

DEBITS TAX BILL 1990*

NEW SOUTH WALES



EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The Commonwealth Government has announced that it will cease to impose debits tax in order that the tax may be imposed by the States. The purpose of this Bill is to provide for the imposition of debits tax by the State of New South Wales. The provisions of the Bill are based on the provisions of the Debits Tax Act 1982 and the Debits Tax Administration Act 1982 of the Commonwealth.

The Commonwealth Treasurer has agreed that if the States pass appropriate legislation, the Commonwealth Commissioner of Taxation will collect the tax on behalf of the States until the end of 1992. The Bill also enables the necessary transitional arrangements to be made.

The tax imposed by the proposed Act applies to all debits (other than debits specifically exempted from the tax) made to an account kept with a financial institution (including a bank) resulting from the drawing of a cheque or payment order.

Exemption from the tax will generally be available for bodies such as governments and public benevolent bodies.

The types of debit recognised in the proposed Act are:

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| exempt debit | - a class of debit which is never to be subject to the tax irrespective of the nature of the account (e.g. a debit made to reverse a prior credit entry or a debit which is subsequently reversed) |
| excluded debit | - broadly, a debit to an account held by a person or body entitled to exemption from the tax (e.g. a government or public benevolent body) |
| taxable debit | - a debit to an account, other than an exempt debit |

* Amended in committee — see table at end of volume.

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- eligible debit - a debit to an account, other than an exempt debit or an excluded debit (i.e. a debit for which the account holder and not the financial institution can, in special circumstances, be required to pay the tax This might occur where a New South Wales resident attempts to utilise an account outside New South Wales in order to avoid payment of the tax)

Under the proposed Act, tax is imposed in respect of:

- * each taxable debit of not less than \$ 1 made by a financial institution to a taxable account
- * each eligible debit of not less than \$1 made by a financial institution to an exempt account
- * each eligible debit of not less than \$ 1 made to an amount kept outside New South Wales by a New South Wales resident where the debit was made to avoid tax that would have been payable if the debit had been to an account kept in New South Wales

The amount of tax to be imposed in respect of a debit is determined by reference to the amount of the debit. The amount of tax, which is specified in Schedule 1 to the proposed Act, is:

<i>Amount of debit</i>	<i>Amount of Tax</i>
Not less than \$ 1 but less than \$100	15c
Not less than \$100 but less than \$500	35c
Not less than \$500 but less than \$5,000	75c
Not less than \$5,000 hut less than \$10,000	\$1.50
\$10,000 or more	\$2.00

References in this Bill to monetary penalties are expressed in penalty units. Under section S6 of the Interpretation Act 1987, 1 penalty unit is currently equivalent to \$100.

PART 1 — PRELIMINARY

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides for the proposed Act to commence on a proclaimed day or days. A proclamation may be made so as to have effect from 1 December 1990 or a later day.

Clause 3 contains definitions for the purposes of the proposed Act.

Clause 4 requires a debit made to an account in respect of 2 or more account transactions to be treated as separate debits in relation to each of those account transactions.

Clause 5 requires a debit made in a currency other than an Australian currency to be expressed in terms of Australian currency.

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Clause 6 provides that the Chief Commissioner of Stamp Duties is to have the general administration of the proposed Act.

Clause 7 enables the delegation of functions by the Chief Commissioner.

PART 2 - IMPOSITION AND AMOUNT OF TAX

Clause 8 imposes the tax as previously described.

Clause 9 determines the amount of tax to be imposed.

PART 3 - LIABILITY TO TAX

Clause 10 establishes the liability to pay the tax imposed by the proposed Act. The financial institution and the account holder are jointly and severally liable to pay the tax imposed on a taxable debit made to a taxable account. The account holder of an account other than a taxable account is liable to pay the tax imposed on an eligible debit made to the account.

