



1997

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

TERRITORY OWNED CORPORATIONS (AMENDMENT) BILL 1997

EXPLANATORY MEMORANDUM

Circulated by the authority of the Chief Minister and Treasurer

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Territory Owned Corporations (Amendment) Bill 1997

Summary

The Territory Owned Corporations (Amendment) Bill 1997 puts in place the necessary legislative support and infrastructure to enable the Government to administer an equitable system of Commonwealth tax equivalents for Territory owned corporations

These changes are administrative in nature. Stated briefly, the new provisions:

- authorise the Treasurer's Instructions for the ACT Tax Equivalent Regime;
- prescribe the timing of payments of tax equivalents as set out in the Treasurer's Instructions;
- provide separate provisions for income tax and wholesale sales tax equivalents;
- provide appropriate appeal provisions against assessments and rulings relating to tax equivalents,
- provide for the issue of amended assessments,
- prescribe penalties for late payment;
- provide for the payment of interest where a tax equivalent is varied,
- provide for the waiver of tax equivalents or penalties where it is just and equitable to do so, and
- provide for the making of rulings related to the ACT Tax Equivalent Regime.

Financial Implications

These measures will be revenue neutral. The income tax and sales tax equivalents are already payable under the Principal Act. This Bill will provide clearer administrative guidelines for their assessment and collection.

Details of the Territory Owned Corporations (Amendment) Bill 1997

Title

Clause 1 - provides for the short title of this Act to be the *Territory Owned Corporations (Amendment) Act 1997*.

Commencement

Clause 2 - provides for this Act to commence on 1 July 1997.

Principal Act

Clause 3 - states that in this Act, 'Principal Act' means the *Territory Owned Corporations Act 1990*.

Interpretation

Clause 4 - inserts a new section 28A in Part V of the Act which includes the following definitions of terms used in the Principal Act:

- 'Commissioner' means the Commissioner for Australian Capital Territory Revenue,
- 'income tax equivalent' means an amount payable under paragraph 30B(2)(a);
- 'relevant rate' means the rates of interest for penalty interest for late payment and interest on under or over payments where a tax equivalent is varied specified in, or ascertained in accordance with, the Treasurer's instructions for the purposes of the provision in which the expression occurs;
- 'Treasurer's Instructions' means instructions issued by the Treasurer in accordance with section 30;
- 'wholesale sales tax equivalent' means an amount payable under subsection 30C(2).

Substitution

Clause 5 - repeals section 30 of the Principal Act and substitutes the following sections

Treasurer's Instructions

Section 30 allows the Treasurer to issue instructions in writing in respect of the ACT Tax Equivalent Regime. The section defines the scope of the Instructions, the period of application, allows professional standards to be applied, delegate authority for specific matters and provides for exemptions in respect of specified matters or specified persons. Sub section 30(3) provides that Instructions which are inconsistent with this or any other Act are invalid to the extent of the inconsistency. Sub section 30(4) requires a corporation to be supplied with a copy of the Instructions for them to become effective and applies the provision to a subsidiary of a Territory owned corporation.

Compliance with Treasurer's Instructions

Section 30A requires a Territory owned corporation or subsidiary to comply with any Treasurer's Instruction that relates to it.

Income Tax Equivalentents

Sub section 30B(1) applies this section to a Territory owned corporation or subsidiary that is not required to pay tax to the Commonwealth because it is owned by the Territory.

Sub section 30B(2) requires a company to which this provision applies to pay to the Territory an amount equivalent to that it would be liable to pay to the Commonwealth if it was liable. The section also gives the Commissioner the powers of the Commonwealth Tax Commissioner in relation to an income tax equivalent.

Sub section 30B(3) allows the Commissioner to specify whether an aspect of the Commonwealth Tax Act can be applied to the calculation, determination and payment of an income tax equivalent payable by a particular Territory owned corporation or subsidiary or by corporations and subsidiaries generally and, if it can be applied, how it is to be applied.

