

NORTHERN TERRITORY OF AUSTRALIA

ENERGY RESOURCE CONSUMPTION LEVY ACT

As in force at 1 July 2008

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NORTHERN TERRITORY OF AUSTRALIA

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ENERGY RESOURCE CONSUMPTION LEVY ACT

An Act to impose a levy on the consumption of certain energy resources

Part I Preliminary

1 Short title

This Act may be cited as the *Energy Resource Consumption Levy Act*.

2 Commencement

This Act shall come into operation on 1 December 1985.

3 Interpretation

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

approved means approved by the Commissioner.

Commissioner means the person for the time being holding the office of Commissioner of Territory Revenue under the *Taxation Administration Act*.

consumer means:

- (a) in the case of a person who consumes or has at any time consumed levy oil but is not a member of a group – that person; or
- (b) in the case of such a person who is a member of a group – that group.

consumption year means a period of 12 months commencing with the first day of the month in respect of which a consumer is required to register under section 7.

energy resource consumption levy or ***levy*** means the levy imposed under section 6.

fuel oil or distillate means oil having characteristics which, among persons experienced in the petroleum industry, would generally cause the oil to be regarded as fuel oil or, as the case may be, distillate.

group means a group within the meaning of section 4.

levy oil means fuel oil or distillate and includes such other oil as may be prescribed as being levy oil, but does not include levy oil which the Commissioner is satisfied is consumed in or by a motor vehicle.

motor vehicle means any motor vehicle whether capable of being used on or off a road, and includes a ship, boat or other vessel, and also includes an aircraft or hovercraft.

registered consumer means a consumer registered under section 7(1).

- (2) Where there is disagreement between the Commissioner and a person as to whether oil is levy oil for the purposes of this Act, the Commissioner shall refer the matter to the Secretary of the Department of Mines and Energy for decision, which decision shall be final.
- (3) Where a consumer is a group, the member of that group that is or appears to be the greatest consumer of levy oil in a consumption year shall, for all the purposes of this Act, be deemed to be the group and liable accordingly.

4 Groups

- (1) For the purposes of this Act, 2 corporations constitute a group if they are, by reason of section 50 of the Corporations Act 2001, to be deemed, for the purposes of that Act, to be related to each other.
- (2) For the purposes of this Act, where the same person has, or the same persons together have, a controlling interest, as referred to in subsection (3), in each of 2 businesses, the persons who carry on those businesses constitute a group.
- (3) For the purposes of subsection (2), the same person has, or the same persons together have, a controlling interest in each of 2 businesses if that person has, or those persons have together, a controlling interest under any of the following paragraphs in one of the businesses and a controlling interest under the same or another of the following paragraphs in the other business:

- (a) a person has, or persons together have, a controlling interest in a business, being a business carried on by a corporation, if the directors, a majority of the directors or one or more of the directors, being directors or a director who are or is entitled to exercise a majority in voting power at meetings of the directors of the corporation are or is accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of that person or of those persons acting together;
 - (b) a person has, or persons together have, a controlling interest in a business, being a business carried on by a corporation that has a share capital, if that person or those persons acting together could, whether directly or indirectly, exercise, control the exercise of, or substantially influence the exercise of, 50% or more of the voting power attached to voting shares issued by the corporation;
 - (c) a person has, or persons together have, a controlling interest in a business, being a business carried on by a partnership, if that person or those persons:
 - (i) owns, or together own, (whether beneficially or not) 50% or more of the capital of the partnership; or
 - (ii) is, or are together, entitled (whether beneficially or not) to 50% or more of the profits of the partnership;
 - (d) a person has, or persons together have, a controlling interest in a business, being a business carried on under a trust, if that person (whether or not as the trustee of another trust) is the beneficiary, or those persons (whether or not as the trustees of another trust) are together the beneficiaries, in respect of 50% or more of the value of the interests in the first-mentioned trust;
 - (e) a person has a controlling interest in a business if, whether or not he is a trustee of a trust, he is the sole owner of the business, and persons, being 2 or more trustees of a trust, have a controlling interest in a business if they are the owners of the business.
- (4) Where a corporation has a controlling interest under subsection (3) in a business, it shall be deemed to have a controlling interest in any other business in which another corporation that is, by reason of section 50 of the Corporations Act 2001, to be deemed for the purposes of that Act to be related to it, has a controlling interest.

