

1993

THE LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

BUSINESS FRANCHISE (LIQUOR) BILL 1993

EXPLANATORY MEMORANDUM

Circulated by the authority of the Chief Minister and Treasurer

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BUSINESS FRANCHISE (LIQUOR) BILL 1993

Outline

The Liquor Tax Act 1991 imposes a tax on persons selling liquor in the ACT and together with the Liquor Act 1975 provides the legislative framework for licensing such persons.

The Liquor Tax Act which came into effect from 1 January 1992 involves the operation of two licensing schemes - one for old licensees and one for new.

Persons licensed on or after 1 January 1992 (new licensees) are required to pay tax in advance of each quarters trading based on estimated or past sales. This advance payment is then adjusted when actual details are known, with the adjustment added to the next tax payment.

Persons licensed before 1 January 1992 (old licensees) however continue to pay tax calculated on purchases made during a quarterly period 15 months prior to the licence period.

It was impossible to bring those licensees into an advance scheme without imposing a heavy financial burden on them. However the Act provides in the case of a licensee ceasing to trade or a licence being transferred that fees payable in respect of those 15 months trading be crystallised into a debt payable by the former licensee or the transferee of the licence.

The intention of Government to introduce different rates for low and high alcoholic beverages has however highlighted the shortcomings of administering two categories of licensees.

The current rate of tax is 10% of the value of liquor purchased and it is proposed that this will be replaced by 2 rates from 1 April 1993 - 13% on high and 7% on low alcoholic beverages.

Under the operation of the current Act "new" licensees, if they wish to recoup the 30% increase in licence fees payable in advance will be required to increase their prices immediately. Old licensees trading prior to 1 January 1992, because their March payment is based on sales 15 months prior to the licence period would not become liable to pay the increased fees for 15 months and therefore receive a significant commercial advantage over the new licensees.

To correct this problem the Bill proposes the adoption of a single integrated scheme which would apply equally to all licensees.

The Business Franchise (Liquor) Bill 1993 has basically adopted the scheme currently in place for new licensees - requiring all licensees to pay fees in advance for the right to trade during the coming quarter. There is however one significant difference.

As previously indicated, under the current Liquor Tax Act new licensees are required to continually adjust estimated purchases with actuals and adjust the next quarterly fee accordingly.

The Bill proposes that there will be no adjustments. The licence fee for a continuing licensee will be based only on purchases by that licensee in the last completed quarter.

The Bill further proposes that new licensees will be required to pay an initial fee for up to the first two quarters as assessed by the Commissioner for ACT Revenue, having regard to criteria specified in the legislation and will be subject to appeal to the Administrative Appeals Tribunal.

The Bill also provides that old licensees, will be required to join the new licensees in the advance scheme. This will mean that licence fees paid on 17 March for the right to trade during the June 1993 quarter will be based on purchases during the December 1992 quarter rather than those of the March 1992 quarter under the current Act.

The proposed scheme will also be consistent with other business franchise schemes, such as tobacco and petroleum, currently operating in the ACT and the States.

The Bill also proposes to abolish the termination fees payable when licensees cease to trade or transfer their licences under the Liquor Tax Act. The Bill proposes that the termination provisions of the liquor tax act be repealed from 1 July 1993 provided licensees convert to the new franchise scheme and renew their licences beyond 1 July 1993.

Financial Implications

These proposals will have minimal impact on current budget estimates.

There are one off costs of \$44,500 for system development and capital equipment associated with the introduction of the differential tax arrangements and enhancements to enable more effective compliance audits of the industry. These costs will be considered in the midterm Budget review. Minor recurrent costs from 1993-94 will be taken up in the Budget context.

Details of the Bill are attached.

DETAILS OF THE BUSINESS FRANCHISE (LIQUOR) BILL 1993

Short title

Clause 1 - provides for the short title for this Act to be the Business Franchise (Liquor) Act 1993 (the Act).

Commencement

Subclause 2(1) - provides that sections 1,2 and 3 commence from the date of Gazettal.

Subclause 2(2) - provides that the remaining provisions of the Act commence on 17 March 1993.

Interpretation

Clause 3 - provides the definitions of the terms referred to within the Act.

Liquor Act definitions

Clause 4 - gives other terms used in the Act the same meaning as that defined in the Liquor Act 1975 (the Liquor Act).

Incorporation of Taxation (Administration) Act 1987

Clause 5 - incorporates the Act with the Taxation (Administration) Act 1987 (the Administration Act) so that the two Acts are read as one.

Administration

Clause 6 - provides for the administration of the Act by the Commissioner for ACT Revenue (the Commissioner).

Exemptions of Universities and Canberra Theatre Trust

Clause 7 - provides that Universities and the Canberra Theatre Trust are not subject to Parts II and III of the Act. Special provisions are contained in Part IV in respect of these organisations.

