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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

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# AUSTRALIAN CAPITAL TERRITORY TAXATION (ADMINISTRATION) AMENDMENT BILL 1981

# AUSTRALIAN CAPITAL TERRITORY TAX (VEHICLE REGISTRATION) BILL 1981

# AUSTRALIAN CAPITAL TERRITORY TAX (LIFE INSURANCE BUSINESS) BILL 1981

# AUSTRALIAN CAPITAL TERRITORY TAX (INSURANCE BUSINESS) AMENDMENT BILL(NO. 2) 1981

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## EXPLANATORY MEMORANDUM

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

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General outline

These Bills, which will come into operation on a date to be proclaimed, will impose, and provide the administrative machinery for the collection of, tax in the Australian Capital Territory, including Jervis Bay, in respect of -

- new registrations, and transfers of existing registrations, of motor vehicles registered in the Territory; and

- premiums received in the Territory in respect of life insurance policies effected by an insurer in the Territory.

The Bills will implement the Budget proposal that these taxes be imposed, with effect from 1 October 1981.

The administrative machinery for the proposed taxes is provided by the first Bill, the Australian Capital Territory Taxation (Administration) Amendment Bill 1981 (referred to in these notes as the Administration Bill). Two of the remaining three Bills will declare the rates at which the new taxes will be payable in respect of taxable transactions and will also provide for exemptions from them. The fourth Bill contains a consequential amendment to the law relating to tax on general insurance business.

Motor vehicle registrations

The two Bills which will give effect to the new tax on motor vehicle registrations are the Administration Bill and the Australian Capital Territory Tax (Vehicle Registration) Bill 1981 (referred to as the Vehicle Registration Bill).

Under the Vehicle Registration Bill, tax will be payable, with effect from the date proclaimed, in respect of new registrations and transfers of existing registrations of motor vehicles registered in the Territory. The Bill also prescribes that the new tax is to be at the rate of $2 for each $100 or part thereof of the market value of the motor vehicle. The tax will apply in respect of the registration of any motor car, motor cycle, truck, lorry, van, trailer, caravan or any other vehicle or item, that is required to be registered in the Territory under the provisions of the Australian Capital Territory Motor Traffic Ordinance 1936.

Liability for the tax will arise where a new registration is sought or a change is sought in the registered owner of a motor vehicle. Tax will not be attracted where the owner of a motor vehicle seeks to renew the registration of the vehicle. Similarly, a new registration, if sought by a person in respect of a motor vehicle that was last registered in the A.C.T., or elsewhere in Australia, to that person will not be liable to tax.

The administration of stamp duties and related taxes that are imposed in the Territory are the administrative responsibility of the Commissioner of Taxation. However, actual collection of the tax in respect of motor vehicle registrations will ordinarily be effected by the Registrar of Motor Vehicles at the time of registration of the vehicle.

Under the proposed administrative arrangements contained in the Administration Bill, the tax will be required to be tendered to the Registrar of Motor Vehicles at the time when the application for a new or transferred registration is made. The Bill provides that the Registrar is not to grant the registration unless payment of the tax has been tendered.

At the time of application for registration the applicant will be required to state, to the best of his or her knowledge and belief, the market value of the motor vehicle or trailer and this stated value will form the basis for the tax to be paid to the Registrar. The Commissioner of Taxation will have power to review the amount so stated and, where he considers the amount stated by the applicant not to accord with the actual market value of the vehicle, to raise an assessment of the tax properly payable.

Any person aggrieved and affected by such an assessment will have rights of objection and appeal to a Taxation Board of Review or the A.C.T. Supreme Court. Rights of objection, review and appeal will also be given against decisions of the Registrar or the Commissioner relating to claims for exemption from payment of the tax.

Exemption from the tax will apply in respect of any vehicle registered in the name of a public benevolent institution, religious institution, public hospital or public educational institution or to diplomatic missions, and personnel of diplomatic missions, of countries where reciprocal exemptions are granted to Australian diplomatic missions or personnel.

In addition to these customary exemption categories, two further exemptions will apply.

The first will apply to persons who, broadly stated, are totally or permanently incapacitated within the meaning relevant to that class of persons entitled to exemption from sales tax on the purchase of new motor vehicles and who, as in the case of the sales tax concession, require the vehicle for transport to employment. The other exempt category will be in respect of registrations of motor vehicles by motor vehicle dealers licensed in the Territory under the Australian Capital Territory Sale of Motor Vehicle Ordinance 1977. The exemption will be limited to vehicles acquired by the licensed dealer as trading stock for resale.

Life insurance premiums

The new tax on life insurance premiums is to be effected by provisions contained in the Administration Bill, the Australian Capital Territory Tax (Life Insurance Business) Bill 1981 ("the Life Insurance Tax Bill") and the Australian Capital Territory Tax (Insurance Business) Amendment Bill (No.2) 1981.

