

2000

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

**FINANCIAL RELATIONS AGREEMENT CONSEQUENTIAL
AMENDMENTS BILL 2000**

EXPLANATORY MEMORANDUM

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Financial Relations Agreement Consequential Amendments Bill 2000

Summary

This is a Bill for an Act consequential upon the Intergovernmental Agreement on the Reform of Commonwealth-State Financial Relations (IGA), to amend the *Duties Act 1999* (Duties Act), the *Financial Institutions Duty Act 1987* (Financial Institutions Duty Act), and the *Payroll Tax Act 1987* (Payroll Tax Act).

The IGA, amongst other things, includes the introduction of a Goods and Services Tax (GST) at a 10% rate from 1 July 2000. The GST will replace the Commonwealth's existing wholesale sales tax and some State and Territory taxes, including financial institutions duty under the Financial Institutions Duty Act and stamp duty on quoted marketable securities under the Duties Act. While the GST will be implemented from 1 July 2000, there is agreement between the Commonwealth and the States that financial institutions duty and stamp duty on quoted marketable securities will not cease until 1 July 2001. This Bill effects the cessation of these duties in accordance with the IGA, and clarifies the treatment of GST in the calculation of payroll tax and duty on hiring charges.

The Duties Act imposes duty on dutiable transactions, including transfers of marketable securities. This Bill will ensure that stamp duty liability arising on the transfer of marketable securities which are quoted on a recognised stock exchange will cease to apply in respect of transfers which occur on or after 1 July 2001.

To address a matter related to an unintended consequence of the introduction of the GST, the Bill also provides that, from 1 July 2000, duty is not payable on the GST component of a charge for the hire of goods.

The Financial Institutions Duty Act imposes financial institutions duty on receipts of registered financial institutions and agents of interstate financial institutions, on payments to unregistered financial institutions, and on liabilities of short-term dealers in respect of short-term dealings. To facilitate the cessation of financial institutions duty the Bill will:

- (i) ensure that no liability for duty will arise in respect of receipts or dealings after midnight 30 June 2001;
- (ii) ensure that no returns will be required to be lodged in respect of receipts or dealings arising in any month after June 2001; and
- (iii) make existing registration and certification requirements unnecessary after 30 June 2001.

The Payroll Tax Act imposes payroll tax on wages. The Payroll Tax Act deems that payments made under a service contract are wages for the purposes of payroll tax, and therefore, from 1 July 2000, the payments made by a deemed employer to a contractor will be inclusive of the GST. To preclude the imposition of payroll tax upon the GST inclusive value of a service contract, the Bill provides that any GST component of an amount paid or payable by an employer in relation to the performance of work under a service contract or the resupply of goods by an employee under a service contract should be deducted for payroll tax purposes.

Revenue/Cost Implications

Revenue lost as a result of the cessation of financial institutions duty and stamp duty on quoted marketable securities is estimated at \$17.4m and \$4m respectively (2001-2002). These amounts will be replaced by revenue to the Territory from the GST and/or Commonwealth payments made under the "guaranteed minimum amounts" arrangements with the Commonwealth.

Details of the Bill are attached.



Details of the Financial Relations Agreement Consequential Amendments Bill
2000

PART 1 - PRELIMINARY

Clauses 1 and 2 are formal requirements. They refer to the title of the Act and the commencement date of the Act and its various Parts. Part 1 (Preliminary) commences on the day on which the Act is notified in the Gazette. Part 2 (Duties Act amendments), except for section 18, and Part 3 (Financial Institutions Duty Act amendments) commence on 1 July 2001. Section 18 and Part 4 (Payroll Tax Act amendments) commence on 1 July 2000.

PART 2 – DUTIES ACT 1999

Clause 3 Act amended by pt 2 – this clause identifies the *Duties Act 1999* as the Act amended in this Part.

Clause 4 Insertion – This clause inserts two new sections in the Duties Act.

- **Section 2A, Dictionary**, provides that the Dictionary at the end of the Duties Act is part of the Duties Act. The dictionary replaces section 4 of the Duties Act which contains the interpretation of words and phrases used in the Duties Act and which is being repealed – see **Clauses 5 and 22** below.
- **Section 2B, Notes**, specifies that a note included in the Duties Act is explanatory and is not part of that Act. This is in order to describe the effect of a number of explanatory notes which are inserted in the Duties Act by this Bill.

