REVENUE CIRCULAR

RC-GEN-009:

2009-10 BUDGET MEASURES

Purpose

This Circular provides information on amendments to the *Taxation Administration Act*, the *Stamp Duty Act* and the *First Home Owner Grant Act* that implement the 2009-10 Budget revenue measures announced by the Treasurer on 5 May 2009.

Landholder stamp duty measures

The following changes have been made to landholder stamp duty to better align the treatment of direct and indirect transfers of land.

The *Stamp Duty Act* is amended to:

a) impose landholder stamp duty on the takeover of a corporation or unit trust that is listed on a recognised financial market, such as the Australian Securities Exchange, from 6 May 2009. This includes a merger vesting of shares, which is one way that a takeover can be achieved;
b) change the application of the landholder provisions so that the provisions apply to acquisitions of interests in unlisted unit trusts of 50 per cent or more, with effect from 6 May 2009. The acquisition threshold previously was 20 per cent for private unit trusts;
c) prevent the avoidance of landholder stamp duty where a person acquires control of a corporation or unit trust without acquiring an entitlement to the property of the entity on its winding up or termination;
d) prevent the avoidance of landholder stamp duty where an arrangement exists that has the effect of reducing a person's entitlement (including to nil) on the winding up of a corporation or the termination of a trust; and
e) enable listed stapled entities to reorganise by way of 'top hatting', with a new head trust being interposed or an existing trust elevated to head trust, without landholder stamp duty being payable.

Further details on these changes will be provided in Revenue Circular RC-SD-003.

Merger vesting

From 6 May 2009, clear rules have been introduced regarding the imposition of stamp duty on mergers. The rules make it clear that a conveyance of dutiable property occurs when there is a 'merger vesting' of property. This approach is consistent with the Territory's existing provisions imposing stamp duty on the statutory vesting of property and with merger provisions existing in Western Australia, New South Wales and Victoria.

In summary a ‘merger vesting’ of property occurs in the following circumstances:

- A merger of two or more entities (the ***merging entities***) where another entity (***entity A***) results as a consequence of the merger is taken to be a merger vesting of all of the property of the merging entities in entity A.

- A merger of two or more entities (the ***merging entities***) with and into each other where each of the merging entities continues in existence is taken to be a merger vesting in the merging entities, jointly, of 50 per cent (in value) of all of the property of the merging entities.

- The merger of one or more entities (the ***merging entity or entities***) with and into another entity (***entity B***) is taken to be a merger vesting of all of the property of the merging entity or entities in entity B.

An entity for the purpose of the merger vesting provisions is a company or a unit trust scheme.

The Act defines the term ‘company’ to include a body, society, association, authority or institution, whether corporate or unincorporated. However, the term does not include a partnership. Partnership mergers are already provided for in sections 28 and 29A of the Act.

The Act defines the term ‘unit trust scheme’ to mean any arrangements made for providing, for persons having funds available for investment, facilities for the persons to participate, as beneficiaries under a trust, in any profits or income arising from the acquisition, holding, management or disposal of property pursuant to that trust.

Stamp duty exemptions extended to all charities

A number of stamp duty exemptions are provided to public benevolent institutions, religious institutions, public hospitals and schools. From 1 July 2009, other non-profit organisations having a sole or dominant purpose that is a charitable, benevolent, philanthropic or patriotic purpose will also be able to obtain these stamp duty exemptions (being, for lease, conveyance and motor vehicle registration stamp duty).

Consistent with the existing lease and conveyance stamp duty exemptions, the property being acquired must be used for purposes other than a commercial activity. That is, the lease and conveyance stamp duty exemptions will not apply where the property is used in a manner that competes with another entity’s business irrespective of how the entity uses any funds derived from this use.

Exempting caravans and other non-motorised trailers from motor vehicle registration stamp duty

From 1 July 2009, non-motorised trailers including, caravans, with a gross vehicle mass of no more than 4.5 tonne will be exempt from motor vehicle registration stamp duty.

Substituting a related purchaser without paying double stamp duty

Situations can arise where a person enters into an agreement to purchase property and then after receiving professional advice wishes to change the purchaser identified in the agreement.

From 1 July 2009, the original purchaser in an agreement may be substituted with a related person without double stamp duty consequences. The purchaser and the substitute may be in a family relationship or one of these parties may be a family company or family trust. However, certain rules must be followed.