Under the Australian Capital Territory Tax (Insurance Business) Act 1969, as proposed to be amended by the Australian Capital Territory Tax (Insurance Business) Amendment Bill 1981 tax is, with effect from 19 August 1981, to be imposed at the rate of 7 per cent of premiums received in the Territory by an insurer in respect of dutiable classes of general insurance. Exemptions from tax are specified in section 6 of that Act and include life insurance and personal accident insurance if undertaken solely in connection with a policy of life insurance.

The provisions of the Life Insurance Tax Bill will formally impose tax, with effect from the date proclaimed, in respect of premiums received in the Territory in respect of life insurance policies effected by an insurer in the Territory on or after that date.

For the purposes of the imposition of the tax, life insurance business falls into two broad categories. The first category is those policies of insurance known as temporary or term policies and the other category comprises policies other than temporary or term policies.

Broadly stated, a temporary or term life insurance policy is an insurance limited for a specified period, the sum insured being payable if the person whose life is insured dies within the period, but nothing being payable if he or she survives beyond then. In other words, the first category is that of insurance that has no savings or investment component. Where such policies are effected in the Territory by an insurer on or after the date proclaimed, the Life Insurance Tax Bill proposes the imposition of tax on premiums received in the Territory in respect of those policies. The tax is generally to be calculated at the rate of 5 per cent of the premium payable for the first year of cover.

The Life Insurance Tax Bill also will mean that premiums received in the Territory by an insurer in respect of policies of life insurance other than temporary or term policies, e.g., for whole of life and endowment policies, will be liable to tax where the policies are effected in the Territory on or after the date proclaimed. In the case of policies in this class the amount of tax payable in respect of the premiums received will be an amount determined by reference to the sum insured under the policy. The tax will

be at the rate of 10 cents for each $200 or part thereof for sums insured between $100 and $2,000. For sums insured greater than $2,000 the tax will be at the rate of $1 plus 20 cents for each $200, or part thereof, above $2,000.

As a measure designed to avoid the double taxing of life policies effected in the Territory by persons outside the Territory, the Life Insurance Tax Bill provides that the new tax will not be imposed on life insurance effected on the life of a person domiciled outside the Territory if a similar tax or stamp duty is paid in another State or Territory in respect of that insurance.

The amendment proposed by the Australian Capital Territory Tax (Insurance Business) Amendment Bill (No. 2) 1981 is consequential upon the proposal to tax new life insurance business effected in the Territory. As already mentioned, the existing law relating to the taxing of general insurance contains an exemption for sickness and accident insurance which is undertaken solely in connection with life insurance. Other sickness and accident insurance is subject to the tax imposed on other classes of general insurance business and the proposed amendment will remove the exemption relating to such insurance undertaken solely in connection with life insurance.

The Administration Bill also contains necessary machinery provisions to require firms carrying on life insurance business in the Territory to become registered with the Commissioner of Taxation. As is the case under existing law in relation to general insurers, registered life insurers will be obliged to furnish to the Commissioner a monthly return of all taxable premiums received each month and to pay the tax payable in respect of those premiums. An insurer will have the right to recover the tax from policyholders.

Each of the Bills is explained more fully in the notes that follow.

## AUSTRALIAN CAPITAL TERRITORY TAXATION (ADMINISTRATION) AMENDMENT BILL 1981

### Clause 1 : Short title, etc.

Sub-clause (1) provides formally for the citation of the amending Act as the Australian Capital Territory Taxation (Administration) Amendment Act 1981. By sub-clause (2) the Australian Capital Territory Taxation (Administration) Act 1969 is to be referred to in the amending Act as "the Principal Act".

### Clause 2 : Commencement

Under this clause the amending Act will come into operation on a date to be fixed by Proclamation. But for this clause the amending Act would, by reason of sub-section 5(1A) of the Acts Interpretation Act 1901, come into operation on the twenty-eighth day after the date of Assent.

### Clause 3 : Interpretation

This clause proposes the insertion of a number of new definitions in section 4 of the Principal Act and the modification of several existing definitions.

Paragraphs (a) and (b) of clause 3 insert the following definitions in sub-section 4(1) of the Principal Act:

"Motor Traffic Ordinance" is defined to be the Motor Traffic Ordinance 1936 that is in force in the Australian Capital Territory;

"registered under a corresponding law", in relation to a vehicle, means registered or licensed under a law of a State or Territory (other than the Australian Capital Territory) that provides for the registration or licensing of vehicles. 'Registration', in connection with such a law, is defined as having a corresponding meaning;

"Registrar" is the term used when referring to the Registrar of Motor Vehicles appointed in pursuance of the Motor Traffic Ordinance;

"registration", in relation to a vehicle, means the original registration or renewal or transfer of registration under the Motor Traffic Ordinance, and 'register' and 'registered' have corresponding meanings.

Paragraph (c) of clause 3 will amend the definition of "return" in sub-section 4(1) of the Principal Act by

inserting a reference to proposed section 44E. Under that section a registered life insurer will be required to lodge with the Commissioner of Taxation a monthly return of premiums received by the insurer during each month in respect of life insurance business effected in the Territory.

