



2002-03 Budget Amendment Conveyance duty and miscellaneous duties

This circular provides information on amendments to the Taxation (Administration) Act and the Stamp Duty Act to implement the various stamp duty measures announced as part of the 2002-03 Budget.

Commencement

Most of the measures commence from 10 October 2002. However, land rich stamp duty anti-avoidance measures, the home ownership concession measures and the measures regarding franchises all commence from 20 August 2002 (being the date of their announcement in the Budget). The exemption for wet hires commenced from 18 July 2002.

Summary

In summary, the amendments are as follows.

- (a) The property value threshold of the first home owner stamp duty concession has increased from \$80 000 to \$125 000, and the eligibility criteria have been aligned with those of the \$7 000 First Home Owner Grant. A new \$1 500 Principal Place of Residence Rebate has also been introduced. See Revenue Circular SD 018 for more information.
- (b) Stamp duty on the grant and renewal of franchises is assessed by levying duty at the lower lease duty rate, rather than at conveyance duty rates. See Revenue Circular SD 019 for more information.
- (c) The Territory Government's insurance stamp duty exemption and duty on the transfer or reinsurance of a policy of life insurance no longer applies. See Revenue Circular SD 020 for more information.
- (d) Certain loop holes in the "land rich" stamp duty provisions have been closed, the period in which a "majority acquisition" can occur has been extended from one to three years, and a minor inconsistency in the treatment of majority acquisitions has been rectified. See Revenue Circular SD 021 for more information.
- (e) The stamp duty treatment of acquisitions of partnership interests has been clarified. See Revenue Circular SD 022 for more information.
- (f) An exemption from stamp duty for transfers of assets arising from the reconstruction of certain corporate groups has been provided. See Revenue Circular SD 023 for more information.
- (g) Hiring duty on "wet hires" has been removed and registered lenders are able to receive the benefit of the \$9 000 stamp duty hiring cap in certain circumstances. Details follow.
- (h) Double duty on certain transactions involving custodians and responsible entities of registered managed investment schemes has been removed. Conveyance duty payable on the retirement and replacement of responsible entities and custodians has also been removed. Details follow.
- (i) Stamp duty is able to be refunded where Family Court orders are obtained within 12 months of the transfer of marital property. Details follow.

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- (j) The stamp duty consequences of transfers of businesses pursuant to the *Financial Sector (Transfer of Business) Act* have been clarified. Details follow.
- (k) The exemption for grants of estates in land from the Crown has been clarified to ensure it does not apply where the grant has the effect of a transfer from a third party. Details follow.
- (l) Instruments that have the effect of a deed due to the *Land Title Act* are not liable to nominal deed duty. Details follow.
- (m) Stamp duty outgoings under a lease are exempt from duty. Details follow.

Hiring duty

Stamp duty is no longer payable on "wet hire" arrangements for rental payments due on or after 18 July 2002. Hiring duty remains payable on receipts that accrued up to 18 July 2002. A "wet hire" occurs where an operator is also provided with the hired equipment.

From 10 October 2002, registered hirers are able to claim the \$9 000 cap on duty payable on a new class of hiring arrangement known as a "special hiring arrangement". In effect this means the hiring duty payable on a "special hiring arrangement" with total rent of greater than \$500 000 will be capped at \$9 000. However, such an arrangement must be submitted to Territory Revenue Management for stamping.

"Special hiring arrangements" are written hiring arrangements that describe goods in such a way as to enable the nature or character of the goods to be clearly and readily identified. However, it does not include an arrangement under which:

- the goods may, at any time, be replaced in whole or in part by other goods, except to the extent that the agreement allows replacement if the goods—
 - are lost, destroyed or stolen
 - fail or malfunction in the course of operation
 - are temporarily replaced during the servicing, maintenance or repair of the goods or
 - are otherwise fit for the purpose for which they were hired, or
- other goods, whether of the same or a different type, may additionally be provided.

In effect this means master lease arrangements will fall outside of this definition.

Managed investment schemes

Registered "managed investment schemes" are investment schemes governed by rules in the Commonwealth *Corporations Act*. Pursuant to these rules, scheme assets may be held by a "custodian" on behalf of the "responsible entity" to clearly distinguish scheme property from other property of the responsible entity.