Clause 11 specifies when the tax is to be paid. Tax payable by a financial institution in respect of a taxable debit made during a month is to be paid by the 14th day after the end of the month. Tax payable by an account holder under an assessment of tax made by the Chief Commissioner is to be paid within 14 days after the day on which notice of the assessment is served on the person.

Clause 12 creates a statutory right for financial institutions to recover from their customers tax paid in accordance with the proposed Act.

Clause 13 governs the issue and revocation of certificates of exemption by the Chief Commissioner. The function of a certificate of exemption is to authorise a financial institution to make tax-free debits to the account to which the certificate relates.

Clause 14 creates offences relating to the forging or unlawful alteration of certificates of exemption and misrepresentations concerning certificates of exemption.

PART 4 - RETURNS AND ASSESSMENTS

Clause 15 requires the furnishing of periodic returns by financial institutions to the Chief Commissioner of taxable debits made during the periods to which the returns relate to taxable accounts kept with the financial institutions.

Clause 16 enables the Chief Commissioner, on application made in accordance with the clause, to refund any amount of tax overpaid by a financial institution, other than an amount paid as a result of an assessment made by the Chief Commissioner.

Clause 17 enables the Chief Commissioner, on application made in accordance with the clause, to make a refund in respect of tax which has been paid by a financial institution in respect of an excluded debit made to a taxable account.

Clause 18 entitles a financial institution, if it wishes to dispute the amount of tax payable by it in respect of a return, to request the Chief Commissioner to make an assessment of the amount of tax payable.

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Clause 19 empowers the Chief Commissioner to make an assessment of tax payable by a financial institution or an account holder, whether or not any return has been furnished.

Clause 20 imposes additional tax, as a penalty, on a financial institution or account holder who fails to furnish information required by the proposed Act to the Chief Commissioner or who furnishes false or misleading information.

Clause 21 enables the Chief Commissioner to amend an assessment at any time within 3 years after it is made and provides for the effect of any such amendment.

Clause 22 ensures that in any objection or dispute relating to an assessment, the objector can only challenge the correctness of the assessment and not any act or omission of the Chief Commissioner in making the assessment.

PART 5 — OBJECTIONS AND APPEALS

Clause 23 defines tax, for the purposes of the proposed Part, to include additional tax under clause 20 or 34 so as to confer rights of objection and appeal in respect of any form of tax payable under the proposed Act.

Clause 24 enables a person dissatisfied with an assessment, or with certain decisions of the Chief Commissioner, to lodge an objection with the Chief Commissioner. The clause requires the Chief Commissioner to determine the objection and to notify the person of the decision. An objector dissatisfied with the decision is given a right, after the granting of an approval by the Chief Commissioner (which, in specified circumstances, the Chief Commissioner is required to grant), to appeal to the Supreme Court.

Clause 25 provides for an appeal by an objector to the Supreme Court to be by way of rehearing and enables the Court, on giving its decision, to determine the amount of any tax payable as a result of the decision.

Clause 26 places on the objector the onus of establishing on the balance of probabilities that the tax in question was incorrectly assessed.

Clause 27 provides for the payment of any tax assessed or refund calculated by the Supreme Court.

Clause 28 provides that the lodging of an objection or appeal does not affect the objector's liability to pay tax, except to the extent otherwise permitted by the Chief Commissioner.

Clause 29 provides for the manner of lodgment of documents or other items with the Chief Commissioner.

Clause 30 enables the Chief Commissioner to stale a case to the Supreme Court on a question of law.

Clause 31 provides for the giving of certificate and other documentary evidence signed by the Chief Commissioner in proceedings under the proposed Part.

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PART 6 — RECOVERY OF TAX

Clause 32 requires tax due and payable under the proposed Act to be paid to the Chief Commissioner and gives the Chief Commissioner the right to sue for the recovery of unpaid tax in a court of competent jurisdiction.