For constitutional reasons the Australian Capital Territory stamp duty legislation is embodied in several Acts that include a number of taxing Acts. By paragraph (d) of clause 3 the definition of "tax" contained in sub-section 4(1) of the Principal Act will be extended to include the two new taxes to be imposed by the Australian Capital Territory Tax (Life Insurance Business) Act 1981 and the Australian Capital Territory Tax (Vehicle Registration) Act 1981.

By paragraph (e) of clause 3 the term "vehicle" is to be defined to mean a motor vehicle or a trailer, as the case may be, within the meaning of the Motor Traffic Ordinance. This will ensure that all of the classes of vehicles required to be registered under the Ordinance will be subject to the new tax on registrations.

Paragraph (f) inserts three new sub-sections - sub-sections (6), (7) and (8) - in section 4 of the Principal Act. New sub-section (6) is a machinery provision and means that an application for the registration of a vehicle is to be taken to be made at the time when the application is received by the Registrar in a form that meets the requirements of the Motor Traffic Ordinance. The practical effect of this sub-section in conjunction with the provisions of proposed new Division 10 to be inserted in the Principal Act by clause 6, is to set the point of time when the new tax on registration of a vehicle is to become payable.

New sub-section (7) contains a number of provisions designed to identify the person or persons to whom a vehicle is or has been registered. These provisions recognise that the Registrar of Motor Vehicles is empowered to register vehicles in names, such as registered business names, other than the names of individual persons or bodies corporate. An exemption from the vehicle registration tax is to be provided where the vehicle concerned was last registered in the Territory or elsewhere in the name of the person who is applying for registration.

Paragraph 7(a) deems a vehicle registered in the name of a partnership to be registered in the names of the persons who are partners in the partnership.

Paragraph 7(b) deems a vehicle registered in a business name to be registered in the name of the person or persons in relation to whom the business name is so registered.

Paragraph 7(c) deems a vehicle registered in the name of a person on behalf of a company to be registered in the name of the company.

New sub-section (8) is a drafting measure to complement sub-section (7), and requires that the terms "registered" and "registration" be read as including a registration of a vehicle registered or licensed under a law of a State or Territory which provides for the registration or licensing of motor vehicles.

## Clause 4 : Interpretation

Clause 4 will insert a new section - section 38A - in Division 6 of Part III of the Principal Act. Division 6 contains provisions which relate to the administration of the existing tax on general insurance business and new section 38A contains two definitions that will clarify the meaning now to be given to two terms contained in that Division. "Insurance" is to be defined, for the purposes of Division 6 as not including life insurance - administrative measures relating to the new tax on life insurance business will be provided for by new Division 6A to be inserted by clause 5. In like manner, "premium" is to be defined so as not to include a premium in respect of life insurance.

## Clause 5 : Division 6A - Life insurance business

This clause proposes the insertion in Part III of the Principal Act of a new Division - Division 6A - comprising new sections 44A to 44F. The new Division contains the administrative framework necessary for the collection of the proposed tax in respect of certain life insurance business effected in the Australian Capital Territory. In broad terms, the provisions of Division 6A will, in respect of the tax on life insurance business, mirror the administrative provisions of Division 6 relating to the existing tax on general insurance business.

## Section 44A - Interpretation

Proposed section 44A defines the term "premium" as used in Division 6A to mean a premium in respect of life insurance.

## Section 44B - Insurer in the Territory to be registered

Sub-section 44B(1) will require any person carrying on, in the Territory, the business of life insurance in respect of which tax is imposed to register with the Commissioner of Taxation within 14 days of the date of commencement of the amending Act. Failure to comply with the requirement will be punishable on conviction by a maximum fine of $200.

Sub-section 44B(2) will make it clear that the contractual liability of an insurer under a policy of life insurance issued in the course of carrying on the business of life insurance in the Territory while in breach of sub-section 44B(1) is not affected by that breach.

Section 44C : Register of life insurers

The Commissioner of Taxation is, by virtue of section 44C, to maintain a register of persons carrying on the business of life insurance in the Territory.

Section 44D : Registration

Section 44D formally provides the system of registration. An insurer is to apply in writing to the Commissioner of Taxation in an approved form for registration in the Register kept by the Commissioner in accordance with proposed section 44C. An insurer may apply for registration if carrying on, or intending to carry on, in the Territory the business of life insurance in respect of which tax is imposed (sub-section (1)).

Where the Commissioner receives an application, the insurer's name is to be entered in the Register (sub-section (2)). The Commissioner is to give notice of the registration by instrument served on the insurer (sub-section (3)).

Where the Commissioner receives notification of the winding-up of a registered insurer or receives a request from the insurer to revoke the registration, the Commissioner is required to revoke the registration and remove the insurer's name from the Register (sub-section (4)).

