

NORTHERN TERRITORY OF AUSTRALIA

DEBITS TAX ACT

As in force at 18 June 2009

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NORTHERN TERRITORY OF AUSTRALIA

As in force at 18 June 2009

DEBITS TAX ACT

An Act for the imposition and collection of a tax in respect of certain debits made to accounts kept with financial institutions and for other purposes

Part 1 Preliminary

1 Short title

This Act may be cited as the *Debits Tax Act*.

2 Commencement

This Act shall come into operation or be deemed to have come into operation, as the case requires, on the commencement of section 4A of the *Debits Tax Act 1982* of the Commonwealth.

3 Purpose

The purpose of this Act is to give effect to arrangements with the Commonwealth for the transfer of the benefit of the Debits Tax to the Territory and for that purpose to provide for:

- (a) the imposition and collection of the Debits Tax; and
- (b) the making of arrangements with the Commonwealth about matters connected with the administration of this Act.

4 Interpretation

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

applied provisions means the provisions applying by reason of section 10.

Commissioner has the same meaning as in the applied provisions.

Commonwealth Act means the *Debits Tax Administration Act 1982* of the Commonwealth.

- (2) In this Act and the applied provisions, a reference to a Commonwealth Act includes a reference to that Act as amended and in force for the time being and to an Act passed in substitution for that Act.

5 Incorporation

The applied provisions are incorporated and shall be read as one with this Act.

Part 2 Imposition and amount of tax

6 Imposition of tax

- (1) Tax is imposed in respect of:
- (a) each taxable debit of not less than \$1 made before 1 July 2005 to a taxable account;
 - (b) each eligible debit of not less than \$1 made before 1 July 2005 to an exempt account; and
 - (c) each eligible debit of not less than \$1 made before 1 July 2005 to an account kept outside the Territory if:
 - (i) at the time when the debit is made, the person in whose name, or either or any of the persons in whose names, the account is kept is a resident or are residents of the Northern Territory; and
 - (ii) it would be concluded that the account was used in connection with the transaction that resulted in the debit for the purpose, or for the purposes that included the purpose, of enabling:
 - (A) the person in whose name, or either or any of the persons in whose names, the account is kept; or
 - (B) any other person,to avoid liability for payment of the tax that would have been imposed if the debit that resulted from that transaction had been made in an account kept in the Territory.
- (2) The conclusion referred to in subsection (1)(c)(ii) may not be drawn if, under the law of the place where the account is kept, the person concerned would be liable, in relation to the use of the account, to pay tax of a similar kind to the tax imposed by this section.

7 Amount of tax

The amount of tax in respect of a taxable debit or eligible debit is the amount set out in Column 2 of Schedule 1 opposite to the reference in Column 1 of Schedule 1 to the range of amounts within which the amount of that debit is included.

8 Accounts kept outside Territory

A reference in this Part to a debit made to an account kept outside the Territory includes a reference to a debit made to an account kept outside the Territory with:

- (a) an ADI; or
- (b) a similar body,

(*the relevant institution or body*), including an account kept by way of withdrawable share capital in, or money deposited with, the relevant institution or body if:
- (c) another account is kept with an ADI in the name of the relevant institution or body; and
- (d) the account has characteristics such that a cheque may be drawn on the ADI that keeps it by the relevant institution or body and, at a time when it is incomplete, be delivered by the relevant institution or body to a customer under an agreement under which:
 - (i) the customer is authorised to fill up the cheque; and
 - (ii) the relevant institution or body is authorised, for the purpose of making a payment to the ADI to enable the institution or body to honour the cheque, to debit the account.

Part 3 Liability to tax and application of Commonwealth Act**9 Liability to tax**

- (1) A financial institution with which a taxable account is kept and the account holder (or, if there are 2 or more account holders, those account holders) are jointly and severally liable to pay the tax imposed by this Act on a taxable debit made to the account.

- (2) The account holder of an account other than a taxable account is liable (or, if there are 2 or more account holders, those account holders are jointly and severally liable) to pay the tax imposed by this Act on an eligible debit made to the account.
- (3) If:
- (a) a financial institution promoted the establishing and keeping of an account with the financial institution outside the Territory;
 - (b) after, or during the course of, that promotion a person residing in the Territory, or one or more persons residing in the Territory jointly, established and kept an account with the financial institution outside the Territory; and
 - (c) it is reasonable to conclude that the promotion and the subsequent establishment and keeping of the account was for a purpose (collateral or otherwise) of avoiding the liability to pay the tax imposed by this Act on eligible debits made to the account,

the financial institution and the account holder or account holders are jointly and severally liable to pay the tax imposed by this Act on an eligible debit made to the account.

