



AUSTRALIAN CAPITAL TERRITORY

Territory Owned Corporations (Amendment) Act 1997

No. 36 of 1997

An Act to amend the *Territory Owned Corporations Act 1990*

[Notified in ACT Gazette S195: 1 July 1997]

The Legislative Assembly for the Australian Capital Territory enacts as follows:

Short title

1. This Act may be cited as the *Territory Owned Corporations (Amendment) Act 1997*.

Commencement

2. This Act commences, or shall be taken to have commenced, on 1 July 1997.

Principal Act

3. In this Act, “Principal Act” means the *Territory Owned Corporations Act 1990*.¹

Insertion

4. Before section 29 of the Principal Act the following section is inserted in Part V:

Interpretation

- “28A. In this Part, unless the contrary intention appears—
- ‘Commissioner’ means the Commissioner for Australian Capital Territory Revenue;
- ‘income tax equivalent’ means an amount payable under paragraph 30B (2) (a);
- ‘relevant rate’ means the rate specified in, or ascertained in accordance with, the Treasurer’s instructions for the purposes of the provision in which the expression occurs;
- ‘Treasurer’s instructions’ means instructions issued by the Treasurer in accordance with section 30;
- ‘wholesale sales tax equivalent’ means an amount payable under subsection 30C (2).”.

Substitution

5. Section 30 of the Principal Act is repealed and the following sections are substituted:

Treasurer’s instructions

“30. (1) The Treasurer may issue instructions in writing in respect of guidelines, principles, practices and procedures to be observed by a Territory owned corporation in relation to—

- (a) the determination, calculation and payment of income tax equivalents and wholesale sales tax equivalents; and
- (b) any other matter connected with income tax equivalents or wholesale sales tax equivalents.

“(2) Treasurer’s instructions may be issued so as to—

- (a) apply at all times, at a specified time or for a specified period;
- (b) require a matter affected by them to be—
 - (i) in accordance with a specified standard or specified requirement; or
 - (ii) approved by a specified person or specified class of persons;

- (c) specify that a specified person or specified class of persons is to determine a specified matter; or
- (d) exempt from the provisions of the Treasurer's instructions, whether on specified conditions or unconditionally and either wholly or to such extent as is specified—
 - (i) a specified person or a specified class of persons;
 - (ii) a specified matter affected by them or a specified class of such matters;
 - (iii) a specified thing or a specified class of things; or
 - (iv) a specified act or a specified class of acts.

“(3) A Treasurer's instruction that is inconsistent with this Act or any other Act is invalid to the extent of the inconsistency.

“(4) A Treasurer's instruction to be complied with by a Territory owned corporation does not have any effect until a copy of it is provided to—

- (a) in the case of a subsidiary—the subsidiary or the corporation of which it is a subsidiary; or
- (b) in any other case—the corporation.

“(5) In this section, unless the contrary intention appears, a reference to a Territory owned corporation shall be taken to include a reference to a subsidiary of a Territory owned corporation.

Compliance with Treasurer's instructions

“30A. A Territory owned corporation or subsidiary shall ensure that it complies with any Treasurer's instruction that relates to it.

Income tax equivalents

“30B. (1) This section applies to a Territory owned corporation or subsidiary that, by reason only of being owned by or on behalf of the Territory, is not required to pay tax under the Commonwealth Tax Act.

“(2) Subject to this Act and the Treasurer's instructions—

- (a) a company to which this section applies shall pay to the Territory an amount equivalent to the tax that it would be liable to pay under the Commonwealth Tax Act if it were not such a company; and

- (b) the Commonwealth Tax Act applies in relation to the calculation, determination and payment of, and all other matters relevant to, an income tax equivalent as if a reference to the Commonwealth Commissioner of Taxation were a reference to the Commissioner or his or her delegate.

“(3) In addition to any other rulings that the Commissioner may make by virtue of the application of paragraph (2) (b), the Commissioner may, in respect of an income tax equivalent or for the purpose of determining whether an income tax equivalent is payable, specify whether an aspect of the Commonwealth Tax Act can be applied in relation to the calculation, determination and payment of an income tax equivalent payable by a particular Territory owned corporation or subsidiary or by Territory owned corporations and subsidiaries generally and, if it can be applied, how it is to be applied.

“(4) In this section—

‘Commonwealth Tax Act’ means the *Income Tax Assessment Act 1936* of the Commonwealth together with any other law of the Commonwealth relating to income tax.

Wholesale sales tax equivalents

“30C. (1) This section applies to a Territory owned corporation or subsidiary that, by reason only of being owned by or on behalf of the Territory, is not required to pay tax under the laws of the Commonwealth relating to goods and services.