Section 44E : Returns in respect of life insurance business

Sub-section 44E(1) will impose an obligation on an insurer registered under Division 6A to furnish to the Commissioner, within 21 days after the end of each month, a return of all premiums received by the insurer in the Territory during that month in respect of taxable life insurance and to pay the tax properly payable in respect of it. Failure to comply with this requirement will render an insurer liable to a fine, upon conviction, of up to $50.

The return is to be in accordance with an approved form and contain such information as is required by the form (sub-section (2)).

Section 44F : Insurer may recover tax from person paying premiums

Section 44F of Division 6A will authorise insurers to recover the tax imposed in respect of life insurance premiums from the persons liable for the premiums.

Clause 6 : Division 10 - Vehicle registration

By this clause, a new Division - Division 10 - comprising new sections 58A to 58F will be inserted in the Principal Act. The new Division contains the administrative provisions necessary for the imposition and collection of the proposed tax on motor vehicle registrations in the Territory.

Section 58A : Interpretation

Section 58A is a drafting measure to permit the Australian Capital Territory Tax (Vehicle Registration) Act 1981 to be referred to in the provisions of Division 10 as the "Taxing Act".

Section 58B : Payment of tax

By the operation of section 58B, tax will be imposed in respect of the registration of a motor vehicle in the Territory and be payable by the person in whose name the vehicle is registered. The tax is to become due and payable at the time of registration of the vehicle.

Section 58C : Registration of vehicles

By section 58C, the Registrar of Motor Vehicles will refuse to register a motor vehicle unless one of four conditions imposed by the section is satisfied. The four conditions referred to are contained in sub-section 58C(1).

Paragraph (1)(a) allows the Registrar to grant registration of a vehicle if he is satisfied that the registration is exempt from tax under the provisions of sub-section 6(1) of the Taxing Act (to be explained more fully later in these notes). Broadly stated, sub-section 6(1) of the Taxing Act will exempt the vehicle to be registered if the vehicle is one that was last registered in the name of the applicant for registration.

Paragraph (1)(b) authorises the Registrar to register a vehicle if the application for registration is accompanied by a certificate from the Commissioner of Taxation that the registration sought will be exempt from tax by virtue of sub-section 6(2) of the Taxing Act. Broadly, the exemptions to be provided by sub-section 6(2) of the Taxing Act are for vehicles to be registered in the names of public benevolent institutions, public hospitals, public educational institutions, religious institutions, certain diplomatic missions and their personnel and certain classes of disabled persons.

By paragraph (1)(c) the Registrar may also grant registration of a vehicle if the applicant for registration certifies to the Registrar that the vehicle to be registered is held as trading stock for resale in the course of a business in respect of which the applicant is a licensed motor vehicle dealer under the Sale of Motor Vehicles Ordinance 1977.

Paragraph (1)(d) will apply where a registration is not exempt from tax under any of the provisions referred to above. The effect will be to ensure that, before the Registrar grants registration in a taxable situation, the applicant for registration must first furnish a statement as to the market value of the vehicle to be registered and such other information as is required by the application form. The applicant must also tender payment to the Registrar of the amount of tax payable on the registration.

Sub-section 58C(2) means that the amount stated by the applicant for registration as the market value of the vehicle will be taken as the market value for the purposes of sub-section (1). This will facilitate the process of registration in the course of which the applicant for registration is required to tender payment of the tax payable calculated by reference to the market value. By virtue of sub-section (2), the market value stated by the applicant is to be accepted by the Registrar for the purposes of calculating the amount of tax payable. Other provisions of the Bill will empower the Commissioner of Taxation to review the amount stated by the applicant as the market value of a vehicle and to raise an assessment of tax payable in any case where the market value has been understated or overstated.

Sub-section 58C(3) will require an applicant for registration who claims exemption from tax on the basis that the vehicle was last registered in his name in the Territory or elsewhere in Australia, to furnish to the Registrar such information as is required by the Registrar to verify the applicant's claim.

Section 58D : Certificates of exemption from tax

As mentioned earlier, one of the bases on which the Registrar may register a vehicle in compliance with section 58C is where the applicant for registration furnishes a certificate of exemption provided by the Commissioner of Taxation. Section 58D requires the Commissioner, on application, to issue a certificate of exemption if the Commissioner is of the opinion that the particular registration, if issued in the name of the applicant, will be exempt from tax by virtue of paragraphs 6(2)(a) to (d) of the Taxing Act (see later).

Section 58E : Information to be supplied to Commissioner of Taxation

To enable the Commissioner of Taxation to review the accuracy of any statement as to the market value of a vehicle under section 58C, section 58E requires the Registrar to furnish to the Commissioner on a monthly basis details of such statements and related information supplied by persons obtaining vehicle registrations.

Section 58F : Refund of tax incorrectly paid

Vehicle registration tax will ordinarily be paid to the Registrar of Motor Vehicles at the time of application for registration. Sub-section 58F(1) will enable the Commissioner of Taxation to refund any amount of registration tax that is overpaid. Overpayments could occur, for example, through inadvertent failure to claim a valid exemption or through an error in calculation. An application for refund under section 58F must be made within 3 years of the date on which the registration was granted.

