

1992

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

PAYROLL TAX (AMENDMENT) BILL (NO.2) 1992

EXPLANATORY MEMORANDUM

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

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Summary

The Payroll Tax Act 1987 (the Act) provides for the imposition of payroll tax on ACT employers where the Australian wide wages of the employer (or group of employers) exceed the minimum threshold (\$500,000 for the current financial year).

In the Chief Minister's 1991/92 Budget Speech it was announced that employment agents in the computer industry would benefit from tax exemptions available to other employers engaging contract labour. The Bill will apply the exemptions to employment agents in all industries.

ACT laws have been amended progressively to allow for the taxation of the Crown in right of the ACT and State and Northern Territory governments in appropriate circumstances. This Bill therefore also proposes to amend the Act in relation to binding the Crown.

Employment Agents

An employment agent is a person who procures the services of another person for a client for which he or she receives a fee. These arrangements by agents are liable for payroll tax and will continue to be so liable.

This Bill proposes that relief from tax should be provided on agency arrangements similar to those available under section 3B of the Act, including contracts where the supply of goods is the primary object of the contract and where the Commissioner is satisfied that the person providing the services to the agency provides those same services to the public generally.

Binding the Crown

Currently the Act applies to wages paid by public authorities of the Territory, other than wages paid out of consolidated revenue.

The Bill continues to exempt payments of departmental salaries and wages from payroll tax but has inserted a mechanism in the legislation to allow the taxing of government business enterprises conducted through trust accounts of the Public Account. This is a natural progression of the policy of imposing taxes on ACT public authorities. The first such activity to be taxed is the ACT Housing Trust.

The Bill also provides for the binding of the Crown in the right of the States and the Northern Territory in respect of State and Northern Territory authorities.

Financial Implications

The effect of the introduction of the amendments in relation to employment agents on revenue is anticipated to cost \$20,000 in refunds for 1991/92, with revenue foregone in the vicinity of \$20,000 - \$30,000 per year thereafter. The binding of the Crown as proposed is expected to realise an increase in payroll tax receipts of \$550,000 per annum.

Details of the Bill are attached.

DETAILS OF THE PAYROLL TAX (AMENDMENT) BILL (NO.2) 1992

Short title

Clause 1 - provides for the short title for this Act to be the Payroll Tax (Amendment) Act (No.2) 1992 (the Act).

Principal Act

Clause 2 - refers to the Principal Act being amended, being the Payroll Tax Act 1987.

Commencement

Clause 3 - provides that the Act shall commence from the date of Gazettal.

Sub-Clause 6(2) - provides that the commencement date for new subsections 9(3) and (4) of the Principal Act shall be 17 September 1991.

Interpretation

Clause 4 - amends section 3 of the Principal Act by replacing the current definition of "employer" with one which binds the Territory along with authorities of the States and the Northern Territory.

Employment of transitional staff

Clause 5 - inserts new section 7 of the Principal Act to clarify that the Territory or a Territory authority is the employer of a person engaged in the public administration of the ACT or its enacted authorities, and that the wages of that person are payable by the Territory or that authority.

Exemption from tax

Sub-Clause 6(1) - amends section 9 of the Principal Act by extending the exemptions from tax provided under the Act by adding paragraphs (i) and (j) to include:

- . departmental salaries and wages, except for salaries and wages paid or payable by nominated commercial and business enterprises of the ACT Government conducted through trust accounts;
- . wages paid or payable by a Territory authority that is funded solely from moneys appropriated from the Consolidated Revenue Fund.

Sub-Clause 6(1) also amends section 9 by inserting new subsections (2), (3) and (4).

- Subsection (2) requires that an instrument contemplated for the purpose specified in new paragraph 1(i) is a disallowable instrument and must therefore be tabled before the Legislative Assembly.

- Subsection (3) will have the effect of providing relief from payroll tax for employment agents on the remuneration paid or payable to a person engaged by an employment agent to provide services for a client of the employment agent, provided the contract with the agent is one where:

- . . . the supply of goods is the primary object of the contract.

- . the services performed are:-
 - (i) not a kind usually required by the agent in running the business, and
 - (ii) provided by a person who provides those services to the general public, or

- . the Commissioner is satisfied that the person providing the services to the agency provides those same services to the public generally.

Subsection (3) also contains an anti-avoidance provision that will allow the Commissioner to disregard contracts entered into with the intention either directly or indirectly of avoiding or evading payroll tax.

- Subsection (4) provides clarification of the terms "contract", "supply" and "services" used within this section.