PART II - LIABILITY FOR FEES

Division 1 - Quarterly franchise fees

Liability

Clause 8(1) - imposes a liability on the licensee for each quarter the licence is in force in the name of the licensee except for the quarters in which the initial fee is applicable.

Clause 8(2) - ensures that subsection (1) applies for the whole quarter irrespective of whether the licensee holds the licence for that quarter or part thereof.

Clause 8(3) - provides that where a licence is transferred, the person who at the first day of the quarter holds the licence is liable to pay the franchise fee for that quarter.

Amount payable - general

Clause 9(1) - requires exempt wholesale licensees (as determined by the Minister under section 20 of the Act) to pay a determined amount each quarter in addition to the franchise fee for that quarter. The amount of franchise fee for other licensees for each quarter will be the greater of the determined amount or the franchise fee calculated in accordance with subclause (2).

Clause 9(2) - sets the formula to be used in assessing the franchise fee.

Amount payable - second quarter following issue of licence

Clause 10(1) - provides that the franchise fee in the second quarter following the quarter in which the licence was granted will be assessed by the Commissioner by reference to trading in the initial and next succeeding quarter in which a licence is granted.

Clause 10(2) - requires the Commissioner to notify the licensee in writing of an assessment under subsection (1).

Clause 10(3) - requires the payment of an assessment under subsection (1) within 14 days from date of notification.

Clause 10(4) - provides that where a return and quarterly franchise fee is lodged under clause 14(3) for the second quarter following the issue of a licence, then the fee lodged under that subsection is to be offset against the Commissioner's assessment under subsection 10(1).

Division 2 - Initial fees

Liability

Clause 11(1) - provides for the assessment of an initial fee in relation to an application for a licence and that the assessed amount by the Commissioner shall be fair and reasonable.

Clause 11(2) - provides guidelines in relation to the circumstances referred to in subsection (1) which the Commissioner is to take into account in assessing the initial fee.

Division 3 - Refund of fees on surrender

Amounts refunded on surrender

Clause 12(1) - provides for a refund of fees on cancellation of the licence where a licensee applies for the surrender or conditional surrender of the licence. The refund is in proportion to the unexpired term of the licence.

Clause 12(2) - provides for a refund of a proportion of the initial fee where the licence is surrendered before the expiration of the initial fee period.

Clause 12(3) - defines "initial fee period" for the purposes of this section as being the period commencing on the first day of the licence and terminating on the last day of the quarter following the quarter in which the licence was issued.

Division 4 - Unlicensed liquor traders

Liability for fees

Clause 13 - provides the method of calculation of initial and quarterly fees payable by persons purchasing liquor for the purpose of sale or exposure for sale without the appropriate licence. The clause applies whether or not the unlicensed person is convicted for an offence against the Liquor Act and the Administration Act applies as if a licence had been in force.

PART III - RETURNS AND PAYMENTS

Time for lodgement of returns and payment

Clause 14(1) - requires licensees to lodge, by the due date, a return, accompanied by the quarterly franchise fee, specifying details of wholesale liquor purchased and exempt sales during the base quarter. The due date and base quarter are specified in clause 3.

Clause 14(2) - provides that the licensee lodging the return for a quarter in which a quarterly franchise fee is due is responsible for all purchases and sales even if the licensee was not the licensee in the base quarter.

Clause 14(3) - provides that the return in respect of the third quarter is to be lodged by the due date and should be accompanied by an estimate of the franchise fee to be assessed under subsection 10(1) by the Commissioner.

Clause 14(4) - provides that where a licence is transferred on the first day of the quarter and the quarterly franchise fee has been paid in accordance with subsection (1) then the quarterly fee is taken to have been paid on behalf of the transferee.

Suspension and cancellation - failure to pay fees and penalties

Clause 15(1) - suspends a licence where a licensee fails to pay, by the due date, any amount imposed under the Act or any penalty tax.

Clause 15(2) - cancels a licence where a licensee fails to pay, within 30 days after the due date, any amount imposed under the Act or any penalty tax.

Clause 15(3) - defines the "date for payment" for the purpose of this subclause and includes provision for the Commissioner to allow further time for payment.

PART IV - FEES PAYABLE BY UNIVERSITIES AND THE CANBERRA THEATRE TRUST

Application

Clause 16 - provides for this Division to apply to the Universities and the Canberra Theatre Trust. This continues the arrangements for a different base quarter under the Liquor Tax Act 1991 for these bodies.

Payments

Clause 17(1) - requires the organisations to which this Division applies to lodge a return specifying details of relevant purchases in the base quarter and to pay the appropriate quarterly franchise fee.

Clause 17(2) - sets the base quarter for Universities and the Canberra Theatre Trust as the quarter beginning 6 months prior to the quarter in which the due date occurs.

PART V - RECORDS AND CERTIFICATES OF LIQUOR TRANSACTIONS

Division 1 - Records

Records of liquor transactions

Clause 18 - defines the details of liquor transactions which must be recorded and kept by licensees for a period of at least 6 years after the date of the relevant transaction. A penalty applies for breach of these requirements.