Sub-section 58F(2) precludes a refund under sub-section (1) where tax has been assessed by the Commissioner, for example, where there has been an understatement of the market value. The ordinary assessment provisions of the Principal Act authorise refunds in appropriate circumstances where there is an overpayment of assessed tax. (See notes in relation to clause 9.)

Clause 7 : Information for the purpose of making assessment

This clause proposes an amendment of section 61 of the Principal Act to substitute a new sub-section (1). Under the existing sub-section (1), which applies to the whole range of Territory stamp duties and related taxes administered by the Commissioner of Taxation, the Commissioner is empowered to require a person who has furnished a return or lodged a dutiable instrument for assessment, to provide such further information as is required for the purpose of making that assessment.

New sub-section (1) will authorise the Commissioner to also require a person who has obtained the registration of a vehicle to provide such further information as might be required to determine whether the correct amount of tax has been paid in relation to that registration.

Clause 8 : False or misleading returns or statements

Sub-section 63(1) of the Principal Act makes it an offence for a person to furnish to the Commissioner a return that is false or misleading in a material particular. The

maximum penalty for such an offence is $1,000. It is a defence to a prosecution for an offence against that sub-section if the false or misleading information was furnished through ignorance or inadvertence.

Paragraph (a) of clause 8 will insert a new sub-section - sub-section (1A) - in section 63 of the Principal Act. Sub-section 63(1A) will make it an offence for a person to make a statement or furnish any other information, in connection with the tax on vehicle registrations, which is false or misleading in a material particular.

Paragraph (b) of clause 8 will make a complementary amendment to sub-section 63(2) so that it will be a defence to a prosecution under new sub-section (1A) if the false statement or information is shown to have been furnished through ignorance or inadvertence.

By sub-section 63(3), a court may impose additional penalty, upon a conviction for lodging a false or misleading return, of up to double the amount of tax that would have been avoided if the false or misleading return had been accepted as correct. The amendment proposed by paragraph (c) of clause 8 will extend authority to impose additional penalty upon conviction of a person for furnishing false or misleading information in connection with the tax on vehicle registrations.

## Clause 9 : Default assessments

This clause proposes the repeal of sections 68 and 69 of the Principal Act and the substitution of two new sections consequent on introduction of the new vehicle registration tax.

Existing section 68 allows the Commissioner of Taxation to make an assessment of stamp duty or tax payable in any case where -

- a person has failed to furnish a return or has furnished a return that is false or misleading;
- a person has failed to furnish additional information required under section 61; or
- a dutiable instrument that has not been duly stamped has been seized by the Commissioner.

New section 68 will extend the present section to permit the Commissioner to make an assessment of vehicle registration tax in certain comparable situations.

Paragraphs (1)(a), (d) and (e) of new sub-section 68(1) simply reproduce those paragraphs of the existing section 68.

Paragraph (1)(b) of the substituted section will authorise assessment where a person has furnished false or misleading information to the Commissioner or to the Registrar of Motor Vehicles in connection with a claim for exemption from vehicle registration tax.

Paragraph (1)(c) will similarly apply in a case where the Commissioner has formed the opinion that the amount stated by a person to be the market value of a vehicle does not reflect the true market value of the vehicle.

By new sub-section (2), an assessment to reflect the true market value of a vehicle, will only be authorised if made within three years of the date of registration of the vehicle, unless the statement made by a person as to the market value of the vehicle was false or misleading in a material particular. Under section 58C, an applicant for registration of a vehicle is required to state, to the best of his knowledge and belief, the market value of the vehicle. Such a statement would only be regarded as false for the purposes of new section 68 if the person deliberately and knowingly stated an incorrect market value.

Where a false statement of market value has been made an assessment of the tax properly payable may be made at any time.

Sub-section (3) of new section 68 will permit a refund of tax overpaid where an assessment has been made by the Commissioner to reduce the amount stated to be the market value of a vehicle.

Existing section 69 of the Principal Act requires the Commissioner of Taxation to give notice in writing of the details of assessments made under section 68. New section 69 incorporates drafting changes consequential on the proposed amendments to section 68 relating to assessments of vehicle registration tax, but does not otherwise disturb the practical effect of existing section 69.

### Clause 10 : Penalty additional to duty or tax on default assessments

This clause proposes the substitution of a new sub-section (1) in section 70 of the Principal Act. Existing sub-section (1) authorises imposition of a penalty - where further tax has become payable as a result of a default assessment made under section 68 - of double the amount of tax liable to be paid by reason of the assessment. The effect of the revision of sub-section (1) is to extend its operation to cases where an assessment of vehicle registration tax is made as a result of a false statement relating to the market value of a vehicle or other false information.

By sub-section 70(6), the Commissioner of Taxation may, in appropriate circumstances, remit in whole or in part any penalty payable under section 70.

