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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

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TAXATION DEBTS (ABOLITION OF CROWN PRIORITY) BILL 1980

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EXPLANATORY MEMORANDUM

(Circulated by authority of the Treasurer,  
the Hon. John Howard, M.P.)

Introductory note

This Bill will give effect, in relation to taxation debts, to the Government's intention, announced by the Minister for Business and Consumer Affairs on 13 September 1979, to abolish the prerogative right, and any statutory priority, of the Commonwealth to receive preferential payment in company insolvencies, other than in relation to debts for tax instalment deductions and withholding tax.

Under the present income tax law, the liquidator of a company that is being wound up is required to pay income tax in priority to all other unsecured debts. A liquidator and a receiver for debenture holders who has taken possession of assets of a company must also set aside some or all of the assets, to the value of an amount notified by the Commissioner of Taxation under each of the various taxation Acts being amended by this Bill, to provide for payment of the relevant tax or charge.

The proposed amendments will give statutory recognition to the decision to withdraw the priority of the Crown, with effect from 1 November 1979. The Minister for Finance, in terms of section 70C of the Audit Act 1901, gave his authority with effect from that date for Crown priority to be postponed so as to rank with unsecured ordinary creditors in cases of company insolvency.

The Bill also provides the opportunity to make a number of purely formal amendments to certain of the taxation Acts that are being amended.

An outline of the main features of the Bill follows.

Amendments of the Income Tax Assessment Act 1936  
(Clauses 4 and 5)

The amendment to be made by clause 5 will repeal section 221 of the Income Tax Assessment Act 1936 and thus abolish the statutory priority for payment of income tax of a company in liquidation over all other unsecured debts of the company. Another Bill will abolish the Crown's prerogative right to priority of payment.

Against this background, it is proposed by clause 4 to modify the requirement on a liquidator or a receiver for debenture holders under section 215 of the Income Tax Assessment Act 1936 to hold sufficient of the assets of the company to pay in full the amount in respect of income tax, as notified by the Commissioner of Taxation. The liquidator or receiver is to be permitted to part with assets to satisfy secured debts or debts which are preferential debts under Commonwealth, State or Territory law. After allowance is made for payment of secured or preferred debts, a liquidator will be required to set aside part of the remaining assets, equal to the proportionate amount that the Commissioner, as an ordinary creditor, would be entitled to receive. The proposed amendments include a formula for the trustee to calculate this amount.

Amendments of the Pay-roll Tax (Territories) Assessment Act 1971  
(Clause 7)

The amendments to section 30 of the Pay-roll Tax (Territories) Assessment Act 1971 proposed by this clause will similarly require a liquidator to set aside for payment of pay-roll tax imposed in relation to the Australian Capital Territory only so much of the assets available for payment of ordinary debts as reflects the fact that pay-roll tax is to rank for payment as an ordinary debt. This will allow the liquidator to pay secured and preferential creditors in priority to any debt for pay-roll tax.

Amendments of the Sales Tax Assessment Act (No. 1) 1930  
(Clauses 9 and 10)

Section 32 of this Act is also to be amended so that a liquidator will only need to set aside out of assets available for payment of ordinary debts so much of those assets as the amount notified by the Commissioner as sufficient to meet sales tax bears to the total of the amounts of ordinary debts owing by the company, including any amounts which the Commissioner of Taxation has notified to the liquidator under similar provisions in respect of various taxes and charges under this and the other Acts being amended. Again, secured and preferential debts will be able to be paid in priority to sales tax.

Certain formal amendments which do not disturb the substance of the law in any way are also to be made, as set out in Schedule 1, to reflect modern drafting style in Commonwealth legislation.

Amendments of the Stevedoring Industry Charge Assessment Act 1947

(Clauses 12 and 13)

Similar amendments to those already outlined in relation to income tax, pay-roll tax and sales tax are proposed in this Act with regard to the setting aside of assets in accordance with section 27 to meet an amount of stevedoring industry charge of which a liquidator or receiver for debenture holders is formally notified by the Commissioner. A liquidator or receiver will be expressly authorised to pay secured and preferential creditors in priority to the charge and will be required only to set aside assets of the company to the value of such amount as reflects the entitlement of the Commissioner as an unsecured creditor.

