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

REVENUE LEGISLATION AMENDMENT BILL 2003

EXPLANATORY STATEMENT

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Revenue Legislation Amendment Bill 2003

Summary

The *Revenue Legislation Amendment Bill 2003* (the Bill) is an omnibus Bill that amends the *Duties Act 1999* (the Duties Act) and the *Gaming Machine Act 1987* (the Gaming Act). The Bill provides the legislative basis for Revenue Initiatives announced in Budget 2003-04.

In brief, the Bill:

- ◆ removes the current exemption allowed under the Duties Act for corporate reconstruction transactions and replaces it with a concession whereby 5% of the duty assessed is payable. The eligible parties and the types of transactions are unchanged;
- ◆ introduces a loan security duty on advances of \$1m or more taken out for commercial purposes. The loan security duty will be levied against the loan instrument but duty will be calculated on the value of all secured property, either wholly or partly in the ACT; and
- ◆ increases the top marginal gaming machine tax rate by 2% from 25.0% to 27.0%. This limits the effect of the measure to those clubs with the most capacity to pay, i.e. those clubs with gross gaming machine revenue in excess of \$600,000 per annum.

The proposed commencement date for the amending Act is 1 July 2003.

Revenue Implications

This Bill will have direct revenue implications estimated to raise \$4.6m additional revenue in 2003-04 as follows:

- ◆ concessional duty for corporate reconstruction transactions: \$1.1m;
- ◆ loan security duty: \$0.5m; and
- ◆ increasing gaming machine tax rate: \$3m.

Details of the Bill are attached.



Details of the Revenue Legislation Amendment Bill 2003

Part 1 Preliminary

Clause 1 Name of Act

This Act is the *Revenue Legislation Amendment Act 2003*.

Clause 2 Commencement

This Act commences on 1 July 2003.

Part 2 Duties Act 1999

Clause 3 Act amended - pt 2

This Act amends the *Duties Act 1999*.

Clause 4 New section 70A is inserted.

70A Corporate reconstructions - concessional duty for dutiable transactions

The provisions of this clause apply to a dutiable transaction if property is transferred (or agreed to be transferred) by a member of a group of corporations to another member of the same group, or is vested in a member of the group (and it was owned by a member of the same group immediately before the vesting). For this section, a corporation includes a unit trust scheme.

The duty payable for the transaction is 5% of the amount that would be payable apart from this provision. Minimum duty of \$20 applies under section 229 of the Duties Act.

The 5% duty only applies if the transaction is approved by the commissioner in accordance with written guidelines determined by the Minister. The guidelines are a disallowable instrument and the approval may be subject to conditions.

These provisions effectively convert the corporate reconstruction exemption omitted in clause 9 of this bill to a concession, but the eligibility criteria are unchanged.

Clause 5 New section 91A is inserted.

91A Corporate reconstructions - concessional duty for relevant acquisitions

This clause repeats the provisions in section 70A to allow concessional duty of 5% to apply to the making of a relevant acquisition (section 86).

These provisions effectively convert the corporate reconstruction exemption omitted in clause 9 of this bill to a concession, but the eligibility criteria are unchanged.

Clause 6 **Chapter 7** is substituted.

Chapter 7 Mortgages

Part 7.1 Application

174 Mortgage advance instruments to which ch 7 applies

The purpose of this legislation is to levy duty on all finance instruments that are supported by a charge on all property rights recognised by law including a chose in action; a chose in possession; intellectual property; ownership; possession; personal property and real property. Secured loan covers loans secured by third party arrangements including guarantees, charges and mortgages.

The duty will be levied on all commercial purpose advances secured by any property right that is \$1m or more in aggregate. This includes a common commercial purpose which is where two or more parties enter into arrangements to borrow funds using different securities, but for a common purpose. Mortgage duty will only be charged for loans taken out for a commercial or a mixed commercial/non-commercial purpose. Consumer loans will be excluded.

The duty will be levied on top-up loans that are taken out after the commencement date of this Act, as well as any new advances. In the case of top-up loans, duty will only be levied on the value of the new advance where the aggregate value equals or exceeds the threshold amount. Outstanding advances will only be included in the threshold if they were taken out on or after the commencement date of this Act.

