate, the general exemption threshold is reduced proportionately (that is, by 70 per cent).

For more information on the calculation of payroll tax, the general exemption threshold or registration as an employer, see I-PRT-001: *Employers guide to payroll tax in the NT* available from the Territory Revenue Management website (www.revenue.nt.gov.au) or by contacting Territory Revenue Management using the contact details provided on page 5 of this circular.

Payments to company directors and others members of a governing body

Payroll tax is a tax levied on 'wages' (which are broadly defined to include wages, salary, commission and a number of other payments) paid or payable by employers in relation to services provided by their employees. This includes payments made directly or indirectly to an employee by an employer or someone else on behalf of that employer. This approach ensures that payroll tax cannot be avoided even if an employer separates itself from the payment of wages to its employees.

The PTA has been amended to ensure that indirect payments made to company directors and other members of the governing body of a company are subject to payroll tax whether these payments are made directly or indirectly to them by the company or someone else on behalf of the company. This change will make the treatment of such payments the same as that for indirect payments made to an employee.

Commissioner's Guideline CG-GEN-01, 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 *Treasury Legislation and Consequential Amendment Act 2006* for precise details of the amendments.



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