Division 2 - Certificates

Annual lodgement

Clause 19(1) - requires licensees to lodge a certificate of liquor transactions containing details of relevant transactions by him/her/it during the preceding financial year, by 1 August each year.

Clause 19(2) - provides that if during the period 1 July to 1 August a licence has been transferred or is no longer in force a certificate, as referred to in subclause 19(1), is not required to be lodged by the former licensee for the financial year immediately preceding that period. The return under Clause 20 provides the relevant information in these circumstances.

Lodgement on transfer or termination of licences

Clause 20(1) - requires that where a licence is transferred or ceases to be in force (except where suspended) the transferor or former licensee is required to lodge a certificate of liquor transactions in the final period within 14 days after the transfer or termination of a licence. The transferor or former licensee will be required to lodge details of relevant transactions during the final period of trading.

Clause 20(2) - defines the final period as being the previous financial year (if the licence is transferred or terminated between 1 July and 1 August) or that part of the financial year from 1 July to the date of transfer or termination if this occurs during the year.

Universities and the Canberra Theatre Trust

Clause 21(1) and (2) - require Universities and the Canberra Theatre Trust to submit annual certificates of liquor transactions containing details of relevant transactions during the preceding financial year, by 1 August each year.

PART VI - EXECUTIVE

Exempt wholesale sales

Clause 22 - allows the Minister, by notice in the Gazette, to declare off licences to be exempt wholesale licences for the purposes of the Act. Such licences will be restricted to those licences who predominantly, if not only, sell liquor to other licensees. Purchases of liquor for such sales are exempt from fees because the fee is paid by the purchasing licensee..

Determination of types of liquor

Clause 23(1) - allows the Minister, by notice in the Gazette, to determine different types of liquor for the purposes of the Act. A determination under this subclause will be made for the purposes of defining high and low alcohol beverages to enable different fees to apply to these products.

Clause 23(2) - provides that the determination made by the Minister in subclause (1) is a disallowable instrument under the Subordinate Laws Act 1989.

Regulations

Clause 24 - provides for the Executive to make regulations in accordance with the Act.

PART VI - REPEAL, TRANSITIONAL, SAVING

Repeal

Clause 25 - provides for the Liquor Tax Act 1991 to be repealed from the date of effect of this Act.

Transitional

These provisions cover the changeover from the Liquor Tax Act to this Act, so that a liability does not arise in respect of the same period under both Acts and prevents the avoidance of liability under either Act.

Clause 26(1) - defines "June quarter" as the 3 months ending on 30 June 1993, and the "repealed Act" as the Liquor Tax Act 1991.

Clause 26(2) - provides that a licensee's liability for advance and quarterly tax payments under the repealed Act ceases on the 17 March 1993.

Clause 26(3) - provides that where a licensee has already made an advance and/or quarterly tax payment under the repealed Act, before 17 March 1993 (when liability under this Act arises), that amount is to be offset against a licensee's liability to pay a quarterly fee under this Act for the June quarter.

Clause 26(4) - provides that a liability under the repealed Liquor Tax Act on the transfer of a licence between 1 January and 16 March 1993 in respect of the June quarter is extinguished because the new licensee on 17 March is liable for fees under this Act in relation to the June quarter.

Clause 26(5) - provides that where a licence is transferred between 1 January and 16 March 1993, before the liability to pay fees under this Act (namely 17 March 1993) arises, and an amount was paid under the repealed Act in respect of the June quarter that amount is to be offset against any liability arising under this Act for the June 1993 quarter.

Saving - continuing licences

Clause 27(1) - provides that notwithstanding the repeal of the Liquor Tax Act 1991, where a continuing licence under the meaning of that Act, (that is a licensee at the time the Liquor Tax Act came into operation on 1 January 1992) ceases to be in force between 3 March 1993 and 1 July 1993, inclusive, then the termination payments under section 16 of that Act will continue to apply to the person holding that licence at the time it ceases to be in force.

Clause 27(2) - provides that a liability on the transfer of a continuing licence between 17 March and 1 July 1993 inclusive continues to apply to the transferee of that licence.

Clause 27(3) - defines a continuing licence as described in (1) above.

AUSTRALIAN CAPITAL TERRITORY

LEGISLATIVE ASSEMBLY

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Explanatory Memorandum

Corrigendum

- Clause 2 - is revised on advice from Parliamentary Counsel so that only clauses 1 and 2 commence from date of Gazettal. The later commencement date of clause 3 to 17 March 1993 will have no substantive effect on the provisions of the Bill.
- Subclause 8(1) - is revised to incorporate the effect of subclause (3).
- Subclause 8(3) - is omitted.
- Subclause 19(2) - is omitted. On review of the Bill by Parliamentary Counsel, the exception provided in this subclause was considered superfluous.