If the loan in aggregate is \$1m a determined fixed amount will apply, and any amount in excess of \$1m will be dutiable at a determined rate.

Duty on loan instruments will be levied where the property used as security is located in or associated with the ACT. Where the security is multi-jurisdictional, duty will only be levied on the value of the security located within the ACT.

174A Written statement if no instrument

If an advance is made and there is no written instrument, the person who would be liable to duty must make a written statement and the chapter applies to the written statement as if it were the instrument.

174B Liability for duty under ch 7 in addition to other liability under Act

Nothing in this chapter prevents duty being simultaneously levied under another chapter of this Act.

Part 7.2 Interpretation for ch 7

174C What is a *mortgage*?

If a mortgage instrument is executed in another jurisdiction and covers property located either completely or partially in the ACT duty will be payable on the loan instrument for the value of the security located within the ACT. If the loan instrument is for an amount equal to or exceeding \$1m in aggregate, mortgage duty will be payable in the ACT on the full value of the security within the ACT where the value of security outside of the ACT:

- is equal to or exceeds \$1m; or
- where it is less than \$1m, this will be counted as part of the ACT threshold.

174D What is an *advance*?

An advance is a payment of money, or any other form of credit provided, made pursuant to a request by a person to another party whether or not the other party is generally in the business of making advances.

174E When is an advance for a commercial purpose?

A commercial purpose is any activity to gain or produce income or carrying on a business to gain or produce income – for example one that would meet the business expenses test under section 8–1 of the *Income Tax Assessment Act 1997* (Cwlth).

174F When are advances for a common commercial purpose?

A common commercial purpose is where two or more parties provide independent security for a loan including, but not limited to a joint loan, for the purposes of entering into a shared commercial activity. A shared commercial activity will include joint ventures, formal and informal partnerships and other business arrangements where there is a concept of sharing risks and profits, however defined. Advances for a common commercial purpose will be aggregated for the purposes of this chapter.

174G Where is property *located*?

Property is taken to be located within the ACT, in the case of real property, if it is physically located within the ACT, and in the case of any other property, if the property has a connection to the ACT. A connection to the ACT will extend to property located and used within the ACT, or in the case of intangible property, the ACT's share of the value of a business based on its turnover.

Part 7.3 Payment of duty

174H Who is liable to pay duty?

Duty is payable by the mortgagor if the loan instrument is secured by a mortgage; in any other case the duty is payable by the person executing the loan instrument. If the advance is not being paid to the person executing the loan instrument, duty is payable by the person who receives the benefit of the advance. If this person cannot be readily identified the obligation rests with the person executing the instrument to identify the ultimate beneficiary or they will be deemed liable on the face of the instrument.

174I What is the *liability day* for duty?

Liability for duty arises on the first day of execution of a mortgage advance instrument to which this chapter applies.

174J When must duty be paid?

Duty is payable within 90 days after the liability day.

174K Working out the amount of duty

If there is no outstanding advance the duty payable is calculated by use of the following formula: fixed duty + (D% of excess over \$1m) where the fixed duty and D% are determined by the Minister under the Taxation Administration Act.

If the total outstanding advances are \$1m or more the duty payable is D% of the advance evidenced by the instrument.

Duty will only be charged on new advances made after the commencement date. The threshold will be calculated taking into account only new advances made after the commencement date with no reference to any advances made prior to the commencement date.

174L Contingent liabilities

Contingent liabilities arise where a person enters into a form of third party security in order to secure an advance made to a principal other than the person providing the security. This includes guarantees, indemnities and any other form of surety or instrument supporting an advance. All advances supported by any instrument creating a contingent liability for any person are dutiable under this chapter.

174M Non-payment of duty

If duty is not paid on an advance any mortgage securing that advance remains unenforceable to the extent that duty and penalties, if applicable, are not paid until such time as all amounts are paid.

Part 7.4 Multi-jurisdictional property

174N Meaning of *security instrument* for pt 7.4

A security instrument is any instrument in whatever form, evidencing a security for an advance. Security instruments include, but are not limited to, caveats lodged to protect unregistered mortgages, guarantees, indemnities and any other instrument that is created for, and is capable of, acting as a document to secure an advance.

