

Debits Tax Assessment Bill 2001

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Western Australia

LEGISLATIVE ASSEMBLY

Debits Tax Assessment Bill 2001

A Bill for

**An Act relating to the assessment and collection of tax on debits
made to accounts kept with financial institutions.**

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary

1. Short title

This Act may be cited as the *Debits Tax Assessment Act 2001*.

2. Commencement

5 This Act comes into operation on the day on which the *Taxation Administration Act 2001* comes into operation.

3. Relationship with other Acts

10 The *Taxation Administration Act 2001* and the *Debits Tax Act 2001* are to be read with this Act as if they formed a single Act.

4. Meaning of terms used in this Act

15 The Glossaries at the end of this Act and the *Taxation Administration Act 2001* define or affect the meaning of some of the words and expressions used in this Act and also affect the operation of other provisions.

Part 2 — Liability and assessment

5. Debits tax on debits

- (1) Debits tax is payable on a debit made to an account kept in Western Australia.
- 5 (2) Debits tax is payable on a debit made to an account kept outside Western Australia if —
- (a) the account is not the head account in a third party cheque arrangement;
 - 10 (b) at the time the debit is made, the person in whose name the account is kept, or if the account is kept in the name of 2 or more persons any one of them, is a resident;
 - (c) the Commissioner is satisfied that the account was used in connection with the transaction that resulted in the debit for the purpose, or for purposes that included the purpose, of enabling —
 - 15 (i) the person in whose name the account is kept, or if the account is kept in the name of 2 or more persons, any one of them; or
 - (ii) any other person,
 - 20 to avoid liability for payment of debits tax that would have been imposed if the debit had been made to an account kept in Western Australia; and
 - (d) the person concerned is not liable, in relation to the use of the account, to pay tax of a similar kind to debits tax under the laws of the place where the account is kept.
 - 25
- (3) Debits tax is payable on a debit made to the head account in a third party cheque arrangement kept outside Western Australia if —
- (a) at the time the debit is made —
 - 30 (i) institution A is a resident; or

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- (ii) the customer, or if the customer's account is kept in the name of 2 or more persons any one of them, is a resident;
- (b) the Commissioner is satisfied that the head account was used in connection with the transaction that resulted in the debit for the purpose, or for purposes that included the purpose, of enabling —
- (i) institution A;
- (ii) the customer, or if the customer's account is kept in the name of 2 or more persons, any one of them; or
- (iii) any other person,
- to avoid liability for payment of debits tax that would have been imposed if the debit had been made to an account kept in Western Australia; and
- (c) the person concerned is not liable, in relation to the use of the account, to pay tax of a similar kind to debits tax under the laws of the place where the head account is kept.
- (4) However, debits tax is not payable on —
- (a) an exempt debit; or
- (b) an excluded debit made to —
- (i) a certificated account; or
- (ii) an account kept outside Western Australia.
- (5) In this section —
- “third party cheque arrangement”** means an arrangement under which —
- (a) a person (the **“customer”**) keeps an account with a financial institution (**“institution A”**) (which account is not an account as defined in this Act because the customer cannot draw cheques on institution A);

- (b) institution A keeps an account (the “**head account**”) with another financial institution (“**institution B**”); and
- (c) the terms on which those accounts are kept —
 - 5 (i) allow institution A to deliver to the customer incomplete cheques drawn by institution A on institution B;
 - (ii) allow the customer to complete and use those cheques;
 - 10 (iii) require institution B to honour those cheques;
 - (iv) require institution A to pay to institution B the amounts necessary to enable institution B to honour the cheques; and
 - 15 (v) authorise institution A to debit those amounts to the customer’s account.

6. Time for payment of debits tax

Debits tax is due for payment within 14 days after the end of the month in which the debit was made.

7. Liability to pay debits tax

- 20 (1) Debits tax on a debit is payable by —
 - (a) the financial institution; and
 - (b) the customer.
- (2) However the financial institution is not liable to pay any debits tax on a debit made to a certificated account or to an account
25 kept outside Western Australia.
- (3) If 2 or more people are liable to pay debits tax on a debit, they are jointly and severally liable.
- (4) A person who is liable to pay debits tax is also liable to pay any
30 penalties, interest or other amount payable under a debits tax Act in connection with the debits tax.

8. Recovery of debits tax from customer

- (1) If a financial institution has paid debits tax on a debit the customer is liable to pay to the financial institution an amount equal to the amount of the debits tax minus any amount —
- 5 (a) that has been refunded to the financial institution under a debits tax Act in respect of the debit; or
- (b) in respect of which an amount has been paid to the financial institution under section 13.
- (2) If 2 or more people are liable to pay the amount to a financial institution, they are jointly and severally liable.
- 10 (3) A financial institution may recover an amount due under subsection (1) —
- (a) by debiting the amount to the account;
- 15 (b) as a debt due by the customer to the financial institution, by action in a court of competent jurisdiction;
- (c) in any other manner agreed between the financial institution and the customer; or
- (d) by any combination of those methods.

