

1991

**THE LEGISLATIVE ASSEMBLY OF THE
AUSTRALIAN CAPITAL TERRITORY**

TAXATION (ADMINISTRATION) (AMENDMENT) BILL (NO. 2) 1991

EXPLANATORY MEMORANDUM

**Circulated by the Authority of the
Chief Minister and Treasurer**

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Outline

The Taxation (Administration) Act 1987 provides a consolidated system for the administration of laws dealing with taxation in the ACT.

The laws that are currently subject to the operation of this Act include:-

- . Stamp Duties and Taxes Act 1987
- . Payroll Tax Act 1987
- . Business Franchise (Tobacco and Petroleum) Act 1984
- . Financial Institutions Duty Act 1987
- . Ambulance Service Levy Act 1990, and
- . Business Franchise (X-Videos) Act 1990

The amendments contained in this Bill relate to a number of important areas in the Act including the gathering of information, making of assessments, remission of penalties, appeals against assessments, the determination of interest rates applying to amounts over and under paid and the grouping of firms.

Of special importance are the amendments relating to the grouping of firms and in particular the amendments which will allow the Commissioner to retrospectively exclude a business from a group of businesses and thereby reduce the payroll tax liability of both the excluded firm and that of the firm remaining in the group.

By way of explanation, the grouping provisions in the Act allow for the taxable wages of associated businesses to be added

together to overcome avoidance schemes whereby separate legal entities are created for a single or related business to split taxable wages and benefit from the \$500,000 threshold more than once.

Under existing legislation the Commissioner, through the operation of the default assessment provisions can apply the grouping provisions and backdate assessments from the date a grouping commenced. However under Subsection 77 (4) of the Act the exclusion of firms from the application of the grouping provisions in circumstances where the Commissioner regards the grouped businesses as being independent, can only occur from the date the Commissioner makes an exclusion order. This is inequitable and the proposed amendments will allow such exclusion to be backdated to the date of the grouping, thereby reducing or cancelling any payroll tax liability of the affected businesses.

Revenue/Cost Implications

The Bill has no revenue or cost implications.

Details of each clause of the proposed Bill are outlined in the Attachment.

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Formal Clauses

Clauses 1 & 2 are formal requirements. They refer to the short title of the Bill and the definition of the Principal Act.

Binding the Crown

Clause 3 inserts new section 4A to amend the Principal Act to bind the Crown in respect of the ACT, the States, the Northern Territory and their respective statutory authorities.

Commissioners requests for further information

Clause 4 amends section 18 of the Act to allow the Commissioner to require a potential taxpayer who has not lodged a return or instrument for assessment to provide information in relation to their tax affairs.

Compromise Assessments for Tax, duty or licence fees

Clause 5 inserts new section 22A to allow the Commissioner to assess as tax, duty or fee, such a sum as he/she, with the agreement of the taxpayer, thinks proper where it is difficult or impractical to ascertain the exact amount owing.

An assessment or default assessment can be made by the Commissioner without reference to the taxpayer. A compromise

assessment however would only be issued with the agreement of, and following discussions with the taxpayer.

Clause 5 will also provide that by virtue of the nature of the agreement, the taxpayer is unable to object or appeal against the compromise assessment and that the Commissioner may accept payment as full discharge of all claims except where the taxpayer is guilty of fraud or had wilfully failed to disclose material facts.

Remission of Penalties

Clause 6 amends section 32 of the Principal Act to remove a restriction on the Commissioner's ability to remit penalty imposed by Section 30 of the Principal Act. The amendment will provide the Commissioner with the power to remit penalty tax in all circumstances where it is imposed.

Exclusion from a group

Clause 7 (a) amends Section 77 of the Principal Act to widen the Commissioner's ability to exclude from a group businesses which although they may not be completely independent of each other are never-the-less substantially independent.

Clause 7 (b), substitutes a new Subsection 77 (2A) of the Principal Act which provides the Commissioner with a more specific set of criteria on which to assess whether a business is substantially independent of other businesses in a group and should thus be excluded from that group. It also substitutes a new Subsection 77 (3) which removes the requirement for the exclusion to be published in the Gazette thus protecting the privacy and commercial interests of taxpayers.

Clause 7 (b), also substitutes a new Subsection 77 (3A) of the Principal Act which provides for the Commissioner to retrospectively exclude a business from a group. This amendment rectifies an inequity within the Principal Act in that the Commissioner is able to retrospectively group a business entity but is unable to ungroup an entity retrospectively.

Clause 7 (c), amends Subsection 77 (4) to allow the operation of the new Subsection 77 (3) in relation to the making of retrospective determinations.

Grouping of commonly controlled businesses

Clause 8 will amend Section 80 of the Principal Act. Subsection 80 (1) of the Act provides that a primary group is formed if a person or persons has, or have together a controlling interest in two or more businesses. Subsection 80 (2) specifies the criteria by which it is decided if a person has a controlling interest in a business.

Section 80 (2) (c) of the Principal Act is deficient in establishing who has the controlling interest in relation to the voting of directors at directors meetings in that it applies in circumstances where a person other than a director controls or influences the voting of directors but does not cover the situation where one or two or more directors hold and apply a majority of the voting power at meetings.

Clause 7 will address this anomaly by amending paragraph 80 (2) (c) of the Principal Act to include as a test in deciding if there is a controlling interest directors who themselves have a controlling interest by virtue of their majority voting power at company meetings.

Appeals to the Supreme Court of the ACT

Clause 9 amends Section 93 of the Principal Act. The existing Section 93 provides that the Commissioner is not required to implement a decision of the Tribunal relating to an assessment of tax if an appeal to the Federal Court or the High Court has been made.

The amendments made by Clause 9 takes into account the fact that appeals from the AAT are now made to the Supreme Court of the Australian Capital Territory.

Clause 9 substitutes a new Subsection 93 (2) of the Principal Act and provides that the Commissioner is not required to give effect to any decision by the Administrative Appeals Tribunal until the appeal process has been exhausted or the time of lodging a further appeal has expired.

Determination of interest rates

Clause 10 amends Section 99 of the Principal Act to authorise the Minister to make determinations in respect of interest rates specified in subsection 35 (1) & 39 (1) of the Act.