

1996

**THE LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

STAMP DUTIES AND TAXES (AMENDMENT) BILL (NO. 3) 1996

EXPLANATORY MEMORANDUM

Circulated by the authority of the Chief Minister and Treasurer

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Stamp Duties and Taxes (Amendment) Bill (No. 3) 1996

Summary

The Stamp Duties and Taxes (Amendment) Bill (No. 3) 1996 provides for the introduction into the Australian Capital Territory of stamp duty on hiring arrangements

Hiring duty is a duty levied on any arrangement, with some exceptions, under which goods are used by a person other than the owner on a payment of a fee by the person who hires the goods. The primary nexus for duty is the use of the hired goods in the ACT

The Bill identifies two classes of hirers - commercial hirers and non-commercial hirers.

Commercial hirers are those that are in the business of hiring (whether or not as the principal business or ancillary to some other business) and are required to register, lodge monthly returns by the twenty-first day of the following month and pay the determined amount of duty.

Non-commercial hirers are those that enter into one-off or occasional hiring and are required to lodge a copy of the hire agreement or a written statement and pay the determined amount of duty

The amount of duty payable is dependent upon the type of hire agreement that the hirer enters into. Hires that are defined as equipment finance leasing are liable for duty at the concessional rate of 0.75% on the total hiring charges, to a maximum duty of \$10,000 for each individual hire. No threshold applies in respect of such hires.

The rate for all other hiring is 1.5% and thresholds apply for both commercial and non-commercial hirers. In the case of commercial hirers duty is payable in respect of total hiring charges received during the return month which exceed the threshold of \$6,000. Duty payable by non-commercial hirers on hires which are not equipment financing arrangements is in respect of total hire charges payable under the hire which exceed \$6,000. The maximum duty of \$10,000 per individual hiring arrangement also applies in these cases

These rates and thresholds, which are in line with those in NSW, will be determined by disallowable instrument following the passage of the Bill

An implementation date has been set at 1 October 1996, with the first return or returns due for lodgement by commercial hirers, together with any duty payable, within 30 days from the date the Act is notified in the Gazette

Non-commercial hirers will be required to lodge individual documents or statements executed or prepared between 30 September 1996 and the date of Gazetteal of the Act within 30 days from the date of Gazetteal and pay the appropriate duty.

Transitional arrangements have also been provided which will allow the Commissioner to waive duty in cases where he or she is satisfied that the agreement for the hire had been negotiated prior to the date of the Budget announcement but not executed by 1 October 1996. The Commissioner's decision will be subject to review by the Administrative Appeals Tribunal.

Financial implications

It is anticipated that this measure will provide revenue of approximately \$1.35m this financial year, \$2.1m for 1997/98, \$2.2m for 1998/99 and \$2.3m for 1999/2000.

Details of the Bill are attached.

Details of the Stamp Duties and Taxes (Amendment) Bill (No. 3) 1996

Short title

Clause 1 - provides for the short title for this Act to be the Stamp Duties and Taxes (Amendment) Act (No. 3) 1996

Commencement

Clause 2 - provides for this Act to have commenced on 1 October 1996

Principal Act

Clause 3 - refers to the Principal Act being amended as the Stamp Duties and Taxes Act 1987

Insertion

Clause 4 - inserts after Part VIA of the Principal Act the following Part

PART VIB - HIRE OF GOODS

Division 1 - Introduction and overview

Interpretation

Section 64F

Subsection (1) provides for the various definitions required for the operation of this Part, for example

"commercial hirer" - defines this term as being the person who hires out the goods as a business, regardless of whether that business is the person's principal business or is ancillary to another business;

"equipment financing arrangement" - means an arrangement under a hire purchase agreement, finance lease or operating lease the effect of which is to provide for the hire of goods for a term longer than 9 months, and

"goods" - has the meaning given by section 64J, ie all chattels personal and fixtures severable from realty, but it does not include things like money.

