

**2002**

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

**TREASURY LEGISLATION AMENDMENT BILL 2002**

**EXPLANATORY MEMORANDUM**

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## Treasury Legislation Amendment Bill 2002

### Summary

The *Treasury Legislation Amendment Bill 2002* amends four different Acts. The amendments all set up default processes which eliminate the need for frequent determinations to be made by the Minister. However, in all cases, the Minister retains the power to make determinations by disallowable instrument to allow for the possibility of a breakdown in the automatic process. Using automatic processes provides certainty in legislation and increased administrative efficiency.

Briefly, the Bill amends:

- the *Taxation Administration Act 1999* (the TAA) to redefine the market rate component of the interest rate as the monthly average yield of the 90-day bank accepted bills rate. The existing determination will be repealed on 1 July 2002 and the default process will re-commence on that date. The market rate component will be automatically reviewed on 1 January and 1 July each year;
- the interest rate provisions of the *Rates and Land Tax Act 1926* (the Rates Act) and the *Rates and Land Rent (Relief) Act 1970* (the Relief Act) to automatically reflect the interest rate percentages set under the TAA. The interest rate percentage on unpaid rates (including those unpaid after revocation of deferment) and land tax will be the same as that for unpaid taxes; and the interest rate percentage on deferred rates and overpaid rates and land tax will be the same as that for overpaid taxes. The existing determinations will be repealed on 16 July 2002 and the default process will commence on that date; and
- the *Payroll Tax Act 1987* (the Payroll Tax Act) provisions relating to the exemption of payroll tax on wages paid by employers to “new starters” to automatically incorporate the relevant determinations made under the *Vocational Education and Training Act 1995* (the VET Act). This will be effective retrospective to 1 September 2001 to ensure that all changes to approved training and prescribed vocations under the VET Act determinations since that date are included.

### Revenue/Cost Implications

These changes are to improve administrative efficiency and are revenue neutral. They have no effect on taxpayers, as the provisions will be the same whether they are automated, or made by the Minister by disallowable instrument.

Details of the Bill are attached.



## **Details of the Treasury Legislation Amendment Bill 2002**

### **Part 1 Preliminary**

#### **Clause 1 Name of Act**

This Act is the *Treasury Legislation Amendment Act 2002*.

#### **Clause 2 Commencement**

- (1) Other than the provisions mentioned in subsections (2) to (4), this Act commences on the day after its notification day.
- (2) Part 2 and section 27 commence on 1 July 2002.
- (3) Parts 3 and 4 and sections 26, 28 and 29 commence on 16 July 2002.
- (4) Part 5 is taken to have commenced on 1 September 2001 to ensure that all changes to approved training and prescribed vocations under the VET Act determinations since that date are included.

### **Part 2 Taxation Administration Act 1999**

#### **Clause 3 Act amended – pt 2**

This part amends the *Taxation Administration Act 1999* (the TAA).

#### **Clause 4 Definitions for Act Section 3, definition of *market rate component***

The amended definition of *market rate component* clarifies that interest is “interest for a day”, that is, it is the rate that applies on the particular day that interest is to be calculated. The market rate component can be different for different days over the time period that interest is calculated if a review of the default rate occurs, or if a determination is made by the Minister during that time period.

#### **Clause 5 Interest rate Section 26 (2) and (3)**

A new section 26 (2) is substituted which sets the market rate component for a day which is either the determined rate or the default rate.

The new section 26 (2) (a) states that if a rate is determined under section 139 (1) (b) of this Act, that is the rate in force for the day. Section 139 is the determination of amounts payable under tax laws which may be made by the Minister in writing. If made, the determination is a disallowable instrument.

The new section 26 (2) (b) states that if there is no determined rate in force under paragraph (a), the market rate component of the interest is the monthly 90-day bank bill rate in accordance with the table that follows, and rounded to the 2<sup>nd</sup> decimal place.

The table shows:

- that if the day is in the first 6 months of the (calendar) year, the monthly 90-day bank bill rate is that for the previous November, if it was published before 1 January of the year. If it had not been published by that date, the rate adopted is the last monthly 90-day bank bill rate that was published before 1 January of the year. If, for example, the last published rate as at 1 January was for the previous October, this rate would be adopted, and it would remain in force until the next review date, whether the previous November rate was published later or not; and
- that if the day is in the second 6 months of the (calendar) year, the monthly 90-day bank bill rate is that for the previous May, if it was published before 1 July of the year. If it had not been published by that date, the rate adopted is the last monthly 90 day bank bill rate that was published before 1 July of the year. If, for example, the last published rate as at 1 July was for the previous April, this rate would be adopted, and it would remain in force until the next review date, whether the previous May rate was published later or not.