Formal amendments to the Act to accord with modern drafting practice are contained in Schedule 2 of the Bill.

Amendments of the Tobacco Charges Assessment Act 1955

(Clauses 15 and 16)

Under the proposed amendments to section 27 of the above Act, a liquidator's obligation to set aside assets for payment of tobacco charge is, in line with other amendments proposed by this Bill, to be reduced to an obligation to set aside from the assets remaining after secured and preferential debts have been paid, the amount which the Commissioner as an ordinary creditor would be entitled to expect to receive.

Formal amendments of the kind referred to in relation to clauses 10 and 13 are also made by clause 16 and Schedule 3 of the Bill.

Amendments of the Wool Tax (Administration) Act 1964

(Clauses 18 and 19)

The formula proposed by the Bill for calculating the amount of assets which a liquidator of a company is required to set aside for payment of wool tax is consistent with the proposals for amendments of other taxation Acts, as already described. There are also to be formal amendments (Schedule 4) to this Act to accord with the change in drafting style being made in those other Acts.

Detailed explanations of each clause of the Bill follow.

PART I : PRELIMINARYClause 1 : Short title, etc.

This clause contains formal provisions for the citation of the amending 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. As amendments proposed by the Bill are to apply with effect from 1 November 1979, it is appropriate for the Bill to come into operation at an early date.

PART II : AMENDMENTS OF THE INCOME TAX ASSESSMENT ACT 1936Clause 3 : Interpretation

This clause identifies the Income Tax Assessment Act 1936 as the Principal Act for the purposes of the amendments to be made under Part II of the amending Act.

Clause 4 : Liquidators, &c.

Section 215 of the Income Tax Assessment Act 1936 imposes certain obligations upon a liquidator of a company, a receiver for debenture holders who has taken possession of assets of a company, or an agent for a non-resident with instructions from his principal to wind up the business or realise his principal's assets (in section 215 these 3 classes of person are each referred to as "the trustee".) The amendments proposed by clause 4 are concerned with situations of company insolvency and will modify the requirements placed on liquidators and receivers.

In its present form, section 215 requires a liquidator to notify the Commissioner of Taxation of his appointment (sub-section (1)) and the Commissioner in turn must notify the liquidator as soon as practicable of the amount which appears sufficient to provide for any tax which is or will become payable by the company (sub-section (2)). Similar requirements apply in respect of a receiver for debenture holders who has taken possession of any assets of a company. Those requirements are not proposed to be altered.

It is a further requirement of the existing law - sub-section 215(3) - that the liquidator or receiver must set aside sufficient of the company's assets - and to that extent

is made liable, as trustee - to pay the amount of tax notified by the Commissioner as being or becoming payable. Under sub-section (4), a failure by a liquidator or receiver to act as required constitutes an offence punishable on conviction by a fine of up to \$100. The liquidator or receiver is personally liable for payment of the tax to the extent that he should have set assets aside.

As proposed to be modified by the amendments contained in clause 4, a liquidator or receiver will be required to set aside assets for payment of tax, but the amount to be set aside will be calculated on a basis that recognises that a debt in respect of income tax is now to rank as an ordinary debt. Specifically, the section as amended will acknowledge the rights of secured and preferred creditors to be paid first. Out of any assets of the company remaining for ordinary creditors only a pro rata share will be required to be set aside for income tax, i.e., no more than the Commissioner is, on the basis of the Commissioner's notification, entitled to on a pro rata basis with ordinary creditors. The personal liability of the liquidator or receiver will be correspondingly reduced.

