



Australian Capital Territory

# **Taxation Administration Act 1999**

**A1999-4**

**Republication No 12**

**Effective: 12 August 2004 – 31 December 2005**

Republication date: 12 August 2004

Last amendment made by A2004-43

Authorised by the ACT Parliamentary Counsel

## About this republication

### The republished law

This is a republication of the *Taxation Administration Act 1999* (including any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes)) as in force on 12 August 2004. It also includes any amendment, repeal or expiry affecting the republished law to 12 August 2004.

The legislation history and amendment history of the republished law are set out in endnotes 3 and 4.

### Kinds of republications

The Parliamentary Counsel's Office prepares 2 kinds of republications of ACT laws (see the ACT legislation register at [www.legislation.act.gov.au](http://www.legislation.act.gov.au)):

- authorised republications to which the *Legislation Act 2001* applies
- unauthorised republications.

The status of this republication appears on the bottom of each page.

### Editorial changes

The *Legislation Act 2001*, part 11.3 authorises the Parliamentary Counsel to make editorial amendments and other changes of a formal nature when preparing a law for republication. Editorial changes do not change the effect of the law, but have effect as if they had been made by an Act commencing on the republication date (see *Legislation Act 2001*, s 115 and s 117). The changes are made if the Parliamentary Counsel considers they are desirable to bring the law into line, or more closely into line, with current legislative drafting practice.

This republication includes amendments made under part 11.3 (see endnote 1).

### Uncommenced provisions and amendments

If a provision of the republished law has not commenced or is affected by an uncommenced amendment, the symbol **U** appears immediately before the provision heading. The text of the uncommenced provision or amendment appears only in the last endnote.

### Modifications

If a provision of the republished law is affected by a current modification, the symbol **M** appears immediately before the provision heading. The text of the modifying provision appears in the endnotes. For the legal status of modifications, see *Legislation Act 2001*, section 95.

### Penalties

The value of a penalty unit for an offence against this republished law at the republication date is—

- (a) if the person charged is an individual—\$100; or
- (b) if the person charged is a corporation—\$500.



Australian Capital Territory

# Taxation Administration Act 1999

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Australian Capital Territory

# Taxation Administration Act 1999

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An Act to provide for the administration of certain Acts relating to the imposition and collection of taxes

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## Part 1 Preliminary

### 1 Name of Act

This Act is the *Taxation Administration Act 1999*.

### 2 Dictionary

The dictionary at the end of this Act is part of this Act.

*Note 1* The dictionary at the end of this Act defines certain terms used in this Act, and includes references (*signpost definitions*) to other terms defined elsewhere.

For example, the signpost definition ‘*group*—see section 112.’ means that the term ‘group’ is defined in that section and the definition applies to this Act.

*Note 2* A definition in the dictionary (including a signpost definition) applies to the entire Act unless the definition, or another provision of the Act, provides otherwise or the contrary intention otherwise appears (see Legislation Act, s 155 and s 156 (1)).

### 3A Notes

A note included in this Act is explanatory and is not part of this Act.

*Note* See *Legislation Act 2001*, s 127 (1), (4) and (5) for the legal status of notes.

### 4 Meaning of *tax laws*

The following are tax laws for this Act:

- (a) this Act;
- (b) the *Debits Tax Act 1997*;
- (c) the *Duties Act 1999*;
- (d) the *Emergencies Act 2004*, schedule 1 (Ambulance levy);

- (e) the *Financial Institutions Duty Act 1987*;
- (f) the *Insurance Levy Act 1998*;
- (g) the *Land Tax Act 2004*;
- (h) the *Payroll Tax Act 1987*;
- (i) the *Rates Act 2004*;
- (j) the *Stamp Duties and Taxes Act 1987*;
- (k) the *Taxation (Administration) Act 1987*;
- (l) an Act declared under the regulations to be a tax law.

## **5 Act binds Territory**

- (1) This Act applies to the Territory so far as it requires or otherwise provides for the payment of money that, on payment, would form part of the public money of the Territory.
- (2) This section has effect despite the *Legislation Act 2001*, section 121 (2).

*Note* Section 121 (2) provides that an Act does not bind the Territory to the extent that it requires or otherwise provides for the payment of money that, on payment, would form part of the public money of the Territory.

## Part 2 Purpose of Act and relationship with other tax laws

### 6 Purpose of Act and relationship with other tax laws

- (1) The purpose of this Act is to make general provision in relation to the administration and enforcement of the other tax laws.
- (2) The other tax laws include provisions in relation to—
  - (a) the imposition of tax and its payment; and
  - (b) exceptions to and exemptions from liability to the tax; and
  - (c) entitlements to refunds.
- (3) This Act includes general provisions in relation to—
  - (a) the assessment and reassessment of tax liability; and
  - (b) the tax liability of groups of corporations; and
  - (c) payment of tax, if this is not provided for in the tax law concerned; and
  - (d) entitlements to and the obtaining of refunds of tax; and
  - (e) the imposition of interest and penalty tax; and
  - (f) approval of special tax return arrangements; and
  - (g) the collection of tax; and
  - (h) record keeping obligations of taxpayers and general offences; and
  - (i) tax officers and their investigative powers and secrecy obligations; and
  - (j) objections and appeals; and

- (k) cooperation with other jurisdictions in conducting investigations and enforcing tax laws; and
- (l) miscellaneous matters such as the service of documents, corporate criminal liability and evidence.

## **Part 3 Assessment of tax liability**

### **7 General power to make assessment**

- (1) The commissioner may make an assessment of the tax liability of a taxpayer.
- (2) An assessment of a tax liability may—
  - (a) consist of a determination that there is not a particular tax liability; or
  - (b) include an assessment of the value of anything for the purpose of assessing tax liability.
- (3) The commissioner has the same powers of assessment in relation to a trustee of a deceased person as he or she would have in relation to the person if the person were alive.

### **8 Tax avoidance schemes made ineffective**

- (1) If the commissioner is satisfied that a person has used a tax avoidance scheme, he or she may—
  - (a) determine the tax to which the person and other persons would have been liable apart from the use of the scheme; and
  - (b) take the action that he or she considers necessary to allow assessments of tax so determined.
- (2) If the commissioner makes a determination under subsection (1), each person benefiting from the scheme is liable for tax in accordance with the determination.
- (3) This section applies in relation to a scheme wherever and whenever entered into.
- (4) This section does not prevent a person from agreeing to pay tax payable by another or from entering a tax-sharing agreement.



(5) In this section:

**scheme** includes—

- (a) any plan, action or conduct of a person; and
- (b) any trust, agreement, arrangement or other understanding between persons, whether oral or in writing, whether express or implied and whether or not it is intended to be legally binding; and
- (c) any series or combination of schemes referred to in paragraphs (a) and (b).

**tax avoidance scheme** means a scheme by which a person obtains or seeks to obtain a reduction in, or exemption from, tax that would otherwise be payable and where, having regard to—

- (a) the way in which the scheme was entered into or carried out; or
- (b) the form and substance of the scheme; or
- (c) the time when the scheme was entered into and the length of time during which it was carried out; or
- (d) the extent to which the scheme reduces the tax that would otherwise be payable; or
- (e) whether the scheme has resulted in, or can reasonably be expected to result in, a change in any person's financial position, or in any other consequence for any person; or
- (f) the nature of any connection (whether of a business, family or any other nature) between the person and a person referred to in paragraph (e);

it would be reasonable to conclude that the person entered into or carried out the scheme principally for the purpose obtaining the reduction in, or exemption from, tax.

**9 Reassessment**

- (1) The commissioner may make 1 or more reassessments of a tax liability of a taxpayer.
- (2) A reassessment of a tax liability shall be made in accordance with the legal interpretations and assessment practices generally applied by the commissioner in relation to matters of that kind at the time the tax liability arose except to the extent that any departure from those interpretations and practices is required by a change in the law (whether legislative or non-legislative) made after that time.
- (3) The commissioner shall not make a reassessment of a tax liability more than 5 years after the initial assessment of the liability, unless—
  - (a) the purpose of the reassessment is to give effect to a decision on an objection or appeal as to the initial assessment; or
  - (b) at the time the initial assessment or a reassessment was made, all the facts and circumstances affecting the liability under the relevant tax law of the person in relation to whom the assessment or reassessment was made were not fully and truly disclosed to the commissioner.
- (4) The initial assessment of a tax liability remains the initial assessment of the liability for this Act even if it is withdrawn under section 13.

**10 Requirement for full and true disclosure of relevant facts and circumstances**

- (1) A person who is liable to pay tax under a tax law shall, before or at the time an assessment of the tax liability is made, fully and truly disclose to the commissioner all the facts and circumstances affecting the tax liability under the relevant tax law.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

- (2) It is a defence to a charge under this section that the defendant reasonably relied on some other person to ensure that the requirements of this section were satisfied.

## **11 Information on which assessment is made**

- (1) The commissioner may make an assessment on the information that the commissioner has from any source at the time the assessment is made.
- (2) If the commissioner has insufficient information to make an exact assessment of a tax liability, the commissioner may make an assessment by way of estimate.

## **12 Compromise assessment**

- (1) If it is difficult or impracticable for the commissioner to determine a person's tax liability under a tax law without undue delay or expense because of the complexity or uncertainty of the case or for any other reason, the commissioner may make an assessment in accordance with this section.
- (2) The commissioner may, with the agreement of the taxpayer, assess liability in an amount specified in, or determined in accordance with, the agreement.
- (3) Despite section 9, the commissioner shall not make a reassessment of a tax liability assessed in accordance with this section unless—
- (a) the taxpayer agrees to the reassessment; or
  - (b) the assessment under this section was procured by fraud or there was a deliberate failure to disclose material information.
- (4) This section does not limit the power of the commissioner to make an assessment by way of estimate under section 11.

**13 Withdrawal of assessment**

The commissioner may withdraw an assessment (being an assessment for which a notice of assessment has been issued) at any time within 5 years after the date of issue of the notice, whether or not the amount of tax specified in the assessment has been paid.

**14 Notice of assessment, reassessment or withdrawal of assessment**

- (1) The commissioner may issue a notice of assessment, showing the amount of the assessment.

*Note* If a form is approved under s 139C (Approved forms) for a notice of assessment, the form must be used.

- (2) If the commissioner has not issued a notice of assessment of the tax liability of a taxpayer, the commissioner shall issue the notice if a request to do so is made by the taxpayer within 5 years after the liability arose.
- (3) If the commissioner makes a reassessment, the commissioner shall issue a notice of assessment, showing the amount of the reassessment and the amount by which the assessment has been increased or decreased.
- (4) If the commissioner withdraws an assessment, the commissioner shall issue a notice of withdrawal of assessment.

**15 Inclusion of interest and penalty tax in notice of assessment**

A notice of assessment of a taxpayer's tax liability issued following a tax default by the taxpayer shall specify any interest and penalty tax that are payable, or will become payable by the taxpayer under part 5 in relation to the default.

**16 Validity of assessment**

The validity of an assessment is not affected only because a provision of a tax law has not been complied with.

**17 Acceptance of money not necessarily an assessment**

If money is paid in connection with the lodging of any document, the acceptance of the money by the commissioner does not, of itself, constitute an assessment.

**18 Remissions of tax**

Tax shall be remitted in the same circumstances as those in which it would be refunded under a tax law if it had been paid.

## Part 4 Refunds of tax

### 19 Entitlement to refund

- (1) If a taxpayer has paid a greater amount of tax in relation to a tax liability than the amount assessed for that liability, the commissioner shall refund the difference to the taxpayer, subject to this part.
- (2) To avoid doubt, it is declared that an amount by which tax is overpaid shall be taken to be tax for this part.

### 20 Offset of refund against other tax liability

- (1) Instead of making a refund to a taxpayer, the commissioner may apply the amount that would otherwise be refunded to meet tax or any other amount payable by the taxpayer under a tax law.
- (2) A refund may be credited towards a taxpayer's future liability, but only with the taxpayer's consent.

### 21 Limitation of refunds of revenue amounts

- (1) The commissioner shall not refund a revenue amount unless the person claiming the refund (the *claimant*)—
  - (a) satisfies the commissioner that—
    - (i) he or she has not charged to, or recovered from, any other person an amount paid in relation to the whole or any part of the revenue amount; or
    - (ii) if the claimant has so charged or recovered any such amount—he or she has repaid the amount; and
  - (b) gives the commissioner an undertaking in writing that he or she will not charge to, or recover from, any other person an amount paid in relation to the whole or any part of the revenue amount.

- (2) If the commissioner is not satisfied about the matters referred to in subsection (1) (a) the commissioner shall give the claimant written notice of his or her decision.
- (3) A person who contravenes an undertaking that he or she has given under subsection (1) (b) is liable to pay the commissioner, as a penalty, an amount equal to double the amount that he or she has charged to, or recovered from, another person by the contravention.

## **22 Judgments for the recovery of revenue amounts**

- (1) Judgment shall not be entered for a plaintiff or claimant in proceedings against the Territory for the recovery of a revenue amount unless—
  - (a) the court is satisfied that—
    - (i) the plaintiff or claimant has not charged to, or recovered from, any other person an amount paid in relation to the whole or any part of the revenue amount; or
    - (ii) if the plaintiff or claimant has so charged or recovered any such amount—he or she has repaid the amount; and
  - (b) the plaintiff or claimant gives to the court an undertaking in writing that he or she will not charge to, or recover from, any other person an amount paid in relation to the whole or any part of the revenue amount.
- (2) A person who contravenes an undertaking that he or she has given under subsection (1) (b) is liable to pay to the commissioner, as a penalty, an amount equal to double the amount that he or she has charged to, or recovered from, another person by the contravention.
- (3) In subsection (1):  
*Territory* includes an officer, Minister and Territory authority.

**23 No recovery of revenue amounts following non-legislative change in law**

- (1) A revenue amount paid before a non-legislative change of the law is not recoverable from the Territory on a ground of invalidity if the ground came into existence because of the change of law.
- (2) If a revenue amount paid before a non-legislative change of the law would have been refundable as an overpayment if the purported tax had been valid, that amount is refundable as if the purported tax had indeed been valid.

- (3) In this section:

*ground of invalidity* means—

- (a) the ground of invalidity of a tax law; or
- (b) the ground of mistake (whether law or a fact) about the validity or invalidity of a tax law; or
- (c) any other restitutionary ground relating to the validity or invalidity of a tax law.