## Clauses 11 to 15 : Review and appeals

### Introductory note

Clauses 11 to 15 propose amendments to Part V of the Principal Act. In cases where a person is dissatisfied with an assessment of stamp duty or tax made by the Commissioner of Taxation, Part V extends rights of objection against the assessment and further rights of review by a Board of Review and by way of appeal to the Supreme Court of the Australian Capital Territory. The amendments made to Part V will provide similar rights of objection and review in relation to certain decisions, other than as part of an assessment, of the Commissioner or the Registrar of Motor Vehicles concerning vehicle registration tax. Where a decision of the Commissioner is reflected in an assessment of vehicle registration tax, the normal rights of objection, review and appeal will be available under Part V in relation to the assessment.

## Clause 11 : Interpretation

This clause will insert a new section - section 73A - in Part V of the Principal Act to define those decisions of the Commissioner of Taxation or of the Registrar of Motor Vehicles against which there will be rights of objection, review and appeal. Those decisions, referred to in Part V as "prescribed decisions" are:

(a) a decision of the Commissioner to refuse to issue a certificate of exemption under section 58D. (The exemptions for which the Commissioner may issue a certificate are explained in the notes relating to the Australian Capital Territory Tax (Vehicle Registration) Act 1981);

(b) a decision by the Registrar that the registration of a vehicle is not exempt from tax. (The class of exemption for which a decision is required to be made by the Registrar is that under sub-section 6(1) of the Taxing Act where the vehicle was last registered in the name of the applicant for registration in the Territory or elsewhere in Australia).

## Clause 12 : Objections to assessments and decisions

This clause proposes amendments to section 74 of the Principal Act.

Paragraph (a) of clause 12 will insert a new sub-section - sub-section (1A) - in section 74 to provide that an objection against a prescribed decision may be made, in writing, within 60 days after the decision is made.

Paragraphs (b) and (c) effect consequential amendments to section 74 to reflect the fact that an objection may be lodged against a prescribed decision as well as against an assessment of tax by the Commissioner.

Clause 13 : Review by Board of Review

This clause proposes a number of consequential amendments to section 75 of the Principal Act. Section 75 empowers a Board of Review to review assessments of the Commissioner of Taxation against which objections have been lodged and disallowed by the Commissioner and, if necessary, to confirm, reduce, increase or vary the assessments. The amendments to be made by this clause will likewise empower a Board of Review to review a prescribed decision and, if it thinks necessary, to set aside such a decision.

Clause 14 : Pending appeal or reference not to affect payment of tax or duty

Section 77 of the Principal Act ensures that duty or tax due and payable under an assessment of the Commissioner of Taxation remains due and payable, notwithstanding that a reference to a Board of Review or an appeal to the Supreme Court of the Australian Capital Territory may be pending, and is recoverable as if such reference or appeal had not been made.

Clause 14 proposes amendments to section 77 so that vehicle registration tax will similarly remain due and payable notwithstanding that a review or appeal in connection with a prescribed decision may be pending.

Clause 15 : Adjustments of duty or tax after appeal

Clause 15 will insert in section 78 of the Principal Act a new sub-section (3). Sub-section 78(3) will require the Commissioner of Taxation, in the event that a prescribed decision is set aside by a Board of Review or the Supreme Court, to give written notice to the person who requested the review that the prescribed decision has been set aside, and to refund any amount of tax overpaid.

Clause 16 : Vehicle registration tax may be recovered by Registrar

New section 80A, to be inserted in the Principal Act by this clause, reflects the position that primary responsibility for the collection of vehicle registration tax will rest with the Registrar of Motor Vehicles.

In appropriate cases, however, the section will allow the Commissioner to pursue his general powers of recovery of unpaid taxes in place of the Registrar.

Clause 17 : Additional penalty for failure to pay duty or tax on time

Clause 17 proposes the insertion of two new sub-sections - sub-sections (3) and (4) - in section 81 of the Principal Act. Section 81 requires the payment of a penalty, calculated at the rate of 10 per cent per annum, where duty or tax is not paid by the date on which it becomes due and payable. By sub-section 81(2), the Commissioner of Taxation is empowered to remit the whole or a part of any such penalty in appropriate circumstances.

New sub-section (3) will enable the Commissioner to delegate to the Registrar of Motor Vehicles his power to remit penalty imposed by section 81 in relation to late payment of vehicle registration tax.

New sub-section (4) is a technical amendment to preserve the right of the Commissioner to remit any amount of penalty notwithstanding that he has delegated such power to the Registrar.

Clause 18 : Recovery of duty or tax from trustees of deceased persons

Section 83 of the Principal Act makes it clear that the Commissioner has the same powers and remedies for the recovery of duty or tax from a trustee of a deceased person as he would have if that person was still living.

Clause 18 will extend the operation of section 83 to give to the Registrar of Motor Vehicles the same powers and remedies for recovery of vehicle registration tax from a trustee of a deceased person.

