



Franchise Fees Windfall Tax (Collection) Act 1997

Act No. 132 of 1997 as amended

This compilation was prepared on 21 December 2010
taking into account amendments up to Act No. 145 of 2010

The text of any of those amendments not in force
on that date is appended in the Notes section

The operation of amendments that have been incorporated may be
affected by application provisions that are set out in the Notes section

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An Act relating to the imposition and collection of franchise fees windfall tax

Part 1—Preliminary

1 Short title [see Note 1]

This Act may be cited as the *Franchise Fees Windfall Tax (Collection) Act 1997*.

2 Commencement

This Act is taken to have commenced on 5 August 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 (3).

State includes the Australian Capital Territory and the Northern Territory.

State franchise law has the meaning given by subsection (2).

windfall tax means the tax payable under this Act.

- (2) The following are **State franchise laws** for the purposes of this Act:

- (a) the *Business Franchise (Liquor) Act 1993* of the Australian Capital Territory;
- (b) the *Business Franchise (Tobacco and Petroleum Products) Act 1984* of the Australian Capital Territory;
- (c) the *Business Franchise Licenses (Petroleum Products) Act 1987* of New South Wales;

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- (d) the Business Franchise Licences (Tobacco) Act 1987 of New South Wales;
 - (e) the Liquor Act 1982 of New South Wales;
 - (f) the *Business Franchise Act 1978* of the Northern Territory;
 - (g) the *Liquor Act 1978* of the Northern Territory;
 - (h) the *Liquor Act 1992* of Queensland;
 - (i) the *Tobacco Products (Licensing) Act 1988* of Queensland;
 - (j) the *Business Franchise (Petroleum Products) Act 1979* of South Australia;
 - (k) the *Liquor Licensing Act 1985* of South Australia;
 - (l) the *Petroleum Products Regulation Act 1995* of South Australia;
 - (m) the *Tobacco Products (Licensing) Act 1986* of South Australia;
 - (n) the *Tobacco Products Regulation Act 1997* of South Australia;
 - (o) the *Liquor and Accommodation Act 1990* of Tasmania;
 - (p) the *Tobacco Business Franchise Licences Act 1980* of Tasmania;
 - (q) the *Petroleum Products Business Franchise Licences Act 1981* of Tasmania;
 - (r) the Business Franchise (Petroleum Products) Act 1979 of Victoria;
 - (s) the Business Franchise (Tobacco) Act 1974 of Victoria;
 - (t) the Liquor Control Act 1987 of Victoria;
 - (u) the *Business Franchise (Tobacco) Act 1975* of Western Australia;
 - (v) the *Liquor Licensing Act 1988* of Western Australia;
 - (w) the *Transport Co-ordination Act 1966* of Western Australia.
- (3) 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.

Note: An effect of this provision is that people who acquire information under this Act are subject to the confidentiality obligations and exceptions in Division 355 in Schedule 1 to the *Taxation Administration Act 1953*.

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 franchise law is wholly or partly invalid because of section 90 of the Constitution;
 - (b) the amount is by way of repayment of an amount paid under the State franchise law before 5 August 1997 in respect of a licensing period commencing before 5 August 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 franchise law were wholly valid.

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

7 Reduction of taxable amount—liquor franchise fees

- (1) If a taxable amount calculated under section 6 relates to a liquor franchise fee for which the licensing period ends after 6 August 1997, then the taxable amount is reduced by an amount calculated as follows:

$$\text{Taxable amount} \times \frac{\text{Days in licensing period after 6 August 1997}}{\text{Total days in licensing period}}$$

- (2) If:
 - (a) a State franchise law required or permitted the payment by instalments of a liquor franchise fee for a licensing period (the **actual licensing period**); and
 - (b) at least one of those instalments was payable after 6 August 1997;

then this section applies as if each of the following periods were a separate licensing period (in place of the actual licensing period):

- (c) the period starting on the day on which an instalment was payable and ending immediately before the day on which the next instalment was payable;
 - (d) the period starting on the day on which last instalment was payable and ending at the end of the actual licensing period.
- (3) In this section:

liquor franchise fee means a fee payable under a law specified in paragraph 4(2)(a), (e), (g), (h), (k), (o), (t) or (v).

8 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 9 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

9 State must withhold windfall tax from taxable amounts

State must withhold and remit 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 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) A State that makes a deduction under subsection (1) must remit it to the Commissioner within 21 days after the end of the month in which the deduction is made. The remitted tax must be accompanied by a statement that:
 - (a) sets out the amount deducted; and
 - (b) identifies the taxpayer.

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.

10 Taxpayer entitled to credit for amount deducted by State

- (1) When a State makes a deduction from a taxable amount under section 9 (or purportedly under section 9), 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 9 in relation to an amount paid under a valid State franchise 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.

11 Regulations for collection etc. of unpaid windfall tax

The regulations may provide for the collection and recovery of any unpaid windfall tax. In particular, the regulations may:

- (a) prescribe the time when windfall tax is due for payment; and
- (b) prescribe penalties for late payment of windfall tax (not exceeding an amount calculated at the rate of 20% per annum).

Note: Windfall tax would normally be collected under section 9.

Part 4—Miscellaneous

12 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.

13 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.

14 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.

Table of Acts**Notes to the *Franchise Fees Windfall Tax (Collection) Act 1997*****Note 1**

The *Franchise Fees Windfall Tax (Collection) Act 1997* as shown in this compilation comprises Act No. 132, 1997 amended as indicated in the Tables below.

Table of Acts

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Franchise Fees Windfall Tax (Collection) Act 1997</i>	132, 1997	19 Sept 1997	5 Aug 1997	
<i>Tax Laws Amendment (Confidentiality of Taxpayer Information) Act 2010</i>	145, 2010	16 Dec 2010	Schedule 2 (item 21): 17 Dec 2010	—

Table of Amendments

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected

How affected

Part 1

Note to s. 5 ad. No. 145, 2010