*non-legislative change* of the law means a change of the law or of legal principles, or a change in what is generally perceived to be the state of the law or legal principles, but does not include a change made by legislation.

*Territory* includes an officer, Minister and Territory authority.

**24 Characterisation**

- (1) For the purpose of the application of the rules of conflict of laws, this part is part of the substantive law of the ACT.
- (2) This section does not affect the characterisation of any other provision in this Act.



## **Part 5**                      **Interest and penalty tax**

### **Division 5.1**                **Interest**

#### **25**                      **Interest in relation to tax defaults**

- (1) If a tax default occurs, the taxpayer is liable to pay interest on the amount of tax unpaid calculated on a daily basis from the end of the last day for payment until the day it is paid at the interest rate from time to time applying under this division.
- (2) Interest is payable under this section in relation to a tax default that consists of a failure to pay penalty tax under division 5.2 but is not payable in relation to any failure to pay interest under this division.

#### **26**                      **Interest rate**

- (1) The interest rate is the sum of—
  - (a) the market rate component; and
  - (b) the premium component.
- (2) The market rate component for a day is—
  - (a) if a determination of a rate is, under section 139 (1) (b) (Determination of amounts payable under tax laws), in force for this paragraph for the day—the determined rate; or
  - (b) if paragraph (a) does not apply—the monthly 90-day bank bill rate worked out in accordance with table 26 and rounded to the 2nd decimal place (with 0.005 rounded to 0.01).

**Table 26**

If the day is....	the monthly 90-day bank bill rate is....
in the 1st 6 months of a year	(a) if, before 1 January of the year, the monthly 90-day bank bill rate for the previous November had been published—that rate; or (b) if paragraph (a) does not apply—the last monthly 90-day bank bill rate published before 1 January of the year.
in the 2nd 6 months of a year	(a) if, before 1 July of the year, the monthly 90-day bank bill rate for the previous May had been published—that rate; or (b) if paragraph (a) does not apply—the last monthly 90-day bank bill rate published before 1 July of the year.

(3) The premium component is 8% per annum.

(4) In this section:

*monthly 90-day bank bill rate* means the monthly average yield of 90-day bank accepted bills published by the Reserve Bank of Australia for a particular month.

**28 Interest rate to prevail over interest otherwise payable on a judgment debt**

If judgment is given by or entered in a court for an amount of unpaid tax (or an amount that includes an amount of unpaid tax), the interest rate determined in accordance with this division continues to apply, to the exclusion of any other interest rate, until the tax is paid.

**29 Remission of interest**

- (1) The commissioner may remit all or part of the market rate component or the premium component of interest, or both, if—
  - (a) the commissioner has determined that no penalty tax is payable under section 31 (6); or
  - (b) the amount of penalty tax has been reduced under section 32 or 33; or
  - (c) penalty tax has been remitted in whole or in part under section 37.
- (2) The commissioner shall not remit the market rate component unless he or she is also satisfied that the circumstances are exceptional and justify the remission.

**Division 5.2 Penalty tax**

**30 Penalty tax in relation to certain tax defaults**

- (1) If a tax default occurs, the taxpayer is liable to pay penalty tax in addition to the amount of tax unpaid.
- (2) Penalty tax imposed under this division is in addition to interest.
- (3) Penalty tax is not payable in relation to a tax default that consists of a failure to pay—
  - (a) interest under division 5.1; or
  - (b) penalty tax previously imposed under this division.

**31 Amount of penalty tax**

- (1) The amount of penalty tax payable in relation to a tax default is 25% of the amount of tax unpaid, subject to this division.
- (2) The amount of penalty tax payable in relation to a tax default is 50% of the amount of tax unpaid if the commissioner is satisfied that the

tax default was caused wholly or partly by a failure by the taxpayer (or a person acting on behalf of the taxpayer) to take reasonable care to fulfil the taxpayer's obligations under a tax law.

- (3) Subsection (2) does not apply if the tax payer satisfies the commissioner that the taxpayer (or a person acting on behalf of the taxpayer) had a reasonable excuse for the failure.
- (4) Subsections (2) and (3) apply to a tax default that happened before their commencement in the same way as they apply to a tax default that happened after their commencement.
- (5) The amount of penalty tax payable in relation to a tax default is 75% of the amount of tax unpaid if the commissioner is satisfied that the tax default was caused wholly or partly by the intentional disregard by the taxpayer (or a person acting on behalf of the taxpayer) of a tax law.
- (6) No penalty tax is payable in relation to a tax default if the commissioner is satisfied that—
  - (a) the taxpayer (or a person acting on behalf of the taxpayer) took reasonable care to comply with the tax law; or
  - (b) the tax default occurred solely because of circumstances beyond the taxpayer's control (or if a person acted on behalf of the taxpayer, because of circumstances beyond either the person's or the taxpayer's control) but not amounting to financial incapacity.

### **32 Reduction in penalty tax for voluntary disclosure**

The amount of penalty tax determined under section 31 is reduced by 80% if, before the commissioner informs the taxpayer that an investigation relating to the taxpayer is to be carried out, the taxpayer discloses to the commissioner, in writing, sufficient information to enable the nature and extent of the tax default to be determined.

**33      Reduction in penalty tax for disclosure before investigation**

The amount of penalty tax determined under section 31 is reduced by 20% if, after the commissioner informs the taxpayer that an investigation relating to the taxpayer is to be carried out and before it is begun, the taxpayer discloses to the commissioner, in writing, sufficient information to enable the nature and extent of the tax default to be determined.

**34      Increase in penalty tax for concealment**

The amount of penalty tax payable in relation to a tax default is 90% of the amount of tax unpaid if the commissioner is satisfied that, after the commissioner has informed the taxpayer that an investigation is to be carried out and before the investigation is completed, the taxpayer (or a person acting on behalf of the taxpayer)—

- (a) deliberately damages or destroys records required to be kept under the tax law to which the investigation relates; or
- (b) fails, without reasonable excuse, to comply with a requirement made by the commissioner under division 9.2 for the purposes of determining the taxpayer's tax liability; or
- (c) hinders or obstructs an authorised officer exercising functions under that division for that purpose; or

(d) otherwise shows intentional disregard for a tax law.

*Note 1* The Legislation Act, dict, pt 1 defines *fail* to include refuse.

*Note 2* Table 34 contains a summary of the effect of s 31 to s 34:

**Table 34 Rates of penalty tax**

column 1 item	column 2	column 3	column 4		column 5
		basic rate	disclosure before investigation begins		intentional disregard for tax law
			before notification	after notification	
1	failure to take reasonable care	25%	5%	20%	90%
2	failure to take reasonable care and no reasonable excuse	50%	10%	40%	90%
3	intentional disregard of the law	75%	15%	60%	90%

**36 Time for payment of penalty tax**

Penalty tax shall be paid by a taxpayer within the period specified in a notice of assessment of the tax liability of the taxpayer, being a period of not less than 14 days.

**37 Remission of penalty tax**

The commissioner may remit all or part of an amount of penalty tax payable by a person if the commissioner is satisfied that—

- (a) either—
  - (i) the person has taken reasonable steps to mitigate, or to mitigate the effects of, the circumstances that resulted in the liability for penalty tax; or
  - (ii) the circumstances that resulted in the liability for penalty tax were exceptional; and

- (b) it would be fair and reasonable to remit all or part of the penalty tax.

## Part 6 Returns

### Division 6.1 General

#### 39 Time of lodgment

Subject to the *Legislation Act 2001*, part 19.5 (Service of documents), a return is lodged by a person when the action referred to in section 127 (a), (b), (c) or (d) is taken.

*Note* If a form is approved under s 139C (Approved forms) for the return, the form must be used.

#### 40 Variation of time for lodgment of return or of period covered by return

- (1) A person may apply to the commissioner to—
  - (a) extend the time by which a return must be lodged; or
  - (b) vary the period to which the return is to relate.
- (2) An application shall—
  - (a) be in writing, addressed to the commissioner; and
  - (b) specify—
    - (i) the name and address of the applicant; and
    - (ii) the grounds on which the variation is sought.
- (3) If the commissioner is satisfied that it would be unduly onerous for a person to lodge a return in accordance with a tax law, the commissioner may, by written notice addressed to the applicant, vary the period in relation to which, or the time within which, the applicant is to lodge the return.
- (4) While a notice under this section is in force in relation to a person, the person shall lodge returns in accordance with the notice.



- (5) If the commissioner is no longer satisfied that it would be unduly onerous for the person to lodge returns in accordance with the relevant tax law, the commissioner may, by written notice addressed to the person, revoke a notice under this section.
- (6) A notice of revocation has effect 21 days after it is made.
- (7) This section does not apply to returns the lodging of which may be varied under the *Payroll Tax Act 1987*, section 17.

#### **41 Authenticity of returns**

A return purporting to be made and signed by or on behalf of a person shall be presumed to have been made and signed by the person or with his or her authority.

### **Division 6.2 Special arrangements for making returns and paying tax**

#### **42 Special arrangements for classes of persons**

- (1) The commissioner may, in writing, approve special arrangements that vary the provisions of a tax law in relation to—
  - (a) the lodging of returns; and
  - (b) the way of payment of amounts of tax;that are due under a tax law.
- (2) An approval also has the effect of—
  - (a) exempting the taxpayers concerned from payment of duty under provisions of the *Duties Act 1999* stated in the approval for transactions for which the taxpayers would otherwise be charged \$20 if the transactions are recorded in a return lodged, or record kept, in accordance with the approval; and

- (b) exempting the taxpayers concerned from the application of that Act, section 229 (Minimum amount of duty) for transactions recorded in a return lodged, or record kept, in accordance with the approval.

*Note* The *Duties Act 1999*, s 229A (1), provides for the exemption in par (a). The *Duties Act 1999*, s 229A (2), provides for the exemption in par (b). The effect of the 2nd exemption is to require the payment of duty of less than \$20 for transactions rather than the minimum duty of \$20 imposed by s 229.

- (3) An approval shall apply in relation to—
- (a) a specified class of taxpayers; or
  - (b) a specified class of persons who act as agents on behalf of a specified class of taxpayers.
- (4) An approval, among other things, may—
- (a) provide an exemption for the taxpayers from stated provisions of the tax law to which it applies; or
  - (b) authorise payments of tax to be made by return; or
  - (c) authorise the lodging of returns and payments of tax by electronic means.
- (5) An approval under this section is a disallowable instrument.

*Note* A disallowable instrument must be notified, and presented to the Legislative Assembly, under the *Legislation Act 2001*.

### **43 Special arrangements for individual applicants**

- (1) The commissioner may, on an application by—
- (a) a taxpayer; or
  - (b) a person who acts, or proposes to act, as an agent for taxpayers of a specified class;

by written notice approve special arrangements that vary the provisions of a tax law in relation to—

- (c) the lodging of returns; and
- (d) the way of payment of amounts of tax;

that are due under a tax law.

(2) An approval also has the effect of—

- (a) exempting the taxpayers concerned from payment of duty under provisions of the *Duties Act 1999* stated in the approval for transactions for which the taxpayers would otherwise be charged \$20 if the transactions are recorded in a return lodged, or record kept, in accordance with the approval; and
- (b) exempting the taxpayers concerned from the application of that Act, section 229 (Minimum amount of duty) for transactions recorded in a return lodged, or record kept, in accordance with the approval.

*Note* The *Duties Act 1999*, s 229A (1), provides for the exemption in par (a). The *Duties Act 1999*, s 229A (2), provides for the exemption in par (b). The effect of the 2nd exemption is to require the payment of duty of less than \$20 for transactions rather than the minimum duty of \$20 imposed by s 229.

(3) An approval, among other things, may—

- (a) provide an exemption for the taxpayers from stated provisions of the tax law to which it applies; or
- (b) authorise payments of tax to be made by return; or
- (c) authorise the lodging of returns and payments of tax by electronic means.

(4) An application for an approval under this section must be made to the commissioner.

*Note* If a form is approved under s 139C (Approved forms) for an application, the form must be used.

- (5) The commissioner may grant or refuse an application.
- (6) The commissioner shall not grant an application under this section for an arrangement consisting only of 1 or more of the following:
  - (a) an extension of time for lodgment of a return;
  - (b) a variation of a period covered by a return;
  - (c) an extension of time for payment of tax;
  - (d) an arrangement to pay by instalments;
  - (e) an approval of a means of payment.

*Note* These variations can be granted under ss 40, 52 and 122.

#### **44 Conditions of approval**

- (1) An approval under section 42 or 43 is subject to conditions specified by the commissioner in the notice of approval or by subsequent written notice.
- (2) The conditions of an approval may include conditions—
  - (a) limiting the approval to tax liabilities of a specified class; and
  - (b) limiting the approval to transactions effected by instruments of a specified class; and
  - (c) requiring the lodging of returns at specified times and about the contents of the returns; and
  - (d) requiring payments of tax at specified times; and
  - (e) about how returns are to be lodged or payments of tax are to be made; and
  - (f) if the approval provides an exemption from a requirement for the stamping of instruments—about the endorsement of the instruments; and

- (g) requiring a taxpayer or agent to whom the approval applies to keep specified records.

**45 Variation and cancellation of approvals**

The commissioner may vary or cancel an approval under section 43 by written notice served on the taxpayer or agent to whom the approval was given.

**46 Taxpayers and agents must comply with conditions**

- (1) A taxpayer who relies on an approval under section 42 (3) (a) or 43 (1) (a) in relation to the lodgment of a return or the payment of an amount of tax shall not breach a condition attaching to the approval.

Maximum penalty: 50 penalty units.

- (2) An agent for a class of taxpayers who acts under an approval under section 42 (3) (b) or 43 (1) (b) in relation to the lodgment of returns or the payment of amounts of tax shall not breach a condition attaching to the approval.

Maximum penalty: 50 penalty units.

**47 Stamping of instruments**

- (1) If—
- (a) an approval under this division provides for an exemption from a requirement for the stamping of an instrument; and
  - (b) the instrument is endorsed in accordance with the conditions of the approval;

the instrument is deemed to be duly stamped, but the liability for the payment of tax in relation to the instrument under the relevant tax law is not affected.

- (2) A person shall not endorse an instrument otherwise than under and in accordance with an approval under this division so as to suggest or imply that the instrument is properly so endorsed and as a result is deemed to be duly stamped.