- (5) Where:
- (a) a person has, or persons together have, a controlling interest under subsection (3) in a business; and
 - (b) the person or persons who carries or carry on that business has or have such a controlling interest in another business,
- the person or persons referred to in paragraph (a) shall be deemed to have a controlling interest in the business referred to in paragraph (b).
- (6) Where:
- (a) a person is a beneficiary under a trust; or
 - (b) two or more persons together are beneficiaries under a trust,
- in respect of 50% or more of the value of the interests in that trust and the trustee has or trustees have under subsection (3), a controlling interest in a business, that beneficiary or those beneficiaries shall, for the purposes of subsection (3), be deemed to have a controlling interest in that business.
- (7) In this section, **corporation** has the same meaning as in the Corporations Act 2001.
- (8) Nothing in this section shall apply to or in relation to a person or corporation that does not consume levy oil in the Territory.

5 Act to bind Crown

This Act binds the Crown.

Part II Energy resource consumption levy

6 Imposition of levy

- (1) Subject to this Act, a levy is payable to the Crown by a consumer on the total quantity of levy oil consumed in the Territory by that consumer during a consumption year.
- (2) The rate of levy is \$1 for each unit of 1,000 litres or part of such unit of levy oil consumed.
- (3) No levy is payable where the levy oil consumed by a consumer during a consumption year or such shorter period as the consumer is a consumer is 10,000,000 litres or less.

7 Registration

- (1) A consumer who:
- (a) consumed more than 830,000 litres of levy oil in any month during the period of 12 months immediately preceding the commencement of this Act; or
 - (b) being a group, the members of which consumed in the aggregate more than 830,000 litres of levy oil in any month during the period of 12 months immediately preceding the commencement of this Act,

shall, within 15 days after the commencement of this Act, apply to the Commissioner in accordance with an approved form for registration under this Act.

Penalty: \$1,000.

- (2) A consumer to which subsection (1) does not apply who in any month consumes more than 830,000 litres of levy oil shall, within 15 days after the expiry of the month during which the levy oil was consumed, apply to the Commissioner in accordance with an approved form for registration under this Act.

Penalty: \$1,000.

- (3) Upon receipt of an application under subsection (1) or (2), the Commissioner shall register the applicant by entering the applicant's name in a register kept by him for the purpose, and shall then give notice of the registration to the applicant.

8 Returns

- (1) A registered consumer or consumer required under section 7 to apply for registration shall, within 15 days after the expiry of each month, furnish to the Commissioner in an approved form, a return specifying:
- (a) the number of litres of levy oil consumed by the consumer during that month; and
 - (b) the total number of litres of levy oil consumed by the consumer:
 - (i) since the beginning of the month during which his liability to register under this Act first arose; or
 - (ii) since the beginning of the consumer's consumption year,

whichever is the later.

Penalty: \$1,000.

- (2) Within 15 days after the expiry of a registered consumer's consumption year or the expiry of the month during which a registered consumer ceases to be a consumer, the registered consumer, instead of a return furnished under subsection (1), shall furnish to the Commissioner in an approved form, a return specifying:
- (a) the number of litres of levy oil consumed by the consumer during the previous month;
 - (b) the total number of litres of levy oil consumed by the consumer during the consumption year or, as the case may be, until the consumer ceased to be a consumer; and
 - (c) details of any levy paid in respect of levy oil consumed during the period to which the return relates.

Penalty: \$1,000.

- (3) A consumer may, in a return under this section, specify the quantity of levy oil consumed in or by a motor vehicle.
- (4) A return under this section shall contain such other information as the Commissioner may specify.
- (5) A return under this section shall be verified by the signature of a senior administrative officer of the consumer.
- (6) A registered consumer or person required under section 7 to apply for registration shall, so long as he remains a consumer, continue to furnish returns under this section notwithstanding that the consumption of levy oil in any month may be less than 830,000 litres.