It is to be noted that while section 215 will continue to require the setting aside of an amount (calculated as above), that setting aside will not ultimately determine how much the Commissioner, as an ordinary creditor, will receive. In the case of a liquidation, for example, it may not be until after all the assets of the company have been realised, creditors' claims established fully and provision made for the costs of winding-up that the amount available for payment of tax and other ordinary debts is finally known. If, in the event, the amount set aside were to prove more than the Commissioner's pro rata entitlement, the amount payable to the Commissioner would be restricted to his pro rata entitlement.

To give effect to the proposed changes, clause 4 of the Bill will omit sub-sections (3) and (4) of section 215 and insert 6 new sub-sections - sub-sections (3), (3A), (3B), (3C), (3D) and (4).

Proposed sub-section (3) will apply to liquidators of companies and receivers for debenture holders. Under paragraph (a) of the new sub-section, a liquidator or receiver must not, without the leave of the Commissioner or as authorised by sub-section (3B), part with any of the assets of the company until he has been notified by the Commissioner of the amount sufficient to provide for the income tax which is or will become payable.

Paragraph (b) contains a formula for determining the pro rata entitlement of the Commissioner, as an ordinary creditor in respect of income tax, to be paid out of the assets

available for payment of ordinary debts. (Other "prescribed tax" debts must also be taken into account.) Assets to the value of the amount so calculated are required under this paragraph to be set aside and, under paragraph (c), the liquidator or receiver is to be liable as trustee to pay tax to that extent.

Sub-section (3A) will substantially restate the existing obligations that are imposed on an agent who has been required by his principal to wind up the business or realize the assets of the principal. The sub-section will continue to require such an agent to set aside out of the assets enough to pay the full amount of income tax payable in respect of the principal. Where the assets in the hands of the agent are insufficient to pay the whole of the principal's tax the agent will continue to be required to set aside the whole of those assets towards the payment of the tax.

Under proposed sub-section (3B) a liquidator of a company or a receiver for debenture holders will be expressly permitted to part with assets of the company to the extent necessary for the purpose of paying debts of the company which are not ordinary debts of the company. "Ordinary debts of the company" is defined in proposed sub-section (3C) as meaning a debt which is an unsecured debt and is not a debt that, under a Commonwealth, State or Territory law, is payable in priority to some or all of the other debts of the company.

Proposed sub-section (3D) will define the expression "prescribed tax" that is used in sub-section (3). The expression will mean a tax or charge assessed under the other Acts being amended by this Bill, i.e., pay-roll tax (in relation to the Australian Capital Territory), sales tax, stevedoring industry charge, tobacco charge and wool tax.

New sub-section (4) is to the same effect as the present sub-section (4) of section 215 and makes it an offence punishable on conviction by a fine of not less than \$2 and not more than \$100 to fail to comply with the section (paragraph (b)). A trustee who fails to pay the tax for which he is liable under sub-section (3) or (3A) is also made personally liable to pay the tax, to the extent of the value of the assets required to be set aside under those sub-sections. It is to be noted, however, that to the extent that the new sub-sections (3), (3A), (3B), (3C) and (3D) may reduce the amount that a trustee is to set aside for income tax, his personal liability under sub-section (4) will be correspondingly reduced.

Paragraph (1)(b) of clause 4 will omit sub-section (6) of section 215 which provides that the Commissioner may - if all other creditors of a company being wound up whose debts rank in priority to the costs, charges and expenses incurred by the liquidator agree to do likewise - permit such costs,

charges and expenses to be paid in priority to tax payable by the company. With the abolition of the priority of the Crown for payment of debts, including income tax (see clause 5), the sub-section is no longer appropriate.

As previously mentioned, the Minister for Finance, in terms of his authority under section 70C of the Audit Act 1901 gave consent, with effect from 1 November 1979, for postponement of the common law and statutory rights of the Commonwealth to be paid in priority to other creditors, so that the Commonwealth would rank with unsecured ordinary creditors in the case of a company insolvency. Accordingly, sub-clause (2) proposes that the amendments to be made by sub-clause (1) be deemed to have come into force on that date.