Maximum penalty: 100 penalty units, imprisonment for 1 year or both.

## **Part 7**                      **Collection of tax**

### **Division 7.1**              **General**

#### **48**              **Tax payable to the commissioner**

- (1) Tax that is payable is payable to the commissioner, who may recover any amount unpaid in a court of competent jurisdiction as a debt to the commissioner.
- (2) The commissioner has the same powers and remedies in relation to the trustee of a deceased person for the recovery of tax from the person's estate as the commissioner would have in relation to the person if the person were alive.

#### **49**              **Costs of recovery are payable to the commissioner**

If an amount by way of tax, penalty tax or interest payable under a tax law has not been paid, the person who is liable to pay that amount is also liable to pay to the Territory an amount equal to the costs and expenses reasonably incurred by the Territory in attempting to recover the amount of tax, penalty tax or interest.

#### **50**              **Joint and several liability**

- (1) If 2 or more persons are jointly or severally liable to pay an amount under a tax law, the commissioner may recover the whole of the amount from them, or any of them, or any 1 of them.
- (2) Nothing in this Act prevents a person who is jointly or severally liable to pay an amount of tax and who pays the amount to the commissioner from recovering a contribution from any other person who is liable to pay the whole or part of that amount.

**51            Time for payment of tax**

Subject to this Act, tax is due and payable—

- (a) in accordance with the relevant tax law; or
- (b) if that law makes no provision in relation to the time for payment—on the last day when the return or other document in relation to the tax is required to be lodged under that law.

**52            Arrangements for payment of tax**

- (1) The commissioner may extend the time for payment of tax by a taxpayer and may accept the payment of tax by instalments.
- (2) A decision of the commissioner under this section may be made subject to the conditions (for example, about the payment of interest) that the commissioner may determine.
- (3) If the commissioner has accepted the payment of tax by instalments, each instalment is due and payable at the time determined by the commissioner in relation to the instalment.
- (4) If an instalment of tax is not paid on or before the time that payment is due, the whole of the outstanding amount of the tax, duty or penalty tax becomes due and payable at that time.

**53            Duties of agents, trustees etc**

- (1) This section applies if—
  - (a) a person (the *agent*) has possession, control or management of a business or property of a taxpayer as an agent or trustee or in any other capacity; and
  - (b) obligations under a tax law (whether about the payment of tax or otherwise) remain undischarged by the taxpayer or will arise in relation to the business or property.



- (2) The agent shall, as soon as and so far as is practicable, ensure that—
- (a) the obligations of the taxpayer under a tax law that remain undischarged are discharged; and
  - (b) all further obligations that arise under a tax law in relation to the business or property are discharged while the person continues to have possession, control or management of the business or property.

Maximum penalty: the penalty that could be imposed on the taxpayer for a failure to fulfil the obligation concerned.

- (3) For those purposes the agent shall set aside (and, so far as necessary, liquidate) assets of the taxpayer (or the taxpayer's estate) to the value of any tax that has become or becomes payable and use those assets to pay the tax.

Maximum penalty: 50 penalty units.

- (4) If the agent fails, without the commissioner's written permission, to set aside, liquidate and use sufficient assets to pay the tax, the commissioner may recover from the agent as a debt the whole or a part of an amount that is assessed as being payable as tax in relation to the business or property and remains unpaid, but the agent will not otherwise be personally liable for the payment of the tax.
- (5) The agent is entitled to be indemnified by the taxpayer (or out of the taxpayer's estate) for payments made or action taken under this section.
- (6) This section does not prevent the making of a payment to the agent out of the assets, in priority to tax, of any reasonable remuneration, charges and expenses to which the agent would, apart from this section, be entitled in relation to his or her exercise of the agent's functions.

**54            Collection of tax from third parties**

- (1) The commissioner may require any of the following persons instead of the taxpayer to pay tax that is payable but remains unpaid:
  - (a) a person from whom any money is due or accruing or may become due to the taxpayer;
  - (b) a person who holds or may subsequently hold money for or on account of the taxpayer;
  - (c) a person who holds or may subsequently hold money on account of some other person for payment to the taxpayer;
  - (d) a person having authority from some other person to pay money to the taxpayer.
- (2) The commissioner's requirement shall be made by written notice to the person concerned (the *debtor*).
- (3) A copy of the notice shall be served on the taxpayer.
- (4) If the money due to the taxpayer is payable in instalments, the commissioner may specify in the notice an amount to be paid by the debtor to the commissioner out of each instalment.
- (5) If, apart from this subsection, money is not due or repayable on demand to the taxpayer unless a condition is fulfilled, for this section the money is deemed to be respectively due or payable on demand even if the condition has not been fulfilled.
- (6) The amount of money required to be paid to the commissioner is—
  - (a) if the amount of money so held or due or authorised to be paid does not exceed the amount payable by the taxpayer to the commissioner—all the money; or
  - (b) if the amount of money exceeds the amount so payable—sufficient money to pay the amount so payable.

- (7) The money shall be paid to the commissioner—
- (a) on receipt of the notice; or
  - (b) when the money is held by the debtor and becomes due to the taxpayer; or
  - (c) after the period (if any) that may be specified by the commissioner;
- whichever is the later.
- (8) A debtor subject to a requirement of the commissioner under this section shall comply with the requirement.
- Maximum penalty: 50 penalty units.
- (9) If a debtor is convicted of an offence against subsection (8) in relation to the refusal or failure of the debtor to pay an amount to the commissioner in accordance with a notice, the court may, in addition to imposing a penalty on the debtor, order the debtor to pay to the commissioner an additional amount not exceeding the firstmentioned amount.
- (10) A debtor who makes a payment in accordance with this section is deemed to be acting under the authority of the taxpayer and of all other persons concerned and is indemnified by this section in relation to the payment.
- (11) If, after a person is given a notice under this section by the commissioner, the whole or a part of the amount is paid by another person, the commissioner shall promptly notify the person to whom the notice is given of the payment and the notice is deemed to be amended accordingly.
- (12) In this section:
- tax** includes—
- (a) a judgment debt or costs in relation to tax; and

- (b) a fine or costs imposed by a court in relation to a tax offence;  
and
- (c) an amount ordered by a court to be paid to the commissioner  
by a person convicted of a tax offence.

## **55            Money held for nonresidents**

- (1) This section applies if a person (the *agent*)—
  - (a) has authority to receive, control or dispose of money belonging  
to; or
  - (b) is liable to pay money to;  
a taxpayer who is not residing in Australia.
- (2) The commissioner may, by written notice served on the agent in  
relation to an amount of a tax liability of the taxpayer, require the  
agent to pay to the commissioner an amount equal to the amount  
payable in relation to the liability, or equal to any amount that the  
agent is required to keep under subsection (3) (a), whichever is less.
- (3) On receiving a notice, the agent is, by force of this section—
  - (a) authorised and required to keep from time to time—
    - (i) any money received by the agent on behalf of the  
taxpayer; or
    - (ii) any money due to be paid by the agent to the taxpayer;  
or so much of it as is equal to the amount payable in relation to  
the liability, whichever is less; and
  - (b) made personally liable for the amount payable in relation to the  
liability, after it becomes payable, to the extent of any amount  
that the agent is required to keep under paragraph (a); and
  - (c) indemnified by the taxpayer for all payments made on behalf  
of the taxpayer under a tax law.

**56 Enforcement of payment orders**

- (1) If—
- (a) the Supreme Court or the Magistrates Court orders a person to pay an amount to the commissioner; and
  - (b) for the Magistrates Court—the amount does not exceed the amount referred to in the *Magistrates Court (Civil Jurisdiction) Act 1982*, section 5 (1);

the order is enforceable in all respects as a final judgment of the court in favour of the commissioner.

- (2) If the Magistrates Court orders a person to pay to the commissioner an amount exceeding the amount referred to in the *Magistrates Court (Civil Jurisdiction) Act 1982*, section 5 (1), the registrar of the court shall give the commissioner a certificate containing the following particulars:
- (a) the name of the court;
  - (b) the date the order was made;
  - (c) the tax law under which the order was made;
  - (d) the amount to be paid to the commissioner;
  - (e) the name and address of the person ordered to pay the amount.
- (3) A certificate may be registered in the Supreme Court, by the registrar of the court, by entering the particulars in a book kept for the purpose.
- (4) If the order to which a certificate relates was made more than 12 months before registration is sought, the certificate shall not be registered without the leave of the court.
- (5) On registration, a certificate is enforceable in all respects as if it were a final judgment of the Supreme Court in favour of the commissioner.

- (6) The costs of registering a certificate and of any other proceedings in relation to the enforcement or registration of an order for payment of an amount to the commissioner are, subject to any prescribed conditions, payable by the person to whom the order relates.

## Division 7.2                      Recovery of tax from directors of corporations

### 56A                      Definitions for div 7.2

In this division:

*arrangement*, for payment of an assessment amount, means an extension of time for payment, or the acceptance of payment by instalments, under section 52 (Arrangements for payment of tax).

*assessment amount*, for a corporation, means the amount of tax liability in an assessment notice issued to the corporation.

### 56B                      Liability of directors and former directors for amounts of tax

- (1) This section applies if a corporation does not pay an assessment amount.
- (2) The commissioner may give a written notice about the assessment amount (a *compliance notice*) to 1 or more of the following:
- (a) a director of the corporation;
  - (b) a person who was a director of the corporation when the corporation first became liable to pay the assessment amount, or any part of the assessment amount, or at any time afterwards (a *former director*).

*Note*                      For how documents may be served, see Legislation Act, pt 19.5.

- (3) The compliance notice must state—
- (a) the assessment amount; and

- (b) a period (of at least 21 days after the day the notice is given to the director or former director) within which the notice must be complied with; and
  - (c) that the director or former director will be liable to pay the assessment amount if the amount is not paid, or the assessment is not withdrawn, within the stated period.
- (4) If the assessment amount is not paid, or the assessment is not withdrawn, within the period stated in the compliance notice, the director or former director is jointly and severally liable with the corporation to pay the assessment amount.
- (5) For this section, an assessment is taken to be withdrawn if—
- (a) the commissioner makes an arrangement with the corporation for the payment of the assessment amount; or
  - (b) an administrator of the corporation is appointed under the Corporations Act, part 5.3A; or
  - (c) the corporation begins to be wound up within the meaning of the Corporations Act.
- (6) A person does not cease to be liable to pay an assessment amount because the person ceases to be a director of the corporation.
- (7) A former director of a corporation is not liable for any tax for which the corporation first became liable after the director ceased to be a director of the corporation, other than interest on an assessment amount for which the former director is liable.

### **56C Failure to comply with arrangement for payment**

- (1) This section applies if—
- (a) a compliance notice is given to a director or former director of a corporation under section 56B in relation to an assessment amount; and

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- (b) the assessment is taken to be withdrawn because the commissioner makes an arrangement for payment with the corporation; and
  - (c) the corporation fails to pay the assessment amount in accordance with the arrangement.
- (2) The commissioner may give a further compliance notice to the director or former director for the amount or any part of the amount.

**56D Right of indemnity of director or former director**

- (1) This section applies if a director or former director of a corporation is liable to pay an amount under this division and an amount is paid by the director or former director in discharge of the liability.
- (2) The director or former director is entitled to be indemnified by the corporation for payment of the amount.

**56E Defence to proceeding for recovery of tax from director or former director**

It is a defence to a proceeding for recovery of an assessment amount from a director or former director of a corporation if the director or former director establishes that he or she took all reasonable steps in the circumstances to ensure that the corporation paid the assessment amount.



## **Part 8**                      **Record keeping and general offences**

### **Division 8.1**              **Record keeping**

#### **57**                      **Requirement to keep proper records**

- (1) A person shall keep, or cause to be kept, the records that are necessary to enable the person's tax liability under a tax law to be properly assessed.
- (2) This section does not affect a provision of any other tax law concerning the keeping of records.

#### **58**                      **Additional records**

- (1) The commissioner may, by written notice given to a person who is required by a tax law to keep a record or cause a record to be kept, require the person to keep, or cause to be kept, the additional records that are specified in the notice.
- (2) A person to whom a notice is given under this section shall comply with the notice.

Maximum penalty: 50 penalty units.

#### **59**                      **Failure to keep proper records**

- (1) A person who is required under a tax law to keep any accounts, accounting records or other records shall not keep them in such a way that they do not correctly record and explain the matters, transactions, acts or operations to which they relate.

Maximum penalty: 30 penalty units.

- (2) It is a defence to a charge under subsection (1) that the person did not know, and could not reasonably be expected to have known, that the accounts, accounting records or other records did not correctly record and explain the matters, transactions, acts or operations to which they relate.
- (3) A person who is required under a tax law to make a record of any matter, transaction, act or operation shall not make it in such a way that it does not correctly record the matter, transaction, act or operation.

Maximum penalty: 30 penalty units.

- (4) It is a defence to a charge under subsection (3) that the person did not know, and could not reasonably be expected to have known, that the record did not correctly record the matter, transaction, act or operation.

## **60 Reckless or deliberate failure to keep proper records**

- (1) A person who is required under a tax law to keep any accounts, accounting records or other records shall not recklessly or knowingly keep them in such a way that they do not correctly record and explain the matters, transactions, acts or operations to which they relate.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

- (2) A person who is required under a tax law to make a record of any matter, transaction, act or operation shall not recklessly or knowingly make it in such a way that it does not correctly record the matter, transaction, act or operation.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

**61 Keeping accounts or records intended to deceive**

A person shall not—

- (a) keep any accounts, accounting records or other records in such a way that they—
  - (i) do not correctly record and explain the matters, transactions, acts or operations to which they relate; or
  - (ii) are (whether wholly or partly) illegible, indecipherable or incapable of being identified; or
  - (iii) cannot be displayed and printed out or otherwise reproduced in legible form; or
- (b) make a record of any matter, transaction, act or operation in such a way that it does not correctly record the matter, transaction, act or operation; or
- (c) alter, deface, mutilate, falsify, damage, remove, conceal or destroy any accounts, accounting records or other records (whether wholly or partly); or
- (d) do or omit to do any other act or thing to any accounts, accounting records or other records;

with the intention of—

- (e) deceiving or misleading the commissioner or another tax officer; or
- (f) hindering or obstructing the investigation of a tax offence; or
- (g) hindering or obstructing the commissioner or another tax officer (otherwise than in the investigation of a tax offence); or
- (h) hindering, obstructing or defeating the administration, execution or enforcement of a tax law; or

- (i) defeating the purposes of a tax law.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

**62 Accessibility**

A person who is required by a tax law to keep a record shall keep the record so that it is able to be readily produced to the commissioner if the commissioner requires its production.

