

1983-84

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA  
HOUSE OF REPRESENTATIVES

---

BANK ACCOUNT DEBITS TAX ADMINISTRATION AMENDMENT BILL 1984

BANK ACCOUNT DEBITS TAX AMENDMENT BILL 1984

---

EXPLANATORY MEMORANDUM

(Circulated by authority of the Treasurer,  
the Hon. Paul Keating, M.P.)



## GENERAL OUTLINE

### Bank Account Debits Tax Administration Amendment Bill 1984

This Bill will amend the bank account debits tax law to:

- exempt debits made to an account of an organisation whose sole function is support of a specified public benevolent or religious institution, hospital, school, college or university that is presently exempt from the bank account debits tax;
- exempt debits made in relation to a minor or insignificant business activity of a government body (including local municipal councils) that does not carry out as its sole or principal function an activity in the nature of a business;
- 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; and
- vary a machinery provision dealing with the lodgment by banks of returns relating to exempt accounts.

### Bank Account Debits Tax Amendment Bill 1984

This Bill will exempt debits of less than \$1 and increase the rate of tax on debits of \$10,000 or more from \$1 to \$1.50.

## MAIN FEATURES

The main features of the Bank Account Debits Tax Administration Amendment Bill 1984 are as follows:

### Exemption of accounts of support groups for existing exempt bodies

(Clause 3 - paragraphs (1)(d), (e) and (f))

The existing legislation provides that an account held by a public benevolent or religious institution, a public or non-profit hospital or a government or non-profit school, college or university is eligible for exemption from the tax. The Bill will grant a similar tax exemption to an organisation established and operated exclusively for the purpose of raising money for, or otherwise supporting, a specified institution, hospital, school, college or university that is itself exempt from tax.

Parents and citizens associations, mothers' clubs and parents and friends associations will be among the school support bodies eligible for exemption. Separately constituted auxiliaries set up to raise funds for a particular hospital or public benevolent institution will also be within the scope of the proposed exemption.

The proposed exemption 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.

Minor business activities of government bodies  
(Clause 3 - paragraphs (1) (a) and (g))

There is a specific provision in the bank accounts debits tax legislation dealing with the exemption of government bodies. It provides that a government department or authority, a municipal corporation or other local governing body that does not carry out as its sole or principal function an activity in the nature of a business is eligible for exemption from the tax, except in relation to bank account debits resulting from transactions connected with a business undertaking.

The proposed amendment will liberalise this exemption so that such a government body will be eligible for exemption not only in respect of its governmental activities but also in respect of any business activity that forms a minor or insignificant part of its functions. This will mean, for example, that a local municipal council will no longer be subject to the tax in respect of business activities such as a caravan park, child care centre or swimming pool where the activity represents an insignificant part of the council's functions. On the other hand, a council that carries on, for example, a substantial electricity undertaking will not be eligible for exemption in respect of debits relating to that business activity.

The amendment will apply to debits made on or after the first day of the month following the month in which this amending Bill receives the Royal Assent.

Tax exemption provisions in enabling legislation of government bodies

(Clause 3 - paragraphs (1) (b) and (c) and Clause 4)

The Bill will clarify the operation of the bank account debits tax legislation in relation to a government department or authority, a municipal corporation or other local governing body whose enabling legislation includes a provision exempting it from Commonwealth taxes.

The existing legislation sets out specific tests for the exemption of government bodies. Those tests are designed to ensure that government bodies are not eligible for exemption from the tax in respect of their business

activities. Notwithstanding those specific requirements, it has been contended that certain government bodies are completely exempt from the tax by virtue of a tax exemption provision contained in their enabling legislation.

The amendments proposed by the 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 of government bodies contained in the bank account debits tax legislation. These amendments are to apply to debits made on or after 22 August 1984.

---

More detailed explanations of the clauses of each of the Bills are contained in the notes that follow.

BANK ACCOUNT DEBITS TAX ADMINISTRATION AMENDMENT BILL 1984Clause 1 : Short title

By sub-clause (1) of this clause the amending Act is to be cited as the Bank Account Debits Tax Administration Amendment Act 1984.

Sub-clause (2) facilitates references to the Bank Account Debits Tax Administration Act 1982 which, in the Bill, is referred to as "the Principal Act".

Clause 2 : Commencement

Under this clause the amending Act is to come into operation on the day on which it receives the Royal Assent. But for this clause, the amending Act would, by reason of sub-section 5(1A) of the Acts Interpretation Act 1901, come into operation on the twenty-eighth day after the date of Assent.

Clause 3 : Interpretation

Sub-clause 3(1) proposes amendments to sub-section 3(1) of the Principal Act which contains definitions of a number of terms used in that Act.

Paragraph (a) of sub-clause 3(1) proposes the omission of the definitions of "excepted goods" and "excepted services" in sub-section 3(1) and the substitution of new definitions. This is a technical amendment consequential upon the proposed liberalisation of the exemption provided to government bodies.