#### **Clause 6      New section 26 (5)**

The reference to notifiable instrument has been omitted as it no longer applies. A new section 26 (5) is substituted which defines *monthly 90-day bank bill rate* as the monthly average yield of 90-day bank accepted bills published by the Reserve Bank of Australia for a particular month.

#### **Clause 7      Section 26**

This section will be renumbered when the Act is next republished.

## **Part 3      Rates and Land Tax Act 1926**

#### **Clause 8      Act amended – pt 3**

This part amends the *Rates and Land Tax Act 1926* (the Rates Act).

#### **Clause 9      Section 22**

Section 22 was a complex provision and in drafting the required amendments, the opportunity has been taken to update language and bring the drafting of the section more closely into line with current drafting practice. A new section 22 has been substituted, however, the operation of the section remains unchanged except for the provisions relating to the determination of interest rates (subsections (3), (4) and (5) (a)) and the application of interest rates from the Taxation Administration Act (subsection 5 (b)).

Under section 22 (3) and (4) the Minister may, in writing, determine an interest rate applying to a day for this section by disallowable instrument. The determination is optional, and, if there is no determination in force, the interest rate applying for a day is now automatically set

under section 22 (5) (b) as the default rate. The default interest rate applying to a day is the interest rate applying under the *Taxation Administration Act 1999*, division 5.1, to the day.

The interest rate is subject to periodic review, which can result in a change in the interest rate applying to any outstanding amounts. This can result in different rates applying during the one period. Section 22 (2) provides that interest is calculated monthly using the interest rate applying for a day on the first day of the month that an amount is unpaid. The current administrative practice is that the interest rate will apply from the 16<sup>th</sup> of a month to the 15<sup>th</sup> of the following month. The rate on the first day of the month applies for the whole of that month, even if an amount is unpaid for only part of the month.

The reorganisation of section 22 has led to new subsections (6), (7) and (8) which restate the existing provisions relating to judgements and the rounding of fractions of cents. There are also new definitions at subsection (9) which apply for section 22:

- **due date** for rates for a parcel means the date specified in an assessment notice by which the rates may be paid in full, or an instalment day; and
- **overdue rates** for a parcel means rates that have become payable but have not been paid by the due date. This ensures that instalments or other charges that are not yet due to be paid will not accrue interest charges.

#### **Clause 10      Payment by ratepayer's debtor**

##### **Section 22AAA (11), definition of *rates*, paragraph (a)**

As section 22 has been redrafted, an incorrect reference to section 22 (3) is omitted and substituted with a new reference so that rates includes interest payable under section 22 (1).

#### **Clause 11      Interest on refund – New section 28B (3)**

This new subsection provides for a default interest rate to be paid on refunds of overpaid rates and land tax calculated under section 28B (1) (b). This rate will apply automatically if there is no interest rate determined by the Minister under section 28B (1) (a) in force for a day for which interest on an overpayment is to be calculated. The interest rate that applies for that day, to be used for the calculation, will be the market rate component applying under section 26 of the TAA.

The rate can be different for different days during the time period that interest is calculated if, either a review of the default rate occurs, or a determination is made by the Minister during that time period.

The provision by which the Minister may determine an interest rate has been retained to allow for the possible breakdown of the automatic process.

#### **Clause 12 – Review of interest decision – Section 30 (5) (a)**

A new section 30 (5) (a) has been substituted to allow the interest rate applied when a decision is reviewed to be either the Ministerial determination or the default interest rate, which ever is used for the purposes of section 28B.

## **Part 4      Rates and Land Rent (Relief) Act 1970**

**Clause 13      Act amended – pt 4**

This part amends the *Rates and Land Rent (Relief) Act 1970* (the Relief Act).

**Clause 14      Interpretation for pt 2 - Section 2B (3)**

Amendments to section 4 and 16, and style changes, necessitate references to these sections to be amended so that interest is now correctly referred to as “under section 4 (Effect of making a determination) or 16 (Interest payable on amount after revocation of determination).”

**Clause 15      Section 3 heading – Deferral of rent and rates**

This substitute heading updates the terminology.

**Clause 16      Effect of making a determination – Section 4 (3)**

The substituted sections 4 (3) and (4) remove the reference to the interest rate being fixed by the Minister. The interest rate which applies will be that made by Ministerial determination if a determination is in force, otherwise, it will be the default interest rate which applies to section 23. The opportunity has been taken to update language and bring the drafting of the section more closely into line with current drafting practice.