Subsection (2) provides that a hiring charge is receivable by a commercial hirer in respect of a month if the charge is shown as being receivable by the hirer in issued invoices for that month or in some other accounting records kept on behalf of the hirer in relation to that month

Duty on hire of goods

Section 64G

Subsection (1) provides that the determined amount of duty is payable on the hire of goods not involving equipment financing arrangements, or an equipment financing arrangement

Subsection (2) provides that, subject to subsection (3), the maximum amount of duty able to be determined in respect of a single hiring arrangement is \$10,000 00

Subsection (3) provides that the maximum amount of duty under a single hiring arrangement does not apply if the arrangement allows for the addition or substitution of goods

Subsection (4) allows the Commissioner to waive duty otherwise payable if he or she is satisfied that a hiring arrangement entered into after the commencement date was negotiated before the commencement date

Hire of goods to which this part applies - jurisdictional nexus

Section 64H provides that this Part applies to an arrangement for the hire of goods and to a person who hires out goods only if the arrangement is entered into in the ACT, the goods are supplied and delivered or agreed to be supplied or delivered in to the ACT, or the goods may be used in the ACT

What are goods?

Section 64J provides that goods include all chattels personal, ie. all types of personal property (other than interests related to real estate), and fixtures that may be severable from realty. Goods does not include money, livestock or things in action. A 'thing in action' could be taken to include debts, shares, intellectual property, contractual rights, beneficiaries' rights and equitable securities

What is a "hire of goods"

Section 64K

Subsection (1) - provides that a hire of goods is an arrangement under which goods are used, or may be used, at any time by a person, other than the person from whom the goods were actually hired

Subsection (2) - provides that a hire of goods does not include an arrangement which gives the person a right to use goods as a consequence of that persons use of land if there is no apportionment of consideration between the use of the goods and the use of the land, and duty chargeable under Part III of the Principal Act has already been paid. If consideration is apportioned and no lease duty is paid on that apportionment then hire duty will be charged

Subsection (3) - a hire of goods does not include an arrangement which results in the ownership of the goods passing to the person to whom they are hired, except in the case where the arrangement is completed by the exercise of an option

Subsection (4) - a hire of goods does not include an arrangement made between a finance company and a motor vehicle dealer or any other person who trades in goods, in relation to the provision and display of motor vehicles or other goods by the dealer pending the sale or lease of those goods to a third party

Subsection (5) - provides a number of other exclusions, including

paragraph (a) - "wet hires", this is, an arrangement where an operator is also provided by the hirer, to operate the goods for the person hiring the goods

paragraph (e) - the loan of a book

paragraph (g) - invalid aids or prosthetic devices, or any other similar aid, device or appliance, hired by a person who is partially or totally incapacitated.

paragraph (h) - the hire of goods by a hospital, school or charitable organisation

What are "hiring charges"?

Section 64L

Subsection (1) - provides that all consideration payable under a hiring arrangement or agreement are hiring charges and are prima facie deductible.

Subsection (2) - provides that hiring charges are to include any incidental payments such as registration, insurance or administrative charges that form part of the agreement to hire the goods

Subsection (3) - provides that hiring charges do not include payments made in respect of work performed on the hired goods, eg. installation or maintenance.

Subsection (4) - includes, as hiring charges, any residual payments made in relation to the hire of goods in Division 3 by non-commercial hirers.

Splitting or redirection of hiring charges (anti-avoidance provision)

Section 64M provides that the Commissioner may include as hiring charges any associated payment, such as for installation and/or maintenance, which are considered to be excessively high and also to treat as hiring charges payments that would have constituted hiring charges but for the fact that they were made to a person other than the person who hired out the goods.

What form may a hire of goods take?

Section 64N provides that the hire of goods may take any form, whether or not the hire of goods is effected or evidenced by a written instrument

Division 2 - What arrangements apply to persons in business of hiring out goods (commercial hirers)?