Clause 19 : Evidence

New sub-section (2), to be inserted in section 86 by this clause, will enable the production of an instrument under the hand of the Registrar of Motor Vehicles that contains particulars of a registration of a vehicle to be taken as evidence of the registration of that vehicle in any proceedings for recovery of unpaid tax in respect of that registration.

## Clause 20 : Judicial notice

Section 95 of the Principal Act requires that all courts and tribunals and all judges and persons acting judicially take judicial notice of the signature of a person who holds the office of Commissioner of Taxation, Second Commissioner of Taxation, or Deputy Commissioner of Taxation.

This clause will amend section 95 to also require that judicial notice be taken of the signature of a person who holds the Office of Registrar of Motor Vehicles.

## Clause 21 : Appearances by Commissioner of Taxation and Registrar

Clause 21 will repeal section 98 of the Principal Act and substitute a new section 98. Existing section 98 permits the Commissioner of Taxation to either appear personally, or be represented by a barrister or solicitor or an officer appointed by him, in any prosecution or other proceeding under the Principal Act before a court or Board of Review.

New section 98 will extend comparable rights of appearance or representation to the Registrar of Motor Vehicles.

## AUSTRALIAN CAPITAL TERRITORY TAX (VEHICLE REGISTRATION) BILL 1981

This Bill will formally impose the tax payable on new and transferred vehicle registrations effected in the Australian Capital Territory, including Jervis Bay. The Bill will also declare the rate of the tax and specify a number of circumstances in which exemption from tax will be available.

Notes on each clause of the Bill are provided below.

### Clause 1 : Short title

Clause 1 provides formally for the citation of the new Act as the Australian Capital Territory Tax (Vehicle Registration) Act 1981.

### Clause 2 : Commencement

This clause proposes that the Act will come into operation on a date to be fixed by Proclamation. But for this clause the 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 Royal Assent.

### Clause 3 : Incorporation

Clause 3 specifies that the Australian Capital Territory Taxation (Administration) Act 1969 is to be incorporated and read as one with the Australian Capital Territory Tax (Vehicle Registration) Act 1981.

### Clause 4 : Imposition of tax

By clause 4, tax will be formally imposed in respect of each registration of a vehicle in the Territory where the application for that registration is made after the Act comes into operation.

### Clause 5 : Rate of tax

Clause 5 prescribes the rate of tax to be applied in respect of a registration of a vehicle. The rate of tax is to be $2 for each $100, or part of $100, of the market value of the vehicle.

### Clause 6 : Exemptions

By sub-clause (1) of clause 6, a registration of a vehicle will be exempt from tax if the registration is applied for in the name of a person in whose name the vehicle was last registered in the Australian Capital Territory or elsewhere in Australia.

Sub-clause (2) specifies a number of other exemptions. Paragraph (2)(a) will exempt from tax a vehicle registered to a public hospital, public benevolent institution, religious institution, public educational institution or a person on behalf of, or a trustee for the purposes of, such an institution.

Paragraphs (2)(b) and (c) will exempt a registration to a diplomatic mission, or in the name of a member of such a mission, from a country that provides a reciprocal exemption from taxes on motor vehicle registrations for Australian diplomatic missions and personnel or that does not impose such taxes.

Paragraph (2)(d) will exempt registrations of new or second-hand vehicles in the names of certain permanently disabled persons. The persons who will qualify for this exemption are persons of the class who are able to obtain exemption from sales tax in respect of the purchase of new vehicles by virtue of item 135 or 135A of the First Schedule to the Sales Tax (Exemptions and Classifications) Act 1935. To be eligible for the exemption from registration tax it will be necessary to show that the vehicle registered would have been exempt from sales tax if it had been purchased new immediately before the registration was granted.

Item 135 authorises exemption from sales tax for motor vehicles for use in the personal transportation of a person who, as a result of service in the Defence Forces, has lost a leg or both arms or is in receipt of a special pension under the Second Schedule to the Repatriation Act 1920 in respect of blindness, total and permanent incapacity or tuberculosis.

Item 135A exempts from sales tax motor vehicles for use in the transportation to and from gainful employment of a person who has been certified by the Director General of Social Services as having lost the use of one or both legs to such an extent as to be permanently unable to use public transport.

Where these conditions are satisfied in respect of a vehicle to be registered in the name of a person and, in the case of item 135A, where the Director General of Social Services has certified accordingly, the registration will be exempt from registration tax.

Paragraph (2)(e) of clause 6 will exempt a registration of a vehicle in the name of a person, who carries on a business as a licensed dealer under the Australian Capital Territory Sale of Motor Vehicles Ordinance 1977, where the vehicle to be registered is held by that person as trading stock for resale in the course of that business.

Sub-clause (3) of clause 6 defines the term "reciprocating country" for the purposes of the diplomatic exemptions under paragraphs (2)(b) and (c).

## AUSTRALIAN CAPITAL TERRITORY TAX (LIFE INSURANCE BUSINESS) BILL 1981

This Bill will formally impose the tax payable on new life insurance business effected in the Australian Capital Territory and will specify the rates of tax payable. The Bill also provides for exemptions from the tax in certain circumstances.