Clause 5 Interpretation – This clause amends section 4 of the Duties Act, which contains definitions of words and phrases used in that Act, by amending some definitions and omitting others. The omission and replacement of references to “the Australian Stock Exchange” and “a recognised stock exchange” relate to the new dictionary definition of “a stock exchange” – see **Clause 22** below. Other omissions remove all references to terminology relating to marketable securities quoted on a stock exchange, as these will no longer appear in the Duties Act when other amendments effected by this Act come into effect. It also relocates all the remaining definitions to the dictionary at the end of the Duties Act and repeals what remains of section 4 of the Duties Act.

Clause 6 Dutiable property – This clause amends section 10 of the Duties Act, the section that enumerates dutiable property, to

- (a) redefine which types of shares are dutiable property by removing a reference to SCH-regulated transfers, as such transfers apply only to shares in corporations listed on a stock exchange;
- (b) remove references to marketable securities which are quoted on a stock exchange; and

- (c) insert a new subsection 10 (2) which specifies that marketable securities that are quoted on a stock exchange are not dutiable property, thus excluding all shares, or units in a unit trust scheme, that are quoted on a stock exchange, and interests in such shares and units, from being dutiable property.

Clause 7 Necessity for written instrument or written statement – This clause amends section 14 of the Duties Act to omit references to SCH-regulated transfers of quoted marketable securities under Part IV of Chapter 2 of the Duties Act, which is also being omitted.

Clause 8 Lodging written instrument or written statement with Commissioner – This clause amends section 15 of the Duties Act to omit statements of non-applicability of the section to transfers of quoted marketable securities under Part IV of Chapter 2 of the Duties Act which is also being omitted.

Clause 9 When must duty be paid? - This clause amends section 16 of the Duties Act to omit a statement of non-applicability of the section to duty which was payable on transfers of quoted marketable securities under Part IV of Chapter 2 of the Duties Act which is also being omitted.

Clause 10 Shares, units and interests (marketable securities) - This clause amends section 32 of the Duties Act by removing a reference to marketable securities quoted on the market operated by the Australian Stock Exchange, which are no longer dutiable.

Clause 11 Repeal – Repeals Part 4 of Chapter 2 of the Duties Act. Chapter 2 is about transactions concerning dutiable property. Part 4 of this Chapter concerns off-market transfers of marketable securities, specifically SCH-regulated transfers and transfers of interests in shares occurring on the London Stock Exchange, liability for and payment of duty on such transactions, transfer documents, requirements for record keeping, and registration of and returns by the security clearing house. The provisions relate exclusively to quoted marketable securities and are therefore no longer required.

Clause 12 Insertion – This clause inserts into the Duties Act a new section 72A **Reduction of duty – payment in non-Australian jurisdiction**. It allows the charging of duty in respect of dutiable transactions taking place outside Australia, but prevents double dipping where duty has been paid to another jurisdiction.

A similar provision, which applied to both quoted and unquoted marketable securities, was previously located with another miscellaneous provision in Part 4 of Chapter 2 which has been omitted – see Clause 11 above.

Clause 13 Marketable securities – This clause amends section 75 of the Duties Act by omitting subsections (1) to (3), (8) and (10). Section 75 enumerates a number of situations relating to transfers of marketable securities where no duty is chargeable. The subsections being omitted relate exclusively to quoted marketable securities, all of which are now not dutiable, making these subsections redundant.

Subsection (9) is rewritten to remove the reference to an ADR that relates to shares quoted on the Australian Stock Exchange or a recognised stock exchange located

outside Australia, as these are no longer dutiable and therefore do not require exemption from duty. However, the provision is rewritten to exempt from duty an ADR that relates to a right that, upon exercise, will be quoted on a stock exchange.

