

2004

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

REVENUE LEGISLATION AMENDMENT BILL 2004

EXPLANATORY STATEMENT

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Revenue Legislation Amendment Bill 2004

Summary

The *Revenue Legislation Amendment Bill 2004* (the Bill) amends the *Taxation Administration Act 1999* (Taxation Administration Act) and the *Payroll Tax Act 1987* (Payroll Tax Act).

The Taxation Administration Act makes general provisions in relation to the administration and enforcement of other tax laws, including the *Payroll Tax Act 1987* and the *Duties Act 1999*.

This Bill will introduce changes that will encourage voluntary compliance without imposing any additional penalties on tax defaulters. If corporations comply with the existing legislation and take appropriate measures to pay their tax liabilities their directors will not be affected by this Bill.

The *Final Report of the Royal Commission into the Building and Construction Industry* (the Cole Royal Commission) recommended that all States and Territories adopt provisions, similar to NSW, to impose liability on directors or former directors, and group members, to help reduce fraudulent conduct and the evasion of taxation responsibilities. Those provisions are contained in the NSW *Taxation Administration Act 1996* and the NSW *Pay-roll Tax Act 1971*. While the Cole Royal Commission specifically dealt with the building and construction industry, its recommendations relate equally to all corporations regardless of their industry.

Overview

The amendments to the Taxation Administration Act provide that a director of a corporation is liable for its unpaid tax debts from the time the corporation first becomes liable, even if they are a former director when the assessment is issued. If there was more than one director at the time the corporation became liable to a charge, then each would be jointly and severally liable with the corporation for any unpaid tax.

The amendments to the Payroll Tax Act provide that all members of a group are jointly and severally liable for the taxation debts of other members of the group. This works in conjunction with the Taxation Administration Act amendments in this Bill. Extending the liability to group members only applies to the Payroll Tax Act, as is the case in NSW.

Both the Taxation Administration Act and Payroll Tax Act provisions particularly target phoenix companies. A “phoenix” practice uses, or promotes the use of, successive company structures to intentionally evade payment of, amongst other things, taxes. These Taxation Administration Act provisions ensure that debts

accrued by these corporations can be pursued through the directors or former directors of the corporations, while the Payroll Tax Act provisions ensure that payroll tax debts can also be pursued through the joint and several liability of the group members. This breaks the cycle whereby directors dissolve a corporation leaving it with no assets, the debts are written off, and the same director then performs the same business using a different corporation name.

All the provisions in this Bill apply to any liability that exists when the Bill commences.

Financial Implications

The revenue impact of this Bill cannot be forecast as the amounts that might be collected under these two amendments depend on the financial state of the corporations, their directors and group members.

Details of the Bill are attached.



Details of the Revenue Legislation Amendment Bill 2004

Part 1 Preliminary

Clause 1 Name of Act

This Act is the *Revenue Legislation Amendment Act 2004*.

Clause 2 Commencement

This Act commences on the day after its notification day.

Part 2 Payroll Tax Act 1987

Clause 3 Legislation amended – pt 2

The part amends the *Payroll Tax Act 1987*.

Clause 4 New section 11A Joint and several liability of group members

This clause makes every member of a group jointly and severally liable for the payroll tax liability of every other member of the group.

Part 3 Taxation Administration Act 1999

Clause 5 Legislation amended – pt 3

The part amends the *Taxation Administration Act 1999*.

Clause 6 New division 7.1 heading

This clause inserts ‘Division 7.1 General’ as a division heading in the Taxation Administration Act before section 48.

Clause 7 New division 7.2 Recovery of tax from directors of corporations

Section 56A provides definitions of ‘arrangement’ and ‘assessment amount’ for division 7.2.

Section 56B states that if a corporation does not pay its payroll tax liability, then the Commissioner may collect that amount from the director or former director of the corporation.

A compliance notice states the amount to be paid and the date the payment is due. It also informs the director or former director that they will be liable for this amount if it is not paid or withdrawn before the due date.

If this amount is not paid or withdrawn within the period specified in the compliance notice, the director or former director on whom it is served becomes jointly and severally liable with the corporation to pay the assessment amount.

This liability ceases if the assessment amount is paid, payment arrangements are made with the Commissioner, an administrator is appointed under the Commonwealth *Corporations Act 2001* or the corporation is wound up within the meaning of the aforementioned Commonwealth Act.

The liability of a director does not cease simply because the person ceased to be a director of the corporation. However a former director of a corporation is not liable for any tax amounts for which the corporation became liable for after the director ceased to be a director of the corporation. They can only be liable for amounts for which the corporation became liable before they ceased to be a director and any interest that has accrued on those amounts.

Section 56C states that if a director or former director is given a compliance notice and arrangements are made with the Commissioner for the corporation to pay the amount and the corporation fails to pay the assessment amount in accordance with the arrangement, then the Commissioner may give a further compliance notice to the director or former director.

Section 56D – A director or former director who is liable for and who pays their debt has a right to be indemnified by the corporation.

Section 56E – Should a director or former director claim that they took all reasonable steps in the circumstances to ensure that the corporation paid the debt be validated, then this will be considered a defence under this division.

Clause 8 Dictionary, new definitions

This clause inserts the terms ‘arrangement’ and ‘assessment amount’ into the Taxation Administration Act dictionary.