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

REVENUE LEGISLATION AMENDMENT BILL 2005 (NO 2)

EXPLANATORY STATEMENT

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Revenue Legislation Amendment Bill 2005 (No 2)

Summary

This Bill amends the *Duties Act 1999*, the *Payroll Tax Act 1987*, the *Land Tax Act 2004* and the *Rates Act 2004*.

Overview

Duties Act 1999

This Bill corrects an error in the definition of ‘general insurer’ and clarifies which insurers are required to register with the Commissioner for ACT Revenue under this Act.

Duty is imposed on the application for, and transfer of, motor vehicle registration. Currently, the dutiable value of a motor vehicle is the greater of the market value at the time of purchase or the consideration (which is usually the purchase price). The amendments in this Bill make the dutiable value for motor vehicles not previously registered under Territory law the ‘list price’. This is the amount fixed as the retail selling price in the ACT by the manufacturer, importer or main distributor in the ACT, including the ‘list price’ of any optional equipment (both inclusive of GST). For such motor vehicles that do not have a ‘list price’, and for transfers of registration, the dutiable value will continue to be the greater of consideration or market value. Where optional equipment does not have a ‘list price’, its dutiable value is the consideration given for acquisition.

The Bill introduces an exemption from duty on the cost of specific motor vehicle modifications made to accommodate the needs of people with a disability. In these cases, the cost of vehicle modifications made so an owner with a disability can drive the vehicle, or so that the owner can transport a person with a disability, will be excluded from the dutiable value of the motor vehicle.

Payroll Tax Act 1987

The Bill introduces a requirement for employers to register with the Commissioner for ACT Revenue for payroll tax purposes within seven days after the end of the month in which the wages paid or payable exceed the determined monthly threshold and it is an offence not to register as required. All registered employers, and those who are required to be registered, must lodge payroll tax returns. This conforms with other jurisdictions’ payroll tax provisions and the registration requirements in other ACT taxation legislation.

The Bill also provides an exemption for wages paid or payable to trainees by approved Group Training Organisations, for the full term of an approved training contract. The Group Training Organisation must apply and satisfy the Commissioner for ACT Revenue that they are not-for-profit, that they provide training under approved training contracts and that they make the trainees available to host employers. The Group Training Organisation may object to the Commissioner’s decision to refuse approval.

Rates Act 2004 and Land Tax Act 2004

Under both Acts, the Commissioner for ACT Revenue may, after following particular procedures, apply to the court for an order to sell a property for the non-payment of rates and/or land tax. If the court is satisfied the section applies, the court must order the sale by public auction. Such a sale must be abandoned at any time leading up to the sale if the owner pays the total amount of rates and land tax in arrears, as well as the costs and expenses incurred by the Commissioner for ACT Revenue in relation to the parcel, up to the point of payment. This Bill clarifies that the Commissioner for ACT Revenue may also

recoup any costs and expenses reasonably incurred after payment has been received where they are a result of the abandonment of the proposed sale.

The Bill extends existing provisions so that the Commissioner for ACT Revenue can apply to the court for the proceeds from the sale of one property to pay outstanding rates and/or land tax debts on that property and other properties owned by the same owner. All rights and interests are protected as the remaining proceeds from the sold property can only be applied to rates and/or land tax arrears for other properties held by the same owner after the mortgagee, and, on application, any other person who has an interest in the land, or any other interested person in relation to the sold property have been paid.

Rates Act 2004

The Commissioner for ACT Revenue has the power to defer an eligible ratepayer's liability to pay rates if they apply for relief. The amendments in this Bill allow the Commissioner for ACT Revenue to defer a ratepayer's liability to pay rates without an application by the ratepayer where he or she is satisfied there are exceptional circumstances to justify the deferral. Affected ratepayers will have full objection rights to such a decision. This power can only be used where the lease for the parcel of land is solely residential. Unlike deferral on application, the Commissioner may defer payment of rates even if the owner is living elsewhere because of the exceptional circumstances.

Financial Implications

The *Duties Act 1999* amendments may result in a minor positive revenue impact from the change in dutiable value for new motor vehicles. The duty forgone from the exemption for motor vehicle modifications for people with a disability is expected to be negligible.

The *Payroll Tax 1987* amendments seek to improve the operation of the Act. Some revenue may be forgone through the introduction of an exemption for Group Training Organisations, but this is not expected to be significant.

The *Rates Act 2004* and *Land Tax Act 2004* amendments are designed to improve the efficiency of the law and are expected to have no budgetary impact.

Details of the Bill are attached.



Details of the Revenue Legislation Amendment Bill 2005

Part 1 Preliminary

Clause 1 - Name of Act. This Act is the *Revenue Legislation Amendment Act 2005 (No 2)*.