The expressions "excepted goods" and "excepted services" are used in sub-section 3(4) of the Principal Act which provides that a government body which charges for goods or services supplied to the public - other than "excepted goods" or "excepted services" - is deemed to be carrying on a business for the purpose of the exemption provided to government bodies. By their existing definitions, "excepted goods" and "excepted services" mean goods or services the supply of which forms a minor or insignificant part of the functions of the government body, or goods or services declared by regulations to be excepted goods or services.

The new definitions delete the references to the supply of goods or services which form a minor or insignificant part of the government body's functions. These references are no longer necessary because the exemption provided to government bodies is being extended by paragraph (g) of sub-clause 3(1) of the Bill to include

debits relating to any business activity (including a deemed business activity) that forms a minor or insignificant part of the body's functions. Accordingly, excepted goods and services, as redefined, will be confined to those that the regulations declare to be so excepted.

Paragraphs (b) to (g) of sub-clause 3(1) propose amendments to paragraph (a) of the definition of "excluded debit" in sub-section 3(1). Paragraph (a) of the definition identifies those debits which will be excluded debits by reason that the body or person in whose name the account concerned is held is entitled to exemption from the tax.

By paragraph (b) of sub-clause 3(1), a technical amendment is being made to sub-paragraph (a)(ii) of the definition of "excluded debit" to ensure that the exemption from the bank account debits tax presently available to certain persons under that sub-paragraph is not affected by proposed new sub-sections 8(3) and (4) (see notes on clause 4)

Existing sub-paragraph (a)(ii) applies to persons such as foreign diplomatic and consular personnel who are entitled to exemption from bank account debits tax by virtue of another Commonwealth law. The proposed amendment will make it clear that sub-paragraph (a)(ii) will continue to apply to such persons notwithstanding that proposed sub-sections 8(3) and (4) will provide that a tax exemption provision in another Commonwealth law does not exempt a person from bank account debits tax.

By paragraph (c) of sub-clause 3(1), sub-paragraph (a)(iii) of the definition of "excluded debit" is being replaced by two new sub-paragraphs - sub-paragraphs (iii) and (iiia). This amendment together with the amendments to section 8 proposed by clause 4 is designed to ensure that a government department or authority, a municipal corporation or other local governing body will only be entitled to exemption from the bank account debits tax if it satisfies the specific tests for exemption of government bodies specified in sub-paragraph (a)(vii) of the definition of "excluded debit".

Existing sub-sub-paragraph (a)(iii)(A) specifies that debits made to an account in the name of an organization that is entitled to exemption from the tax under another Commonwealth law is an excluded debit. It has been contended that a Commonwealth authority whose enabling legislation includes a provision exempting it from Commonwealth taxes is eligible for exemption under sub-sub-paragraph (a)(iii)(A) notwithstanding the specific tests for exemption of government bodies contained in sub-paragraph (a)(vii) of the definition of "excluded debit".

New sub-paragraph (a) (iii) will re-enact the terms of existing sub-sub-paragraph (a) (iii) (A) except that it will expressly exclude from its scope government bodies of the kinds referred to in sub-paragraph (a) (vii). Non-government organizations (e.g. certain international organizations) which, but for proposed sub-sections 8(3) and (4), would be entitled to exemption from the bank account debits tax by virtue of a tax exemption provision in another Commonwealth law will continue to be eligible for exemption from the tax under new sub-paragraph (a) (iii)

New sub-paragraph (a) (iiia) will re-enact the terms of existing sub-sub-paragraph (a) (iii) (B) which specifies that debits made to an account in the name of an organization to which Australia is obliged under an international agreement to grant tax exemption will be excluded debits.

Paragraphs (d) and (e) propose technical amendments to sub-paragraph (a) (vi) of the definition of "excluded debit" to make it clear that government schools and colleges as well as non-profit private schools and colleges are within the scope of sub-paragraph (a) (vi).

These amendments will ensure that parents and citizens' associations and similar organizations which serve government schools will qualify for exemption under the new exemption proposed by paragraph (f) of sub-clause 3(1) which is expressed to apply to organizations whose sole function is to support a school, etc., referred to in sub-paragraph (a) (vi).

Paragraph (f) will insert a new sub-paragraph - sub-paragraph (a) (via) - in the definition of "excluded debit". By this new sub-paragraph the definition of "excluded debit" will include debits made to accounts of organizations established and carried on exclusively for raising money for, or otherwise promoting the interests of, a specified public benevolent or religious institution, hospital, school, college or university that is exempt under sub-paragraph (a) (vi).

The requirement that the organization must exclusively promote the interests of a specified school, hospital, etc., means that the proposed exemption will not extend to "umbrella" support groups that offer support for more than one school, hospital, etc. A condition of the exemption is that the debit must relate to a transaction carried out wholly and exclusively in the furtherance of the objects of the body.

Paragraph (g) proposes to amend sub-paragraph (a) (vii) of the definition of "excluded debit" which provides that debits made to an account of a government



department or authority or a municipal corporation or other local governing body will be excluded debits provided two tests are satisfied.

The first test is that the government body must not have as its sole or principal function the carrying on of an activity in the nature of a business. The second test is that the debit must not have resulted from a transaction connected with a business activity.