Application

Section 64P - provides for this Division to apply to commercial hirers

Registration of commercial hirers

Section 64Q

Subsection (1) - requires a commercial hirer to become registered where that hirer enters into an equipment financing arrangement or, in any month, the hiring charges received or receivable by the commercial hirer, other than from equipment financing arrangements, exceeds the duty-free threshold

Subsection (2) - requires that a person who is not already registered make an application for registration within 21 days after the end of the month either in which the equipment financing arrangement was entered into, or in the case of other hiring charges when the duty-free threshold is exceeded, whichever occurs first

Failure to comply with this section may attract a penalty of 50 penalty units for a natural person or 250 penalty units for a body corporate.

Application for registration

Section 64R requires the Commissioner to register a commercial hirer upon application in the approved form under this Division

Registration without application

Section 64S

Subsections (1) and (2) - provide that the Commissioner may register a commercial hirer even if that commercial hirer has not applied for registration, and in writing, notify the commercial hirer of the hirer's registration

Cessation of business and cancellation of registration by commercial hirer

Section 64T

Subsection (1) - requires a registered commercial hirer who ceases to hire out goods as a business to, notify the Commissioner of that fact, lodge the required return, and pay the duty payable in connection with the return on or before the twenty-first day of the month after which the notification is given

Failure to comply with this section may attract a penalty of 50 penalty units for a natural person or 250 penalty units for a body corporate

Subsection (2) - The notice given under subsection cancels the commercial hirer's registration on the day it is received by the Commissioner, cancellation will not effect any accrued liability by the hirer

Duty base

Section 64U

Subsection (1) - provides that, subject to subsection (2), duty payable by the commercial hirer under this Part is assessed on the total amount of hiring charges received in a month by the hirer.

Subsection (2) - provides that, with the approval in writing by the Commissioner, the commercial hirer may choose to have duty assessed on hiring charges receivable in a month.

Subsection (3) - provides that while a commercial hirer may, with written approval, change between receipts and accruals basis from month to month, the change cannot be made within a month

Subsection (4) - provides that the Commissioner may make any consequential adjustment required because of the written approval and, for that purpose, may issue an assessment, or make a refund, of duty

Subsection (5) - requires that the first return lodged by the commercial hirer after change in duty base must include any hiring charges that would not otherwise be accounted for because of the change in basis

Subsection (6) - provides that a commercial hirer may make an adjustment for a bad debt incurred in relation to a hiring charge, on which duty has been assessed and paid, by deducting the amount of the bad debt from the hiring charges for the month in which the bad debt is written off

Monthly returns and payment of duty

Section 64V provides that in respect of a month hiring charges are received or receivable by a commercial hirer, registered or otherwise, in relation to:-

paragraph (a) - an equipment financing arrangement;

paragraph (b) - a hiring arrangement, other than equipment financing arrangement, where the amount of the charges exceeds the duty free threshold, and

paragraph (c) - an equipment financing arrangement and a hiring, other than an equipment financing arrangement, irrespective of whether or not the hiring charges exceed the duty free threshold;

then the hirer is required on or before the twenty-first day of the next month to:-

paragraph (d) - lodge a return on the approved form showing the total amount of charges, but distinguishing between charges related to equipment financing arrangements and any other type of hiring, and

paragraph (e) - pay the determined rate of duty applicable to the charges according to the type of hiring or equipment financing arrangement appearing on the return

Returns of related bodies corporate

Section 64W states that where two or more commercial hirers are related corporations they may lodge a composite return but only one nominated company will be able to claim the duty free threshold

Refunds - error as to place of use of goods

Section 64X provides that where duty has been paid in the ACT in the belief that the hired goods were used here and it is subsequently found that the duty was correctly payable elsewhere, there will be an entitlement for a refund where there is evidence that the amount has been paid in the correct jurisdiction

Division 3 - What arrangements apply to other persons?