Notes on each clause of the Bill follow.

### Clause 1 : Short title

The new Act is to be cited as the Australian Capital Territory Tax (Life Insurance Business) Act 1981.

### Clause 2 : Commencement

As already mentioned, it is proposed that the Act will come into operation on a date to be fixed by Proclamation.

### Clause 3 : Incorporation

By this clause the Australian Capital Territory Taxation (Administration) Act 1969 is to be incorporated with and read as one with this Act.

### Clause 4 : Imposition of taxation

Clause 4 is the operative provision which will impose tax on new life insurance effected in the Australian Capital Territory on or after the date of commencement of the Act. The tax will be imposed on life insurance for which premiums are received in the Territory by an insurer after the commencement of the Act.

### Clause 5 : Rate of tax

As mentioned earlier in these notes, tax is to be imposed in respect of two categories of life insurance. The two categories are -

(a) temporary or term life insurance; and

(b) life insurance other than temporary or term insurance.

Clause 5 sets the rate of tax that is to be payable in respect of each category.

Paragraph (a) of clause 5 provides that the rate of tax in the case of temporary or term insurance is to be 5 per cent of the premiums received in respect of the first year of the insurance where the term of the insurance exceeds 1 year

or, where the term does not exceed 1 year, 5 per cent of the premiums received.

For any other class of life insurance, the tax is to be calculated by reference to the sum insured under the policy. Sub-paragraph (b)(i) of clause 5 sets the rate of tax for sums insured between $100 and $2,000 at 10 cents for each $200, or part thereof, of the sum insured. For sums insured greater than $2,000, sub-paragraph (b)(ii) of clause 5 prescribes a rate of tax of $1 plus 20 cents for each $200, or part thereof, of the sum insured above $2,000.

Clause 6 : Exemptions and reduction of tax

To avoid the possibility of tax or stamp duty being imposed both in the Australian Capital Territory and in another State or Territory on a policy of life insurance, sub-clause (1) of clause 6 will exempt from tax life insurance which relates solely to the life of a person who is domiciled outside the Territory and in respect of which stamp duty or similar tax has been or will be paid under a law of a State or Territory.

Sub-clause (2) of clause 6 will provide for a customary exemption from tax for members of diplomatic missions in Australia.

Sub-clause (3) will have effect in relation to sub-clause (1) where a policy of life insurance relates to the lives of two or more persons, not all of whom qualify for exemption from tax under sub-clause (1). In such a case, the Commissioner of Taxation may determine the extent to which the exemption is applicable.

Sub-clause (4) is a drafting measure to ensure that a reference to the life of a person in clause 6 will be read as including, where appropriate, a reference to the lives of two or more persons.

## AUSTRALIAN CAPITAL TERRITORY TAX (INSURANCE BUSINESS) AMENDMENT BILL (NO. 2) 1981

This Bill proposes an amendment of the Australian Capital Territory Tax (Insurance Business) Act 1969. The amendment proposed in consequent on the proposal to tax new life insurance business effected in the Territory.

The Australian Capital Territory Tax (Insurance Business) Act 1969 - referred to in the Bill as the "Principal Act" - imposes tax on general insurance effected in the Territory. Several types of insurance are specified in the Principal Act as being exempt from the tax. Among these are life insurance and personal accident and sickness insurance if undertaken solely in connection with life insurance. Other personal accident and sickness insurance is not exempt from the

tax. The exemption for sickness and accident insurance undertaken solely in connection with life insurance is to be withdrawn by the amendment proposed by this Bill and such insurance will, from the date of commencement of the amending Act, become taxable under the Australian Capital Territory Tax (Insurance Business) Act 1969 in the same way as other sickness and accident insurance. Life insurance, as already explained, is to become taxable by virtue of the Australian Capital Territory Tax (Life Insurance Business) Bill 1981.

Notes are provided below on each clause of this Bill.

Clause 1 : Short title

Sub-clause (1) of this clause provides for the amending Act to be cited as the Australian Capital Territory Tax (Insurance Business) Amendment Act (No. 2) 1981.

Sub-clause (2) provides formally for the Australian Capital Territory Tax (Insurance Business) Act 1969 to be referred to in the amending Act as "the Principal Act".

Clause 2 : Commencement

By this clause, it is proposed that the amending Act, like the related Acts discussed in this memorandum, will come into operation on a date to be fixed by Proclamation.

Clause 3 : Exemptions

This is the operative clause of the Bill by which it is proposed that the exemption from tax on premiums paid on personal sickness and accident insurance undertaken solely in connection with life insurance will be withdrawn. This exemption is contained in paragraph 6(b) of the Principal Act and, by the amendment proposed, that paragraph will be omitted from the Principal Act.

The effect of the amendment will be to impose tax on all personal sickness and accident insurance at the generally applicable rate of 7 per cent of the premiums payable under the policy.

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