Maximum penalty: 20 penalty units.

**63 Records must be accessible in English**

A person who is required by a tax law to keep a record shall keep the record in English.

Maximum penalty: 20 penalty units.

**64 Period record to be kept**

- (1) A person who is required by a tax law to keep a record shall keep the record for not less than 5 years after—
- (a) the date it was made or obtained; or
  - (b) the date of completion of the transaction or act to which it relates;

whichever is the later.

Maximum penalty: 20 penalty units.

- (2) A person may, with the written approval of the commissioner, destroy a record within the 5 year period unless another law requires the record to be kept for not less than 5 years.

## **Division 8.2            General offences**

### **65            Avoidance of tax**

- (1) A person liable to pay an amount of tax shall not knowingly avoid paying, or disclosing his or her liability to pay, part or all of that amount.

Maximum penalty: 100 penalty units, imprisonment for 1 year or both.

- (2) On convicting a person of an offence against this section, the court may, in addition to imposing the penalty for the offence and without affecting the person's liability to pay the amount of tax avoided, order the person to pay to the commissioner an amount not exceeding double the amount of tax avoided.

### **67            Failure to lodge documents**

- (1) A person shall not fail to lodge a document, instrument, statement or return that is required to be lodged by a tax law.

Maximum penalty: 50 penalty units.

- (2) A person shall not fail to notify the commissioner or another person of any matter or thing of which notice is required to be lodged by a tax law.

Maximum penalty: 50 penalty units.

- (3) A person shall not fail to submit for stamping an instrument required to be stamped by a tax law.

Maximum penalty: 50 penalty units.

### **68            Falsifying or concealing identity**

A person shall not—

- (a) falsify or conceal the identity, or the address or location of a place of residence or business, of a taxpayer or of another person; or
- (b) do, by act or omission, anything that facilitates the falsification or concealment of the identity, or the address or location of a place of residence or business, of a taxpayer or of another person.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

### Division 8.3 Supplementary offence provisions

#### 69 General defence to a charge under a tax law

It is a defence to a charge of an offence against a tax law if the defendant proves that the offence was not committed deliberately and did not result from any failure by the defendant to take reasonable care to avoid the commission of the offence.

#### 70 Penalties for second and subsequent offences against certain provisions

- (1) If a person is convicted of an offence against—
  - (a) section 10, 67 or 82 (offences of failing to provide information, lodge documents, or appear to answer questions); or
  - (b) section 59, 60 61, 64 or 68 (offences of failure to keep proper records or concealing identity); or
  - (c) the Criminal Code, part 3.4 (False or misleading statements, information and documents);(the *subsequent offence*) and either—
  - (d) at the same sitting, the person is convicted of a related offence that was committed within the period of 10 years ending on the day the subsequent offence was committed; or

- (e) the court is satisfied that the person has been convicted within that period of a related offence;

the court may impose twice the penalty otherwise provided for the subsequent offence.

- (2) In this section:

*related offence* means—

- (a) if the subsequent offence is an offence against section 10, 67 or 82—an offence against—
- (i) section 10, 67 or 82; or
  - (ii) the *Taxation Administration Act 1953* (Cwlth), part 3, division 2, subdivision A; or
- (b) if the subsequent offence is an offence against section 59, 60, 61, 64 or 68 or the Criminal Code, part 3.4—an offence against—
- (i) section 59, 60, 61, 64 or 68; or
  - (ii) the Criminal Code, part 3.4; or
  - (iii) the *Taxation Administration Act 1953* (Cwlth), part 3, division 2, subdivision B; or
  - (iv) the *Crimes (Taxation Offences) Act 1980* (Cwlth); or
  - (v) the *Crimes Act 1914* (Cwlth), section 29D that relates to a tax liability.

- (3) For this section, a reference to an offence against a law of the Commonwealth includes a reference to an offence against the *Crimes Act 1914* (Cwlth), section 6 or the *Criminal Code* (Cwlth), section 11.1, 11.4 or 11.5 that relates to an offence against that law of the Commonwealth.

*Note* A reference to an offence against a Territory law includes a reference to a related ancillary offence, eg attempt (see *Legislation Act 2001*, s 189).

- (4) For subsection (1) (c) or (d), a reference to a person's conviction includes a reference to an order made in relation to the person under the *Crimes Act 1900*, section 402 or the *Crimes Act 1914* (Cwlth), section 19B.

## **71 Orders to comply with requirements**

- (1) If—
- (a) a person is convicted before a court of an offence against a provision of a tax law that requires the person to—
    - (i) provide to or lodge with the commissioner any information or document; or
    - (ii) attend before the commissioner or any other person; or
    - (iii) cause an instrument to be duly stamped; or
  - (b) a court makes an order under the *Crimes Act 1900*, section 402 in relation to the person in relation to the offence;  
the court may, in addition to imposing a penalty on the person or making that order in relation to the person, and whether or not the time for complying with the requirement or any other such requirement has passed, order the person to comply, within a specified time or at a specified place and time—
    - (c) with the requirement; and
    - (d) with such other requirements that have or could have been made in relation to the person under a tax law as the court considers necessary to ensure compliance with the firstmentioned requirement.
- (2) If an order under this section is not given orally by the court to the person in relation to whom the order is made, the proper officer of the court shall serve a copy of the order on the person.



- (3) A person shall comply with an order under this section to the extent that the person is capable of doing so.

Maximum penalty: 100 penalty units, imprisonment for 1 year or both.

## **72 Orders to pay additional amounts**

- (1) If—

(a) a person (the *convicted person*) is convicted of—

- (i) an offence against section 59 or 60 in relation to keeping any accounts, accounting records or other records (the *relevant accounts*) or the making of a record; or
- (ii) an offence against the Criminal Code, part 3.4 (False or misleading statements, information and documents) in relation to giving information to a tax officer; and

(b) the court is satisfied that the proper amount of tax that the convicted person or another person is liable to pay exceeds the amount that would have been payable if the amount had been assessed on the basis that the statement was not false or misleading, on the basis of the relevant accounts as they were kept, or on the basis that the record was correct, as the case requires;

the court may, in addition to imposing a penalty on the convicted person, order the convicted person to pay to the commissioner an amount not exceeding double the amount of the excess.

- (2) If—

(a) a person (the *convicted person*) is convicted of an offence against section 61 or 68 in relation to an act or omission; and

(b) the court is satisfied that the act or omission was intended to facilitate the avoidance of a tax liability of the convicted person or another person;

the court may, in addition to imposing a penalty on the convicted person, order the convicted person to pay to the commissioner an amount not exceeding double that amount.

## **Part 9**                      **Tax officers, investigation and secrecy provisions**

### **Division 9.1**              **Tax officers**

#### **73**              **The commissioner**

There shall be a Commissioner for Australian Capital Territory Revenue appointed by the Minister.

#### **74**              **General administration of the tax laws**

The commissioner has the general administration of this Act and the other tax laws and may do all the things that are necessary or convenient to give effect to this Act and the other tax laws.

#### **75**              **Commissioner may exercise functions under Commonwealth Act**

The commissioner may exercise the functions of a State taxation officer under the *Taxation Administration Act 1953* (Cwlth), part 3A.

#### **76**              **Other staff**

Any other staff that may be necessary for the administration of the tax laws may be appointed under the *Public Sector Management Act 1994*, division 5.3.

#### **77**              **Use of consultants and contractors**

The commissioner may engage the consultants and contractors that may be necessary or convenient to exercise the commissioner's functions.

**78 Delegation by commissioner**

The commissioner may delegate to any person the commissioner's functions under this or any other Act.

*Note* For the making of delegations and the exercise of delegated functions, see Legislation Act, pt 19.4.

**79 Authorised officers**

- (1) The commissioner is an authorised officer.
- (2) The commissioner may appoint persons to be authorised officers.
- (3) A person who—
  - (a) is engaged in the administration or enforcement of a tax law of a reciprocating jurisdiction; and
  - (b) is recognised in a notice issued by the commissioner as an authorised officer for this subsection;is an authorised officer for the time and for the purpose specified in the notice.
- (4) A tax officer to whom the commissioner delegates functions under division 9.2 is an authorised officer.

**80 Identity cards for authorised officers**

- (1) An authorised officer shall be issued with an identity card—
  - (a) containing the person's name and a photograph of the person; and
  - (b) stating that the person is an authorised officer for the tax laws.

*Note* If a form is approved under s 139C (Approved forms) for the identity card, the form must be used.
- (2) When recognising an officer of a reciprocating jurisdiction for section 79 (3), the commissioner may approve the use of the identity

card issued by that jurisdiction, together with the notice issued under section 79 (3) (b), for subsection (1).

- (3) A person who has been issued with an identity card under subsection (1) and ceases to be an authorised officer shall return the card to the commissioner as soon as practicable.

Maximum penalty: 1 penalty unit.

## **81 Personal liability**

A matter or thing done or omitted by the commissioner or a tax officer does not, if the matter or thing was done or omitted honestly for the purpose of—

- (a) administering or enforcing a tax law of the Territory; or
- (b) administering or enforcing a tax law of a reciprocating jurisdiction in accordance with division 9.3;

subject the commissioner or the tax officer so acting personally to any action, liability, claim or demand.

## **Division 9.2 Powers of investigation**

### **82 Power to require information, instruments or records or attendance for examination**

- (1) The commissioner may, for a purpose related to the administration or enforcement of a tax law, by written notice served on a person, require the person—
- (a) to provide to the commissioner (either orally or in writing) information that is described in the notice; or
  - (b) to attend and give evidence before the commissioner or an authorised officer; or

- (c) to produce to the commissioner a record or other document described in the notice that is in the person's custody or control.
- (2) If a notice to a person under subsection (1) is made to determine that person's tax liability, the notice shall state that the requirement is made for that purpose, but the commissioner is not otherwise required to identify a person in relation to whom any information, evidence, record or other document is required under this section.
- (3) The commissioner—
  - (a) may specify whether information or evidence to be provided or given under this section shall be given orally or in writing; and
  - (b) may require any information or evidence given in writing to be in the form of, or verified by, a statutory declaration; and
  - (c) may require any information or evidence given orally to be given on oath or affirmation.
- (4) A person shall not, without reasonable excuse, fail—
  - (a) to comply with the requirements of a notice under this section within the period specified in the notice or any further period allowed by the commissioner; or
  - (b) to comply with any other requirement of the commissioner about the giving of evidence or how information or evidence is to be provided or given under this section.

Maximum penalty: 50 penalty units.

- (5) A person required to attend before an authorised officer to give oral evidence shall be paid expenses in accordance with the scale of allowances determined under section 139.
- (6) Subsection (5) does not apply to a person, or a representative of a person, giving evidence in relation to the person's own tax liability.

**83 Powers of entry and inspection**

- (1) An authorised officer may, for a purpose related to the administration or enforcement of a tax law, enter and inspect any premises at any reasonable time and do any of the following:
- (a) remain on the premises;
  - (b) examine all documents and seize and remove, or take copies of or extracts from, any document on behalf of the commissioner;
  - (c) inspect any gaming machines and seize any gaming machine that the tax officer believes on reasonable grounds to be connected with an offence against a tax law;
  - (d) require any person on the premises to answer questions or otherwise give information, including information about the identity of the person or another person;
  - (e) require any person on the premises to give access to any document in the person's custody or control, and to—
    - (i) produce or display the document; or
    - (ii) provide a copy of the document or a version of it in some form other than that in which it is normally kept;in any printed, electronic or other form that it is reasonably practicable to provide;
  - (f) require any person on the premises to produce any gaming machine in the person's custody or control;
  - (g) require the owner or occupier of the premises to provide the authorised officer with the assistance and facilities that is or are reasonably necessary to enable the authorised officer to exercise powers under this part.
- (2) An authorised officer who enters premises under subsection (1) and is requested by the occupier to identify himself or herself is not

authorised to remain on the premises unless he or she produces his or her identity card to the occupier.

- (3) The powers of entry and inspection under this section shall not be exercised in relation to premises, or a part of premises, used for residential purposes except with the consent of the owner or occupier of the premises or part.
- (4) In this section:
- occupier*, in relation to premises, includes a person apparently in charge of or responsible for the premises.

#### **84 Search warrant**

- (1) If a magistrate is satisfied, on the application of the commissioner supported by an affidavit or other sworn evidence, that there is a reasonable ground for suspecting that a document relevant to the assessment or payment of tax may be found in certain premises, the magistrate may issue a warrant authorising an authorised officer together with any assistants named or described in the warrant—
- (a) to enter those premises, using the force that is necessary for the purpose; and
- (b) to search the premises and to break open and search anything in the premises where a document or gaming machine may be stored or concealed; and
- (c) to seize and remove, on behalf of the commissioner—
- (i) any document that appears to be relevant to the assessment or payment of tax; or
- (ii) any gaming machine that the authorised officer believes on reasonable grounds to be connected with an offence against a tax law.
- (2) The powers given by this section are additional to, and do not limit, any other powers given under a law.



**85 Use and inspection of documents and records produced or seized**

- (1) This section applies to a document that has been produced to the commissioner or seized and removed by an authorised officer.
- (2) The document may be kept for as long as is reasonably necessary to enable it to be inspected, copies of, or extracts or notes from it to be made, and for a determination to be made about whether subsection (3) applies.
- (3) If the document is liable to tax, it may be kept until the tax is paid.
- (4) If the document is required by the commissioner as evidence for the purposes of legal proceedings, it may be kept until the proceedings are finally determined.
- (5) The commissioner shall permit a person who would be entitled to inspect the document if it were not in the possession of the commissioner to inspect the document at any reasonable time.
- (6) Nothing in this section prejudices a lien a person has on the document.

**86 Use of goods produced or seized**

- (1) This section applies to any thing, other than a document, that has been produced to the commissioner or seized and removed by an authorised officer.
- (2) The thing may be kept for as long as is reasonably necessary to enable it to be inspected and for a determination to be made about whether subsection (3) applies.
- (3) If the thing is liable to tax, it may be kept until the tax is paid.
- (4) If the thing is required by the commissioner as evidence for the purposes of legal proceedings, it may be kept until the proceedings are finally determined.

