

**DEBITS TAX ASSESSMENT BILL 2001**  
**EXPLANATORY MEMORANDUM**

This Explanatory Memorandum provides detailed notes on the operation of each clause of the Debits Tax Assessment Bill 2001. This Bill will replace the existing Debits Tax Assessment Act 1990 with an up-to-date, contemporary statute in an easy to follow format. The repeal and where relevant, saving, of the Debits Tax Assessment Act 1990 can be found in the Taxation Administration (Consequential Provisions) Bill 2001.

It should be noted that many of the administrative provisions of the 1990 Act have not been reproduced in this Bill. The common administrative provisions will be located in the Taxation Administration Bill 2001. The attachment to this document includes a table of cross-referenced sections, showing the equivalent Debits Tax Assessment Bill 2001 and Taxation Administration Bill provisions. A reversed table is also attached.

**PART 1 - PRELIMINARY**

**Clause 1: Short title**

This clause provides that the Act is to be cited as the Debits Tax Assessment Act 2001.

**Clause 2: Commencement**

This clause provides for the Act to operate on the day on which the Taxation Administration Act 2001 comes into operation. A combined operation date for both Acts is necessary as the Taxation Administration Bill contains the relevant administrative provisions applicable to debits tax. It is proposed that the commencement date of the Taxation Administration Act will be 1 July 2002.

**Clause 3: Relationship with other Acts**

This provision is a general interpretation provision relevant to the application of the Debits Tax Assessment Act 2001 ("the Act").

It combines the Taxation Administration Act 2001, the Debits Tax Act 2001 and the Debits Tax Assessment Act 2001, so that they can be read as if they constituted one Act.

**Clause 4: Meaning of terms used in this Act**

This clause provides the status of the Glossary at the end of the Act and the Taxation Administration Act, insofar as they include terms that are used in the Act or affect the meaning of the Act. It also notes that the Glossaries may affect the operation of other provisions.

## PART 2 – LIABILITY AND ASSESSMENT

### **Clause 5: Debits tax on debits**

This clause details the circumstances where debits tax will be imposed on debits made to accounts. Generally, debits to an account will be taxable where the account has a cheque drawing facility associated with it, whether or not cheques are actually drawn on the account.

An "account" is defined in clause 1 of the Glossary to mean 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
- (b) to which payments may be debited by the institution in respect of cheques drawn on the institution by the customer.

Subclause (1) provides that debits tax is payable on a debit made to an account in Western Australia. This is the standard nexus arrangement under which the majority of debits tax is paid in Western Australia.

Subclause (2) is an anti-avoidance provision and sets out certain circumstances where debits tax is payable on a debit made to an account kept outside Western Australia. These circumstances are where:

- the account is not the head account in a third party cheque arrangement (as defined in subclause (5));
- at the time of making the debit, the person in whose name the account is kept, or if there is more than one person, any of the persons, is a resident (as defined in Clause 1 of the Glossary);
- the Commissioner is satisfied that the account was used for the purposes of avoiding the payment of debits tax that would have been imposed if the debit had been made to an account kept in Western Australia; and
- the person is not liable to pay tax of a similar kind to debits tax in the place where the account is kept.

It should be noted that debits tax is payable in all jurisdictions up to 31 December 2001. With effect from 1 January 2002, debits tax is to be abolished in New South Wales. Accordingly, this provision will operate where the account of one or more Western Australian residents is located in New South Wales and the Commissioner considers the person has avoided Western Australian debits tax.

Subclause (3) is an anti-avoidance arrangement similar to that set out in subclause (2), however, this subclause applies to third party cheque arrangements.

In this case, debits tax is payable on a debit made to a non-Western Australian head account in a third party cheque arrangement (as defined in subclause (5)), where:

- at the time the debit is made, institution A (see the definition of "third party cheque arrangement") is a resident and the customer, or one of the customers where there are 2 or more, is a resident (as defined in Clause 1 of the Glossary);
- the Commissioner is satisfied that the head account was used for the purposes of avoiding the payment of debits tax that would have been imposed if the debit had been made to an account kept in Western Australia; and
- the person is not liable to pay tax of a similar kind to debits tax in the place where the account is kept.