“(2) Subject to this Act and the Treasurer’s instructions, a corporation or subsidiary to which this section applies shall pay to the Territory an amount calculated in accordance with the Treasurer’s instructions to be equivalent to the value of the benefit gained by the corporation or subsidiary because of any exemption from sales tax that would otherwise have been payable under the laws of the Commonwealth relating to goods and services.

Payment of tax equivalents

“30D. The payment of an income tax equivalent or a wholesale sales tax equivalent shall be at the times and in the manner specified in the Treasurer’s instructions.

Penalty for late payment

“30E. (1) If a Territory owned corporation or subsidiary does not pay an amount, or part of an amount, payable as an income tax equivalent or a wholesale sales tax equivalent by the date on which it is due, interest is due and payable on the amount unpaid at the relevant rate from that day to and including the day on which it is paid.

“(2) A Territory owned corporation or subsidiary is not liable to pay interest under subsection (1) if the Commissioner so determines.

Variation of tax equivalents

“30F. (1) Subject to the Treasurer’s instructions, the Commissioner may vary an original tax equivalent if satisfied that it has been calculated incorrectly.

“(2) The Commissioner shall give the relevant corporation or subsidiary notice of a variation under subsection (1).

“(3) If a Territory owned corporation or subsidiary has paid the whole or part of an original tax equivalent and that whole or part is greater than the varied tax equivalent—

- (a) the difference between the amount so paid and the varied tax equivalent accrues interest at the relevant rate from the date of the payment of the whole or part to and including the date of repayment of an amount equivalent to that difference; and
- (b) the Commissioner shall pay to the corporation or subsidiary an amount equivalent to the difference between the whole or part paid and the varied tax equivalent and any interest accrued in accordance with paragraph (a).

“(4) If an original tax equivalent is less than a varied tax equivalent—

- (a) the difference accrues interest at the relevant rate from the date on which the original tax equivalent was due to be paid to and including the date of repayment of an amount equal to the difference; and
- (b) the relevant Territory owned corporation shall pay to the Commissioner an amount equal to the difference between the original tax equivalent and the varied tax equivalent and any interest accrued in accordance with paragraph (a) in the manner and no later than at the times determined by the Commissioner.

“(5) In this section—

‘original tax equivalent’ means an income tax equivalent calculated under paragraph 30B (2) (a) or a wholesale sales tax equivalent calculated under subsection 30C (2);

‘varied tax equivalent’ means an income tax equivalent or a wholesale sales tax equivalent varied under subsection (1).

Remission, refund and waivers

“30G. Where the Commissioner is satisfied that it is fair and reasonable that all or part of any amount paid or payable under this Part should be remitted, refunded or waived, the Commissioner may remit or refund the relevant amount to the relevant corporation or subsidiary or may waive payment.

Rulings

“30H. Subject to this Act and the Treasurer’s instructions, the Commissioner may, on receiving an application in accordance with the Treasurer’s instructions, make a ruling in respect of the calculation, determination or payment of an income tax equivalent or a wholesale sales tax equivalent payable by a particular Territory owned corporation or subsidiary or by Territory owned corporations and subsidiaries generally, as required by the application.

Objections

“30J. (1) A Territory owned corporation or subsidiary may, in accordance with the Treasurer’s instructions, lodge with the Commissioner an objection to an assessment, a determination or a ruling that relates to it.

“(2) The Commissioner shall determine an objection in accordance with the Treasurer’s instructions.

Appeals

“30K. (1) A Territory owned corporation or subsidiary may, in accordance with the Treasurer’s instructions, apply to the Treasurer for review of the determination of an objection by the Commissioner within 90 days after the day on which the corporation or subsidiary is notified of the determination.

“(2) The Treasurer may inform himself or herself on any matter relevant to a review in such manner as he or she considers appropriate.

“(3) On review, the Treasurer shall—

(a) confirm the Commissioner’s determination of the objection; or

- (b) uphold the objection and amend or revoke the determination, calculation or ruling to which the objection relates in terms no less favourable to the applicant than those of the original decision;

and shall, in any case, notify the applicant of his or her decision as soon as practicable after making the decision.

“(4) The decision of the Treasurer under subsection (3) is final.

“(5) Subject to this section, a review of the determination of an objection shall be instituted, considered and determined in accordance with the Treasurer’s instructions.

Effect of pending objection or review

“30L. The fact that the consideration of an objection is pending does not affect the decision to which the objection relates, so that income tax equivalents and wholesale sales tax equivalents may be assessed and are payable as if no objection had been made.”.

Transitional

6. The document entitled “Treasurer’s Instructions for the ACT Tax Equivalent Regime” issued by the Treasurer in September 1996 shall, for all purposes, be taken to have been issued under section 30 of the Principal Act as amended by this Act on 1 July 1997 and a copy to have been provided on that day to any corporation or group to which the instructions relate.

NOTE

Principal Act

1. Reprinted as at 30 September 1996.

[Presentation speech made in Assembly on 17 June 1997]