- (5) If the owner of the thing is convicted as a result of the legal proceedings, the court may direct that the thing be forfeited to the Territory, and in that case it may be disposed of as the Minister directs.
- (6) If the thing is no longer required by the commissioner, but the commissioner is unable to return it to the owner within 12 months despite reasonable efforts to do so (for example because the owner has left the ACT), the commissioner may direct that the thing be disposed of by auction and the proceeds held for the owner instead of the thing.
- (7) Nothing in this section prejudices a lien a person has on the thing.

## **87 Selfincrimination**

- (1) A person is not excused from answering a question, providing information or producing a document, when required to do so under section 71 or 82, on the ground that to do so might tend to incriminate the person or make the person liable to a penalty.
- (2) If the person objects to answering the question, providing the information or producing the document on that ground, the answer, information or document is not admissible against the person in any criminal proceedings other than—
  - (a) proceedings for an offence in relation to false or misleading statements, information or records; or
  - (b) proceedings for an offence in the nature of perjury.

## **88 Failing to comply with requirement of inspector**

- (1) A person shall not, without reasonable excuse, fail to comply with a requirement of an authorised officer under this division.

Maximum penalty: 50 penalty units.

- (2) A person does not commit an offence against this section arising from the entry of an authorised officer onto premises unless it is established that, at the material time, the authorised officer had—
- (a) identified himself or herself as an authorised officer; and
  - (b) warned the person that a refusal or failure to comply with the requirement constituted an offence.

**90 Access to public records without fee**

The commissioner may inspect and take copies of any public record kept under an Act or other Territory law without payment of any fee that would otherwise be payable.

**Division 9.3 Cooperation with other jurisdictions**

**91 Cooperative agreements**

The commissioner may make agreements with the responsible authorities of reciprocating jurisdictions governing cooperation under this division.

**92 Investigation at request of reciprocating jurisdiction**

- (1) On the written request of an officer of a reciprocating jurisdiction who exercises functions in relation to a tax law of that jurisdiction, the commissioner may authorise a tax officer of the ACT or of the reciprocating jurisdiction to investigate a matter that relates to the administration or enforcement of a tax law of the reciprocating jurisdiction.
- (2) This Act applies in relation to an investigation under this section as if it were an investigation into a matter relating to the administration or enforcement of a tax law of the ACT.

**93 Disclosure of information to a reciprocating jurisdiction**

Despite any secrecy provision in a tax law of the ACT—

- (a) the commissioner may give information disclosed or obtained under such a tax law to a tax officer of a reciprocating jurisdiction; and
- (b) a tax officer of a reciprocating jurisdiction may give information disclosed or obtained under such a tax law to another person;

for the purposes of the administration or enforcement of a tax law of that jurisdiction.

## Division 9.4 Secrecy

### 94 Meaning of *tax officer* for div 9.4

In this division:

*tax officer* includes any person who has acquired a confidential document or confidential information under a tax law or as a result of exercising functions under or in relation to a tax law.

### 95 Tax officers to respect confidentiality

- (1) A person who is or has been a tax officer shall not, otherwise than in the exercise of the person's duties as a tax officer, make a record of any confidential information about another person.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

- (2) A person who is or has been a tax officer shall not disclose any information obtained under or in relation to the administration of a tax law, except as permitted by this part.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

- (3) The commissioner may require a tax officer to make an oath or affirmation, in a way specified by the commissioner in writing, to maintain secrecy in accordance with this section.

*Note* If a form is approved under s 139C (Approved forms) for an oath or affirmation, the form must be used.

- (4) For subsection (2), information disclosed to the commissioner by a person exercising a function under a law of the Commonwealth, a State or another Territory in relation to taxation is information obtained under this Act.

## **96 Permitted disclosures of general nature**

- (1) The commissioner may disclose information obtained under or in relation to the administration of a tax law that does not and is not likely to—
- (a) directly or indirectly identify a particular taxpayer; or
  - (b) disclose matters about the personal affairs of a particular taxpayer.
- (2) The commissioner may disclose statistical information that does not satisfy subsection (1) if—
- (a) the reason that a taxpayer or his or her affairs might be identified is that there are few taxpayers in particular categories; and
  - (b) the commissioner is satisfied that it is in the public interest to disclose that information.

## **97 Other permitted disclosures**

A tax officer may disclose information obtained under or in relation to the administration of a tax law—

- (a) with the consent of the person to whom the information relates or of a person acting on behalf of the person to whom the information relates; or

- (b) in connection with the administration or execution of a tax law (including for the purpose of any legal proceedings arising out of a tax law or a report of any such proceedings); or
- (c) in accordance with a requirement imposed under an Act; or
- (d) to any of the following persons, or to a person authorised to receive the information by any of the following persons:
  - (i) the ombudsman;
  - (ii) for the purpose of investigating an offence against a law of the Territory, the Commonwealth, a State or another Territory—the commissioner of police;
  - (iii) the auditor-general;
  - (iv) for the *Workers Compensation Act 1951*—the nominal insurer;
  - (v) for the *Financial Management Act 1996*, section 64 or 65—the Treasurer;
  - (vi) the registrar of motor vehicle dealers;
  - (vii) the registrar of liquor licences;
  - (viii) the Australian statistician;
  - (ix) the Australian Crime Commission;
  - (x) a person prescribed by the regulations for this section.

**98 Prohibition on secondary disclosures of information**

A person shall not disclose any information provided to the person by a tax officer in accordance with this Act unless the disclosure is made with the consent of the commissioner or so as to enable the person to exercise a function given to the person by law for the purpose of the enforcement of a law or protecting the public revenue.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

**99 Further restrictions on disclosure**

(1) A person who is or has been a tax officer shall not be required—

- (a) to produce a confidential document in court; or
- (b) to disclose any confidential information to a court;

unless the court considers that it is necessary to do so for the purposes of the administration or execution of a tax law.

(2) In this section:

*court* includes any tribunal, authority or person having power to require documents to be produced or questions to be answered.

## Part 10                      Objections and appeals

### Division 10.1              Objections

#### 100            Objection

- (1) A taxpayer may lodge a written objection with the commissioner if the taxpayer is dissatisfied with—
  - (a) an assessment, other than a compromise assessment, that is shown in a notice of assessment served on the taxpayer; or
  - (b) a decision mentioned in schedule 1 or schedule 2; or
  - (c) a decision under a tax law that is prescribed under the law for this section.

*Note*        Decisions are prescribed for this section under the *Land Tax Act 2004*, s 38 (Objections) and the *Rates Act 2004*, s 70 (Objections).

- (2) An objection must be accompanied by the fee (if any) determined under section 139A (Determination of fees) for the objection.
- (3) The commissioner shall refund a fee paid under this section if—
  - (a) the commissioner allows the objection in whole or in part; or
  - (b) the taxpayer appeals to the tribunal and—
    - (i) the tribunal or a court hearing an appeal on the matter upholds the objection in whole or in part;
    - (ii) the period when any further appeal can be made has ended; and
    - (iii) neither the taxpayer nor the commissioner has appealed against the decision in relation to a part of the objection that was upheld.



**101 Grounds for objection**

- (1) The grounds for the objection shall be stated fully and in detail, and shall be in writing.
- (2) The grounds for the objection, for a reassessment, are limited to the extent of the reassessment.
- (3) The burden of showing that an objection should be sustained lies with the taxpayer making the objection.

**102 Time for lodging objection**

An objection shall be lodged with the commissioner not later than 60 days after the date that the notice of the assessment, or of the decision objected to, is served on the taxpayer, except as provided by section 103.

**103 Objections lodged out of time**

- (1) The commissioner may permit a person to lodge an objection after the 60 day period.
- (2) The person seeking to lodge the objection shall state fully and in detail, in writing, the circumstances concerning and the reasons for the failure to lodge the objection within the 60 day period.
- (3) The commissioner may grant permission unconditionally or subject to conditions or may refuse permission.
- (4) The commissioner shall give notice to the person of the commissioner's decision.

*Note* If a form is approved under s 139C (Approved forms) for the notice, the form must be used.

- (5) If the commissioner does not grant permission unconditionally, the commissioner shall include in the notice an explanation for refusing to grant permission or for imposing conditions on the permission.

**104            Determination of objection**

- (1) The commissioner shall consider an objection and either allow the objection in whole or in part or disallow the objection.
- (2) The commissioner shall take such steps as are necessary (for example, by delegating the functions given by this section) to ensure that the individual who considers the objection is not the individual who made the assessment or decision against which the objection was lodged.

**105            Notice of determination**

- (1) The commissioner shall give notice to the objector of the determination of the objection.

*Note*        If a form is approved under s 139C (Approved forms) for the notice, the form must be used.

- (2) If the objection is not upheld, the commissioner shall, in the notice, give an explanation for disallowing an objection or for allowing an objection in part only.

**106            Recovery of tax pending objection or appeal**

The fact that an objection or appeal is pending does not in the meantime affect the assessment or decision to which the objection or appeal relates and tax may be recovered as if no objection or appeal were pending.

**Division 10.2            Appeals to tribunal**

**107            Right of appeal to tribunal**

- (1) A taxpayer may apply to the tribunal for a review of a determination by the commissioner of an objection by the taxpayer to—
  - (a) an assessment; or
  - (b) a decision of a kind listed in schedule 1; or

- (c) a decision under a tax law that is prescribed under the law for this section.
- (2) For the *Administrative Appeals Tribunal Act 1989*, section 24, the tax laws together constitute a single enactment.

**108 Grounds of appeal**

- (1) Subject to this section, the appellant's and respondent's cases on an appeal are not limited to the grounds of the objection.
- (2) If the objection was to a reassessment, the grounds of the appeal are limited to the extent of the reassessment.

**109 Giving effect to decision on appeal**

- (1) Within 60 days after a decision by the tribunal becomes final, the commissioner shall take any action, including amending any relevant assessment, that is necessary to give effect to the decision.
- (2) For this section, a decision by the tribunal becomes final when a period of 30 days has passed after a relevant decision and no appeal against the relevant decision has been instituted within that period.
- (3) In this section:

*relevant decision* means—

- (a) the decision of the tribunal; or
- (b) a decision by a court hearing an appeal from—
  - (i) the decision of the tribunal; or
  - (ii) a decision of a lower court in relation to the decision of the tribunal.

## **Division 10.3            Interest**

### **110            Interest payable on amounts to be paid by taxpayer**

If a taxpayer is required to pay an amount of tax following the determination of an objection, division 5.1 applies to the amount.

### **111            Interest payable on refunds**

- (1) If the taxpayer is entitled to a refund of an amount following the determination of an objection or a decision of the tribunal, the commissioner shall pay interest on the amount calculated on a daily basis from the date of its payment by the taxpayer until the date of the refund at the market rate component under section 26.
- (2) Interest under this section is not payable to a person on an overpaid amount of interest or penalty tax under part 5 in relation to any periods in relation to which the overpaid amount has been passed on by the person to another person and has not been refunded.
- (3) Section 20 applies to an amount of interest payable under this section as if it were a refund.
- (4) No interest is payable under this section if the amount that would otherwise be payable is less than \$1.
- (5) If—
  - (a) an amount of interest payable to a person under this section is applied by the commissioner against a tax liability of the person; and
  - (b) the amount (if any) remaining to be paid by the person to the commissioner, or to be refunded to the person by the commissioner, would, apart from this subsection, be less than \$1;

then the remaining amount ceases to be payable by the person or to the person.

## **Part 11**                      **Miscellaneous provisions**

### **Division 11.1**              **Business groups**

#### **112**              **Membership of groups**

- (1) For a tax law, a group is constituted by all the persons forming a primary group that is not a part of any larger primary group, apart from persons in relation to whom a determination under subsection (2) is in force.
- (2) The commissioner may, in writing, determine that a person who would, apart from the determination, be a member of a group arising under section 114 is not a member of the group if the commissioner is satisfied that the person has continuously carried on business, and will continue to carry on business, substantially independently of the other members of the group.
- (3) In determining, for subsection (2), whether a person carries on business substantially independently of the other member or members of a group, the commissioner shall have regard to the nature and degree of ownership or control of the business of each member of the group, the nature of each of those businesses and any other matter that the commissioner considers relevant.
- (4) The commissioner shall give written notice of a determination to the person in relation to whom the determination is made and to each member of the group.
- (5) A determination takes effect—
  - (a) on the date when notice under subsection (4) is given to the person excluded from the group; or
  - (b) if another date of effect (including an earlier date) is specified in the notice—on that other date.

- (6) A determination continues in force until it is revoked and notice of the revocation has been served on the person in relation to whom the determination was made.
- (7) The commissioner may revoke a determination if the circumstances referred to in subsection (2) that applied to the person when the determination was made cease to apply to the person.
- (8) Notice of the revocation of a determination shall be given by the commissioner—
  - (a) to the person in relation to whom the determination was made; and
  - (b) to each other member of the group of which the person is a member, as a result of the revocation, under subsection (1).

**113 Primary groups of corporations**

- (1) Corporations constitute a primary group if they are related corporations within the meaning of the Corporations Act.
- (2) For the purpose of assessing whether corporations are related under the Corporations Act, they are deemed to carry on business and not to be trustee companies.

**114 Primary groups arising from the use of common employees**

- (1) If 2 persons have an agreement under which an employee of 1 of them works solely or mainly in connection with a business carried on by—
  - (a) the other; or
  - (b) both of them;then the 2 persons constitute a primary group.

(2) In this section:

*agreement* means an agreement, arrangement or undertaking, whether formal or informal, whether expressed or implied, and whether or not the agreement, arrangement or undertaking includes provisions in relation to the supply of goods or services.

*person* includes a set of several persons.