Where a responsible entity enters into an agreement for the purchase of dutiable property that is to be held by a custodian, the property is to be transferred into the name of the custodian. This leads to an incidence of double duty, as both the agreement in the hands of the responsible entity and the transfer in the hands of the custodian are liable for conveyance stamp duty. From 10 October 2002, nominal duty of \$20, rather than ad valorem conveyance duty, applies to the second of these transactions, thus ensuring that conveyance duty is only paid once in this circumstance.

In addition, conveyances of dutiable property resulting from the retirement of responsible entities and/or custodians could also result in stamp duty being payable at conveyance rates. From 10 October 2002, where the Commissioner of Taxes is satisfied that the replacement or

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appointment of a custodian or responsible entity is the only change in interests, nominal duty of \$20 is payable, rather than stamp duty at conveyance rates.

Family Court Orders—refunds of duty

The Commonwealth *Family Law Act* provides an exemption from stamp duty on the conveyance of property due to a marriage breakdown. This exemption is conditional on the transfer being pursuant to Family Court orders. The exemption does not apply where a transfer occurs first and then orders are made after the transfer.

From 10 October 2002, a refund of stamp duty paid by a spouse on a conveyance of dutiable property from the other spouse is available, provided that the parties obtain Family Court orders consistent with the conveyance within twelve months after that conveyance. This refund is not available on instruments executed before 10 October 2002.

Transfers of business under the *Financial Sector (Transfer of Business) Act*

Under the Commonwealth *Financial Sector (Transfer of Business) Act*, certain financial sector organisations (including banks, life insurers and credit unions) may transfer their business to a similar organisation when given permission to do so by the Australian Prudential Regulation Authority (“APRA”).

Where the transfer is voluntary, the Act provides that the receiving organisation obtains the assets and liabilities of the transferring organisation as a successor in law without any transfer, conveyance or assignment. While stamp duty is payable on such transfers under the existing stamp duty legislation, amendments have been inserted to clarify the operation of the stamp duty legislation in relation to voluntary transfers.

In certain circumstances, APRA will force a financial sector organisation to acquire the assets of another such organisation. From 10 October 2002, such **involuntary** acquisitions occurring under the *Financial Sector (Transfer of Business) Act* will be exempt from duty.

Grants of Crown leases and freehold title

The *Stamp Duty Act* provides a broad exemption for grants of interests in land from the Territory. However, duty is payable where monetary consideration is given or agreed to be given for grants of both absolute title and convertible Crown leases.

From 10 October 2002, the exemption will not apply where freehold title or lesser estates in land from the Crown is granted after the surrender of a convertible Crown lease and the grantee of the interest in land was not the person who surrendered the lease. However, this is conditional upon whether, in the opinion of the Commissioner of Taxes, the grant amounts to or has the effect as if it were, a transfer of an estate in the land from a third party.

Deeds—operation of the *Land Title Act*

Currently, all instruments capable of registration under the *Land Title Act* are deemed to be deeds by that Act. As a consequence, unless the instrument is otherwise taxable or exempt from stamp duty, deed duty of \$20 must be paid.

The amendments ensure that instruments that are deemed to be deeds solely by operation of the *Land Title Act* will no longer be deeds for the purpose of assessing stamp duty. However, an instrument that is signed, sealed and delivered, or would otherwise be a deed if the *Land Title Act* did not operate, will continue to be liable for deed duty even though it may be capable of registration under that Act.

Leases—stamp duty on outgoings

The term “rent” takes its meaning from the common law, and Courts have held that the term may include ordinary outgoings under a lease of land. However, it has not been the practice of the Commissioner of Taxes to assess these outgoings where they are separately identified.

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Accordingly, this Budget measure clarifies that reasonable outgoings payable on a lease of land will not comprise "rent" for the purpose of assessing stamp duty where they are separately identified.

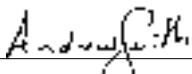
Other stamp duty changes

More detail on the changes to the home owner stamp duty concessions, the stamp duty treatment of franchises, insurance stamp duty, land rich provisions, the stamp duty treatment of partnerships and the corporate reconstructions exemption can be found in the following circulars:

- SD 018 for home owner concession changes
- SD 019 for the treatment of franchises
- SD 020 for the insurance stamp duty changes
- SD 021 for the land rich changes
- SD 022 for the treatment of partnerships and
- SD 023 for the corporate reconstructions exemption.

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 Act 2002* and the *Stamp Duty Amendment Act (No. 2) 2002* for precise details of the changes. For general information, please contact TRM on 1300 305 353.



Authorised by

the Commissioner of Taxes

4 November 2002