Clause 2 - Commencement. Sections 9, 24 and 26 commence on a day fixed by the Minister by written notice to allow time to advise taxpayers of the changes and to amend administrative procedures. Sections 25, 27 and 28 commence on the first day of the month following the month that this Act is notified, and the remaining provisions commence on the day after this Act's notification day.

Clause 3 - Legislation amended. This Act amends the *Duties Act 1999*, the *Land Tax Act 2004*, the *Payroll Tax Act 1987* and the *Rates Act 2004*.

Part 2 Duties Act 1999

Clause 4 - Legislation Amended – Pt 2. Part 2 amends the *Duties Act 1999*.

Clause 5 - Definitions for ch 8 Section 175, definition of *general insurer*. This provision substitutes a new definition of “general insurer” to align the wording with the *Insurance Act 1973* (Cwlth), which requires general insurers to be “authorised”.

Clauses 6 and 7 - Section 175, definition of *insurer* and new section 188A, Meaning of *insurer* for pt 8.4. A new definition of “insurer” is substituted to clarify which categories of insurers are required to register with the Commissioner for ACT Revenue under part 8.4 of the Duties Act. The narrower definition in section 188A applies only to part 8.4. The broader definition in section 175 includes all persons who write general insurance (other than insurance intermediaries), even if they are not authorised under the Commonwealth *Insurance Act 1973*, and applies to the rest of chapter 8. There is no change to the definitions of “insurer” in relation to life insurance.

Clause 8 - Section 191 (1) (a). This substitution is consequential to clause 5.

Clause 9 - Section 203 Meaning of dutiable value for part 9.1. A new definition of dutiable value of a motor vehicle is substituted. For vehicles that have not been previously registered in the ACT, the dutiable value is the list price and the value of any optional equipment for the vehicle. For vehicles that do not have a list price, and for transfers of motor vehicle registration, the dutiable value remains unchanged as the greater of the market value at the time of purchase and the consideration (which is usually the purchase price).

The “list price” for a motor vehicle is defined to be the amount fixed by the manufacturer, importer or main distributor in the ACT as the retail selling price in the ACT of a vehicle of that make and model. The list price for optional equipment is the additional amount fixed by the manufacturer, importer or main distributor in the ACT as the retail selling price in the ACT for the equipment if the vehicle is to be sold with it. In both cases GST is included.

Optional equipment is defined as equipment that is not covered by the list price of the vehicle or that is prescribed by regulation to be optional equipment. The value of

optional equipment is defined as the list price of the optional equipment, if there is one, or the consideration (which is usually the purchase price).

Clause 10 - New section 211A Partial exemption – modified vehicles for people with disabilities. This clause inserts a partial exemption from duty for vehicles modified to enable the transportation of a person with a disability. Where a vehicle has been modified for a person with a disability and the applicant for registration is either a person with a disability, or, a person who uses the motor vehicle to transport a person with a disability, the dutiable value for such an application is the dutiable value in section 203, reduced by the value of the modifications.

Modifications are those made to enable a person with a disability to drive the vehicle or to enable someone to transport a person with a disability in the vehicle. Equipment that would be considered a normal optional extra, such as automatic transmission, power steering or air conditioning is not considered to specifically enable the transport of a person with a disability. The value of the modifications is defined as the consideration given for the modifications (which is usually the purchase price).

Clauses 11 to 19 - Dictionary note and definitions. These clauses contain minor and technical amendments to the Duties Act dictionary. Clause 18 inserts a definition of “person with a disability” that is derived from the Commonwealth-State-Territory Disability Agreement. This is a more modern definition and replaces the previous definition of a “disabled person”.

Part 3 Land Tax Act 2004

Clause 20 - Legislation amended – pt 3. Part 3 amends the *Land Tax Act 2004*.

Clause 21 - Section 24 Sale of land for nonpayment of land tax. This clause substitutes a new section 24 which mirrors section 26 of the *Rates Act 2004* (See clause 30 of this Bill).

Clause 22 - Application may relate to more than one parcel. This clause substitutes a new section 25 (2) which mirrors section 27 (2) of the *Rates Act 2004* (See clause 31 of this Bill).

Part 4 Payroll Tax Act 1987

Clause 23 - Legislation amended – pt 4. Part 4 amends the *Payroll Tax Act 1987*.

Clause 24 - New Sections 7 Registration of employers, and 8 Transitional – registration of existing employers. This clause inserts new sections in the Payroll Tax Act so that employers may register with the Commissioner for ACT Revenue when their taxable wages paid or payable for a month exceed the threshold. The monthly threshold is now determined for section 7 under section 139 of the *Taxation Administration Act 1999*. Previously, this amount was determined for section 16 (1) of the Payroll Tax Act.

If not already registered, it is an offence for an employer not to register within seven days after the end of the month in which their monthly taxable wages exceeds the determined threshold. The maximum penalty for this offence is 250 penalty units.