### **115 Primary groups of commonly controlled businesses**

- (1) If a person or set of persons has a controlling interest in each of 2 businesses, the persons who carry on those businesses constitute a primary group.
- (2) For this section, a person or set of persons has a controlling interest in a business if—
  - (a) for 1 person—the person is the sole owner (whether or not as trustee) of the business; or
  - (b) for a set of persons—the persons are together the exclusive owners (whether or not as trustees) of the business; or
  - (c) for a business carried on by a corporation—
    - (i) the person or each of the set of persons is a director of the corporation and the person or set of persons is entitled to exercise more than 50% of the voting power at meetings of the directors of the corporation; or
    - (ii) a director or set of directors of the corporation that is entitled to exercise more than 50% of the voting power at meetings of the corporation is under an obligation, whether formal or informal, to act in accordance with the direction, instructions or wishes of that person or set of persons; or

- (d) for a business carried on by a corporation that has a share capital—that person or set of persons can, directly or indirectly, exercise, control the exercise of, or substantially influence the exercise of, more than 50% of the voting power attached to the voting shares issued by the corporation; or
  - (e) for a business carried on by a partnership—that person or set of persons—
    - (i) own (whether beneficially or not) more than 50% of the capital of the partnership; or
    - (ii) is entitled (whether beneficially or not) to more than 50% of the profits of the partnership; or
  - (f) for a business carried on under a trust—the person or set of persons (whether or not as a trustee or trustees of another trust) is the beneficiary in relation to more than 50% of the value of the interests in the first mentioned trust.
- (3) If—
- (a) 2 corporations are related to each other within the meaning of the Corporations Act; and
  - (b) 1 of the corporations has a controlling interest in the business; the other corporation has a controlling interest in the business.
- (4) If—
- (a) a person or set of persons has a controlling interest in a business; and
  - (b) a person or set of persons who carry on the business has a controlling interest in another business;
- the person or set of persons referred to in paragraph (a) has a controlling interest in that other business.



- (5) If—
- (a) a person or set of persons is the beneficiary of a trust in relation to more than 50% of the value of the interests in the trust; and
  - (b) the trustee has a controlling interest in a business of the trust; the person or set of persons has a controlling interest in the business.
- (6) A person who may benefit from a discretionary trust as a result of the exercise of a power of discretion by the trustee or another person, or by the trustee and another person, is deemed, for subsection (5), to be a beneficiary in relation to more than 50% of the value of the interests in the trust.
- (7) Subsection (1) does not apply in relation to a person or set of persons that has a controlling interest in 2 businesses if—
- (a) for 1 person—both businesses are wholly owned by the person, whether as trustee or otherwise; or
  - (b) for a set of persons—both businesses are wholly owned by the persons as trustees.

**116 Smaller primary groups are subsumed under larger groups**

If a person is a member of 2 or more primary groups, the members of all the groups together constitute a primary group.

**Division 11.2 Treatment of bodies corporate**

**117 Public officer of body corporate**

- (1) The commissioner may require a body corporate to appoint, and afterwards maintain at all times, a public officer of the body for the tax laws.

- (2) A body corporate shall maintain a public officer if required to do so by the commissioner.

Maximum penalty: 50 penalty units.

- (3) A person shall not be appointed as or remain a public officer unless the person—

- (a) is an individual who is at least 18 years old; and
- (b) is ordinarily resident in Australia; and
- (c) is capable of understanding the nature of his or her appointment as public officer.

- (4) An appointment of a public officer is not duly made until written notice of the appointment, specifying the name and residential address of the officer, has been lodged with the commissioner.

- (5) If a body corporate required by the commissioner to maintain a public officer fails to do so, the commissioner may appoint a person as the public officer of the body by written notice served on the person and the body.

- (6) Service of a document on the public officer of a body corporate shall be sufficient service on the body for a tax law, and, if at any time a body corporate required to have a public officer does not have one, then service on a person acting or appearing to act in the business of the body shall be sufficient.

- (7) The public officer of a body corporate shall be answerable for the discharge of all obligations imposed on the body under a tax law, and, in case of default, is liable—

- (a) for a prosecution for an offence—to the penalty applying to an individual who commits that offence; or
- (b) in any other case—to the same penalties as the body.

- (8) Everything that the public officer of a body corporate is required to do and does in his or her representative capacity is deemed to have been done by the body, but the absence or non-appointment of a public officer shall not excuse the body from the necessity of complying, or from a penalty for failure to comply, with a provision of a tax law and the body is liable to comply with the tax laws as if there were no requirement to appoint a public officer.
- (9) A document served on or requirement made of the public officer of a body corporate is deemed to have been served on or made of the body.
- (10) Any civil or criminal proceedings brought under a tax law against the public officer of a body corporate are deemed to have been brought against the body, and the body is liable jointly with the public officer for any penalty imposed on the public officer, or for compliance with any order made against the public officer.

## **118 Liability of directors or other officers**

Without limiting, altering or transferring the liability of the public officer of a body corporate, every notice, process or proceeding that, under a tax law, may respectively be given to, served on or taken against the public officer or the body may, if the commissioner considers appropriate, be given to, served on or taken against a director, secretary or other officer of the body, and the director, secretary or officer then has the same liability in relation to the notice, process or proceeding as the public officer or the body corporate would have if it had been given to, served on or taken against the public officer.

## **119 Offences by persons involved in management of bodies corporate**

- (1) If a body corporate contravenes, by act or omission, a provision of a tax law, a person who is concerned in, or takes part in, the management of the body is deemed to have contravened the same provision unless the person satisfies the court that—

- (a) the body contravened the provision without the person's knowledge; or
  - (b) the person was not in a position to influence the conduct of the body in relation to its contravention of the provision; or
  - (c) the person, if in such a position, used all due diligence to prevent the contravention by the body.
- (2) A person may be convicted under this section of a contravention of a provision of a tax law whether or not the body corporate has been convicted of its contravention.
- (3) This section does not affect a liability imposed on a body corporate for an offence committed by it against a tax law.
- (4) For this section the following are persons who are concerned in, or take part in, the management of a body corporate:
- (a) a director;
  - (b) a secretary;
  - (c) a receiver and manager of property;
  - (d) an official manager or deputy official manager;
  - (e) a liquidator of the body corporate appointed in a voluntary winding up;
  - (f) a trustee or other person administering a compromise or arrangement made between the body and another person or other persons.

## **120 Prosecution of bodies corporate**

- (1) A charge against a body corporate for a tax offence may be dealt with summarily.
- (2) If, in a prosecution for a tax offence constituted by an act done by a body corporate, it is necessary to establish the intention of the body,

it is sufficient to show that a servant or agent of the body, being a servant or agent by whom the act was done, had the intention.

- (3) In a prosecution for a tax offence, any act done by or on behalf of a body corporate by—
- (a) a director, servant or agent; or
  - (b) any other person—
    - (i) at the direction; or
    - (ii) with the consent or agreement, whether express or implied;
- of a director, servant or agent;

is deemed to have been done also by the body corporate.

## **121 Notice of appointment of liquidators etc**

A person who is appointed as a liquidator, receiver, manager or administrator of a body corporate shall notify the commissioner of the appointment within 14 days.

Maximum penalty: 10 penalty units.

## **Division 11.3 Payments**

### **122 Means and time of payment**

- (1) Tax may be paid to the commissioner—
- (a) by a cash payment made at, or a bank cheque or postal money order delivered to, an office of the commissioner; or
  - (b) by any other means, including electronic means, approved by the commissioner.
- (2) An approval of the commissioner may be—
- (a) general or limited to particular taxes, persons or payments; and

- (b) unconditional or subject to conditions.
- (3) If the commissioner approves payment by a personal cheque, payment is effected—
  - (a) if the cheque is paid when the commissioner first presents the cheque to the bank for payment—when the cheque was received by the commissioner; or
  - (b) if the cheque is not paid when the commissioner first presents the cheque to the bank for payment, but is paid on a subsequent presentation—when payment is actually effected.
- (4) The commissioner is not required to present a cheque to the bank for payment more than once if it is not paid on the first presentation.
- (5) An approval of a means of payment (other than by personal cheque) may include a stipulation about when payment by that means will be taken to be effected and any such stipulation will have effect according to its terms.
- (6) The commissioner may vary or cancel an approval under this section.

### **123 Adjustments of amounts**

If an amount of tax payable by a taxpayer, whether a single amount or an aggregate of several amounts, is not a multiple of 5 cents, the commissioner may decrease the amount to the nearest multiple of 5 cents.

### **124 Valuation of foreign currency**

If an amount involved in the calculation of tax is not in Australian currency, the amount shall be converted to Australian currency at the rate of exchange last reported by the Reserve Bank before the liability to pay the tax arose.

**125 Appropriation of public money**

If the commissioner is authorised or required to pay an amount under this Act, the amount shall be paid from the public money of the Territory which is appropriated accordingly.

**Division 11.4 Notices and service of documents**

**126 Notification of decisions**

A notice given or served by the commissioner of—

- (a) an assessment or a decision of a kind referred to in schedule 1;  
or
- (b) a determination of an objection under section 105 to a decision referred to in paragraph (a);

shall be in accordance with the requirements of the code of practice in force under the *Administrative Appeals Tribunal Act 1989*, section 25B (1).

**127 Service of documents on commissioner**

A document authorised or required to be served on, given to or lodged with the commissioner for a tax law may be served, given or lodged—

- (a) by delivering it to an office of the commissioner; or
- (b) by post addressed to the commissioner at an office of the commissioner; or
- (c) by a means indicated by the commissioner as being an available means of service (such as by fax or other electronic means or by delivering it, addressed to the commissioner, to the facilities of a document exchange); or
- (d) by leaving it with a person who has authority to accept documents on the commissioner's behalf.

**128 Day of service of document or payment of money**

If a document is served on the commissioner or a payment of money is tendered to the commissioner at a time on a day that is after the ordinary hours of business when the offices of the commissioner are open to the public on that day, the document or money is deemed to have been served on or tendered to the commissioner on the following business day.

**129 Service of documents by commissioner**

- (1) A document authorised or required to be served on or given to a person by the commissioner for a tax law may be served on or given to the person—
  - (a) personally; or
  - (b) by leaving it at the last address of the person known to the commissioner (including, for a corporation, the registered address or a business address of the corporation); or
  - (c) by post addressed to the person at the last address of the person known to the commissioner (including, for a corporation, the registered address or a business address of the corporation); or
  - (d) by a means indicated by the person as being an available means of service (such as by fax or by delivering it, addressed to the person, to the facilities of a document exchange); or
  - (e) by any means provided for the service of the document by another Act or law.
- (2) If a person (the *agent*) has actual or apparent authority to accept service of a document on behalf of another, the commissioner may, for a tax law, serve the document on the agent as if the agent were that other person.
- (3) Service of a document on a member of a partnership, or on a member of the committee of management of an unincorporated association or other body of persons, for a tax law, constitutes



service of the document on each member of the partnership, or on each member of the association or other body of persons.

## **Division 11.5 Proceedings and evidence**

### **131 Presumption of regularity about issue of documents**

A document or a copy of a document bearing the written, printed or stamped signature or name of the commissioner or a person described in the document as a delegate of the commissioner shall be presumed to have been lawfully issued by the commissioner.

### **132 Legal proceedings in commissioner's name**

- (1) Legal proceedings may be taken by or against the commissioner in the name Commissioner for Australian Capital Territory Revenue.
- (2) A person who takes legal proceedings in the name of the commissioner shall be presumed to be authorised to take those proceedings.

### **133 Evidence of claim**

- (1) In proceedings in relation to a tax offence that is punishable on summary conviction, a statement or averment in the information, claim or complaint by which the proceedings were instituted is evidence of the matters stated or averred and of the facts on which they are based.
- (2) If a matter stated or averred relates to a question of mixed law and fact, the statement or averment shall be taken to be evidence of the fact only.
- (3) This section does not apply in relation to an averment of the intention of the defendant in the proceedings.

**134 Evidence of assessments and determinations**

- (1) Production of a notice of assessment, or of a document signed by the commissioner purporting to be a copy of a notice of assessment, is conclusive evidence—
  - (a) of the due making of the assessment; and
  - (b) that the amount and all particulars of the assessment are correct, except in objection or appeal proceedings where it is prima facie evidence only.
- (2) Production of a notice of determination of an objection, or of a document signed by the commissioner purporting to be a copy of a notice of such a determination, is conclusive evidence of the making of the determination and of its terms.

**135 Commissioner may certify copies of documents**

Production of a document, certified by the commissioner as being a copy of, or extract from, a document received by the commissioner, is sufficient evidence of the matters set out in the document without production of the original.

**136 Certificate evidence**

A certificate signed by the commissioner that states any of the following matters is admissible in proceedings under a tax law and, in the absence of evidence to the contrary, is proof of the matters stated in the certificate:

- (a) the person named in the certificate is liable to pay tax;
- (b) an assessment of tax has been made in relation to circumstances specified in the certificate;
- (c) notice of an assessment was issued to a person named in the certificate, or the person's agent, on the day specified in the certificate;

- (d) the amount of tax, penalty tax or interest specified in the certificate is payable by a person named in the certificate or has been paid in whole or in part by or on behalf of a person so named;
- (e) a document specified in the certificate was posted to, delivered to, or served personally on, a person named in the certificate on a day specified in the certificate;
- (f) a person named in the certificate is, or is not, registered or licensed as required by the relevant tax law;
- (g) a return or statement required by a tax law has been, or has not been, lodged by or on behalf of a person named in the certificate on or as at a day specified in the certificate;
- (h) a person named in the certificate is, or was, an authorised officer on the date specified in the certificate.

### **137 Evidence of previous convictions**

In proceedings for an offence for which, under this Act, a person is liable for a heavier penalty if the person has committed previous offences of a relevant kind, a certificate of the commissioner setting out the facts that the commissioner considers relevant in relation to any such convictions of the person is evidence of the matters stated in the certificate and of the facts on which they are based.

## **Division 11.6 Miscellaneous**

### **138 Tax liability unaffected by payment of penalty**

The payment by a person of a penalty imposed by a court does not relieve the person from the payment of any other amount the person is liable to pay under a tax law.

### **139 Determination of amounts payable under tax laws**

- (1) The Minister may, in writing, determine the following:

- (a) the amount of tax, duty or licence fee payable under a tax law;
  - (b) the rate or differential rates at which, or the method by which, an amount of tax, duty, a licence fee or interest, payable under a tax law is to be calculated;
  - (c) a scale of allowances for expenses of witnesses under section 82 (5);
  - (d) the value of meals or other sustenance or the value of the use of premises for the *Payroll Tax Act 1987*, section 3 (2);
  - (e) a rate for the *Payroll Tax Act 1987*, section 10 (1) or (2), 11 (1), (2) or (3), 12 (1) or (2) or 13 (1) or (2);
  - (f) an amount for the *Payroll Tax Act 1987*, section 16 (1);
  - (g) an amount for the *Debits Tax Act 1997*, section 10 (1) or 16 (7) or (8);
  - (h) an amount for the *Emergencies Act 2004* schedule 1, section 4.
- (2) A determination under subsection (1) is a disallowable instrument.