Subclause (4) provides that debits tax is not payable on an exempt debit or an excluded debit made to a certificated account or an excluded debit made to an account kept outside Western Australia.

Subclause (5) provides an explanation of a "third party cheque arrangement".

#### **Clause 6: Time for payment of debits tax**

This clause provides that debits tax is due for payment within 14 days after the end of the month in which the debits were made. Clause 9 sets out the payment mechanism used for payment of the tax.

## Clause 7:    **Liability to pay debits tax**

This clause specifies who is liable to pay debits tax.

Subclause (1) provides that debits tax is payable by both the financial institution and the customer. Clause 1 of the Glossary includes definitions of "financial institution" and "customer".

Subclause (2) removes the liability of the financial institution to pay debits tax in respect of a debit made to a certificated account or a debit made outside of Western Australia. Part 3 includes the relevant provisions on certificated accounts. Clause 5 sets out the specific circumstances where debits tax is payable in respect of a debit made to an account outside Western Australia.

Subclause (3) provides that if 2 or more people are liable to pay debits tax, that liability is joint and several. It should be noted that this provision applies to the joint liability of a financial institution and the customer, and the joint liability of customers where the account is kept in the name of 2 or more customers.

A financial institution is considered a "person" on the following basis:

- section 5 of the Interpretation Act 1984 defines a person in the following manner:
  - " "**person**" or any word or expression descriptive of a person includes a public body, company, or association or body of persons, corporate or unincorporate" ;
- a financial institution is defined in Clause 1 of the Glossary of this Act as a "financial institution within the meaning of the Cheques Act 1986 of the Commonwealth" ;
- under the Cheques Act 1986," "financial institution" means -
  - (a)     the Reserve Bank of Australia;
  - (b)     a bank within the meaning of the Banking Act 1959 (Cwth); and
  - (c)     a FIC institution."

- under the Reserve Bank of Australia Act 1959, the Reserve Bank of Australia is a body corporate;
- a "bank" under the Banking Act 1959 has to be an "authorised deposit taking institution" and by definition under that Act, an "authorised deposit taking institution" has to be a body corporate;
- an "'FIC institution" means a body corporate that is ..... -
  - (a) a building society;
  - (b) a credit union; or
  - (c) a special service provider."

Subclause (4) provides that a person that is liable to pay debits tax is also liable to pay any additional taxes, interest, penalties or charges payable under a debits tax Act. An example of this could include penalty tax payable under clause 27 of the Taxation Administration Bill.

**Clause 8: Recovery of debits tax from customer**

This clause authorises a financial institution to recover an amount of debits tax paid from the customer.

Subclause (1) provides that if a financial institution has paid an amount of debits tax on a debit, the customer is liable to pay to the financial institution an amount equal to the debits tax less any amount:

- that has been refunded to the financial institution under a debits tax Act in respect of that debit; or
- in respect of which an amount has been paid to the financial institution under clause 13. This clause relates to the retrospective issue of an exemption certificate for certain bodies.

Subclause (2) clarifies that for the purposes of this section, where 2 or more people are liable to pay an amount to a financial institution, the liability is joint and several.

Subclause (3) sets out the potential methods a financial institution may use to recover debits tax

from a customer. The financial institution is not limited to using these methods.

**Clause 9: Monthly returns by financial institutions**

This clause sets out the arrangements for the lodgement of returns and payment of debits tax by financial institutions.

Subclause (1) requires a financial institution to lodge a monthly return covering all debits on which debits tax is payable made during the month to accounts kept with the financial institution in Western Australia. Failure to lodge the return is an offence, for which a maximum offence penalty of \$5,000 is payable. It should be noted that a return is a self-assessment under clause 14 of the Taxation Administration Bill.

Subclause (2) requires a financial institution to lodge a nil return in any month where no debits on which debits tax is payable are made during the month to accounts kept with the financial institution in Western Australia. Failure to lodge the return is an offence, for which a maximum offence penalty of \$5,000 is payable.

Subclause (3) requires that the return be in an approved form and be lodged with the Commissioner within 14 days after the end of the month. At such time, clause 6 requires that the amount of debits tax corresponding to the return be paid.

