

1994

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

TAXATION (ADMINISTRATION) (AMENDMENT) BILL 1994

EXPLANATORY MEMORANDUM

**Circulated by the authority of the Chief Minister and Treasurer
Rosemary Follett, MLA**

TAXATION (ADMINISTRATION) (AMENDMENT) BILL 1994

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

The Bill proposes providing the Commissioner for ACT Revenue (the Commissioner) with the power to vary the frequency and time limit for lodgment of tax returns if the Commissioner believes it would be unduly onerous for the taxpayer to lodge a return in accordance with a tax law.

This Bill will also extend the time period within which amended assessments can be issued. In cases where the Commissioner is satisfied there is no tax avoidance due to fraud or evasion, the period within which an amended assessment can be issued is now to be 6 years (previously 3 years). In cases where the Commissioner believes there has been some tax avoidance due to fraud or evasion, the time period within which an amended assessment can be issued is to be unlimited.

Currently, any action taken for the recovery of the tax debts due to the Crown is taken in the name of the Crown even though action is instituted by the Commissioner. This Bill will amend the Act to allow the Commissioner to recover debts from taxpayers in his/her official name. This change will enable the Commissioner's actions, in discharging his/her statutory responsibilities to be readily distinguishable from, and not attributable to, the Executive Government.

The Act is currently silent on the issue of which of the parties (Commissioner or taxpayer) should carry the primary onus of proving his/her case. This Bill will place the burden of proof upon the taxpayer where the taxpayer asserts that an assessment is excessive. However, this measure will not extinguish the requirement for the Commissioner to furnish particulars of the basis on which the Commissioner proposes to support an assessment in the legal process.

This Bill will also replace references to the now defunct Companies Act 1981 with references to the relevant provisions of the Corporations Law.

Financial Implications

The amendments will not directly increase revenue. However they will ensure the future protection of the revenue. No additional costs will be involved.

Details of the Bill are attached.

DETAILS OF THE TAXATION (ADMINISTRATION) (AMENDMENT) BILL 1994

Short title

Clause 1 - Provides for the short title of this Act to be the Taxation (Administration) (Amendment) Act 1994 (the Act).

Commencement

Clause 2 - Provides that this Act is to commence on the day of gazettal.

Principal Act

Clause 3 - Provides that the 'Principal Act' is the Taxation (Administration) Act 1987.

Variation of lodgment of returns

Clause 4 - Allows the taxpayer to apply to the Commissioner in writing for approval to vary the frequency and time limit within which the taxpayer must lodge a return. Conversely, the Commissioner may revoke such a notice when in force when he/she is satisfied that the taxpayer should lodge returns in accordance with the relevant tax law. This provision allows a similar concession to that already provided in section 17 of the Payroll Tax Act 1987.

Amended assessments

Clause 5 - Amends section 22 of the Principal Act to allow the Commissioner to amend an assessment of tax within six years. Formerly, the time limit was three years. This will increase the prospect of all self assessing taxpayers being subject to audit and the Revenue Office detecting and correcting underpayments of tax. In addition, the time limit is removed in the case of tax avoidance due to fraud or evasion or where a material fact has not been disclosed.

Time for payment

Clause 6 - Provides that where the Commissioner has allowed a variation in time to lodge a return in accordance with Clause 4, tax is due and payable at the time when the return is due to be lodged in accordance with the Commissioner's approval.

Recovery as a debt due

Clause 7 - Allows the Commissioner to recover debts from taxpayers in his/her official name. This amendment will make it clear that it is the Commissioner for ACT Revenue who has instituted debt recovery proceedings.

Review of decisions

Clause 8 - Provides the taxpayer with a right of appeal in relation to the Commissioner's decision regarding a variation to the lodgment of returns (Clause 4). This amendment provides consistency with other decisions made by the Commissioner in relation to tax laws.

Notification of decisions

Clause 9 - Provides that where the Commissioner makes a decision refusing to vary the period for lodgment of a return the Commissioner must provide a notice to taxpayers informing them of their rights of appeal. This will ensure the taxpayers' rights of appeal remain consistent with their rights in relation to other decisions made by the Commissioner.

Insertion

Clause 10 - Inserts new section 95A which provides that the burden of providing that an assessment is excessive rests with the taxpayer. This amendment recognises that it is the taxpayer who has the best knowledge of his or her own affairs.

Corporations law

Clause 11 - Replaces references to the repealed Companies Act 1981 with references to the relevant provisions of the Corporations Law.