Sub section 30B(4) defines 'Commonwealth Tax Act' as the *Income Tax Assessment Act 1936* of the Commonwealth together with any other law of the Commonwealth relating to income tax

Wholesale sales tax equivalentents

Sub section 30C(1) applies this section to a Territory owned corporation or subsidiary that is not required to pay tax to the Commonwealth because it is owned by the Territory.

Sub section 30C(2) requires a corporation or subsidiary to pay to the Territory an amount equivalent to the benefit gained by the corporation or subsidiary because of any exemption from sales tax that would otherwise have been payable to the Commonwealth relating to goods or services

Payment of tax equivalentents

Sub section 30D authorises the payment of income tax equivalentents or wholesale sales tax equivalentents at the times and in the manner specified in the Treasurer's Instructions

Penalty for late payment

Sub section 30E(1) authorises charging of interest on that part of a tax equivalent not paid by the due date at the relevant rate from that due date until the date that it is paid

Sub section 30E(2) states that a corporation or subsidiary is not liable to pay this interest if the Commissioner so determines.

Variation of tax equivalents

Sub section 30F(1) allows the Commissioner, subject to the Treasurer's Instructions, to vary an original tax equivalent if satisfied that it has been calculated incorrectly

Sub section 30F(2) requires the Commissioner to give the relevant corporation or subsidiary notice of any such variation.

Sub section 30 F(3) provides that where a corporation or subsidiary has overpaid a tax equivalent as a result of the tax equivalent being varied the Commissioner shall repay the amount of the overpayment plus any interest at the relevant rate

Sub section 30F(4) provides that where a corporation or subsidiary has underpaid a tax equivalent as a result of the tax equivalent being varied the corporation or subsidiary shall pay interest on the amount underpaid at the relevant rate The section allows the Commissioner to determine the manner and timing of such repayments.

Sub section 30F(5) defines 'original tax equivalent' and 'varied tax equivalent'

Remission, refund and waivers

Section 30G allows the Commissioner, where satisfied that it is fair and reasonable to do so, to remit, refund or waive all, or any part of, an amount paid or payable under Part V of the Act

Rulings

Section 30H allows the Commissioner, in response to an application, to make a ruling in respect of the calculation, determination or payment of an income tax equivalent or a wholesale sales tax equivalent The ruling may apply to a particular corporation or subsidiary or may apply generally, in accordance with the application

Objections

Sub section 30J(1) allows a corporation or subsidiary to lodge an objection with the Commissioner to an assessment, a determination or a ruling that relates to it

Sub section 30J(2) requires the Commissioner to determine any such objection in accordance with the Treasurer's Instructions

Appeals

Sub section 30K(1) allows a corporation or subsidiary to apply to the Treasurer, in accordance with the Treasurer's Instructions, for a review of the Commissioner's determination of an objection. Such application must be made within 90 days of the corporation or subsidiary being notified of the Commissioner's determination of the objection.

Sub section 30K(2) provides for the Treasurer to seek information on any matter considered relevant to the review.

Sub section 30K(3) provides for the Treasurer, on review, to either confirm the Commissioner's determination or uphold the objection and amend or revoke the Commissioner's determination in terms no less favourable to the applicant than those of the original decision. The Treasurer is also required to notify the applicant of the decision as soon as practicable after making the decision.

Sub section 30K(4) states that the decision of the Treasurer in respect of a review is final.

Sub section 30K(5) requires that a review by the Treasurer be instituted, considered and determined in accordance with the Treasurer's Instructions.

Effect of pending objection or review

Section 30L states that a corporation or subsidiary that has lodged an objection is, while consideration of that objection is pending, liable for income tax equivalents and wholesale sales tax equivalents, as assessed, as if no objection had been made.

Transitional

Clause 6 - provides that the Treasurer's Instructions issued in September 1996 shall be taken to have been issued under section 30 of the Principal Act, as amended by this Act, on 1 July 1997 and to have been provided to relevant corporations on that date.