It should be noted that subsection 75 (4), which provides that duty is not chargeable on a transfer of marketable securities between a transferor and a trustee or nominee where there is no change in beneficial ownership, is proposed to be amended prior to 1 July 2001 by a separate Bill. For the following reasons this Bill will not effect its amendment:

- There is a current proposal that this subsection be amended in line with its equivalent in the NSW Duties Act 1997. These non IGA related amendments will be effected by the proposed separate Bill, which will come into effect prior to 1 July 2001.
- On 1 July 2001 it will be inappropriate for the amended provision, which will continue to relate to all marketable securities until 1 July 2001, to remain in section 75, because exemptions under section 75 apply to both quoted and non-quoted marketable securities. On 1 July 2001, when this Bill takes effect and quoted marketable securities will not be dutiable, only non-quoted marketable securities will require exemption under the provision.
- The proposed separate Bill will therefore provide that, effective as of 1 July 2001, the amended provision will be relocated to Division 1 of Part 6, Concessional Rates of Duty, which relates to trusts.

Clause 14 Interpretation - This clause amends section 96 of the Duties Act by altering the definition of "company" in subsection (1) to exclude a company listed on a stock exchange. This change will ensure that there is no liability for duty arising from a buy back of quoted shares.

Clause 15 Substitution – This clause repeals section 102 of the Duties Act, **Assessment of duty**, and substitutes a new clause in which there is no reference to quoted marketable securities.

Clause 16 Application of Part – This clause amends section 109 of the Duties Act to exclude shares in a Territory company listed on a stock exchange so that there is no liability for duty when such shares are allotted to any person in discharge of an obligation, by direction.

Clause 17 Repeal – This clause repeals Chapter 4 of the Duties Act which provides for liability for, and rates of duty on, on-market transfers of marketable securities exclusively.

Clause 18 Payments exempted from "hiring charges" – This clause amends section 156 of the Duties Act to provide that duty is not payable on any GST component of a hiring charge.

Clause 19 Minimum amount of duty – This clause amends section 229 of the Duties Act. The purpose of the section is to ensure that minimum duty chargeable on

all dutiable transactions, except an insurance transaction, is \$20. This amendment removes all references to sections of the Duties Act which relate to quoted marketable securities and which are omitted by this Bill.

Clause 20 Registration of transfers of shares – This clause amends section 248 of the Duties Act, which sets out the conditions which a company must satisfy before entering a dutiable transfer of shares in its records. The clause omits,

- from subsection (1), the reference to an SCH-regulated transfer because duty will no longer be chargeable on such transfers, and
- from subsection (2), the subparagraphs referring to a broker's stamp and identification number and an SCH participant's identification code because transfers effected by instruments bearing these will no longer be dutiable.

Clause 21 Registration of transfers of units - This clause amends section 249 of the Duties Act, which sets out the conditions which a trustee or manager of a unit trust must satisfy before entering a dutiable transfer of shares in its records. The clause omits from subsection (2) the subparagraphs referring to a broker's stamp and identification number and an SCH participant's identification code because transfers effected by instruments bearing these will no longer be dutiable.

Clause 22 Objections and review of decisions - This clause amends section 252 of the Duties Act, which lists decisions made by the Commissioner to which a taxpayer may object. The clause omits paragraph 252 (1) (d) because the paragraph refers to a decision under subsection 40 (3), which is omitted by clause 11 of this Bill (along with the rest of Part 4 of Chapter 2 of the Duties Act).

Clause 23 Insertion – This clause inserts a dictionary after section 253 of the Duties Act containing the revised definitions of “marketable securities” and “private company” and a new definition of “stock exchange”. The first two definitions are revised to take account of the removal of liability for duty on marketable securities quoted on the Australian Stock Exchange or a recognised stock exchange. The new definition of “stock exchange” amalgamates the current definitions of “Australian Stock Exchange” and “recognised stock exchange”.

PART 3 – FINANCIAL INSTITUTIONS DUTY ACT 1987

Clause 24 Act amended by pt 3 – this clause identifies the *Financial Institutions Duty Act 1987* as the Act amended in this Part.

Clause 25 Insertion – This clause inserts new section 13AAA, **Cessation of effect from 1 July 2001—pt 2**, in part 2 of the Financial Institutions Duty Act.

Subsection 13AAA (1) removes the liability of a financial institution to pay financial institutions duty under section 10 on a receipt of money on or after 1 July 2001. However, this does not affect the liability of a financial institution to pay financial institutions duty on a dutiable receipt of money prior to that date.