The Commissioner for ACT Revenue must register an employer who applies under this part, and may cancel an employer’s registration if satisfied that the requirement to

register has never, or no longer, applies. Cancellation of registration does not prevent an employer from applying again if their monthly wages exceed the determined threshold and the employer commits an offence if they fail to do so.

Transitional provisions remove the burden of compliance with section 7 for all employers who lodged a return in the month immediately before the commencement of this section, the Commissioner for ACT Revenue must, under section 8, register these employers.

Clause 25 - New section 9AB Exemption from tax – trainees under approved training contracts. A new section is inserted to introduce an exemption for wages paid or payable by an approved group training organisation to a trainee under an approved training contract as defined in the *Vocational Education and Training Act 2003*. Before approving the exemption, the Commissioner for ACT Revenue must be satisfied that the group training organisation is a not-for-profit entity that provides training to trainees under approved training contracts and on-hires the trainees to host employers.

Clause 26 - Section 16 Payroll tax returns. This clause substitutes a new section 16 in the Payroll Tax Act. Section 16 applies to all employers if section 7 applies to the employer in relation to a month. That is, it applies to employers whose wages (paid or payable) exceed, in a month, the threshold determined under section 139 of the *Taxation Administration Act 1999* for section 7. Section 16 applies even if the employer has committed an offence and has not registered with the Commissioner for ACT Revenue under section 7.

The employer must lodge monthly payroll tax returns for the month that section 7 first applies and each subsequent month in the financial year. The employer must pay any interim tax payable because of section 12 (1) or (2). Returns must be lodged no later than 7 days after the end of a month and must state the taxable wages paid or payable by the employer during the month.

Previously, employers were required to lodge monthly returns once their taxable wages paid or payable exceeded the threshold without the need to register with the Commissioner for ACT Revenue.

Clauses 27 and 28 - Review of decisions New section 19 (d) and Section 19 (d) to (g). Clause 27 inserts a right of review in the administrative appeals tribunal of the Commissioner for ACT Revenue's decision to refuse to approve an entity as a group training organisation. Clause 28 is a technical amendment to allow the renumbering of the section.

Part 5 Rates Act 2004

Clause 29 - Legislation amended – pt 5. Part 5 amends the *Rates Act 2004*.

Clause 30 - Section 26 Sale of land for non-payment of rates. This clause substitutes a new section that makes a number of amendments to the existing provision.

Subsections (1) and (2) are unchanged. The Commissioner for ACT Revenue may apply to a court of competent jurisdiction for the sale of all or part of the parcel of land to recover rates and/or land tax in arrears in relation to the parcel of land (if the

Commissioner has complied with section 23 (Notice of rates in arrears) and the rates are still in arrears at least 1 year after the notification under section 23).

Subsection (3) inserts a new provision that allows the Commissioner for ACT Revenue to ask the court in the same application, that the proceeds from a sale also be applied to pay the total amount of any rates or land tax in arrears on 1 or more stated parcels of land owned by the same owner.

Under subsection (4), if satisfied this section applies to the parcel, the court must then order the sale of the parcel of land (or part of it if sufficient to pay the total debt) by public auction. Sub-paragraph (4) (iv) inserts a new provision whereby, if the Commissioner for ACT Revenue has made a request in paragraph (3), and the court is satisfied that the parcel is owned by the same owner, the court pays the total rates and/or land tax in arrears on the parcel mentioned in paragraph (3).

The court must order the proceeds of the sale be paid into court and the title to the parcel is transferred free from mortgages and encumbrances to the purchaser. This is unchanged from the previous provisions.

A new subsection (5) states that the proceeds of the sale must be distributed in the following order:

- (a) first, the Commissioner for ACT Revenue must be paid the total of the rates and land tax in arrears at the time the court makes the order and any expenses or costs relating to the declaration (under section 23), the application (under section 26) and the sale of the parcel;
- (b) second, a mortgagee of the parcel prior to the sale is entitled to the amount owing under the mortgage (if the amount is more than the remaining proceeds, the remaining proceeds are paid to the mortgagee);
- (c) third, subject to paragraph (9), the Commissioner is entitled to the total of the rates and land tax in arrears at the time the court makes the order if application has been made under paragraph (3) (if the amount is more than the remaining proceeds, the remaining proceeds); and
- (d) finally, subject to paragraph (10), any remaining funds may then be paid to the previous owner.

Subsection (6) requires the court to pay the Commissioner for ACT Revenue any amount due under subsection (5) without a court order.

Subsection (7) requires the court to pay the owner or the mortgagee before the property was sold, any amount to which they are entitled under paragraph (5) without a court order if they hand over to the court the certificate or other title to the parcel.

Subsection (8) applies where there may be 2 or more mortgagees of the parcel before the sale. The court may make orders about their respective entitlements that the court considers just.