Clause 5 : Payment of tax to have priority in case of bankruptcy or liquidation

Section 221 of the Principal Act requires that, with some limited exceptions, a liquidator of a company which is being wound up is to apply the assets of the company to the payment of the company's income tax liability, in priority to all other unsecured debts. Clause 5 will repeal that section with effect from 1 November 1979, thus giving effect to the Ministerial announcement made on that date to terminate the statutory priority position of the Crown in company insolvencies.

PART III - AMENDMENTS OF THE PAY-ROLL TAX (TERRITORIES) ASSESSMENT ACT 1971

Clause 6 : Interpretation

This clause identifies the Pay-roll Tax (Territories) Assessment Act 1971 as the Principal Act for the purposes of the amendments made under Part III of the amending Act.

Clause 7 : Liquidator to give notice

Section 30 of the Pay-roll Tax (Territories) Assessment Act 1971 places an obligation upon a liquidator of a company being wound up (being a company registered or required to be registered as an employer under that Act) to advise the Commissioner of Taxation of his appointment and also places obligations upon him with regard to setting aside assets and payment of pay-roll tax. The Commissioner is, in turn, required to notify as soon as practicable the amount which appears sufficient to provide for the pay-roll tax which is or will become payable by the company. In these respects, the obligations imposed upon a liquidator in respect of pay-roll tax parallel those in respect of income tax under section 215 of the Income Tax Assessment Act 1936.

Clause 7 of the Bill will omit the present sub-sections (3) and (4) of section 30 and insert in their place new sub-sections (3), (3A), (3B), (3C) and (4).

Paragraph (a) of new sub-section (3) will continue to prohibit a liquidator from parting with the company's assets until he has been notified by the Commissioner of the amount sufficient to provide for the pay-roll tax which is or will become payable, but this will be subject to the exception proposed in sub-section (3A) in relation to payment of secured and preferential debts.

Paragraph (b) of sub-section (3) will provide the formula for calculating the amount to be set aside to meet pay-roll tax, i.e., as explained in relation to income tax, on the basis that the Commissioner ranks as an ordinary creditor. Paragraph (c) will restate that the amount required to be set aside represents the extent of the liquidator's liability as trustee to pay the pay-roll tax.

New sub-section (3A) will allow a liquidator to use assets of the company at any time to pay debts which are not "ordinary" debts of the company. These, in terms of proposed sub-section (3B), are debts which are not secured debts and are not debts required under a law of the Commonwealth, a State or Territory to be paid in priority to some or all of the other debts of the company.

New sub-section (3C) defines the phrase "prescribed tax" for the purposes of the proposed sub-section (3) to mean tax or charge assessed under the other Acts which are to be amended by the provisions of this Bill.

The main purpose of new sub-section (4) is to make it clear that the personal liability of the liquidator for payment of the pay-roll tax of the company is limited to the value of the assets that he is required to set aside under new sub-section (3).

Paragraph (1)(b) of clause 7 will make a consequential amendment to sub-section (5), which relates to the situation where two or more persons are liquidators of a company and imposes on those persons joint liability for payment of tax. The amendment recognises that pay-roll tax is now to rank as an unsecured debt. The sub-section as proposed to be amended will acknowledge situations where no assets of the company are available to pay pay-roll tax, the assets having been absorbed in meeting secured or preferential claims.

Paragraph (1)(c) of clause 7 will omit sub-section (6) of section 30 which, against the former background that pay-roll tax attracted priority of payment in a liquidation, provides for the Commissioner to approve payment of the liquidator's costs, charges and expenses (if in his opinion they



are properly incurred) in priority to the pay-roll tax payable by the company. This sub-section will be inappropriate following abolition of the Crown priority.

Sub-clause 7(2) provides for the amendments to section 30 to be deemed to have come into operation on 1 November 1979, the date from which, as previously explained, priority of the Commonwealth has been waived on the authorisation of the Minister for Finance in terms of section 70C of the Audit Act 1901.

PART IV - AMENDMENTS OF THE SALES TAX ASSESSMENT ACT  
(NO. 1) 1930

Clause 8 : Interpretation

This clause identifies the Sales Tax Assessment Act (No. 1) 1930 as the Principal Act for the purposes of the amendments proposed under Part IV of this Bill.