Subclause (4) authorises the Commissioner to permit financial institutions to lodge separate returns in relation to debits made to accounts that are kept with a particular branch or branches of a financial institution. Section 50 of the Interpretation Act allows such permission to be subject to reasonable conditions and withdrawn.

**PART 3 – CERTIFICATED ACCOUNTS****Clause 10: Application and issue of certificates**

This clause sets out the arrangements applying to the application for and issue of certificates. These certificates provide that no debits tax is payable on an exempt or excluded debit made to the account to which the certificate relates.

Subclause (1) requires the Commissioner to issue a certificate for an account kept in Western Australia, if he is satisfied that all debits made to



the account are, or are likely to be, exempt debits or excluded debits. The meaning of "exempt debit" and "excluded debit" are found in clauses 2 and 3 of the Glossary.

Subclause (2) requires that an application for a certificate be in an approved form. An application form is available from the Office of State Revenue for this purpose.

Subclause (3) requires the Commissioner to notify the applicant for a certificate, where he refuses to issue the certificate.

**Clause 11: Duration of certificate**

This clause sets out the period over which a certificate of exemption is valid.

Subclause (1) requires the Commissioner to specify the date on which the certificate takes effect. This is labelled the "start date".

Subclause (2) sets the parameters surrounding the start date.

Paragraph (a) provides that the start date may be a date before the date of issue of the certificate. This will result in debits tax that has been paid by the customer being refunded upon presentation of the certificate to the financial institution in accordance with clause 13.

Paragraph (b) limits the start date from being more than 5 years before the date of making the application. This is consistent with the reassessment principles set down by the Taxation Administration Bill, which limit downward reassessments (and consequently refunds) to a 5 year time period.

Paragraph (c) requires that the certificate date cannot be earlier than 28 June 1996 unless a certificate could have been issued for the account before that date. This provision recognises the amendments made to section 11 of the Debits Tax Assessment Act 1990, which extended the ability to issue a retrospective exemption certificate in certain circumstances. These amendments were effective from 28 June 1996.

Subclause (3) provides that a certificate comes into force from the start date and remains in force

until the expiry date, or if there is not an expiry date, until it is revoked. The majority of certificates are not issued with expiry dates.

**Clause 12: Notification of debits that are not exempt or excluded**

This clause places a notification requirement on a customer where a debit that is not exempt or excluded is made to a certificated account.

Subclause (1) requires that a customer must notify the Commissioner where a debit that is not an excluded debit or an exempt debit is made to a certificated account. Such notification must be made within 7 days of making the debit. The notification is not required under this section, if notification of the intention to make the debit is given under subclause (2). Failure to make the notification is an offence, for which a maximum penalty of \$20,000 is payable.

When notification is made under this clause, the Commissioner will issue an assessment notice requiring the customer to pay the relevant amount of debits tax.

Subclause (2) requires that a customer must notify the Commissioner where a debit that is not an excluded debit or an exempt debit will be or is likely to be made to a certificated account within the next 30 days. The customer is required to make such notification within 7 days of becoming aware of it. Failure to make the notification is an offence, for which a maximum penalty of \$20,000 is payable.

Subclause (3) requires that a notification under this section must be made in an approved form. The approved form accepted by the Commissioner is notification in writing.

Subclause (4) provides that only one account holder is required to notify the Commissioner under this section where an account is kept in the name of 2 or more persons.

**Clause 13: Refund of debits tax if certificate commences retrospectively**

This clause details the arrangements that apply when a refund of debits tax is due because a certificate has been issued with a retrospective commencement date.

Subclause (1) provides a reassessment power in respect of a certificate issued with a start date that precedes the date on which a certificate was issued. The Commissioner is required to make a reassessment where this has occurred, providing debits tax had been paid on a debit to the account after the start date and that tax would not have been paid had the certificate been issued on the start date. The debits tax paid is deemed to have never been payable.

Subclause (2) provides that an application for the reassessment mentioned above can be made by the customer, if the financial institution recovered the amount of debits tax paid from the customer. In the rare cases where the debits tax was not recovered (ie. the financial institution did not pass the debits tax on to the customer) the financial institution may apply for the reassessment.