9. Monthly returns by financial institutions

- 20 (1) A financial institution must lodge a monthly return in relation to all debits made during the month to accounts kept with the financial institution in Western Australia on which debits tax is payable by the institution.
Penalty: \$5 000.
- 25 (2) If no such debits are made during a month, the financial institution is to lodge a nil return for that month.
Penalty: \$5 000.
- (3) A monthly return must —
- (a) be in an approved form; and

- (b) be lodged with the Commissioner within 14 days after the end of the month.
- (4) The Commissioner may, by notice, permit a financial institution to lodge separate monthly returns in relation to debits made to accounts kept with a particular branch or branches of the financial institution.
- 5

Part 3 — Certificated accounts

10. Application and issue of certificates

- 5 (1) If, on the application of a customer, the Commissioner is satisfied that all debits to an account kept in Western Australia are, or are likely to be, exempt debits or excluded debits, the Commissioner is to issue a certificate for the account.
- (2) An application for a certificate is to be in an approved form.
- (3) If the Commissioner does not issue a certificate, the Commissioner must notify the applicant to that effect.

10 11. Duration of certification

- (1) The Commissioner must specify in the certificate the date with effect from which the certificate is to take effect (the “**start date**”).
- (2) The start date —
- 15 (a) may be before the date on which the certificate is issued;
- (b) cannot be more than 5 years before the date on which the application for the certificate was made; and
- (c) must not be earlier than 28 June 1996 unless a certificate could have been issued for the account before that date.
- 20 (3) A certificate comes into force with effect from the start date and remains in force until midnight on the expiry date specified in the certificate (if any) or until it is revoked.

12. Notification of debits that are not exempt or excluded

- 25 (1) If a debit that is not an exempt debit or an excluded debit is made to a certificated account the customer must notify the Commissioner within 7 days after the debit is made, unless the Commissioner was notified in accordance with subsection (2) before the debit was made.

Penalty: \$20 000.

(2) If the customer for a certificated account becomes aware that a debit that is not an exempt debit or an excluded debit will be, or is likely to be, made to the account within the next 30 days, the customer must notify the Commissioner within 7 days of becoming aware of it.

Penalty: \$20 000.

(3) A notification must be made in an approved form.

(4) If an account is kept in the name of 2 or more persons it is sufficient compliance with subsection (1) or (2) if one of them notifies the Commissioner in accordance with this section.

13. Refund of debits tax if certificate commences retrospectively

(1) If —

(a) the start date (within the meaning of section 11) for a certificate is before the date on which the certificate was issued;

(b) debits tax has been paid on a debit made to the account on or after the start date; and

(c) debits tax would not have been payable on that debit had the certificate been issued on the start date,

then debits tax is to be taken never to have been payable on that debit and the Commissioner is to make a reassessment accordingly.

(2) An application for a reassessment may be made —

(a) if the financial institution has recovered the amount of the debits tax from the customer — by the customer; or

(b) otherwise — by the financial institution.

(3) Despite section 17 of the *Taxation Administration Act 2001*, the Commissioner may make a reassessment under subsection (1) of the amount of debits tax payable on any debit made to the account after the start date, irrespective of when the original assessment in relation to that debit was made.

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(4) If a customer who is entitled under this section to apply for a reassessment of the amount of debits tax payable on a debit but has not done so, presents the certificate referred to in subsection (1)(a) to the financial institution —

- 5 (a) the financial institution is to pay to the customer an amount equal to the amount of the debits tax; and
- (b) the financial institution may then apply for a reassessment instead of the customer.

10 (5) A financial institution that is entitled under subsection (4) to apply for a reassessment may, instead of applying for a reassessment, include in its monthly return lodged under section 9 for the month in which the customer presented the certificate a credit of an amount equal to the amount of debits tax.

15 **14. Annual statement of certificated accounts**

(1) A financial institution with which one or more certificated accounts are kept during a calendar year must give to the Commissioner an annual statement in relation to all certificated accounts kept with the institution during that year.

20 Penalty: \$5 000.

- (2) An annual statement must —
- (a) be in an approved form; and
- (b) be given to the Commissioner before 1 March in the year after the year to which the statement relates (or such later date as the Commissioner allows).

25 **15. Revocation of certificates**

(1) The Commissioner may revoke a certificate if the Commissioner is satisfied that a debit that is not an exempt debit or an excluded debit has been, or is to be, made to the account.