A Commissioner's Guideline will be issued to provide more detailed information on how the 'substituted purchaser' provisions operate at the time the amendments to the Act become law. This Guideline will also cover the circumstances when a cancelled agreement must be lodged with the Territory Revenue Office (TRO). Cancelled agreements are also discussed below.

Remove the requirement to lodge cancelled agreements unless a sub-sale of property or conveyance by direction has occurred

Where an agreement to convey dutiable property is cancelled, the agreement is required to be lodged with TRO. The taxpayer is also able to apply for a remission of stamp duty otherwise payable.

From 1 July 2009, the requirement to lodge a cancelled agreement will be removed unless the agreement is cancelled to give effect to a sub-sale of the property or is the result of a conveyance by direction.

Where an agreement is cancelled after being assessed by TRO, the parties must lodge an application for a remission of duty.

Stamp duty treatment of residential leases

The stamp duty exemption for the lease of a building to be used for residential purposes has been removed. This exemption is technically unnecessary following the abolition of lease duty on rent from 1 July 2006. This also clarifies that all leases that are granted for valuable consideration in addition to, or instead of rent, are liable to conveyance stamp duty.

However, from 1 July 2009, an exemption will be provided to the grant or transfer of a lease of residential premises in a retirement village.

Exempt First Home Saver Accounts from life insurance duty

A range of institutions offer First Home Saver Accounts. These accounts assist Australians to save for their first home through a combination of Commonwealth Government contributions and low taxes. Unlike other institutions, accounts offered by insurance companies would be liable to life insurance duty.

To overcome this technicality, First Home Saver Accounts offered by life insurance companies will be exempt from life insurance duty. This measure takes effect from 1 October 2008, which is when the Commonwealth's First Home Saver Accounts Scheme commenced.

Eligibility to first home owner grant and first home owner concession

These measures will commence on a date to be fixed by the Administrator by *Gazette* notice. The date to be fixed will be after the expiry of the Commonwealth's first home owner boost scheme, which will be no sooner than 1 July 2009.

A person will not be eligible for the first home owner grant when the consideration or unencumbered value of the home, or building costs and land, is more than $750 000.

Similarly, a person will not be entitled to the stamp duty first home owner concession when the consideration or unencumbered value for the conveyance:

- of a home and land, is more than $750 000. This includes an off-the-plan contract, which is a contract for the purchase of a new home on a proposed lot on a plan of subdivision; and
- of vacant land is more than $385 000. A home must be built on the vacant land within 3 years.

A person who is not entitled to the first home owner concession may be entitled to the stamp duty principal place of residence rebate. For more detailed information on the first home owner concession and principal place of residence rebate please refer to Commissioner's Guideline CG-HI-001.

Consequential amendment resulting from the introduction of the *Taxation Administration Act*

The *Taxation Administration Act* will be amended to reinstate the Commissioner's ability to place a statutory charge on land the subject of a pre-1 January 2008 landholder transaction where a stamp duty liability is still outstanding.

Other revenue measures in the Budget

Also of note in the Budget is that:

- the 1.1 cent per litre on-road fuel subsidy ceases from 5 May 2009. For more detailed information please refer to Commissioner's Guideline *CG-FS-001: Territory on-road fuel subsidies*;
- the abolition of stamp duty on non-land business property has been deferred to 1 July 2012; and
- the Territory will further harmonise its payroll tax legislation, by introducing a new *Payroll Tax Act 2009* that is identical, as far as possible, with the payroll tax laws in New South Wales, Victoria, South Australia and Tasmania and consistent with Queensland.

Further information relating to payroll tax harmonisation will be published by 1 July 2009. Refer also to the Payroll Tax Bill 2009 and explanatory statement for precise details of the amendments.

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. All Circulars and Guidelines are available from TRO's website.

Refer to the Revenue Legislation Amendment Bill 2009 and explanatory statement for precise details of the amendments.

Craig Vukman

COMMISSIONER OF TERRITORY REVENUE

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For further information, contact the Territory Revenue Office

GPO BOX 1974	Phone: 1300 305 353
Darwin NT 0801	Fax: 08 8999 6395
Email: ntrevenue.ntt@nt.gov.au	Website: www.revenue.nt.gov.au