9 Additional returns and information

The Commissioner may, by notice in writing, require a consumer or a person to furnish to him, within the time specified in the notice:

- (a) such return or such further or fuller return; or
- (b) such information to verify the content of any return,

as the Commissioner requires.

Penalty: \$1,000.

10 Calculation of levy

(1) Where:

- (a) a return under section 8 is a first return or is the first return in a new consumption year; and
- (b) the product of the number of litres of levy oil disclosed as being consumed multiplied by 12 exceeds 10,000,000,

levy is calculated in accordance with the following formula:

$$\$1 \times \frac{A}{1,000}$$

where A is the number of litres of levy oil disclosed as being consumed.

(2) Where:

- (a) a return under section 8 discloses that levy oil has been consumed during 2 or more immediately preceding months; and
- (b) the product of the average number of litres of levy oil disclosed as being consumed each month during the period covered by the return multiplied by 12 exceeds 10,000,000,

levy is calculated in accordance with the following formula:

$$\$1 \times \frac{A}{1,000} - B$$

where:

- A** is the total number of litres of levy oil disclosed as being consumed each month during that period. and
- B** is any levy already paid in respect of levy oil disclosed as being consumed each month during that period.

(3) Where an annual return or a final return under section 8(2) discloses that the total number of litres of levy oil consumed during the consumption year or part to which the return relates exceeds 10,000,000, a levy is calculated in accordance with the following formula:

$$\$1 \times \frac{A}{1,000} - B$$

where:

- A** is the total number of litres of levy oil disclosed as being consumed during that consumption year or that part. and
- B** is any levy already paid in respect of levy oil disclosed as being consumed during that consumption year or that part.

11 Payment of levy

A consumer liable to pay a levy calculated in accordance with section 10 shall pay that levy to the Commissioner within the time which the consumer is required to furnish a return relating to the month or other period in respect of which the levy is payable.

12 Refunds

- (1) Where the Commissioner is satisfied that a consumer who has paid a levy in respect of a consumption year or such shorter period in relation to which he was a consumer did not consume more than 10,000,000 litres of levy oil in that year or shorter period, the Commissioner shall refund to the consumer the amount of levy so paid.
- (2) Where the Commissioner is satisfied that a levy has been overpaid in respect of a consumption year or such shorter period in relation to which the levy payer was a consumer, the Commissioner may refund to the consumer who paid the levy the amount found to be overpaid.

13 Liquidator to give notice

- (1) A person who is the liquidator of a company which has been a consumer registered or required to be registered under this Act shall, within 15 days after he has become liquidator, serve on the Commissioner notice in writing of his appointment.
- (2) The Commissioner shall, as soon as practicable after a notice under subsection (2) has been served on him, advise the liquidator of the amount which appears to the Commissioner to be sufficient to provide for any levy which then is or will become payable by the company.
- (3) A liquidator shall:
 - (a) not without leave of the Commissioner part with any of the assets of the company of which he is the liquidator until he has been so advised;

- (b) set aside out of the assets available for the payment of a levy payable under subsection (2) assets to the value of the amount so notified, or the whole of the assets so available if they are of less than that value; and
 - (c) to the extent of the value of the assets which he is so required to set aside, be liable as trustee to pay the levy.
- (4) Where a liquidator fails to comply with any provision of this section or fails as trustee to pay the levy for which he is liable under subsection (3), he shall, to the extent of the value of the assets of which he has taken possession and which are, or were at the time, available to him for the payment of the levy, be personally liable to pay the levy, and shall be guilty of an offence.

Penalty: \$1,000.

- (5) Where more persons than one are appointed liquidators or are required by law to carry out the winding-up of a company, the obligations and liabilities attaching to a liquidator under this section shall attach to each of those persons and, where any one of those persons has paid the levy due in respect of the company being wound up, the other person or persons shall each be liable to pay that person his equal share of the amount of the levy so paid.
- (6) Notwithstanding anything in this section, all costs, charges and expenses which, in the opinion of the Commissioner, have been properly incurred by the liquidator in the winding-up of a company, including the remuneration of the liquidator, may be paid out of the assets of the company in priority to any levy payable in respect of the company.

