Date Introduced: 5 September 1984
House: House of Representatives
Presented by: The Hon. Chris Hurford, M.P.,
Minister for Housing and
Construction and Minister Assisting
the Treasurer

Short Digest of Bill

Purpose

To extend exemptions to debits made to an account of an organisation whose sole function is support of a specified public benevolent or religious institution, educational institution or hospital that is presently exempt, and to debits made in relation to a minor business activity of a government body. A second purpose is to make it clear that a tax exemption provision, contained in the enabling legislation of a government body, does not apply to exempt that body from bank account debits tax.

Background

Introduction of the Bank Account Debts (BAD) Tax was announced on 17 August 1982 in the 1982/83 Budget Speech.[1] The postponed starting date of 1 April 1983 was announced on 3 February 1983 by the previous Government, which enacted the original legislation prior to the March Federal election. The current Government decided to implement the tax, and also undertook to review its operation after it had been in operation for about six months. The Government's examination was confined to exemptions from the tax, as consideration of other aspects was judged to be more appropriate following the report of the working party established by the 1983 Premiers' Conference to examine the distribution of taxing powers between the Commonwealth and the States.[2]

Bank account debits tax is levied by the Bank Account Debts Tax Act 1982, which prescribes the rates and imposes tax in respect of "taxable debits" to "taxable accounts" and "eligible debits" to "exempt accounts", with additional provision to discourage avoidance off-shore. Provision for assessment and collection is in the Bank Account Debts Tax Administration Act 1982. Amendments to
the latter are needed to effect two of the three additional exemptions decided upon by the Government following the completion of its examination of the tax, while the former is being amended to effect the third exemption and to amend the rate of taxation. (See Bills Digest No. 84/185).

By way of background to the first additional exemption, while public benevolent or religious institutions and non-profit educational institutions and hospitals are currently eligible for exemptions from the tax, organisations such as parents' and citizens' associations and fund-raising auxiliaries, which are established and operated exclusively for the purpose of raising money for the aforemen­tioned institutions, are not eligible for exemption. This Bill will amend this situation so that such organisations are eligible. Exemption will not, however, extend to "umbrella" support groups whose purpose is to promote in a more general way the interests of schools, hospitals or other exempt institutions nor to broadly based support groups such as community service clubs.

Second, all debits by government bodies resulting from transactions connected with a business undertaking are currently subject to the tax, to ensure equality of tax treatment with private sector competitors. This includes activities by local councils such as operating swimming pools, child-care centres and caravan parks, even where they represent an insignificant part of a council's functions and are not commercial in a real sense. Because transactions relating to such business activities are generally conducted through the council's main operating bank account, that account is not eligible for the issue of a certificate of exemption. Instead, the council is initially required to pay tax on all debits to the account and subsequently claim a refund from the Commissioner of Taxation of the tax paid on the non-business debits. The Government believes that the administrative burden in these particular situations is disproportionate to the very small amount of revenue involved. Accordingly, the Bill will extend the scope of exemptions to cover such activities.

In relation to government bodies whose enabling legislation includes a provision exempting them from Commonwealth taxes, legal arguments have been advanced that such bodies are completely exempt from the BAD tax even where they carry on substantial business undertakings. The intended operation of the existing law is that such exemptions not apply. Therefore, this Bill will make it clear that a government body will only be entitled to exemption from the tax if it satisfies the specific tests for exemption contained in the original legislation; that is, that substantial business undertakings are not carried on.
Main Provisions

Under clause 3, eligibility for exemption will be extended to accounts held by organisations established and operated exclusively for the purpose of raising money for, or otherwise supporting, public benevolent or religious institutions and non-profit educational institutions and hospitals that are themselves exempt from tax.

Clause 3 will also liberalise the exemption for government bodies so that they will be eligible for exemption not only in respect of their governmental activities but also any business activity that forms a minor part of their functions.

Both of the above amendments will apply to debits made on or after the first day of the month following the month in which this Bill receives the Royal Assent.

The need for a government body to satisfy the specific tests for entitlement to exemption from the tax that are contained in the legislation will be clarified in clauses 3 and 4.

This particular measure will be made effective in relation to debits occurring on or after 22 August 1984 which was the date on which the Treasurer announced that the law would be amended in this way.

The final measure proposed by this Bill will vary a machinery provision in the existing legislation (clause 5) which stipulates that banks must lodge an annual return relating to exempt accounts specifying the names and addresses of the account holders in alphabetical order. The Bill will replace the requirement to furnish a list of account holders in alphabetical order with a requirement that the bank furnish the return in an approved form containing such particulars as are required by the form. This is consistent with the existing provision relating to lodgment of returns for taxable accounts and will assist the Commissioner of Taxation in exercising appropriate control over the system of certificates of exemption.

For further information, if required, contact:

Economics and Commerce Group

22 October 1984

LEGISLATIVE RESEARCH SERVICE

References