It should be noted that Sales Tax Assessment Acts (Nos. 2 to 9) 1930 adopt, by reference, provisions of the Sales Tax Assessment Act (No. 1) 1930 and the amendments to be made by this Part will also have effect in relation to each of those Acts.

Clause 9 : Liquidator to give notice

Section 32 of the Principal Act generally parallels, in respect of sales tax, section 215 of the Income Tax Assessment Act 1936 and section 30 of the Pay-roll Tax (Territories) Assessment Act 1971, in the obligations of notification, setting aside of assets and payment of tax which are imposed upon a liquidator of a company. The amendments proposed by clause 9 are to the same effect in relation to sales tax as the amendments which clauses 4 and 7 propose in relation to income tax and pay-roll tax.

Sub-sections (2A) and (2B) are to be omitted from, and 5 new sub-sections are to be inserted into, section 32 (new sub-sections (2A), (2B), (2C), (2D) and (2E)).

New sub-section (2A) is in terms that correspond with related sub-sections of the other Acts being amended and that have already been explained. By paragraph (a), liquidators are prevented from parting with any of the assets of the company until notified by the Commissioner (or otherwise authorised by him). However, proposed sub-section (2B), like its proposed counterparts, will provide an exception to allow a liquidator to pay secured creditors and those debts which, under Commonwealth, State or Territory law, are required to be paid in priority to some or all of the other debts of the company. New sub-section (2A) will also require the amount of

assets to be put aside to meet the Commissioner's entitlement in respect of sales tax debts to be calculated by a formula (in paragraph (b)) that recognises the "ordinary creditor" status now being given to the Commissioner. The amount so calculated is, under paragraph (c), to be the measure of the extent to which the liquidator is liable, as trustee, to pay the sales tax.

Proposed sub-section (2C) defines "ordinary" debts to be, broadly, debts that are not secured or preferential debts.

"Prescribed tax" is defined, for purposes of proposed sub-section (2A), by new sub-section (2D) to mean the various taxes and charges assessed under the Acts being amended by this Bill.

New sub-section (2E) also reflects the change being brought about by the alteration in status of the Commissioner of Taxation to that of an ordinary creditor. While failure to comply with section 32 will remain an offence, the extent of the personal liability of a liquidator arising from any non-compliance will equate with his amended responsibility to set aside assets under sub-section (2A).

Sub-section (3) of section 32, which operates where more than one person is appointed as liquidator of a company, is to be amended by paragraph (1)(b) of clause 9 to recognise that in the absence of priority, the amount of outstanding sales tax may not require to be fully paid.

Paragraph (1)(c) proposes the omission of sub-section (4) of section 32 which allows the costs, charges and expenses of a liquidator to be paid in priority to sales tax if, in the opinion of the Commissioner of Taxation, they are properly incurred. With the withdrawal of the Crown's priority, these costs etc. rank in priority to taxation debts and the consent of the Commissioner under this sub-section becomes inappropriate.

Sub-clause (2) deems the amendments to section 32 to have come into operation on 1 November 1979.

#### Clause 10 : Formal amendments

Schedule 1 of the Bill, in conjunction with clause 10, introduces amendments of a purely formal nature to the Principal Act, to reflect modern drafting style. For example, a reference to "sub-section 7 of section 3" becomes a reference to "sub-section 3(7)" and money amounts are being expressed in figures rather than in words. These amendments are not intended to disturb the practical operation of the law.

PART V - AMENDMENTS OF THE STEVEDORING INDUSTRY CHARGE  
ASSESSMENT ACT 1947

Clause 11 : Interpretation

The Stevedoring Industry Charge Assessment Act 1947 is identified as the Principal Act for the purposes of Part V of the amending Bill.

