

2018

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

Betting Operations Tax Bill 2018

EXPLANATORY STATEMENT

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BETTING OPERATIONS TAX BILL 2018

Summary

The Betting Operations Tax Bill 2018 (Bill) establishes the legislative framework for the implementation of a point of consumption betting operations tax in the ACT.

Overview

Current wagering tax arrangements are largely designed to capture tax revenue from Territory betting operations, through taxes levied at the point of supply. The shift in turnover away from traditional betting agencies based in the ACT towards on-line operators, has provided an opportunity for online operators to base themselves in low or no tax jurisdictions. This has limited the Territory's ability to collect revenue from gambling which occurs in the ACT.

The point of consumption model levies tax based on the location of the consumer, rather than the location of the betting operator. This model better aligns where wagering taxes are levied with the location where the social costs of gambling actually occur. It also re-establishes the power of State Governments to effectively tax wagering occurring within their jurisdictions.

The Bill will impose a betting operations tax in the ACT on a model broadly aligned with the models adopted in South Australia and Queensland. ACT betting operations tax will have the following key parameters:

- an application to all betting operators that earn revenue as a result of accepting bets from, or providing a service through which bets are made by, people located in the ACT at the time of making the bet or using the service;
- a tax base of net wagering revenue (effectively player losses) from ACT consumers;
- an annual tax-free threshold, ensuring that smaller operators do not have a liability for payment;
- a tax rate of 15 per cent;
- specification as a tax law under the *Taxation Administration Act 1999* (TAA), and therefore subject to the TAA's general provisions for matters including assessments, refunds, penalties and interest, debt recovery, compliance and review.

The legislation commences on 1 January 2019. It is expected only corporate entities will register and be liable for the tax given the tax free threshold. Administration systems, including registration and payment options, will be developed prior to 1 January 2019 and are intended to be delivered online similar to the ACT Revenue Office's new self-service portal for return based taxes.

Human Rights

This Bill does not have any human rights implications. It is expected only corporate entities will lodge returns and pay the tax once registered with the ACT Revenue Office.

Details of the ACT Point of Consumption Wagering Tax Bill 2018

Part 1 Preliminary

Clause 1 Name of Act

This clause provides that the name of the Act is the *Betting Operations Tax Act 2018*.

Clause 2 Commencement

This clause provides that the Act commences on 1 January 2019.

Clause 3 Dictionary

This clause provides that the dictionary is part of the Act.

Clause 4 Notes

This clause provides that notes are not part of the Act.

Clause 5 Offences against Act—application of Criminal Code etc

This clause provides that the *Criminal Code 2002* applies to offences against this Act.

Part 2 Betting operations tax

Clause 6 When is a bet an ACT bet?

This clause defines the meaning of an **ACT bet** (the dictionary defines the meaning of **bet**). A bet is an ACT bet if placed with a betting operator by a person located in the ACT at the time the bet is placed.

If the operator does not know the person's location at the time the bet is placed, a person is taken to be located in the ACT if the person has used an ACT home address or business address (whichever is applicable) to register with the operator.

Clause 7 Meaning of net ACT betting revenue

This clause defines **net ACT betting revenue** (NABR) as follows:

$$(TB + TF) - (W + PC)$$

Where:

TB represents the total ACT bets made with, or using a service provided by, the betting operator during the financial year.

TF represents the total of fees, commissions, and any other amounts prescribed by regulation, which are associated with making bets or using the service during the financial year.

W represents total winnings paid or payable in respect of ACT bets during the financial year.

PC means the total refunds of ACT bets by the operator, and any other costs prescribed by regulation and paid by the operator, during the financial year.

The TAA makes general provision for amounts that are valued in a foreign currency (see section 124).

Clause 8 Meaning of threshold amount

This clause sets an annual threshold above which an operator is liable to pay the tax. The threshold is set at \$150,000 unless another amount is determined by the Treasurer.

