Commonwealth Places Windfall Tax (Collection) Act 1998

No. 25, 1998

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An Act relating to the imposition and collection of Commonwealth places windfall tax

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[*Assented to 17 April 1998*]

The Parliament of Australia enacts:

Part 1—Preliminary

1 Short title

This Act may be cited as the *Commonwealth Places Windfall Tax (Collection) Act 1998*.

2 Commencement

This Act is taken to have commenced on 6 October 1997.

3 This Act binds the Crown

This Act binds the Crown in each of its capacities.

4 Definitions

(1) In this Act, unless the contrary intention appears:

Commissioner means the Commissioner of Taxation.

liable to repay has the meaning given by subsection (2).

State taxing law has the same meaning as in the *Commonwealth Places (Mirror Taxes) Act 1998*.

windfall tax means the tax payable under this Act.

(2) For the purposes of this Act, a State is ***liable to repay*** an amount to a person if:

(a) the State is liable to repay the amount to the person; or

(b) the State is required or permitted to offset the amount against other amounts that are owing, or may become owing, to the State by the person; or

(c) the State is required or permitted to apply the amount for the benefit of the person in any other way.

5 Administration

The Commissioner has the general administration of this Act.

Part 2—Liability

6 Taxable amount

(1) A taxable amount is any amount that meets all the following conditions:

(a) a State is liable to repay the amount to a person (the ***taxpayer***) because a State taxing law is wholly or partly invalid because of paragraph 52(i) of the Constitution;

(b) the amount is by way of repayment of an amount paid under the State taxing law before 6 October 1997;

(c) the amount is claimed by the taxpayer from the State, or a court orders the State to pay the amount to the taxpayer.

(2) A taxable amount is reduced by deducting any part of it that a State would have been liable to repay even if the State taxing law were wholly valid.

Example: An amount that is repayable solely because of an overpayment by the taxpayer would be deducted.

7 Liability to windfall tax

(1) The taxpayer in respect of a taxable amount is the person to whom the State was liable to repay the taxable amount.

Note: Section 8 extinguishes the liability of the State to repay the taxable amount.

(2) The person who is the taxpayer in respect of a taxable amount is liable to pay windfall tax on the taxable amount.

Part 3—Collection

8 State must withhold windfall tax from taxable amounts

State must withhold windfall tax

(1) A State that is liable to repay a taxable amount must not repay or otherwise apply the taxable amount without first having deducted the windfall tax on the taxable amount.

(2) As soon as practicable after making a deduction under subsection (1), the State must notify the taxpayer in writing that the deduction was made.

(3) An amount deducted under subsection (1) is payable by the State to the Commonwealth.

State discharged from liability to account

(4) When a State makes a deduction from a taxable amount under subsection (1) (or purportedly under subsection (1)), the State is discharged from any liability to pay or account for the amount deducted to any person other than the Commissioner.

9 Taxpayer entitled to credit for amount deducted by State

(1) When a State makes a deduction from a taxable amount under section 8 (or purportedly under section 8), the taxpayer is entitled to a credit equal to the amount deducted.

(2) However, the taxpayer is not entitled to a credit for any amount purportedly deducted under section 8 in relation to an amount paid under a valid State taxing law.

(3) The credit is a debt due to the taxpayer by the Commissioner on behalf of the Commonwealth.

(4) The Commissioner may apply some or all of the credit against the taxpayer's liability to windfall tax (whether or not that liability is in respect of the taxable amount that gives rise to the credit). The Commissioner must refund any amount not applied.

Part 4—Miscellaneous

10 Annual report

After the end of each financial year, the Commissioner must give a report to the Minister, for presentation to the Parliament, on the operation of this Act during the year.

11 Arrangements with States

(1) The Commissioner may make an arrangement with an appropriate officer or authority of a State about any matter in connection with the administration of this Act.

(2) In particular, an arrangement may relate to the Commissioner's delegation of powers or functions under this Act or the regulations.

Note: Section 8 of the *Taxation Administration Act 1953* contains the Commissioner's delegation power.

12 Commonwealth payments to States

(1) Whenever a State becomes liable to make a payment to the Commonwealth under section 8, the Commonwealth is liable to pay an equal amount to the State.

(2) Amounts payable by the Commonwealth under subsection (1) are to be reduced by amounts that the Commissioner is liable to refund under subsection 9(4).

(3) The Consolidated Revenue Fund is appropriated for the purposes of this section.

13 Regulations

(1) The Governor-General may make regulations prescribing matters:

(a) required or permitted by this Act to be prescribed; or

(b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) In particular, the regulations may prescribe penalties for offences against the regulations by way of fines of up to 10 penalty units.

[*Minister's second reading speech made in—*
House of Representatives on 5 March 1998
Senate on 23 March 1998]

(14/98)