30 (2) Subsection (1) applies whether or not the Commissioner has been notified under section 12.

- (3) A revocation must be served on —
- (a) the customer, or if the account is kept in the name of 2 or more persons, each of them; and
 - (b) the financial institution with which the account is kept.
- 5 (4) A revocation takes effect on the day, and at the time, it is served on the financial institution.

16. Offences relating to certificates

A person must not —

- (a) forge a certificate;
- 10 (b) utter a certificate that the person knows is forged;
- (c) alter or sign a certificate without lawful authority;
- (d) knowingly represent that a document is a certificate if it is not; or
- (e) knowingly represent that a certificate applies to an
- 15 account other than the account for which it was issued.

Penalty: \$20 000.

Part 4 — General

17. **Deemed separate debits**

- 5 (1) A debit that would, but for this section, be a single debit made to an account in respect of 2 or more transactions is taken to be separate debits in relation to each of those transactions.
- (2) Subsection (1) does not apply to a debit that is, or is in a class of debits that are, prescribed for the purposes of this section.
- (3) In this section —
- 10 “**transaction**” means the payment of a cheque, or the doing of any other thing, that will result in the making of a debit to an account.

18. **Debits to be expressed in Australian currency**

15 For the purposes of this Act the amount of a debit that is made in a currency other than Australian currency, is the amount of the debit converted to Australian currency as at the time the debit was made.

19. **Exemptions under other written laws**

- 20 (1) A written law passed before 1 January 1991 that purports to exempt a person from liability to pay a tax which could be taken to include debits tax does not exempt that person from liability to pay debits tax.
- (2) A written law passed on or after 1 January 1991 that purports to exempt a person from liability —
- 25 (a) to pay taxes under the laws of Western Australia; or
- (b) to pay certain taxes under those laws that include debits tax,

other than a law that expressly exempts a person from liability to pay debits tax, does not exempt the person from liability to pay debits tax.

20. Financial institution to keep records

A financial institution must make and retain sufficient records (including any prescribed records) to enable its liability for debits tax to be assessed by the Commissioner.

5 **21. Regulations**

(1) The Governor may make regulations prescribing all matters that are required or permitted by a debits tax Act to be prescribed or are necessary or convenient to be prescribed to give effect to a debits tax Act.

10 (2) Regulations may create offences and provide, in respect of an offence so created, for the imposition of a fine not exceeding \$5 000.

Glossary

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1. Definitions

(1) Unless the contrary intention appears —

5 “**account**” means an account —

(a) kept with a financial institution (including an account kept by way of withdrawable share capital in, or money deposited with, a financial institution that is not a bank); and

10 (b) to which payments may be debited by the institution in respect of cheques drawn on the institution by the customer;

“**activity in the nature of a business**” —

15 (a) includes the supplying of goods or services (other than goods or services that are, or are in a class of goods or services that are, prescribed for the purposes of this paragraph) to the public for payment;

20 (b) does not include the carrying on of an activity that forms a minor or insignificant part of the functions of the body carrying it on; and

(c) need not be an activity carried on for profit;

“**banking business**” includes a business carried on by a financial institution in the course of which the institution keeps accounts for its customers;

25 “**certificate**” means a certificate issued under section 10;

“**certificated account**” means an account in respect of which a certificate is in force;

“**charitable organisation**” means —

(a) a public benevolent or religious institution;

30 (b) a public hospital or a hospital carried on by an association or other body of persons otherwise than for purposes of profit or gain to the individual members of that association or body;

- (c) a university;
- (d) a government college, a government school, or a college or school carried on by an association or other body of persons otherwise than for purposes of profit or gain to the individual members of that association or body;
- 5 (e) a trust the moneys of which may be applied only for charitable purposes;
- (f) an institution established for any other charitable purpose;
- 10 (g) a society, institution or organisation established, and carried on, solely for the purpose of raising money for, or otherwise promoting the interests of an entity that is a charitable organisation under paragraphs (a) to (f);
- “cheque”** has the same meaning as it has in the *Cheques Act 1986* of the Commonwealth;
- 15 **“clause”** means a clause in this Glossary;
- “customer”** means a person in whose name an account is kept;
- “debit”** means a debit to an account;
- “debits tax”** means the tax imposed by the *Debits Tax Act 2001*;
- “debits tax Act”** means any one or more of the following —
- 20 (a) the *Debits Tax Act 2001*;
- (b) the *Debits Tax Assessment Act 2001*;
- (c) the *Taxation Administration Act 2001*;
- “excluded debit”** means a debit that is excluded under clause 3;
- “exempt debit”** means a debit that is exempt under clause 2;
- 25 **“financial institution”** means a financial institution within the meaning of the *Cheques Act 1986* of the Commonwealth;
- “government body”** means —
- (a) a department of the government of the Commonwealth or of a State or Territory;
- 30 (b) an authority of the Commonwealth or of a State or Territory; or
- (c) a local government;