Clause 12 : Liquidators &c

Section 27 of the Principal Act is in substantially the same terms as section 215 of the Income Tax Assessment Act 1936. It affects a liquidator of a company which is or was required to furnish returns under the Principal Act; a receiver for debenture holders in possession of the assets of such a company, or an agent for a non-resident employer of waterside labour who is required by his principal to wind up the business or realise the assets of his principal's business. Such "trustees", as they are referred to in the section, are required to give notice to the Commissioner of Taxation of their role and are prohibited from parting with any of the assets of the company without the leave of the Commissioner until the Commissioner has, in accordance with the section, notified them of the amount which appears sufficient to provide for the stevedoring industry charge which is or will become payable by the company or principal.

Those obligations insofar as they apply to an agent for a non-resident will not be changed, but those imposed upon a liquidator or receiver will be relaxed to accord with the reduced status of debts of the Crown in company insolvencies.

Clause 12 will omit the existing sub-sections (3) and (4) and substitute in their place proposed sub-sections (3), (3A), (3B), (3C), (3D) and (4).

New sub-section (3) requires a liquidator or receiver to retain the assets of the company intact (unless the Commissioner otherwise gives leave) until the Commissioner's notification under sub-section (2) has been received. As in the case of the amendments proposed to the other Acts affected by this Bill, an important exception is to be provided in sub-section (3B) to allow a liquidator or receiver to satisfy claims of other creditors whose debts are secured or, under Commonwealth, State or Territory law, are to be accorded priority of payment.

Paragraphs (b) and (c) of the proposed sub-section (3) respectively restate in terms of the "ordinary debt" status of the charge, the pro rata amount that is to be set aside out of assets for payment of the charge, and that the amount so calculated represents the extent of the person's liability for payment as trustee.

Under proposed sub-section (3A), the existing rules will remain undisturbed in relation to an agent for a non-resident employer of waterside labour who is required by his principal to wind up the business or realise his principal's assets.

The expressions "ordinary debts of the company" and "prescribed tax" are defined respectively in sub-sections (3C) and (3D) and are to be used in the amended section 27 in ways consistent with the use of those expressions in the other Acts being amended by the Bill.

The personal liability of a trustee for failure to comply with the requirements of section 27 is being restated in the proposed new sub-section (4) in terms consistent with those previously described (e.g., in relation to new sub-section 215(4) of the Income Tax Assessment Act 1936).

Correspondingly, the present sub-section 27(6), which provides for the Commissioner to agree, if certain other creditors do likewise, to the costs, charges and expenses of the liquidator being paid in priority to the unpaid stevedoring industry charge, is to be omitted by paragraph (1)(b) of clause 12.

Again, sub-clause (2) provides for the amendments made by clause 12 to be deemed to have come into operation on 1. November 1979.

#### Clause 13 : Formal amendments

Formal amendments that do not disturb the substance of the Principal Act but reflect a more modern drafting style are to be made by this clause and Schedule 2 of the Bill.

#### PART VI - AMENDMENTS OF THE TOBACCO CHARGES ASSESSMENT ACT 1955

#### Clause 14 : Interpretation

This clause defines the abovementioned Act to be the Principal Act for the purposes of the amendments under this Part of the Bill.

#### Clause 15 : Liquidators to give notice

Section 27 of the Tobacco Charges Assessment Act 1955 places similar requirements upon liquidators of companies liable to pay the tobacco charge as do the sections imposing obligations of notification and setting aside of assets which have been mentioned previously in relation to the other Acts to be amended by this Bill. Clause 15 therefore proposes similar changes to this section as does, for example, clause 9 in respect of the sales tax law.

The clause proposes to omit sections (3) and (4) and to insert 5 new sub-sections.

Proposed sub-section (3) specifies obligations that liquidators will have to set aside assets and pay tobacco charge. It also contains in paragraph (b) the basis for calculating the amount which must be set aside, out of the assets available for payment of ordinary debts, to meet the entitlement of the Commissioner of Taxation based on the amount notified by him under section (2). The amount calculated under the formula also determines, by paragraph (c), the extent of the liability of the liquidator as trustee to pay the charge.