Subclause (3) overrides clause 17 of the Taxation Administration Bill to allow the Commissioner to make a reassessment under subclause (1), to reflect the start date of the certificate. This power applies regardless of when the original assessment of the tax payable on the debit was made. However, the reassessment limitation is consistent with other refund powers, in that the start date of the certificate cannot be earlier than 5 years from the date of the debit under clause 11(2)(b).

Subclause (4) provides that a customer may present the certificate to the financial institution with which the account is kept to obtain an amount equal to the debits tax paid. This may occur where the customer does not elect to lodge a reassessment application with the Commissioner under subclause (2)(a). Where this is the case, the financial institution is to pay the customer an amount equal to the debits tax paid, and may then apply to the Commissioner for a reassessment instead of the customer.

Subclause (5) allows a financial institution that is entitled to make a reassessment under subclause (4), to instead credit the amount of the debits tax payable from its monthly return in the month the customer presented the certificate.

**Clause 14: Annual statement of certificated accounts**

This clause creates a requirement for a financial institution to make an annual statement to the Commissioner in respect of all certificated accounts kept with the institution during a calendar year. Failure to provide the statement is an offence, for which a maximum penalty of \$5,000 is payable.

The statement allows the Commissioner to data match the certificated accounts to ensure all certificates being used are valid.

Subclause (2) requires that the annual statement must be in an approved form and provided to the Commissioner prior to 1 March after the year to which the statement relates. For example, if the annual statement covers the period 1 January 2002 to 31 December 2002, the statement must be provided before 1 March 2003. The Commissioner is authorised to extend the time within which the annual statement may be lodged.

**Clause 15: Revocation of certificates**

This clause authorises the Commissioner to revoke a certificate in certain circumstances.

Subclause (1) provides that the Commissioner may revoke a certificate if he is satisfied that a debit that is not an exempt or excluded debit has been or will be made to the certificated account.

Subclause (2) specifies that subclause (1) applies regardless of whether the Commissioner has been notified by the customer under clause 12.

Subclause (3) requires that a revocation be served on the customer, or each customer if the account is kept in the name of 2 or more persons, and the financial institution with which the account is kept.

Subclause (4) provides that the revocation takes effect on the date and time of the service of the notice on the financial institution.

**Clause 16: Offences relating to certificates**

This clause provides a number of offences in relation to certificates. The offences are:

- forging a certificate;
- uttering a certificate that the person knows is forged;
- altering or signing a certificate without lawful authority;
- knowingly representing that a document is a certificate if it is not; or
- knowingly representing that a certificate applies to an account other than the account for which it is issued.

Each of these offences has a maximum penalty of \$20,000.

**PART 4 - GENERAL****Clause 17: Deemed separate debits**

This clause is an anti-avoidance provision that is used to separate debits that have been amalgamated into a single transaction.

Subclause (1) provides that a debit that would be a single debit in respect of 2 or more transactions, if not for this clause, is deemed to be separate debits for each of those transactions.

Subclause (2) provides an ability to prescribe certain types of transactions that subclause (1) is not to apply to. It is intended to continue the prescription currently made under section 4 of the Debits Tax Assessment Act 1990 in respect of any debit to an account that is held by an employer solely for the purpose of the payment of wages.

Subclause (3) provides a definition of "transaction" for the purposes of the clause.

**Clause 18: Debits to be expressed in Australian currency**

This clause specifies that where a debit is made in a currency other than Australian currency, the amount of the debit is to be converted to Australian currency at the time of making the debit. Debits tax will then be charged on the amount in Australian currency.

**Clause 19: Exemptions under other written laws**

This clause specifically deals with the debits tax treatment that applies where another written law purports to exempt a person from the payment of debits tax.

Subclause (1) provides that a written law that was passed before 1 January 1991 (the date the Debits Tax Assessment Act 1990 commenced) is to be of no effect where it purports to exempt a person from a liability to pay debits tax. Prior to that date, debits tax was a Commonwealth tax, and this clause ensures that the only exemptions that apply are those specifically enacted under Western Australian law.