Subsection 13AAA (2) removes the liability for a registered financial institution to furnish a return under section 13 detailing dutiable receipts relating to any month after June 2001. However, a return for the month of June 2001 is still required to be lodged within 21 days after the end of that month.

Clause 26 Insertion – This clause inserts new section 13GA, **Cessation of effect from 1 July 2001—pt 2A**, in the Financial Institutions Duty Act.

Subsection 13GA (1) removes the liability of an agent of an interstate financial institution to pay financial institutions duty under section 13A on a receipt of money on or after 1 July 2001. However, this does not affect the liability of an agent of an interstate financial institution to pay financial institutions duty on a dutiable receipt of money prior to that date.

Subsection 13GA (2) removes the requirement of subsection 13D (4) for a registered agent to give notice of any change to information, which was originally specified in an application for registration as an agent, that happens on or after 1 July 2001.

Subsection 13GA (3) removes the requirement under section 13E for an agent of an interstate financial institution or for an interstate financial institution to give a monthly return for any month after June 2001.

The Commissioner's power under section 13G to require, after 1 July 2001, an interstate financial institution to give a return on behalf of an agent for a month before July 2001 is retained.

Clause 27 Insertion – This clause inserts new section 18, **Cessation of effect from 1 July 2001—pt 3**, in the Financial Institutions Duty Act, and applies to short-term dealers whose liability is worked out by reference to the sum of certain short-term liabilities at the close of each day during the month, or daily closing credit balances during the month.

Subsection 18 (1) ensures that no liability to pay financial institutions duty arises in respect of the dealer's average daily liability during any month after June 2001, either under section 13H, in respect of the dealer's average daily liability during a month, or under section 15, in respect of receipts of short-term investments.

Subsection 18 (2) removes, as of 1 July 2001, the requirement that a short-term dealer must not use an exempt short-term dealing account for any purpose other than those specified in paragraph 16 (3) (c) of the Financial Institutions Duty Act.

Subsection 18 (3) removes the requirement for a short-term dealer to give a return under section 17 relating to any month after June 2001.

Clause 28 Insertion – This clause inserts new section 23A, **Cessation of effect from 1 July 2001—pt 5**, in the Financial Institutions Duty Act.

Subsection 23A (1) removes the liability for the payment of financial institutions duty, under section 23, of a person who pays money to an unregistered financial institution on or after 1 July 2001.

Subsection 23A (2) removes the liability of such a person, under subsection 23 (2), to furnish a return relating to the month in which the money was paid to the financial institution for any month after June 2001.

Clause 29 Insertion – This clause inserts new section 28A, **Cessation of effect from 1 July 2001—pt 6**, in the Financial Institutions Duty Act.

Subsection 28A (1) removes the liability under section 24, in relation to money received on or after 1 July 2001, of a person to pay financial institutions duty in respect of large aggregate receipts totalling \$100,000 or more during a month.

Subsection 28A (2) removes the requirement, under subsection 26 (5), for a person approved by the Commissioner as exempt from the payment of financial institutions duty on large aggregate receipts, to give notice of any change to information that happens on or after 1 July 2001.

Subsection 28A (3) removes the requirement for a person to give a return under section 28, in relation to large aggregate receipts, relating to any month after June 2001.

Clause 30 Repeal – This clause repeals the *Financial Institutions Duty (Validation) Act 1994*. This Act validates the imposition of financial institutions duty at a particular rate on certain transactions between 1 November 1992 and 16 May 1994. Its repeal does not undo its validating effect (see *Interpretation Act 1967* s 42 (1) (b)). It is repealed because it is no longer necessary to keep it in force.

Part 4 – Payroll Tax Act 1987

Clause 31 Act amended by pt 4 – This clause identifies the *Payroll Tax Act 1987* as the Act amended in this Part.

Clause 32 Application of Act to certain contracts – This clause amends section 3B of the Payroll Tax Act to provide that any GST component of an amount paid or payable by an employer in relation to the performance of work under service contract or the resupply of goods by an employee under a service contract should be deducted for payroll tax purposes.