14 Recovery of levy paid on behalf of another

- (1) A consumer who pays a levy under this Act, being a consumer who is a member of a group and is deemed under section 3(3) to be that group, shall be entitled to recover as a debt from each other member of the group a contribution of a sum which bears to the levy paid the same proportion as the number of litres of levy oil consumed by that other member bears to the total number of litres of levy oil consumed upon which the levy was paid.
- (2) A person who, under this Act, pays any levy for or on behalf of any other person who was legally bound to pay the levy shall be entitled to recover the amount so paid from that other person as a debt, together with the costs of recovery, or to retain or deduct that amount out of any money in his hands belonging to or payable to that other person.

Part III Miscellaneous**15 Application of *Taxation Administration Act***

- (1) The Commissioner shall have the general administration of this Act.
- (2) Subject to this Act, all the provisions of the *Taxation Administration Act*, with any necessary modification, shall apply in respect of the levy as if:
 - (a) the levy were a duty payable under a taxation law; and
 - (b) a return under this Act were a return required under a taxation law; and
 - (c) a consumer were a person liable to pay duty under a taxation law.

16 Regulations

The Administrator may make regulations, not inconsistent with this Act, prescribing matters:

- (a) required or permitted to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

ENDNOTES
1**KEY**

Key to abbreviations

amd = amended
app = appendix
bl = by-law
ch = Chapter
cl = clause
div = Division
exp = expires/expired
f = forms
Gaz = Gazette
hdg = heading
ins = inserted
lt = long title
nc = not commenced

od = order
om = omitted
pt = Part
r = regulation/rule
rem = remainder
renum = renumbered
rep = repealed
s = section
sch = Schedule
sdiv = Subdivision
SL = Subordinate Legislation
sub = substituted

2**LIST OF LEGISLATION*****Energy Resource Consumption Levy Act 1985 (Act No. 53, 1985)***

Assent date 25 November 1985
 Commenced 1 December 1985 (s 2)

Companies and Securities (Consequential Amendments) Act 1986 (Act No. 18, 1986)

Assent date 30 June 1986
 Commenced 1 July 1986 (s 2)

Corporations (Consequential Amendments) Act 1990 (Act No. 59, 1990)

Assent date 14 December 1990
 Commenced 1 January 1991 (s 2, s 2 *Corporations (NT) Act 1990* (Act No. 56, 1990) and Gaz S76, 21 December 1990)

Energy Resources Consumption Levy Amendment Act 1992 (Act No. 42, 1992)

Assent date 7 September 1992
 Commenced 7 September 1992 (s 2)

Energy Resources Consumption Levy Amendment Act 1995 (Act No. 29, 1995)

Assent date 26 June 1995
 Commenced 1 July 1995 (s 2)

Corporations Reform (Consequential Amendments NT) Act 2001 (Act No. 17, 2001)

Assent date 29 June 2001
 Commenced 15 July 2001 (s 2, s 2 *Corporations Act 2001* (Cth Act No. 50, 2001) and Cth Gaz S285, 13 July 2001)

Revenue Law Reform (Budget Initiatives) Act 2008 (Act No. 23, 2008)

Assent date 30 June 2008
 Commenced pt 1, ss 3, 12(1), 18 and 19: 1 January 2008;
 ss 7, 10 and 11(1): 6 May 2008; rem: 1 July 2008 (s 2)

3

SAVINGS AND TRANSITIONAL PROVISIONS

s 6 *Energy Resources Consumption Levy Amendment Act 1992* (Act No. 42, 1992)

s 5 *Energy Resources Consumption Levy Amendment Act 1995* (Act No. 29, 1995)

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LIST OF AMENDMENTS

s 3 amd No. 23, 2008, s 21

s 4 amd No. 18, 1986, s 3; No. 59, 1990, s 4; No. 17, 2001, s 21

s 6 amd No. 42, 1992, s 4; No. 29, 1995, s 3

s 10 amd No. 42, 1992, s 5; No. 29, 1995, s 4

s 15 amd No. 23, 2008, s 21