174O Property not completely in the ACT - dutiable proportion

This clause provides details for calculating duty payable in the ACT on advances that are secured by multi-jurisdictional property, inclusive of property in the ACT.

174P Property not completely in the ACT - valuation

This clause provides details on valuing property that is used to secure an advance where the property securing the advance is not completely in the ACT.

174Q Advances secured by mortgage package

A mortgage package is two or more security instruments, whether or not provided by the same person, used to secure an advance of \$1m or more for a commercial purpose or common commercial purpose, and at least one of the securities affects property located completely or partly within the ACT.

174R Duty not payable if instrument or package stamped under corresponding Act

If a mortgage advance instrument or a mortgage package has previously been stamped with mortgage duty under a corresponding Act, no duty is payable for any advances subject to the earlier stamping.

174S Duty reduced for interstate exempt mortgages

If there are two or more security instruments securing an advance and one or more of these instruments is an exempt security instrument in another jurisdiction, duty will be reduced to the extent of the value of the exemption.

174T Multi-jurisdictional statement

If the security securing an advance is a multi-jurisdictional security, and duty is payable under this chapter in relation to an advance, there is an obligation on both the mortgagor and the mortgagee to provide to the commissioner within 3 months of the liability day, a written statement setting out the location and value of the secured property.

Clause 7 Rate of duty - Section 208 (1)

The rate of duty is payable at the determined rate subject to subsection (2) and section 208AA. This allows concessional duty of 5% of the duty otherwise payable if the provisions of s208AA are met.

Clause 8 New section 208AA is inserted in Part 9.1**208AA Corporate reconstructions - concessional duty for motor vehicle registration applications**

The provisions of this clause apply to the application to register a motor vehicle if the application is made by a member of a group of corporations and immediately before the application, the vehicle was registered in the name of another member of the same group. A corporation includes a unit trust scheme.

The duty payable for the transaction is 5% of the amount that would be payable apart from this provision. Minimum duty of \$20 applies under section 229 of the Duties Act.

The 5% duty only applies if the transaction is approved by the commissioner in accordance with written guidelines determined by the Minister. The guidelines are a disallowable instrument and the approval may be subject to conditions.

These provisions effectively convert the corporate reconstruction exemption omitted in clause 9 of this bill to a concession, but the eligibility criteria are unchanged.

Clause 9 Corporate reconstructions – exemptions – Section 232

The omission of Section 232 removes the exemption for corporate reconstruction.

Clause 10 Objections and review of decisions

New section 252 (1) (ea) and (eb)

The insertion of new sections 252 (1) (ea) and (eb) allow a taxpayer to object under the Taxation Administration Act to the commissioner's decision to impose a condition on the approval for concessional duty to be paid on a dutiable transaction (s70A) or a relevant acquisition (s91A), respectively.

Clause 11 Insert New section 252 (1) (sa)

The insertion of a new section 252 (1) (sa) allows a taxpayer to object under the Taxation Administration Act to the commissioner's decision to impose a condition on the approval for concessional duty to be paid on the application to register a motor vehicle.

Clause 12 Section 252 (1) (y)

This clause makes s252 (1) (y) the final subsection in the provision.

Clause 13 Section 252 (1) (z)

This subsection is omitted. Objection rights are no longer necessary as the section to which it refers has been omitted.

Clause 14 Section 252 (1)

This section renumbers paragraphs when the Act next is republished under the *Legislation Act 2001*.

Clause 15 Dictionary, new definitions

New definitions are inserted into the dictionary.

Clause 16 Dictionary, definition of *mortgage*

This definition is substituted.

Clause 17 Dictionary, new definition of *security instrument*

A new definition is inserted into the dictionary.

Part 3 Gaming Machine Act 1987

Clause 18 Act amended - pt 3

This part amends the *Gaming Machine Act 1987*.

Clause 19 Definitions for Act

Section 4, definition of *prescribed percentage*, paragraph (b) (iv)

This clause amends paragraph (b)(iv) of the definition of prescribed percentage by substituting a new prescribed percentage in relation to that part of gross gaming machine revenue that exceeds \$50,000 per month of 27%.