Clause 33 authorises the Chief Commissioner to grant an extension of time for the payment of tax

Clause 34 imposes additional tax at the rate of 20% p.a. by way of penalty for late payment of tax. The clause also gives the Chief Commissioner a limited power to remit the additional tax

Clause 35 provides for the giving of certificate and other documentary evidence signed by the Chief Commissioner in proceedings for the recovery of unpaid tax

PART 7 - OFFENCES

Clause 36 makes it an offence for a person:

- * to fail or neglect to furnish a return or information or to comply with a requirement of the Chief Commissioner;
- * without just cause, to fail or neglect to give evidence, answer questions or produce records required by the Chief Commissioner or an authorised officer;
- * to furnish a false return or give a false answer.

Clause 37 makes it an offence for a person to evade or attempt to evade tax

Clause 38 enables a prosecution for an offence to be commenced within 3 years after the date of the offence or, in the case of an offence relating to the furnishing of a return, at any time.

Clause 39 provides that payment of a penalty does not relieve the offender from any liability to pay tax

Clause 40 makes it an offence to obstruct an officer acting in the administration of the proposed Act or the regulations made under it.

Clause 41 specifies the circumstances in which information obtained in the administration of the proposed Act or the regulations made under it may or may not be disclosed.

Clause 42 enables informations for offences to be laid in the name of the Chief Commissioner by authorised officers and sets out the procedure for instituting prosecutions.

Clause 43 provides for the summary prosecution of offences in Local Courts.

PART 8 - MISCELLANEOUS

Clause 44 requires a financial institution to furnish an annual return to the Chief Commissioner setting out details of exempt accounts kept by the financial institution during the year.

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Clause 45 requires financial institutions to be represented, for the purposes of the proposed Act, by specified officers of the financial institutions.

Clause 46 requires an officer duly authorised by the Chief Commissioner to be given access, at reasonable times, to all books, records and other documents held by any person.

Clause 47 enables the Chief Commissioner to require, in writing, any person to furnish any information, to attend before the Chief Commissioner and answer questions, on oath or otherwise, or to produce any books, records or other documents in the person's custody.

Clause 48 causes service of a document on a member of a partnership or on the committee of management of an unincorporated association or other body of persons to be taken to be adequate service of the document on each member of the partnership, association or body.

Clause 49 enables the Chief Commissioner to compromise a claim for tax because of difficulty in ascertaining the amount of tax

Clause 50 enables the Chief Commissioner to garnish money owed to or held on behalf of a taxpayer who has defaulted in payment of tax

Clause 51 requires financial institutions to preserve, for a minimum of 5 years, records sufficient to enable their liability for tax to be assessed.

Clause 52 provides for the authentication of documents issued by the Chief Commissioner for the purposes of the proposed Act.

Clause 53 enables the Governor-in-Council to make regulations for the purposes of the proposed Act.

Clause 54 provides for the amendment of the Acts specified in Schedule 2.

Clause 55 is a formal provision which gives effect to the Schedule of transitional provisions.

SCHEDULE 1 — AMOUNT OF TAX

Schedule 1 sets out the amount of tax payable according to the amount of the taxable debit or eligible debit.

SCHEDULE 2 — CONSEQUENTIAL AMENDMENT OF OTHER ACTS

Schedule 2 provides for the consequential amendment of the following Acts:

Business Franchise Licences (Petroleum Products) Act 1987

Business Franchise Licences (Tobacco) Act 1987

Health Insurance Levies Act 1982

Land Tax Management Act 1956

Pay-roll Tax Act 1971

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Revenue Laws (Reciprocal Powers) Act 1987
Stamp Duties Act 1920

SCHEDULE 3 — TRANSITIONAL PROVISIONS

As it is proposed that the Commonwealth Commissioner of Taxation will continue to collect debits tax on behalf of the States until the end of 1992, Schedule 3 contains provisions that will enable the necessary arrangements for this to be done to be made between the New South Wales Chief Commissioner of Stamp Duties and the Commonwealth Commissioner of Taxation.