Subsection (9) applies where a person has an interest in the land other than as an owner or a mortgagee. On application by such an interested party, the court may order that they are paid the value of the person's interest, as decided by the court, before the commissioner is paid any entitlement under subsection (5) (c).

Subsection (10) applies where any other interested party submits an application for payment. On such an application, the court may order all or part of the balance of the proceeds to a person (other than the owner before the sale) if the court considers it just to do so.

Subsection (11) is unchanged from a previous provision in that the sale must be abandoned if the owner pays the total rates and land tax in arrears for the parcel at the time of the payment, and any costs and expenses incurred up to the time of the payment in relation to the declaration, application and sale.

In addition to this, a new provision (d) has been added to clarify that the Commissioner must also be paid any costs and expenses reasonably incurred in relation to the abandonment of the sale. Sub-paragraph (e) is a new provision to allow the proposed sale to be abandoned only if the total amount of rates and land tax in arrears for the related parcel/s at the time of payment is paid if the Commissioner for ACT Revenue has made an application under paragraph (3).

Subsection (12) inserts a definition of “related parcel” whereby 2 or more parcels of land are related if they have the same owner and the Commissioner for ACT Revenue has complied with section 23 in relation to them.

Clause 31 - Application may relate to more than 1 parcel Section 27 (2). If the Commissioner makes an application in relation to two or more parcels:

- on application from the Commissioner for ACT Revenue, if the properties have the same owner, the court may make a single order under section 24, and may make consequential or ancillary orders that the court considers appropriate.
- the court may make orders about apportionment of rates, land tax or any other amount payable, that the court considers just.

Clause 32 - Definitions for Part 7 Section 45, definition of deferral determination.

A new definition of “deferral determination” is substituted to reflect the changes in section numbering. This now includes section 46 (Determination for deferral of rates on application), the new section 47 (Determination for deferral of rates without an application), and an amended deferral determination under section 50.

Clause 33 - Sections 46 Determination for deferral of rates on application, and 47 Determination of deferral of rates without application.

Section 46 is now a combination of the previous sections 46 and 47 and it applies only in cases where an application has been made by an owner to the Commissioner for ACT Revenue to defer rates. The only substantial change is to omit the now obsolete references to land held in fee simple.

A new section 47 has been introduced to give the Commissioner the power to defer a ratepayer’s liability without an application if there are exceptional circumstances justifying the deferral. These circumstances have not been set out as they would usually relate to personal situations and vary from person to person. (Objection and appeal rights are provided in clause 40.)

The Commissioner may defer all or part of the rates that are payable at the date of the determination and any rates that may become payable while the determination is in force. The deferral of arrears benefits the ratepayer as the interest rate is very much

lower than that charged on overdue rates. Deferral also prevents any perceived harassment that comes from issuing arrears notices and court action to recover the debt.

As with deferrals made on application, the Commissioner must provide a copy of the determination to the person to whom it relates and the deferral may only apply if the parcel is used for residential purposes. If the owner is eligible, they may receive a rebate of rates under division 7.3 of the Rates Act before the remaining rates liability is deferred.

A deferral made on application requires that the owner is usually resident. A difference in section 47 is that where the owner does not ordinarily live on the parcel, a determination may be made if the owner lives elsewhere due to the exceptional circumstances, and the owner has not entered into a tenancy agreement in relation to the parcel.

Clause 34 - Revocation of deferral determination – payment of debt and on request. Section 51 (b) has been amended so that a determination may only be revoked by the ratepayer where a deferral determination has been made on application under section 46.

Clause 35 - Additional grounds for revocation of deferral determination. section 52 has been reworded so that new subsection (1) applies only to section 46.

Clause 36 - Section 52 (1) (e). Minor amendments have been made to section 52 (1) (e) to update terminology and there is no material change to the effect of this section.

Clause 37 - New sections 52 (2) and (3) set out the circumstances in which the Commissioner for ACT Revenue may revoke a determination made under section 47. The Commissioner for ACT Revenue may revoke such a determination only if:

- the person to whom the determination relates ceases to own the parcel;
- the owner has entered into a tenancy agreement; or
- the circumstances that caused the determination to be made by the Commissioner for ACT Revenue have changed.

Clause 38 - Notice of proposed revocation on additional grounds. This changes the references section 53 (3) to include 52 (2) (a) along with sections 52 (1) (e) or (f).

Clause 39 - Revocation of deferral determination on grounds. This clause clarifies that section 54 (2) only applies to a determination made under section 46.

Clause 40 - Objections Section 70 (b) (c) and (d). New subparagraphs have been substituted to accommodate the amended numbering of sections in relation to deferrals. Decisions prescribed for the *Taxation Administration Act 1999* section 100 (Objections) now include new sections 46 and 47.