

Commonwealth Places (Mirror Taxes Administration) Bill

EXPLANATORY MEMORANDUM

PART 1—PRELIMINARY

Clause 1 outlines the purpose of the Bill.

Clause 2 is the commencement provision.

Sub-clause (1) provides that except for Part 6 and the Schedule, the Act will come into operation on the day on which it receives the Royal Assent.

Sub-clause (2) provides that Part 6 and the Schedule come into operation on a day to be proclaimed. The date of commencement for Part 6 and the Schedule must be on or after the day on which an arrangement is made between the State Governor and the Governor-General of the Commonwealth under clause 5, because until such an arrangement the applied laws corresponding to the State taxing laws (that are applied by the Commonwealth Act in relation to Commonwealth Places) will not have effect.

Under the Commonwealth Places (Mirror Taxes) Act 1998 (Cth), the State taxing laws are taken to have always been applied in relation to Commonwealth places in this State, but not so as to impose any liability for tax for things that happened before 6 October 1997.

Clause 3 This clause defines certain words and expressions used in the proposed Act.

Sub-clause (1) provides definitions of a number of terms including:

"applied law" means the provisions of a State taxing law that apply in relation to a Commonwealth place in accordance with the Commonwealth Act.

"Commonwealth Act" means the Commonwealth Places (Mirror Taxes) Act 1998 of the Commonwealth.

"Commonwealth place" means a place in the State acquired by the Commonwealth for public purposes. Examples of such places include airports, defence bases, and office blocks purchased by the Commonwealth to accommodate employees of Commonwealth Government Departments.

"excluded by section 52(i) of the Commonwealth Constitution" means inapplicable by reason only of the operation of section 52 of the Commonwealth Constitution in relation to Commonwealth places.

In this regard, that section states "the Parliament shall, subject to this Constitution, have exclusive power to make laws for the peace, order, and good government of the Commonwealth with respect to—

- (i) the seat of government of the Commonwealth, and all places acquired by the Commonwealth for public purposes;"

"proceedings" means any proceedings, whether civil or criminal and whether original or appellate. This would include an appeal to the Supreme Court arising from the Commissioner of State Revenue's disallowance of a taxpayer's objection.

"State authority" is defined as those persons and entities outlined in paragraphs (a) to (e). It is envisaged that these persons and entities will be undertaking tasks associated with the administration of applied laws on behalf of the Commonwealth.

"State taxing law" means a State law that is a State taxing law within the meaning of the Commonwealth Act.

The Commonwealth Act provides that a State taxing law is—

- (a) a scheduled law of the State. The laws of Victoria which are scheduled laws are the **Debits Tax Act 1990**, the **Financial Institutions Duty Act 1982**, the **Pay-roll Tax Act 1971** and the **Stamps Act 1958**.
- (b) a State law that imposes tax and is prescribed by regulations. At this point, no such law has been prescribed.
- (c) any other State law of the State to the extent that it is relevant to the laws scheduled or prescribed. This

includes, for example, the **Taxation (Reciprocal Powers) Act 1987** and the **Interpretation of Legislation Act 1984**.

As noted in the explanatory memorandum tabled at the time of the introduction of the Commonwealth legislation, "this reflects the broad policy that, so far as possible, the mirror taxes will operate, be applied and interpreted in the same way as the State Taxes they mirror; thus it will be State interpretation acts, and so on that will be applied as relevant to the mirror taxes."

- Clause 4 This clause clarifies that this Act binds the Crown in the right of the State of Victoria and, subject to the limitations on the legislative power of the State, in all its other capacities.

PART 2—ADMINISTRATION AND OPERATION OF STATE TAXING LAWS AS APPLIED LAWS IN RELATION TO COMMONWEALTH PLACES

- Clause 5 provides for a formal arrangement to be made between the State Governor and the Commonwealth Governor-General in relation to the exercise by a State authority of a power, duty or function under an applied law.

State taxing laws will only have effect as applied laws under the Commonwealth Act in relation to Commonwealth places in Victoria while such an arrangement is in force.

- Clause 6 provides for the variation or revocation of such an arrangement, subject to agreement between the Governor and the Governor-General.

This provision corresponds to section 9 of the Commonwealth Act under which such arrangements, variations or revocations must be published in the Commonwealth Gazette.

- Clause 7 This clause provides for a State authority to exercise or perform any power, duty or function that the Commonwealth Act requires or authorises it to exercise or perform, despite any State law.

PART 3—PROCEEDINGS

- Clause 8 This clause requires proceedings commenced in a court under an applied law to be continued as if commenced under the corresponding State taxing law if the court is satisfied that the
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State taxing law is not excluded by section 52(i) of the Commonwealth Constitution.