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“incomplete”, in relation to a cheque, means wanting in a material particular necessary for the cheque to be, on its face, a complete cheque;

“resident” means —

- 5 (a) an individual who —
- (i) resides in Western Australia; or
- (ii) is domiciled in Western Australia, unless the Commissioner is satisfied that the person’s permanent place of residence is outside Western
- 10 Australia;
- (b) a body corporate registered under the *Corporations Act 2001* of the Commonwealth that —
- (i) is taken to be incorporated in Western Australia; or
- 15 (ii) carries on business in Western Australia and either —
- (I) has its central management and control in Western Australia; or
- (II) has its voting power controlled by
- 20 shareholders who are residents of Western Australia;
- (c) a body corporate that is not registered under the *Corporations Act 2001* of the Commonwealth that —
- (i) is incorporated in Western Australia; or
- 25 (ii) carries on business in Western Australia and either —
- (I) has its central management and control in Western Australia; or
- (II) has its voting power controlled by
- 30 shareholders who are residents of Western Australia;
- (d) a partnership or other unincorporated association or body of persons, any member of which is a resident.

- (2) In relation to a debit —
- (a) a reference to “the account” is a reference to the account to which the debit is made;
 - (b) a reference to “the customer” is a reference to the customer in whose name the account is kept; and
 - (c) a reference to “the financial institution” is a reference to the financial institution with which the account is kept.
- 5
- 2. Exempt debit**
- (1) A debit is exempt if it is made for the purpose of —
- (a) reversing a credit previously made to an account;
 - (b) deducting an amount under section 221YHZC(1A) of the *Income Tax Assessment Act 1936* of the Commonwealth; or
 - (c) recovering from the customer an amount equal to the amount of debits tax paid or payable by the financial institution.
- 10
- (2) If, as a result of —
- (a) the closure of a branch, or the amalgamation of branches, of a financial institution;
 - (b) the conversion, updating or relocating of a financial institution’s data processing systems; or
 - (c) the loss by the customer of an electronic banking card issued by a financial institution,
- 15
- the financial institution —
- (d) debits or credits an amount to an account solely for the purpose of closing that account; and
 - (e) credits or debits the same amount to a new account kept with the financial institution for the same customer,
- 20
- then the debit referred to in paragraph (d) or (e) is exempt.
- (3) A debit is exempt if it is, or is in a class of debits that are, prescribed for the purposes of this subclause.
- (4) If a debit made to an account is subsequently reversed, the debit is to be taken to be, and to have always been, exempt.
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3. Excluded debit

- (1) A debit is excluded if the customer is —
- (a) the Governor-General or the Governor of a State;
 - (b) the government of a country other than Australia.
- 5 (2) A debit is excluded if —
- (a) the customer is a person who would, but for section 19, be entitled to an exemption from debits tax by virtue of a written law other than a debits tax Act; and
 - 10 (b) the debit is made in relation to a transaction carried out by or on behalf of the customer solely for the purpose of —
 - (i) in the case of an individual — his or her private or domestic affairs (which does not include the carrying on by the individual of a business in Australia); or
 - 15 (ii) in the case of an organisation — engaging in its official activities.
- (3) A debit is excluded if —
- (a) the customer is a charitable organisation; and
 - 20 (b) the debit is made in relation to a transaction carried out by or on behalf of the organisation solely in furtherance of its objects.
- (4) A debit is excluded if —
- (a) the customer is a government body other than a body the sole or principal function of which is to carry on an activity in the nature of a business; and
 - 25 (b) the debit is made in relation to a transaction entered into by or on behalf of the government body that is not in connection with the carrying on by that body of an activity in the nature of a business.
- (5) A debit is excluded if —
- 30 (a) the customer is a financial institution (other than the institution with which the account is kept);

- (b) either —
- (i) the business carried on by the customer in Western Australia consists wholly or principally of banking business; or
 - (ii) all debits made, or to be made, to the account are in connection with banking business carried on by the customer in Western Australia;
- and
- (c) the account is not the head account in a third party cheque arrangement (as defined in section 5).
- (6) A debit is excluded if the debits tax that would be payable on the debit if it were not excluded cannot be recovered from the customer by the financial institution.
- (7) A debit is excluded if it is, or is in a class of debits that are, prescribed for the purposes of this subclause.
- (8) A debit is excluded if the customer is an authority of the Commonwealth, or of a State or Territory, that is, or is of a class of authorities that are, prescribed for the purposes of this subclause.
- (9) If an account is kept in the name of 2 or more persons, a reference in this clause to “the customer” is a reference to all of them.