Subclause (2) provides that unless a written law passed on or after 1 January 1991 expressly exempts a person from a liability to pay debits tax, any provision that exempts a person from a liability to pay taxes under the laws of Western Australia or to pay certain taxes under those laws that includes debits tax, is of no effect.

**Clause 20: Financial institution to keep records**

This clause provides that 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. Failure to make and retain these records for 5 years is an offence under clause 79 of the Taxation Administration Bill for which a maximum penalty of \$20,000 is payable.

**Clause 21: Regulations**

This clause provides a regulation making power.

Subclause (1) authorises the Governor to make regulations for all matters that are required or permitted by a debits tax Act to be prescribed, or that are necessary or convenient to be prescribed to give effect to a debits tax Act.

Subclause (2) provides that the regulations may create offences and provide, in respect of those offences, penalties up to \$5,000.

**GLOSSARY**

**Clause 1: Definitions**

This clause of the Glossary defines the terms used in the Act. Explanations of the terms have not been included on the basis that the terms themselves are self explanatory.

**Clause 2: Exempt debit**

This clause of the Glossary provides three circumstances in which debits are considered to be exempt. Debits tax is not payable on an exempt debit.

**Clause 3: Excluded debit**

This clause of the Glossary provides eight circumstances in which a debit is considered to be excluded. Debits tax is not payable on an excluded debit. The majority of certificated accounts are in respect of excluded debits.

**CONVERSION TABLE – DEBITS TAX ASSESSMENT ACT 1990 ACT TO DEBITS TAX  
ASSESSMENT BILL 2001**

<b>OLD SECTION</b>	<b>OLD SECTION NUMBER</b>	<b>NEW SECTION</b>	<b>NEW SECTION NUMBER</b>
Interpretation	3	Glossary	N/A
Deemed separate debits	4	Deemed separate debits	17
Debits to be expressed in Australian currency	5	Debits to be expressed in Australian currency	18
General administration of this Act	6	Administration of taxation Acts	7 – TAA
Delegation of functions	7	Delegations & Authorized investigators	10 & 11 – TAA
Liability to tax	8(1), (2)	Liability to pay debits tax	7
Liability to tax	8(3), (4)	Exemptions under other written laws	19
When tax payable	9(1)(a)	Time for payment of debits tax	6
When tax payable	9(1)(b), (2)	Assessments	Part 3 – TAA
Recovery of tax by financial institutions	10	Recovery of debits tax from customer	8
Certificates of exemption from tax	11(1), (7)	Application and issue of certificates	10
Certificates of exemption from tax	11(2)	Duration of certification	11
Certificates of exemption from tax	11(3)	Revocation of certificates	15
Certificates of exemption from tax	11(4), (5), (6)	Notification of debits that are not exempt or excluded	12
Certificates of exemption from tax	11(8)	Duration of certification	11(2)
Offences relating to certificates of	12	Offences relating to certificates	16



<b>OLD SECTION</b>	<b>OLD SECTION NUMBER</b>	<b>NEW SECTION</b>	<b>NEW SECTION NUMBER</b>
exemption			
Returns in respect of taxable debits	13(1), (2), (4)	Monthly returns by financial institutions	9
Returns in respect of taxable debits	13(3)	Assessments	Part 3 - TAA
Refunds of amounts incorrectly paid	14	Assessments, Power to make refund, Refund to be passed on in certain cases	Part 3 - TAA, 54, 55
Refunds for tax paid on excluded debits	15	Refund of debits tax if certificate commences retrospectively	13
Special assessments	16	Assessments	Part 3 - TAA
Default assessments	17	Assessments	Part 3 - TAA
Penalty for failure to furnish return etc.	18	Monthly returns by financial institutions	9(1), (2)
Amendment of assessments	19	Assessments	Part 3 - TAA
Validity of assessments	20	No equivalent	N/A
Definition of " tax"	21	Glossary	TAA
Objections	22	Objections and appeals	Part 4 - TAA
Appeals	23	Objections and appeals	Part 4 - TAA
Commissioner may state case	24	Objections and appeals	Part 4 - TAA
Proceedings not to delay payment of tax	25	Objections and appeals	Part 4 - TAA
Recovery of tax	26	Recovery of unpaid tax	60 - TAA
Extension of time and payment by instalments	27	Arrangements for instalments and extensions of time	47 - TAA