The proposed amendment liberalises the second test so that debits to an account of a government body that does not primarily carry on a business undertaking will be excluded debits not only where a debit relates to non-business activities but also where a debit relates to a business activity that forms a minor or insignificant part of that body's functions.

By sub-clause 3(2) the proposed amendments relating to the two new exemptions will apply to debits made to an account on or after the first day of the month which follows the month in which this amending Act receives the Royal Assent.

By sub-clause 3(3) the proposed amendments to correct a possible technical deficiency in the legislation in respect of Commonwealth authorities whose enabling legislation provides for exemption from Commonwealth taxes will apply to debits made to an account on or after 22 August 1984.

#### Clause 4 : Liability to tax

Section 8 of the Principal Act establishes the liability to pay the tax imposed by the Bank Account Debits Tax Act 1982. Under sub-section (1) liability for payment of bank account debits tax is imposed jointly and severally on the bank with which a taxable account is kept and the account holder. By sub-section (2) the account holder is liable to pay tax imposed on an eligible debit to an account that is not a taxable account.

Clause 4 proposes amendments of section 8 of the Principal Act to make it clear that a liability imposed on an account holder under sub-section 8(1) or (2) is not to be overridden by a provision contained in another Act that purports to exempt an account holder from Commonwealth taxes. Accordingly, a person will only be exempt from the bank account debits tax if the person satisfies the tests for exemption specified in the bank account debits tax legislation. In particular, the amendments proposed by clause 4 together with the amendment proposed by paragraph 3(1)(c) will ensure that a government body whose enabling

legislation includes a provision exempting it from Commonwealth taxes will only be entitled to exemption from the bank account debits tax if it satisfies the specific tests for exemption of government bodies specified in sub-paragraph (a)(vii) of the definition of "excluded debit" in sub-section 3(1) of the Principal Act.

Sub-clause (1) of clause 4 proposes the insertion of two new sub-sections - sub-sections (3) and (4) - in section 8.

Proposed sub-section (3) will apply where a pre-existing Commonwealth law purports to exempt a person from liability to pay bank account debits tax or to pay a class of taxes that includes the bank account debits tax. In such a case, sub-section (3) provides that the pre-existing law does not exempt the person from liability to pay bank account debits tax.

New sub-section (4) will apply where a future Commonwealth law purports to exempt a person from liability to pay a class of taxes that includes bank account debits tax (except a law which expressly exempts a person from liability to pay the bank account debits tax). In that case, sub-section (4) provides that the future law is not to be construed as exempting the person from liability to pay bank account debits tax.

By sub-clause (2) new sub-sections 8(3) and (4) will apply to debits made to accounts on or after 22 August 1984.

#### Clause 5 : Return in relation to exempt accounts

Sub-clause 5(1) proposes amendments to section 56 of the Principal Act which is a machinery provision that enables appropriate control to be exercised by the Taxation Office over the system of certificates of exemption. Existing section 56 requires a bank to furnish to the Commissioner of Taxation an annual return relating to exempt accounts specifying the names and addresses of the account holders in alphabetical order.

The proposed amendments will delete the requirement for the annual return to contain, in alphabetical order, the name and addresses of account holders. Instead, the bank will be required to furnish a return in accordance with a form approved by the Commissioner and containing such particulars as are required by the Commissioner. The required information may, as at present, be furnished by way of an electronic medium if the Commissioner so agrees.

By sub-clause (2) the new requirements will first apply in respect of a return for the year ended 31 December 1985.

BANK ACCOUNT DEBITS TAX AMENDMENT BILL 1984

This Bill will exempt debits of less than \$1 and increase the rate of tax on debits of \$10,000 or more from \$1 to \$1.50.

Clause 1 : Short title

By sub-clause (1) of this clause the amending Act is to be cited as the Bank Account Debits Tax Amendment Act 1984.

Sub-clause (2) facilitates references to the Bank Account Debits Tax Act 1982 which, in the Bill, is referred to as "the Principal Act".

Clause 2 : Commencement

Under this clause, the amending Act will come into operation on the first day of the month which follows the month in which the Bank Account Debits Tax Administration Amendment Act 1984 receives the Royal Assent.

Clause 3 : Imposition of Tax

Clause 3 will repeal section 4 of the Principal Act and substitute a new section 4 which will ensure that debits below \$1 are not subject to the tax.

The substituted section 4 will formally impose bank account debits tax in respect of each debit subject to the tax that is not less than \$1 and is made to the account on or after the date of commencement of the section.

Clause 4 : Schedule

Clause 4 will repeal the Schedule to the Principal Act which sets out the existing rates of tax and substitute a new Schedule which specifies the new rates of tax as follows :

<u>Amount of Debit</u>	<u>Amount of tax</u>
Not less than \$1 but less than \$100	10 cents
Not less than \$100 but less than \$500	25 cents
Not less than \$500 but less than \$5000	50 cents
Not less than \$5000 but less than \$10000	\$1
\$10000 or more	\$1.50

Clause 5 : Saving

Clause 5 is a saving provision which will ensure that bank account debits tax imposed by the Principal Act before the commencement of this amending Act will continue to be imposed. Effectively, it ensures that tax is still payable at the previous rates of bank account debits tax on debits made before the commencement of this amending Act.