This means that a proceeding does not have to be restarted or any steps taken in the proceedings redone when the proceeding has been commenced under an applied law in the mistaken belief that the State taxing law was excluded by section 52(i) of the Commonwealth Constitution. This clause is similar to section 12 of the Commonwealth Act.

Clause 9 This clause prevents an objection being made in proceedings under a State taxing law merely on the ground that proceedings have been commenced or are pending under a corresponding applied law.

It ensures that proceedings under a State taxing law are not frustrated because a similar proceeding is also taken under the corresponding applied law (for example, if duplicate proceedings are instituted because the State taxing authority is unsure of the correct jurisdiction). This clause is similar to section 13 of the Commonwealth Act.

Clause 10 This clause provides that a court can deal with an appeal from a judgement, decree, order or sentence of a court in proceedings under an applied law as though it was commenced under the corresponding State taxing law, where the court is satisfied that the State taxing law is not excluded by section 52(i) of the Commonwealth Constitution. This clause is similar to section 14 of the Commonwealth Act.

Clause 11 This clause is similar to section 16 of the Commonwealth Act and facilitates proof of interests in land when an issue arises in proceedings under a State taxing law as to whether a particular place is a Commonwealth place. Relevant certificates are not conclusive; they can be rebutted by other evidence.

PART 4—VALIDATION AND SAVING

Clause 12 This clause is similar to section 18 of the Commonwealth Act and ensures that if an action is purportedly done under an applied law and the corresponding State taxing law is not excluded by section 52(i) of the Commonwealth Constitution, it will be regarded as having been done under the State taxing law that corresponds to the applied law. The provision will, for

example, validate the action of the Commissioner of State Revenue who pursues as a single debt under an applied law a tax debt that relates partly to a business in a Commonwealth place, and partly elsewhere in the State. It will ensure that if a taxpayer pays as Commonwealth mirror tax an amount which was properly due as State tax, the amount will be taken to have been paid as State tax so the taxpayer will not be entitled to a refund and the Commissioner of State Revenue will not be required to pursue a separate payment of State tax.

Clause 13 This clause is a saving provision to cover circumstances in which a place ceases to be a Commonwealth place. It has the effect that, in such circumstances, all rights, privileges, duties and liabilities that were acquired or created under an applied law while the place was a Commonwealth place continue. Penalties can be imposed as if the applied law continued to have effect and investigations, legal proceedings and remedies may be instituted or enforced as if the applied law had not ceased to have effect.

Clause 14 This clause is a saving provision similar to clause 13 to cover circumstances in which a place becomes a Commonwealth place. It has the effect that, in such circumstances, all rights, privileges, duties and liabilities that were acquired or created under a State taxing law while the place was not a Commonwealth place continue. Penalties can be imposed as if the State taxing law had continued to have effect and investigations, legal proceedings and remedies may be instituted or enforced as if the State taxing law had not ceased to have effect.

Clauses 13 and 14 are similar to sections 22 and 24 of the Commonwealth Act.

PART 5—MISCELLANEOUS

Clause 15 This clause provides for references to an applied law in an instrument or other writing to be read as a reference to the corresponding State taxing law if the State taxing law is not excluded by section 52(i) of the Commonwealth Constitution. This ensures the validity of such documents and negates the need for new documents to specify the State taxing laws.

- Clause 16 This clause provides for appropriation of the Consolidated Fund to the necessary extent to meet the State's liabilities as enumerated in the clause. An example is where Commonwealth mirror revenues have been mistakenly credited to the State Consolidated Fund.
- Clause 17 This clause provides that if an act or omission constitutes an offence under both a law of the State and an applied law, and the offender is punished under the applied law, the offender is not liable to also be punished for the offence under the law of the State.
- Clause 18 This clause provides for the making by the Governor in Council of regulations necessary or convenient to give effect to the purposes of this Act.
- Clause 19 This clause provides that an Act specified in the heading to an item in the Schedule is amended as set out in that item.

SCHEDULE

The Schedule provides for amendments to the **Debits Tax Act 1990**, the **Financial Institutions Duty Act 1982**, the **Pay-roll Tax Act 1971**, the **Stamps Act 1958** and the **Taxation Administration Act 1997**. The aim of the amendments to the State taxing laws and the applied laws is for each State taxing law and corresponding applied law under the Commonwealth Act to be able to operate in conjunction, once the applied laws (which will be modified by way of Treasurer's Notice under section 8 of the Commonwealth Act) are in operation. The amendments taken as a whole ensure that, if a State taxing law cannot operate in Commonwealth places in Victoria and hence the corresponding applied law has effect in relation to those Commonwealth places, the combined liability of a taxpayer under both the State taxing law and corresponding applied law will be as close as possible to what the taxpayer's liability would have been if the State taxing law applied to all places in Victoria, including Commonwealth places.