

1997

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

TAXATION (ADMINISTRATION (AMENDMENT) BILL 1997

EXPLANATORY MEMORANDUM

Circulated by the authority of the Chief Minister and Treasurer

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Taxation (Administration) (Amendment) Bill 1997

Summary

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

Amendments are proposed that will ensure refunds of tax are only available where the taxpayer satisfies a Court that the refund sought will not represent a windfall gain to the taxpayer but will be returned to the person who bore the incidence of the tax, namely the taxpayer's customer. Where this can not be done the tax revenue will be retained. Similar provisions are already imposed on the Commissioner for ACT Revenue. The provisions will also clarify that:

- where a claim is precluded from being made under the Act for a refund of tax paid because of the invalidity of a tax law, a claim will be able to be made for the refund of an amount of revenue that exceeded the amount of tax that was payable, as if the law had continued to be valid, and
- Part XIIA of the Act (the refund or recovery of revenue provisions) applies to revenue amounts paid and proceedings commenced before and after the commencement of that Part.

Financial Implications

The amendments will not directly increase revenue, however, they will help to ensure the future protection of ACT revenue. No additional costs will be involved.

Details of the Bill are attached

Taxation (Administration) (Amendment) Bill 1997

Title

Clause 1 - provides for the short title of this Act to be the Taxation (Administration) (Amendment) Act 1997

Commencement

Clause 2 - provides for this Act to commence on the day it is notified in the Gazette

Principal Act

Clause 3 - refers to the Principal Act being amended as the Taxation (Administration) Act 1987

Review of decisions

Clause 4 - amends section 91 of the Principal Act by omitting paragraphs (h) and (j) and substituting paragraphs (h), (i) and (j) These paragraphs provide a taxpayer with a right of appeal to the Administrative Appeals Tribunal

- where the Commissioner, in an application for a refund under proposed section 95C of the Act, makes a decision that she or he is not satisfied that a taxpayer has not charged a revenue amount to, recovered a revenue amount from, or has not repaid a revenue amount to, a third party, or
- where the Commissioner refuses wholly or partly an application for a refund of an amount that exceeded the tax payable (where an invalid law is assumed valid for the purposes of the refund) in accordance with proposed subsection 95D(2)

Limitation of refunds of revenue amounts

Clause 5 - amends section 95C of the Principal Act by

- (a) omitting subsection (1) and substituting a new subsection (1) which provides the Commissioner is not to provide a refund of tax paid to a claimant without
 - (i) the claimant satisfying the Commissioner that the impost has not been passed on, either wholly or in part, to any third parties, and if it has and the impost has been paid, the third parties have been reimbursed, and
 - (ii) the claimant after meeting these conditions, provides the Commissioner with an undertaking that the tax impost will not be passed on, either in whole or in part, to a third party

- (b) omitting from subsection (2) a reference to "paragraphs (1)(a) or (b)" and substituting a reference to "subparagraph (1)(a)(i) or (ii)", and
- (c) adding subsection (3) which provides that where a person providing an undertaking to the Commissioner does not comply with the undertaking the person is to pay to the Commissioner an amount equal to double the amount charged or recovered from the third party

Insertion

Clause 6 - provides for the insertion of a new section 95CA in the Principal Act, after section 95C.

New section 95CA provides that.

- (i) in proceedings against the Territory to recover a revenue amount a court is not to provide a refund to a plaintiff or claimant without the plaintiff or claimant satisfying the court that the impost has not been passed on, either in whole or in part, to any third parties, or if it has and the impost has been paid, the third parties have been reimbursed, and
- (ii) the plaintiff or claimant after meeting these conditions, provides the court with an undertaking that the tax impost will not be passed on, either in whole or in part, to a third party The penalty for not complying with the undertaking is to pay to the Commissioner an amount equal to double the amount charged or recovered from the third party

These measures help to ensure that a tax refund sought from a court will not represent a windfall gain to the taxpayer, but will be returned to the person who bore the incidence of the tax, namely the taxpayer's customer, or remain with the Commissioner.

In proposed section 95CA a reference to the Territory is to be read as including a reference to an officer (including the Commissioner), a Minister or an authority of the Territory.

Recovery of revenue amounts following a non-legislative change in law

Clause 7 - amends section 95D of the Principal Act by omitting subsection (2) and substituting proposed subsections (2) and (2A) which provide for

- (i) a person to be able to apply to the Commissioner for a refund of an amount in excess of the tax payable, where the relevant tax law has been declared invalid by the courts, and

- (ii) for the Commissioner to consider the application and provide a refund either wholly or partially, or reject the application (An adverse decision of the Commissioners is reviewable by the Administrative Appeals Tribunal in accordance with proposed clause 4)

Insertion

Clause 8 - provides for the insertion of a new section 95F after section 95E

New section 95F provides that Part XIIA of the Principal Act (the refund or recovery of revenue provisions) applies to taxes paid and legal proceedings commenced before or after the commencement of the Part