Clause 9 Amount of bet

This clause specifies that if all or part of a bet is placed in something other than cash, the amount of the bet includes the monetary value of the non-cash component. For example, a customer may bet with 'credits' offered by an operator.

Clause 10 Liability to pay betting operations tax

This clause imposes the betting operations tax on betting operators with a set amount of NABR.

If the operator's NABR is less than a threshold determined by the Minister under section 139 of the *Taxation Administration Act 1999* (TAA), the operator has a liability of nil.

If the operator's NABR is greater than or equal to the determined threshold, the operator is liable to pay tax on the amount of NABR in excess of the threshold. The tax is imposed on this amount at either 15 per cent or a percentage rate determined by the Minister under section 139 of the TAA.

Section 48 of the TAA provides that tax that is payable is payable to the Commissioner for ACT Revenue (Commissioner).

Clause 11 Registration of betting operator liable to pay betting operations tax

If a person is a betting operator liable to pay betting operations tax for a financial year, this clause requires the person to apply to the Commissioner for registration as a betting operator.

The application must be made within 7 days after the end of the month in which the person becomes liable. Failure to register is an offence with a maximum penalty of up to 250 penalty units. This is in keeping with the penalty units that may be imposed for a failure to register under the *Payroll Tax Act 2011* and is another tool which the Commissioner may use in cases of significant non-compliance. The Commissioner may instead choose to only use the penalties under the *Taxation Administration Act 1999*, in relation to penalty tax and interest.

The Commissioner may cancel an operator's registration if satisfied the operator has stopped having a liability to pay tax.

Clause 12 Returns

This clause requires registered betting operators to lodge monthly returns and pay betting operations tax that is payable to the Commissioner.

Operators must lodge a return after the end of the first month in a financial year in which its NABR first exceeds the determined threshold, as well as for each subsequent month in that financial year.

For the first month and each subsequent month except June, operators have 7 days after the end of the relevant month in which to lodge a return. For the month of June, the operator must lodge a return within 21 days after the end of the month (i.e. by 21 July).

The amount of tax payable on lodging a monthly return is, for the first month, the amount that is payable in accordance with clause 10 above. For a subsequent month's return:

- if there was a net loss in the operator's NABR in that month—no tax is payable;
- if there was a net gain—the amount payable is the amount calculated in accordance with clause 10 less any amount already paid to the Commissioner for the financial year.

Clause 13 Information to be included in return

This clause requires a return to be lodged in the form approved by the Commissioner and with certain mandatory information. The collection of information such as name, address, contact details of the betting operator are necessary to allow the commissioner to ascertain whether that operator is liable to pay betting operations tax. Ascertaining an operator's tax liability and collecting the tax constitute core purposes of the Bill.

Clause 14 Monthly returns—lodgement variation

This clause permits a betting operator to apply to the Commissioner in writing for a variation of the periods in relation to which, or the time within which, returns may be lodged for the betting operations tax. The Commissioner may place limitations or conditions on such a variation and may revoke a variation by written notice to the operator.

Clause 15 Regulation-making power

This clause permits the Executive to make regulations for this Act.

Part 4 Consequential amendments

Clause 16 Legislation amended—sch 1

The legislation mentioned in schedule 1 is amended.

Schedule 1 Consequential amendments

Part 1.1 Taxation Administration Act 1999

Clause 1.1 New paragraph 4 (aa)

This clause specifies that the *Betting Operations Tax Act 2018* is a tax law under section 4 of the TAA.

Dictionary

The dictionary prescribes definitions relevant to the Act.

Importantly, **bet** is defined as any stake, pledge or wager between 2 people on any event or contingency, but does not include a game or lottery authorised under a gaming Act, such as the *Casino Control Act 2006*, the *Casino (Electronic Gaming) Act 2017*, the *Gaming Machine Act 2004* and the *Lotteries Act 1964*.

betting operator is defined as any person who earns revenue as a result of accepting bets from, or providing a service through which bets are made by people who are located in the ACT at the time of making the bet or using the service.