<b>OLD SECTION</b>	<b>OLD SECTION NUMBER</b>	<b>NEW SECTION</b>	<b>NEW SECTION NUMBER</b>
Penalty for unpaid tax	28	Penalty for tax infringements, Penalty for late payment of tax	26, 27 - TAA
Evidence	29	Evidentiary certificates	113 - TAA
Offences - generally	30(1)	Monthly returns by financial institutions	9(1), (2)
Offences - generally	30(2)	Power to require information and tax records, Power to require person to attend for examination, False or misleading information	86, 87, 98 - TAA
Evading taxation	31	Evasion of tax	97 - TAA
Time for commencing prosecutions	32	Time for commencing prosecutions	102 - TAA
Penalty not to relieve tax	33	Criminal penalties not to affect civil liabilities	101 - TAA
Obstructing officers	34	Obstructing or misleading an investigator	99 - TAA
Disclosure of information	35	Confidentiality	105 - TAA
Institution of prosecutions	36	Authority required for prosecution	103 - TAA
Proceedings for offences	37	No equivalent	N/A
Return in relation to exempt accounts	38	Annual statement of certificated accounts	13
Representative officers etc. of financial institutions	39	No equivalent	N/A

<b>OLD SECTION</b>	<b>OLD SECTION NUMBER</b>	<b>NEW SECTION</b>	<b>NEW SECTION NUMBER</b>
Access to books etc	40	Investigations	Part 8 - TAA
Commissioner to obtain information and evidence	41	Power to require information and tax records, Power to require person to attend for examination	86, 87 - TAA
Service on partnerships and associations	42	Service on agent or representative of taxpayer	107(3) , (4) - TAA
Commissioner may collect tax from person owing money to financial institution or account holder	43	Power to garnishee	65 - TAA
Preservation of records	44	Financial institution to keep records	20, 79 - TAA
Regulations	45	Regulations	21

**CONVERSION TABLE – DEBITS TAX ASSESSMENT BILL 2001 TO DEBITS TAX  
ASSESSMENT ACT 1990**

<b>NEW SECTION</b>	<b>NEW SECTION NUMBER</b>	<b>OLD SECTION</b>	<b>OLD SECTION NUMBER</b>
Relationship with other Acts	3	No equivalent	N/A
Meaning of terms used in this Act	4	No equivalent	N/A
Debits tax on debits	5	Imposition of tax	4 – DTA
Time for payment of debits	6	When tax payable	9(1)(a)
Liability to pay debits tax	7	Liability to tax	8
Recovery of debits tax from customer	8	Recovery of tax by financial institutions	10
Monthly returns by financial institutions	9	Returns in respect of taxable debits	13
Application and issue of certificates	10	Certificates of exemption from tax	11
Duration of certification	11	Certificates of exemption from tax	11
Notification of debits that are not exempt or excluded	12	Certificates of exemption from tax	11
Refund of debits tax if certificate commences retrospectively	13	Refunds for tax paid on excluded debits	15
Annual statement of certificated accounts	14	Return in relation to exempt accounts	38
Revocation of certificates	15	Certificates of exemption from tax	11
Offences relating to certificates	16	Offences relating to certificates of exemption	12
Deemed separate debits	17	Deemed separate debits	4

<b>NEW SECTION</b>	<b>NEW SECTION NUMBER</b>	<b>OLD SECTION</b>	<b>OLD SECTION NUMBER</b>
Debits to be expressed in Australian currency	18	Debits to be expressed in Australian currency	5
Exemptions under other written laws	19	Liability to tax	8(3), (4)
Financial institution to keep records	20	Preservation of records	44
Regulations	21	Regulations	45
Glossary	1	Interpretation	3
Exempt debit	2	Interpretation - "exempt debit"	3
Exempt debit	2(2)	Exempt debits	Reg 2 - DTAR
Excluded debit	3	Interpretation - "excluded debit"	3

DTA = Debits Tax Act 1990

DTAA = Debits Tax Assessment Act 1990

DTAR = Debits Tax Assessment Regulations 1997

TAA = Taxation Administration Bill 2001