Statement of transaction

Section 64Y

Subsection (1) - provides that where hiring charges are paid or payable to a person who is a non-commercial hirer in relation to -

paragraph (a) - an equipment financing arrangement, or

paragraph (b) - a hiring arrangement, other than equipment financing arrangement, where the amount of the charges exceeds the duty free threshold,

the person is required to make out written statement specifying (paragraphs (d), (e), (f), (g) and (h)) the name and address of each of the parties, a description of the goods, the commencement date and term of the hire, the total of the hiring charges, distinguishing between charges related to equipment financing arrangements and any other type of hiring and the intervals at which the hiring charges are paid or payable

Subsection (2) - requires that the written statement is to be made out either when the hirer receives the first, or only, payment of hiring charges, or when the hiring charges become payable, whichever occurs first

Subsection (3) - provides that a person hiring out goods is not required to make out a statement if he or she retains a copy of a written agreement which incorporates the terms of the hiring referred to in subsection (1) and specifies the matters referred to in paragraphs(1)(d) to (h) inclusive

Failure to comply with this section may attract a penalty of 10 penalty units for a natural person or 50 penalty units for a body corporate

Lodgement of statement and payment of duty

Section 64Z

Subsection (1) - provides that within 30 days after the written statement is made out, the person hiring out the goods is required (subject to subsection(2)) to lodge the statement and pay duty on the determined amount that is applicable to the charges

Failure to comply with this section may attract a penalty of 50 penalty units for a natural person or 250 penalty units for a body corporate

Subsection (2) provides that where the terms of a hiring are incorporated in a written agreement, and that agreement specifies the matters required under 64Y(1), the person hiring out the goods may lodge that agreement instead of a written statement

Subsection (3) - provides that both the person hiring out the goods and the person to whom the goods are hired may be held jointly and severally liable if the hirer does not lodge a document and pay the duty within 30 days of entering into the hiring arrangement

Subsection (4) - provides that a person to whom the goods are hired may at any time make out and lodge a statement and pay the appropriate duty. This could occur where the hirer does not reside in the Territory or is not subject to duty by reason of exempt status.

Apportionment of duty

Section 64ZA

Subsection (1) - provides that where goods are used, or will be used, under a single hiring arrangement, in one or more Australian jurisdiction during the term of the hire, the person who hires the goods is to apportion the hiring charges between each State or Territory according to the proportion of use in each jurisdiction

Subsection (2) - requires that where the hiring charges are apportioned, particulars of the apportionment are to be recorded in the hiring documents or in some other form that readily identifies the parties to the arrangement and the relevant dates

Subsection (3) - provides that, where goods described in a written statement may be used in more than one State or Territory during the term of the hire, the Commissioner may assess duty on an estimate of that part of the term the goods are likely to be used in the ACT

Division 4 - Miscellaneous

Place of use of goods

Section 64ZB places no obligation on the person who hires out the goods to inquire as to any change in the place of use of goods.

Review of decisions

Clause 5 amends Section 65 of the Principal Act to include certain decisions made by the Commissioner in Part VIB as reviewable

Application

Clause 6 provides that subject to section 7, Part VIB of the Principal Act as amended by this Act applies in relation to a hire of goods entered into on or after the commencement of this Act

Transitional

Clause 7

Subsection (1) - provides that, notwithstanding the provisions of section 64V regarding the period specified for lodgement of a return and payment of duty, a person is required within 30 days after the notification of this Act in the Gazette, in respect of each completed month between 30 September 1996 and the date of notification, to lodge a return in relation to hiring charges received or receivable by the person in respect of each completed month and pay the required amount of duty in respect of those hiring charges

Subsection (2) - provides that, notwithstanding the provisions of section 64Z regarding the period specified for lodgement of a statement or agreement and payment of duty, a non-commercial hirer has 30 days from the date of notification to lodge a statement or agreement and pay the duty in relation to hiring charges received or receivable between 30 September 1996 and the date of notification

Subsection (3) - refers to sections in this section as being taken from the Principal Act as amended by this Act

Subsection (4) - provides that this section is a tax law for the purposes of the Taxation (Administration) Act 1987