The liquidator is not prevented from parting with assets of the company for the purpose of paying debts that are not "ordinary debts of the company" and this is made clear in proposed sub-sections (3A) and (3B); while the term "prescribed tax", as used in proposed sub-section (3), is defined in proposed sub-section (3C) in terms matching those in the comparable provisions.

New sub-section (4) restates the sanctions provided in the existing sub-section against a liquidator who does not comply with the provisions of the section or fails to pay the charge as required. Such a liquidator is personally liable to pay the amount of charge which should have been provided for under sub-section (3) by setting aside assets, and is guilty of an offence punishable upon conviction by a penalty not exceeding \$100.

Paragraph (1)(b) of clause 15 proposes a consequential amendment to sub-section (5) of section 27, which does not alter the practical effect of that sub-section.

Sub-section (6) of section 27 which, like its counterparts in the other Acts, permits the Commissioner of Taxation to allow a liquidator's costs, charges and expenses to be paid in priority to any tobacco charge debt, is no longer appropriate and, by paragraph (1)(c) of clause 15, is to be omitted.

The amendments proposed by clause 15 are also to be deemed to have come into operation on 1 November 1979.

#### Clause 16 : Formal amendments

Formal amendments are also being made to the Tobacco Charges Assessment Act 1955 to bring it generally into line with the drafting style currently adopted in Commonwealth Acts. These amendments are to be given effect by clause 16 and schedule 3.

PART VII - AMENDMENTS OF THE WOOL TAX (ADMINISTRATION)  
ACT 1964

Clause 17 : Interpretation

The abovementioned Act is identified as the Principal Act in relation to the amendments contained in Part VII.

Clause 18 : Liquidators to give notice

Section 47 of the Wool Tax (Administration) Act 1964 is the last in the series of sections in Acts being amended by this Bill which imposes obligations upon liquidators of companies who are liable to pay tax - in this instance wool tax - to give notice to the Commissioner of Taxation of his appointment and to set aside assets for the payment of tax. The amendments being made to this section are in line with those to be made to those other sections of other Acts referred to previously in this explanatory memorandum.

Sub-sections (3) and (4) of section 47 are to be omitted and 5 new sub-sections (in essence, containing provisions the same as those that are to be inserted in the other Acts) are to be substituted.

Consistent with the equivalent new sub-sections of the other Acts, the proposed sub-sections (3), (3A) and (3B) will prohibit a liquidator from parting with assets of a company before the Commissioner of Taxation has notified the amount which appears sufficient to provide for wool tax except, in terms of proposed sub-section (3A), for the purposes of paying secured and preferential debts of the company, i.e., debts that are not ordinary debts of the company (as defined in new sub-section (3B)). Sub-section (3), like its proposed counterparts in the other Acts, will contain a formula for calculating the pro rata amount in respect of wool tax which the liquidator will be required to set aside out of the assets available for payment of ordinary debts, and which will represent the extent of liability for payment of the liquidator as trustee.

Proposed sub-section (3C) defines the term "prescribed tax" to mean tax or charge assessed under the other Acts which this Bill amends.

As will be the case in respect of the amendments made elsewhere in the Bill, the inclusion of the substituted sub-section (4) recognises that the obligation of the liquidator to set aside assets to meet the liability for tax is to be measured against the position of the Commissioner of Taxation as an ordinary creditor.

By paragraph (1)(b) a drafting amendment of the kind explained elsewhere is to be made in sub-section (5) which deals with situations where more than one person is appointed liquidator of a company.

Again uniformly with the amendments to the other Acts, the authority of the Commissioner to approve the payment of a liquidator's costs, charges and expenses ahead of wool tax is to be removed by paragraph (1)(c) of clause 18 which will repeal sub-section (6) of section 47.

By sub-clause (2) the amendments to the Principal Act are also to operate with effect from 1 November 1979.

Clause 19 : Formal amendments

Further purely formal amendments (set out in Schedule 4) to reflect modern drafting style are proposed, this time with effect upon the Wool Tax (Administration) Act 1964.