**Clause 17      Section 4 (4)**

Everything before paragraph (a) is omitted and substituted with a new subsection (5) and the wording simplified. There is no change to the substance of the provision.

**Clause 18      Section 16 – Interest payable on amount after revocation of determination**

This amendment updates language and brings the drafting of the section more closely into line with current drafting practice. There is no change in the substance of the provision.

**Clause 19      Remission of interest – Section 17**

Amendments to section 4 and 16, and style changes, necessitate references to these sections to be amended so that interest is now correctly referred to as “under section 4 (Effect of making a determination) or 16 (Interest payable on amount after revocation of determination).”

**Clause 20      Section 23 – Interest rate**

The substituted section 23 has been renamed and amended to allow default interest rates to apply if there is no Ministerial determination in force on the day interest is payable. The Minister retains the power to set interest rates by determination (a disallowable instrument) and can set different rates for an amount deferred under section 3 (Deferral of rent and rates) and an amount unpaid after revocation of a determination.

Where default interest rates apply for a day for which interest is payable, this interest is payable on an amount:

- deferred because of the making of a determination under section 3, at the market rate component applying under the TAA, section 26, to the day (section 23 (3)) and

- unpaid after the date of revocation of a determination, at the rate equal to the interest rate applying under the TAA, division 5.1 to the day (section 23 (4)). This interest rate is the sum of the market rate component and the premium component.

**Clause 21      Objections – Section 23B (1) (b)**

The word “deferred” is replaced by the word “deferral” to be consistent with the new section 3 heading.

## **Part 5      Payroll Tax Act 1987**

**Clause 22      Act amended – pt 5**

This part amends the *Payroll Tax Act 1987* (the Payroll Tax Act).

**Clause 23      Exemption from tax – new starters**  
**Section 9A (2) (a)**

Previously, training that was “approved by the Minister in writing” referred to determinations made by the Department of Community Services under the *Vocational Education and Training Act 1995* (VET Act) at a particular date. The changes to this provision have been made to overcome the need to make a new determination each time the VET Act determinations are amended.

Section 9A (2) (a) has been substituted, so that *eligible training* is now defined as *recognised training*, and takes place during a single continuous period (the *training period*). *Recognised training* and *approved training* are later defined in clause 25 (section 9A (8)).

As there is now a direct reference to *approved training* (in the definition of *recognised training*) in section 9A of the Payroll Tax Act, the Minister is no longer required to make an approval in writing. The latest relevant determinations under the VET Act are automatically picked up by the Payroll Tax Act for the purposes of exemption from tax for new starters.

**Clause 24      Section 9A (2), note**

This note is omitted as it is no longer relevant.

**Clause 25      Section 9A (6)**

This section (and the Note) is substituted with new sections 9A (6), (7) and (8).

New section 9A (6) states that the Minister may, in writing, declare that approved training is not recognised training. This power is retained so the Minister may selectively not recognise any training that may fall outside the intention of the payroll tax exemption. If this determination is made, the remaining training or prescribed vocations in the relevant VET Act determinations still apply. Under section 9A (7), a declaration made under subsection (6) is a disallowable instrument.

Section 9A (8) defines *approved training* and *recognised training* for the purposes of section 9A.

**Approved training** is defined in terms of the VET Act definitions of “approved training” and “prescribed vocations”. Section 4 (1) of the VET Act defines:

- “approved training” as a sequence of vocational education and training that is the subject of a determination in force under section 25 of the VET Act; and
- “prescribed vocation” is a trade or other vocation that is the subject of a determination in force under section 26 of the VET Act.

These are the same VET Act determinations that were previously referred to in the determination made by the Minister under the old section 9A (2) (a), so the effect of the changes is simply to remove the need for a determination.

**Recognised training** means approved training other than training declared under subsection (6) not to be recognised training.

Wages paid for all approved training in the relevant VET Act determinations will be eligible for a payroll tax exemption, if all other conditions are met, unless the Minister has declared some training as not recognised. Training which is not recognised can include a prescribed vocation.

## **Part 6      Repeals**

### **Clause 26      Rates and Land Rent (Relief) Regulations 1985**

This regulation (No 16) set the maximum prescribed rate for interest rates set under the old section 23. As interest rates are now aligned to those in the TAA, this regulation is no longer required.

### **Clause 27      Instrument under Taxation Administration Act 1999**

This instrument is repealed from 1 July 2002 so there is certainty that the default interest rates will apply automatically from that date.

### **Clauses 28 and 29      Instruments under Rates and Land Tax Act 1926, and Instrument under Rates and Land Rent (Relief) Act 1970**

These instruments are all repealed from 16 July 2002 so there is certainty that the default interest rates will apply automatically from that date.