*Note* A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

### **139A Determination of fees**

- (1) The Minister may, in writing, determine fees for this Act.

*Note* The Legislation Act contains provisions about the making of determinations and regulations relating to fees (see pt 6.3).

- (2) A determination is a disallowable instrument.

*Note* A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

### **139C Approved forms**

- (1) The commissioner may, in writing, approve forms for this Act or any other tax law.

(2) If the commissioner approves a form for a particular purpose, the approved form must be used for that purpose.

(3) An approved form is a notifiable instrument.

*Note* A notifiable instrument must be notified under the *Legislation Act 2001*.

## **140 Regulation-making power**

(1) The Executive may make regulations for this Act.

*Note* Regulations must be notified, and presented to the Legislative Assembly, under the *Legislation Act 2001*.

(2) The regulations may prescribe offences for contraventions of the regulations and prescribe Maximum penalties of not more than 20 penalty units for offences against the regulations.

## **Schedule 1 Decisions reviewable by commissioner and tribunal**

(see ss 100, 107 and 126)

### **1 Objections and appeals**

A person dissatisfied with a decision listed in clause 2 may—

- (a) lodge an objection under section 100; and
- (b) if dissatisfied with the determination of the objection—apply to the tribunal under section 107.

### **2 Kinds of decision subject to objection or appeal**

Clause 1 applies to a decision—

- (a) under section 8 determining the existence and effect of a tax avoidance scheme; or
- (b) under section 31 (6) to impose penalty tax; or
- (c) under section 31 (5) to impose increased penalty tax; or
- (d) under section 34 to impose increased penalty tax; or
- (e) under section 37 refusing to remit penalty tax; or
- (f) under section 40 (5) revoking a variation previously granted in relation to requirements for a return; or
- (g) under section 43 refusing an application for special arrangements for lodgment of returns or methods of payment; or
- (h) under section 44 imposing conditions on an approval under section 43; or
- (i) under section 45 varying or cancelling an approval under section 43; or

- (j) under section 103 refusing permission to lodge a late objection;  
or
- (k) under section 112 refusing to determine that a person is not a member of a group, or revoking such a determination.

## **Schedule 2 Decisions reviewable by commissioner only**

(see s 100)

### **1 Objections**

A person dissatisfied with a decision listed in clause 2 may lodge an objection under section 100.

### **2 Kinds of decision subject to objection**

Clause 1 applies to a decision—

- (a) under section 29 refusing to remit interest in accordance with the taxpayer's application; or
- (b) under section 40 (3), refusing to vary the time for lodging a return in accordance with the taxpayer's application; or
- (c) under section 40 (3), refusing to vary the period to which a return relates in accordance with the taxpayer's application; or
- (d) under section 52—
  - (i) refusing to extend the time for payment of tax; or
  - (ii) refusing to accept payment by instalments; or
  - (iii) imposing a condition on an extension of time or acceptance of payment by instalments; or
- (e) under section 103 imposing conditions on a grant of permission to lodge a late objection.



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## Dictionary

(see s 2)

*Note 1* The Legislation Act contains definitions and other provisions relevant to this Act.

*Note 2* For example, the Legislation Act, dict, pt 1, defines the following terms:

- ACT
- Commonwealth
- Executive
- individual
- Magistrates Court
- penalty unit (see s 133)
- State
- Supreme Court
- Legislative Assembly
- Minister (see s 162)
- the Territory.

***arrangement***, for payment of an assessment amount, for division 7.2 (Recovery of tax from directors of corporations)—see section 56A.

***assessment*** means—

- (a) an assessment, reassessment or compromise assessment of the tax liability of a person under a tax law, made by the commissioner under part 3; or
- (b) an assessment substituted by the tribunal on an appeal under part 10.

***assessment amount***, for a corporation, for division 7.2 (Recovery of tax from directors of corporations)—see section 56A.

***authorised officer*** means an authorised officer under section 79.

**business** means—

- (a) a profession or trade; or
- (b) any other activity carried on for fee or reward; or
- (c) the activity of employing persons to perform duties in connection with another business; or
- (d) the carrying on of a trust;

whether carried on by 1 person or 2 or more persons together.

**commissioner** means the Commissioner for Australian Capital Territory Revenue referred to in section 73.

**corporation**—see the Corporations Act, section 57A.

**director**, in relation to a body corporate, includes a person occupying or acting in a position with responsibility for the direction of the body, by whatever name called and whether or not validly appointed to occupy, or duly authorised to act in, the position.

*Note* **Document** is defined in the *Legislation Act 2001*, dict, pt 1, and includes information in electronic form.

**group**—see section 112.

**identity card** means—

- (a) an identity card issued under section 80 (1); or
- (b) an identity card approved under section 80 (2), together with a notice issued under section 79 (3) (b).

**interest rate** means the interest rate set under section 26.

**lodge**—see section 127.

**market rate component**, in relation to interest for a day—see section 26 (2).

**objection** means an objection made under section 100.

**premises** includes land, a vehicle, a vessel and an aircraft.

**premium component**, in relation to interest—see section 26 (4).

**primary group**—see sections 113 to 116.

**public officer** means the public officer of a body appointed under section 117.

**reciprocating jurisdiction** means a jurisdiction, being the Commonwealth, a State or another Territory, under a law of which a tax officer of the jurisdiction is authorised to give to the commissioner, for the purposes of the administration of a tax law of the ACT, information within the knowledge of the tax officer.

**record** means a record in any form of document.

**return** means a return, statement, application, report or other record that—

- (a) is required or authorised under a tax law to be lodged by a person with the commissioner or a specified person; and
- (b) is liable to tax or records matters in relation to which there is or may be a tax liability.

**revenue amount** means an amount of money paid voluntarily or under compulsion as a tax (including penalty tax).

**tax** means a tax, duty or levy under a tax law, and includes—

- (a) interest and penalty tax under part 5; and
- (b) any other amount paid or payable by a taxpayer to the commissioner under a tax law.

**tax default** means a failure by a taxpayer to pay, in accordance with a tax law, the whole or part of tax that the taxpayer is liable to pay.

**tax law**—

- (a) in relation to the ACT—see section 4; and

- (b) in relation to another jurisdiction—means a law of that jurisdiction that relates to the imposition of a tax, duty or levy.

**tax offence** means an offence against a tax law.

**tax officer**—

- (a) for this Act, means—
- (i) the commissioner; or
  - (ii) an authorised officer; or
  - (iii) anyone else engaged (whether as an officer or employee or otherwise) in the administration or enforcement of a tax law; and
- (b) for division 9.4 (Secrecy)—see section 94.

**taxpayer** means a person who has been assessed as liable to pay an amount of tax, who has paid an amount as tax or who is liable or may be liable to pay tax.

**tribunal** means the administrative appeals tribunal.

## Endnotes

### 1 About the endnotes

Amending and modifying laws are annotated in the legislation history and the amendment history. Current modifications are not included in the republished law but are set out in the endnotes.

Not all editorial amendments made under the *Legislation Act 2001*, part 11.3 are annotated in the amendment history. Full details of any amendments can be obtained from the Parliamentary Counsel's Office.

Uncommenced amending laws and expiries are listed in the legislation history and the amendment history. These details are underlined. Uncommenced provisions and amendments are not included in the republished law but are set out in the last endnote.

If all the provisions of the law have been renumbered, a table of renumbered provisions gives details of previous and current numbering.

The endnotes also include a table of earlier republications.

### 2 Abbreviation key

am = amended	ord = ordinance
amdt = amendment	orig = original
ch = chapter	par = paragraph/subparagraph
cl = clause	pres = present
def = definition	prev = previous
dict = dictionary	(prev...) = previously
disallowed = disallowed by the Legislative Assembly	pt = part
div = division	r = rule/subrule
exp = expires/expired	reg = regulation/subregulation
Gaz = Gazette	renum = renumbered
hdg = heading	reloc = relocated
IA = Interpretation Act 1967	R[X] = Republication No
ins = inserted/added	RI = reissue
LA = Legislation Act 2001	s = section/subsection
LR = legislation register	sch = schedule
LRA = Legislation (Republication) Act 1996	sdiv = subdivision
mod = modified/modification	sub = substituted
o = order	SL = Subordinate Law
om = omitted/repealed	<u>underlining</u> = whole or part not commenced or to be expired

## Endnotes

3 Legislation history

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### 3 Legislation history

#### **Taxation Administration Act 1999 No 4**

notified 1 March 1999 (Gaz 1999 No S8)  
commenced 1 March 1999 (s 2)

as amended by

#### **Ambulance Service Levy (Amendment) Act 1999 No 37 s 6**

notified 12 July 1999 (Gaz 1999 No S44)  
commenced 1 July 1999 (s 2)

#### **Revenue Legislation Amendment Act 1999 No 38 pt 4**

notified 12 July 1999 (Gaz 1999 No S44)  
commenced 1 July 1999 (s 2)

#### **Taxation Administration Transitional Regulations SL 1999 No 12**

notified 14 July 1999 (Gaz 1999 No 28)  
commenced 1 March 1999 (s 2)

#### **Law Reform (Miscellaneous Provisions) Act 1999 No 66 sch 3**

notified 10 November 1999 (Gaz 1999 No 45)  
commenced 10 November 1999 (s 2)

#### **Emergency Management Act 1999 No 76 s 82**

notified 23 December 1999 (Gaz 1999 No S65)  
ss 1, 2 and 82 commenced 23 December 1999 (s 2 (1); but see  
s 82 (7))  
amendments by s 82 (7) commenced 1 January 2000 (s 82 (7) and see  
Gaz 1999 No S69)

#### **Tobacco Amendment Act 2000 No 16 sch 3 pt 1**

notified 20 April 2000 (Gaz 2000 No 16)  
s 1, s 2 commenced 20 April 2000 (IA s 10B)  
sch 3 pt 1 commenced 1 July 2000 (s 2 (3))

#### **Taxation Administration Amendment Act 2000 No 47**

notified 28 September 2000 (Gaz 2000 No 39)  
commenced 28 September 2000 (s 2)

**Statute Law Amendment Act 2000 No 80 amdt 3.24**

notified 21 December 2000 (Gaz 2000 No S69)  
commenced 21 December 2000 (s 2)

**Legislation (Consequential Amendments) Act 2001 No 44 pt 378**

notified 26 July 2001 (Gaz 2001 No 30)  
s 1, s 2 commenced 26 July 2001 (IA s 10B)  
pt 378 commenced 12 September 2001 (s 2 and see Gaz 2001  
No S65)

**Race and Sports Bookmaking Act 2001 No 49 sch 2 pt 5**

notified 12 July 2001 (Gaz 2001 No 28)  
s 1, s 2 commenced 12 July 2001 (IA s 10B)  
sch 2 pt 5 commenced 7 September 2001 (s 2 and Gaz 2001 No S68)

**Duties Amendment Act 2001 (No 2) 2001 No 55 sch 1 pt 3**

notified 15 August 2001 (Gaz 2001 No S57)  
commenced 15 August 2001 (s 2)

**Statute Law Amendment Act 2001 (No 2) 2001 No 56 pt 3.47**

notified 5 September 2001 (Gaz 2001 No S65)  
s 1, s 2 commenced 5 September 2001 (Gaz 2001 No S65)  
amnds 3.476, 3.478-3.481 commenced 12 September 2001 (s 2 (2))  
pt 3.47 remainder commenced 5 September 2001 (s 2 (1))

**Treasury Legislation Amendment Act 2002 No 7 pt 2**

notified LR 17 April 2002  
s 1, s 2 commenced 17 April 2002 (LA s 75)  
pt 2 commenced 1 July 2002 (s 2 (2))

**Legislation Amendment Act 2002 No 11 pt 2.46**

notified LR 27 May 2002  
s 1, s 2 commenced 27 May 2002 (LA s 75)  
pt 2.46 commenced 28 May 2002 (s 2 (1))

**Criminal Code 2002 No 51 pt 1.22**

notified LR 20 December 2002  
s 1, s 2 commenced 20 December 2002 (LA s 75 (1))  
pt 1.22 commenced 1 January 2003 (s 2 (1))

## Endnotes

3 Legislation history

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**Duties Amendment Act 2003 A2003-1 s 18**

notified LR 3 March 2003  
s 1, s 2 commenced 3 March 2003 (LA s 75 (1))  
s 18 commenced 4 March 2003 (s 2)

**Statute Law Amendment Act 2003 (No 2) A2003-56 sch 3 pt 3.27**

notified LR 5 December 2003  
s 1, s 2 commenced 5 December 2003 (LA s 75 (1))  
sch 3 pt 3.27 commenced 19 December 2003 (s 2)

**Australian Crime Commission (ACT) Act 2003 A2003-58 sch 1 pt 1.4**

notified LR 17 December 2003  
s 1, s 2 commenced 17 December 2003 (LA s 75 (1))  
sch 1 pt 1.4 commenced 17 June 2004 (s 2 and LA s 79)

**Revenue Legislation Amendment Act 2003 (No 2) A2003-59 pt 3**

notified LR 18 December 2003  
s 1, s 2 commenced 18 December 2003 (LA s 75 (1))  
pt 3 commenced 19 December 2003 (s 2)

**Rates Act 2004 A2004-3 sch 1 pt 1.2**

notified LR 18 February 2004  
s 1, s 2 commenced 18 February 2004 (LA s 75 (1))  
sch 1 pt 1.2 commenced 1 July 2004 (s 2)

**Criminal Code (Theft, Fraud, Bribery and Related Offences)  
Amendment Act 2004 A2004-15 sch 2 pt 2.89**

notified LR 26 March 2004  
s 1, s 2 commenced 26 March 2004 (LA s 75 (1))  
sch 2 pt 2.89 commenced 9 April 2004 (s 2 (1))

**Emergencies Act 2004 A2004-28 pt 3.24**

notified LR 29 June 2004  
s 1, s 2 commenced 29 June 2004 (LA s 75 (1))  
pt 3.24 commenced 1 July 2004 (s 2 (1) and CN2004-11)

