

1990

THE LEGISLATIVE ASSEMBLY OF THE AUSTRALIAN CAPITAL TERRITORY

FINANCIAL INSTITUTIONS DUTY (AMENDMENT) BILL 1990

EXPLANATORY MEMORANDUM

Circulated by the Authority of the Minister for Finance
and Urban Services

Mr Craig Duby, MLA

FINANCIAL INSTITUTIONS DUTY (AMENDMENT) BILL 1990

Outline of Amendment

The Financial Institutions Duty Act 1987 provides for the imposition of duty on registered financial institutions in the Australian Capital Territory.

This Bill introduces measures to impose duty on the physical receipt of money by financial institutions in the ACT in order to reduce the opportunity for avoidance. It also removes a previous exemption for a receipt in the ACT which was destined for another FID jurisdiction.

The Bill also provides for:

- . Exemptions from duty of customer accounts in merged or reconstructed financial institutions.
- . Exemption for any pension, benefit or allowance payable under the Social Security Act 1947.
- . Clarification of the rollover of term deposit provisions so that only amounts added to the principal sum will be subject to duty.
- . Exemption for certain telegraphic transfers.
- . Removal of the exemption provisions under Section 18 for Government and Statutory Authority held accounts and the introduction under Section 19 of the Act for similar provisions.
- . An exemption for a specific account, or class of accounts to be prescribed under the Act.
- . The Crown to be bound by the Act.

Financial Implications

These measures to be introduced are mainly anti-avoidance or house keeping measures and are expected to be revenue neutral or at most result in a marginal increase in the amount of duty collected.

The details of the proposed Bill are attached.

DETAILS OF THE FINANCIAL INSTITUTIONS DUTY (AMENDMENT) BILL 1990

Short title

Clause 1 - provides for the short title of this Act to be the Financial Institutions Duty (Amendment) Act 1990.

Commencement

Sub-clause 2 (1) - Provides for Sections 1, 2 and 3 to commence on the day the Act is notified in the Gazette.

Sub-clause 2 (2) - Provides that the remaining provisions commence on 1 December 1990.

Principal Act

Clause 3 - Refers to the Principal Act being amended, being the Financial Institutions Duty Act 1987.

Interpretation

Clause 4 - Provides that the definition of 'exempt account', under Section 3 of the Principal Act is amended by omitting 'section 16, 18 or 19' and substituting 'section 16 or 19'.

This is a result of the repeal of Section 18 of the Act.

Insertion

Clause 5 - Provides that the following section is inserted after Section 3 of the Principal Act:

Act Binds the Crown

"3A. This Act binds the Crown."

This provision will bind the Crown in right of the Territory, the States and other Territories. The Crown in right of the Commonwealth will not be bound by the FID Act unless a regulation is made under the Australian Capital Territory (Self-Government) Act 1988 of the Commonwealth for the purpose of section 27 of that Act.

Dutiable and non-dutiable receipts

Sub-clause 6 (a) - Omits sub-subparagraph (2) (e) (i) (A) and substitutes a new provision (A) which makes non-dutiable any receipt by a financial institution of a pension, benefit or allowance payable under the Social Security Act 1947 of the Commonwealth.

Sub-clause 6 (b) - Omits paragraph (2) (f) and replaces it with a new provision (f) which makes non-dutiable receipts by a registered financial institution for transferring or remitting out of the Territory at the request of a person.

The receipt must be in the form of:

- (i) a cheque drawn on the financial institution by that person; or
- (ii) a debit to an account kept by the financial institution on behalf of that person.

Sub-clause 6 (c) - Amends subparagraph (2) (p) (ii) & (iii) respectively to allow for rollovers of a term deposit, if duty has already been paid on the principal amount, to be a non-dutiable receipt to the extent that the amount equals the principal sum of the previous deposit. Any interest component of that term deposit, where duty has not been paid will be subject to duty.

Sub-clause 6 (d) - Amends subparagraph (2) (q) (ii) by removing the reference to the same term. This makes the renewal of a commercial bill not subject to duty if:

- (a) the new bill replaces an expired bill;
- (b) the commercial bill is for the same amount and in the same name as the expired bill; and
- (c) duty has already been paid by the financial institution on receipt of the amount for which the bill was first drawn.

Sub-clause 6 (e) - Inserts at the end of Subsection 6 (2) subsections which provide that receipts which arise from:

- (a) takeover by a financial institution of another financial institution;
- (b) transfer of engagements from one financial institution to another financial institution;
- (c) amalgamation of one financial institution with another financial institution; or
- (d) a change in the identity of a financial institution

will not constitute dutiable receipts for the purposes of the Act.

Repeal

Clause 7 - Repeals Section 18 of the Principal Act.

This Section formerly provided an automatic exemption from duty for accounts held by Government departments, or accounts held by statutory authorities so long as they were used for other than commercial purposes.

Exempt accounts: approval

Clause 8 - Amends Section 19 of the Principal Act to provide exemptions for accounts held by the following:

- . The Territory, Commonwealth a State, another Territory, or a statutory authority of the Territory, Commonwealth, State or another Territory, being an account which is funded solely from the consolidated revenue of the Territory, the Commonwealth, State or other Territory.

This is a similar provision to the repealed Section 18 of the Act, except that it requires accounts held by both Government Departments and statutory authorities to be funded solely from consolidated revenue.

- . A person, being a prescribed account.

This provision allows a regulation to be made exempting from duty a specific account, or class of accounts held by a person. A reference to a prescribed account is sufficient to include a prescribed class of accounts.

Exempt accounts: designation

Clause 9 - Removes the reference to the repealed Section 18 of the Principal Act.

Exempt accounts: cancellation

Clause 10 - Removes the reference to the repealed Section 18 of the Principal Act.

Notification of decisions

Clause 11 - Inserts a reference to a statutory authority under the provisions requiring the Commissioner to provide notification for refusing to issue a certificate under Section 19 of the Principal Act.

Savings

Sub-Clause 12 (1) - Provides that exemption certificates under Section 18 of the Act and those sections which were in force immediately before the commencement day will apply to a specified account until 1 March 1991.

Sub-Clause 12 (2) - Provides definitions of "commencement day" and "specified account". These are:

- (i) "commencement day" - means the day on which the provisions of this Act commence (1 December 1990).**
- (ii) "specified account" - means an account which had immediately prior to 1 December 1990 a certificate of approval of an exempt account issued under Section 18 of the Act.**