**Revenue Legislation Amendment Act 2004 A2004-36 pt 3**

notified LR 30 June 2004  
s 1, s 2 commenced 30 June 2004 (LA s 75 (1))  
pt 3 commenced 1 July 2004 (s 2)



**Revenue Legislation Amendment Act 2004 (No 2) A2004-43 pt 3**

notified LR 11 August 2004

s 1, s 2 commenced 11 August 2004 (LA s 75 (1))

pt 3 commenced 12 August 2004 (s 2)

**4 Amendment history****Dictionary**s 2 om 2001 No 44 amdt 1.3975  
ins A2003-56 amdt 3.260**Definitions for Act**s 3 am 2001 No 56 amdt 3.476, amdt 3.478, amdt 3.479  
defs reloc to dict A2003-56 amdt 3.259  
def **determined fee** ins 1999 No 38 s 16  
om 2001 No 44 amdt 1.3976  
def **function** om A2003-56 amdt 3.257  
def **penalty unit** om 2001 No 56 amdt 3.477  
def **tax officer** om A2003-56 amdt 3.258  
om A2003-56 amdt 3.260**Notes**

s 3A ins 2001 No 56 amdt 3.480

**Meaning of tax laws**s 4 am 1999 No 76 s 82 (7); 2000 No 16 sch 3 pt 1; 2001 No 49  
amdt 2.30; pars renum R2 LA (see 2001 No 49 amdt 2.31);  
A2003-56 amdt 3.261; A2003-59 s 7; pars renum R7 LA (see  
A2003-59 s 8); A2004-3 amdt 1.2, amdt 1.3; pars renum R11  
LA (see A2004-3 amdt 1.4); A2004-28 amdt 3.67**Act binds Territory**

s 5 sub 2002 No 11 amdt 2.92

**Tax avoidance schemes made ineffective**s 8 am A2003-56 amdt 3.262, amdt 3.263; ss renum R7 LA (see  
A2003-56 amdt 3.264)**Notice of assessment, reassessment or withdrawal of assessment**

s 14 am 2001 No 44 amdt 1.3977, amdt 1.3978

**Offset of refund against other tax liability**

s 20 am A2004-3 amdt 1.5

**Judgments for the recovery of revenue amounts**

s 22 am A2003-56 amdt 3.265

**No recovery of revenue amounts following non-legislative change in law**

s 23 am A2003-56 amdt 3.266

## Endnotes

### 4 Amendment history

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#### **Interest**

div 5.1 hdg (prev pt 5 div 1 hdg) renum R2 LA (see 2001 No 55 amdt 1.11)

#### **Interest rate**

s 26 am 2000 No 47 s 4; 2001 No 44 amdt 1.3979, amdt 1.3980; ss renum R2 LA (see 2001 No 44 amdt 1.3981); 2002 No 7 s 5, s 6; ss renum R4 LA (see 2002 No 7 s 7); table renum R10 LA

#### **No interest is imposed if the amount would be small**

s 27 om 2000 No 47 s 5

#### **Penalty tax**

div 5.2 hdg (prev pt 5 div 2 hdg) renum R2 LA (see 2001 No 55 amdt 1.11)

#### **Amount of penalty tax**

s 31 am 2000 No 47 s 6; ss renum R3 LA

#### **Increase in penalty tax for concealment**

s 34 am 2000 No 47 s 7; A2003-56 amdt 3.267, amdt 3.268; table renum R10 LA

#### **Minimum amount of penalty tax**

s 35 om 2000 No 47 s 8

#### **General**

div 6.1 hdg (prev pt 6 div 1 hdg) renum R2 LA (see 2001 No 55 amdt 1.11)

#### **Form of returns**

s 38 om 2001 No 44 amdt 1.3982

#### **Time of lodgment**

s 39 am 2001 No 56 amdt 3.481; 2001 No 44 amdt 1.3983; 2002 No 11 amdt 2.93

#### **Special arrangements for making returns and paying tax**

div 6.2 hdg (prev pt 6 div 2 hdg) renum R2 LA (see 2001 No 55 amdt 1.11)

#### **Special arrangements for classes of persons**

s 42 am 2001 No 55 amdt 1.9; ss renum R2 LA (see 2001 No 55 amdt 1.10); 2001 No 44 amdt 1.3984, amdt 1.3985; A2003-1 s 18

#### **Special arrangements for individual applicants**

s 43 am 2001 No 55 amdt 1.9; ss renum R2 LA (see 2001 No 55 amdt 1.10); 2001 No 44 amdt 1.3986; A2003-1 s 18

#### **General**

div 7.1 hdg ins A2004-43 s 6

#### **Recovery of tax from directors of corporations**

div 7.2 hdg ins A2004-43 s 7

**Definitions for div 7.2**

s 56A ins A2004-43 s 7

**Liability of directors and former directors for amounts of tax**

s 56B ins A2004-43 s 7

**Failure to comply with arrangement for payment**

s 56C ins A2004-43 s 7

**Right of indemnity of director or former director**

s 56D ins A2004-43 s 7

**Defence to proceeding for recovery of tax from director or former director**

s 56E ins A2004-43 s 7

**Record keeping**

div 8.1 hdg (prev pt 8 div 1 hdg) renum R2 LA (see 2001 No 55 amdt 1.11)

**General offences**

div 8.2 hdg (prev pt 8 div 2 hdg) renum R2 LA (see 2001 No 55 amdt 1.11)

**Giving false or misleading information**

s 66 om A2004-15 amdt 2.181

**Failure to lodge documents**

s 67 am A2003-56 amdt 3.269

**Supplementary offence provisions**

div 8.3 hdg (prev pt 8 div 3 hdg) renum R2 LA (see 2001 No 55 amdt 1.11)

**Penalties for second and subsequent offences against certain provisions**

s 70 am 2002 No 51 amdt 1.46; A2004-15 amdt 2.182, amdt 2.183;  
pars renum R9 LA

**Orders to pay additional amounts**

s 72 am A2004-15 amdt 2.184

**Tax officers**

div 9.1 hdg (prev pt 9 div 1 hdg) renum R2 LA (see 2001 No 55 amdt 1.11)

**Delegation by commissioner**

s 78 am SL 1999 No 12 reg 3; 1999 No 66 sch 3; A2003-56 amdt  
3.270, amdt 3.271

**Identity cards for authorised officers**

s 80 am 2001 No 44 amdt 1.3987, amdt 1.3988

**Personal liability**

s 81 am A2003-56 amdt 3.272

**Powers of investigation**

div 9.2 hdg (prev pt 9 div 2 hdg) renum R2 LA (see 2001 No 55 amdt 1.11)

## Endnotes

### 4 Amendment history

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**Power to require information, instruments or records or attendance for examination**

s 82 am A2003-56 amdt 3.273

**Search warrant**

s 84 am A2003-56 amdt 3.274

**Failing to comply with requirement of inspector**

s 88 hdg sub A2004-15 amdt 2.185

s 88 am A2003-56 amdt 3.275; A2004-15 amdt 2.186; ss renum R9 LA (see A2004-15 amdt 2.187)

**Impersonating authorised officer**

s 89 om A2004-15 amdt 2.188

**Cooperation with other jurisdictions**

div 9.3 hdg (prev pt 9 div 3 hdg) renum R2 LA (see 2001 No 55 amdt 1.11)

**Secrecy**

div 9.4 hdg (prev pt 9 div 4 hdg) renum R2 LA (see 2001 No 55 amdt 1.11)

**Tax officers to respect confidentiality**

s 95 am 2001 No 44 amdt 1.3989, amdt 1.3990

**Other permitted disclosures**

s 97 hdg sub A2004-36 s 7

s 97 am A2003-58 amdt 1.5

**Objections**

div 10.1 hdg (prev pt 10 div 1 hdg) renum R2 LA (see 2001 No 55 amdt 1.11)

**Objection**

s 100 am 1999 No 38 s 17; 2001 No 44 amdt 1.3991; A2004-3 amdt 1.6

**Objections lodged out of time**

s 103 am 2001 No 44 amdt 1.3992, amdt 1.3993

**Notice of determination**

s 105 am 2001 No 44 amdt 1.3994, amdt 1.3995

**Appeals to tribunal**

div 10.2 hdg (prev pt 10 div 2 hdg) renum R2 LA (see 2001 No 55 amdt 1.11)

**Right of appeal to tribunal**

s 107 am A2004-3 amdt 1.7

**Interest**

div 10.3 hdg (prev pt 10 div 3 hdg) renum R2 LA (see 2001 No 55 amdt 1.11)

**Business groups**

div 11.1 hdg (prev pt 11 div 1 hdg) renum R2 LA (see 2001 No 55  
amdt 1.11)

**Treatment of bodies corporate**

div 11.2 hdg (prev pt 11 div 2 hdg) renum R2 LA (see 2001 No 55  
amdt 1.11)

**Payments**

div 11.3 hdg (prev pt 11 div 3 hdg) renum R2 LA (see 2001 No 55  
amdt 1.11)

**Notices and service of documents**

div 11.4 hdg (prev pt 11 div 4 hdg) renum R2 LA (see 2001 No 55  
amdt 1.11)

**Proceedings and evidence**

div 11.5 hdg (prev pt 11 div 5 hdg) renum R2 LA (see 2001 No 55  
amdt 1.11)

**Judicial notice of commissioner's name and signature**

s 130 om A2003-56 amdt 3.276

**Miscellaneous**

div 11.6 hdg (prev pt 11 div 6 hdg) renum R2 LA (see 2001 No 55  
amdt 1.11)

**Determination of amounts payable under tax laws**

s 139 am 1999 No 37 s 6; 1999 No 76 s 82 (7); 2001 No 44  
amdt 1.3996, amdt 1.3997

**Determination of fees**

s 139A ins 1999 No 38 s 18  
sub 2001 No 44 amdt 1.3998

**Application—amendment by Taxation Administration Amendment Act 2000**

s 139B ins 2000 No 47 s 9  
exp 28 September 2002 (s 139B (2))

**Approved forms**

s 139C ins 2001 No 44 amdt 1.3999

**Regulation-making power**

s 140 sub 2001 No 44 amdt 1.4000

**Transitional**

pt 12 hdg ins 2000 No 80 amdt 3.24  
exp 21 December 2003 (s 144 (1))

## Endnotes

### 4 Amendment history

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#### Investigations and legal proceedings

s 141 ins 1999 No 38 s 19  
exp 31 July 1999 (s 141 (2))  
ins 2000 No 80 amdt 3.24  
am 2001 No 44 amdt 1.4001  
exp 21 December 2003 (s 144 (1))

#### Interest and penalty tax

s 142 ins 2000 No 80 amdt 3.24  
am 2001 No 44 amdt 1.4001  
exp 21 December 2003 (s 144 (1))

#### Assessments and payments

s 143 ins 2000 No 80 amdt 3.24  
am 2001 No 44 amdt 1.4001  
exp 21 December 2003 (s 144 (1))

#### Application of secrecy provisions to former Act

s 143A ins A2003-59 s 9  
exp 21 December 2003 (s 144 (1))

#### Expiry of pt 12

s 144 ins 2000 No 80 amdt 3.24  
am 2001 No 44 amdt 1.4002; A2003-59 s 10, s 11  
exp 21 December 2003 (s 144 (1))

#### Dictionary

dict ins A2003-56 amdt 3.277  
def **arrangement** ins A2004-43 s 8  
def **assessment** reloc from s 3 A2003-56 amdt 3.259  
def **assessment amount** ins A2004-43 s 8  
def **authorised officer** reloc from s 3 A2003-56 amdt 3.259  
def **business** reloc from s 3 A2003-56 amdt 3.259  
def **commissioner** reloc from s 3 A2003-56 amdt 3.259  
def **corporation** sub A2003-56 amdt 3.256  
reloc from s 3 A2003-56 amdt 3.259  
def **director** reloc from s 3 A2003-56 amdt 3.259  
def **group** reloc from s 3 A2003-56 amdt 3.259  
def **identity card** reloc from s 3 A2003-56 amdt 3.259  
def **interest rate** reloc from s 3 A2003-56 amdt 3.259  
def **lodge** reloc from s 3 A2003-56 amdt 3.259  
def **market rate component** sub 2002 No 7 s 4  
reloc from s 3 A2003-56 amdt 3.259

def **objection** reloc from s 3 A2003-56 amdt 3.259  
def **premises** reloc from s 3 A2003-56 amdt 3.259  
def **premium component** reloc from s 3 A2003-56 amdt 3.259  
def **primary group** reloc from s 3 A2003-56 amdt 3.259  
def **public officer** reloc from s 3 A2003-56 amdt 3.259  
def **reciprocating jurisdiction** reloc from s 3 A2003-56  
amdt 3.259  
def **record** reloc from s 3 A2003-56 amdt 3.259  
def **return** reloc from s 3 A2003-56 amdt 3.259  
def **revenue amount** reloc from s 3 A2003-56 amdt 3.259  
def **tax** reloc from s 3 A2003-56 amdt 3.259  
def **tax default** reloc from s 3 A2003-56 amdt 3.259  
def **tax law** reloc from s 3 A2003-56 amdt 3.259  
def **tax offence** reloc from s 3 A2003-56 amdt 3.259  
def **tax officer** ins A2003-56 amdt 3.277  
def **taxpayer** reloc from s 3 A2003-56 amdt 3.259  
def **tribunal** reloc from s 3 A2003-56 amdt 3.259

## Endnotes

### 5 Earlier republications

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## 5 Earlier republications

Some earlier republications were not numbered. The number in column 1 refers to the publication order.

Since 12 September 2001 every authorised republication has been published in electronic pdf format on the ACT legislation register. A selection of authorised republications have also been published in printed format. These republications are marked with an asterisk (\*) in column 1. Except for the footer, electronic and printed versions of an authorised republication are identical.

Republication No	Amendments to	Republication date
1	SL 1999 No 12	31 July 1999
2	Act 2001 No 56	19 October 2001
3	Act 2002 No 11	30 May 2002
4	Act 2002 No 11	1 July 2002
5	Act 2002 No 51	1 January 2003
5 (RI)	Act 2002 No 51	4 March 2003
6	A2003-1	4 March 2003
7	A2003-59	19 December 2003
8	A2003-59	22 December 2003
9	A2004-15	9 April 2004
10	A2004-15	17 June 2004
11	A2004-36	1 July 2004

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