10 Commonwealth Act applies as law of Territory

The Commonwealth Act (other than sections 1, 2, 6 and 8) applies as a law of the Territory and so applies as if amended as set out in Schedule 2.

Part 4 Arrangements with Commonwealth

11 Arrangements for and administration of Act

- (1) The Commissioner may make an arrangement with the Commissioner of Taxation appointed under the *Taxation Administration Act 1953* of the Commonwealth about any matter connected with the administration of this Act.
- (2) In particular, an arrangement under subsection (1) may provide:
- (a) for the performance of functions and exercise of powers conferred under section 12 by the Commissioner of Taxation or a Second Commissioner of Taxation; or

- (b) for the performance of functions or exercise of powers of the Commissioner under this Act by officers or employees under the control of the Commissioner of Taxation.

12 Conferral of functions and powers on Commissioner of Taxation

- (1) Subject to subsection (2), the Commissioner of Taxation of the Commonwealth and the Second Commissioners of Taxation have the functions and powers of the Commissioner under this Act.
- (2) The Commissioner of Taxation or a Second Commissioner shall not perform a function or exercise a power conferred by subsection (1) except in accordance with an arrangement made under section 11.

Part 5 Penal provisions

13 Offences relating to furnishing returns and giving other information

- (1) A person must not:
 - (a) fail or neglect to furnish any information as and when required by this Act or the Commissioner; or
 - (b) without just cause, refuse or neglect to attend and give evidence when required, or to answer truthfully and fully a question put, by the Commissioner or an officer employed in the administration of this Act and duly authorised by the Commissioner.

Penalty: If the offender is a natural person – 40 penalty units.

If the offender is a body corporate – 200 penalty units.

- (1A) A person must not fail or neglect to furnish a return as and when required by this Act or by the Commissioner.

Penalty: If the offender is a natural person – 20 penalty units.

If the offender is a body corporate – 100 penalty units.

- (1B) A person must not make or deliver a return which is false in a material particular or make a false answer whether orally or in writing.

Penalty: If the offender is a natural person – 100 penalty units or imprisonment for 6 months.

If the offender is a body corporate – 500 penalty units.

- (2) A person shall not, without just cause, refuse or neglect to produce any books required of the person by the Commissioner or any officer employed in the administration of this Act and duly authorised by the Commissioner.

Penalty: If the offender is a natural person – 100 penalty units.

If the offender is a body corporate – 500 penalty units.

- (3) A person who, after being found guilty for an offence against this section, continues to fail to comply with the requirements in respect of which he or she was found guilty is guilty of an offence and punishable as provided in section 14.

- (4) If an offence against this section arises under subsection (1)(a) or (b) or under subsection (2) by reason of the neglect or failure of a person to do any thing within a particular period, the offence is, for the purposes of subsection (3), taken to continue for as long as the thing remains undone, despite the lapsing of that period.

14 Evading tax

A person shall not, by any wilful act, default or neglect, or by any fraud, act or contrivance whatever, evade or attempt to evade tax chargeable under this Act.

Penalty: If the offender is a natural person – 100 penalty units and treble the amount of tax evaded or attempted to be evaded.

If the offender is a body corporate – 500 penalty units and treble the amount of tax evaded or attempted to be evaded.

15 Time for commencing prosecutions

- (1) A prosecution in respect of an offence against section 14 may be commenced at any time within 3 years after the commission of the offence.

- (2) A prosecution in respect of an offence arising under section 13(1)(a) or (c) may be commenced at any time.

16 Penalties not to relieve from tax

Payment of a penalty under this Act does not relieve a person from liability to any tax for which he or she would otherwise be liable.

17 Obstructing officers

A person who obstructs or hinders a person acting in the administration of this Act is guilty of an offence.

Penalty: If the offender is a natural person – 400 penalty units or imprisonment for 2 years.

If the offender is a body corporate – 2 000 penalty units.

17A Financial institutions to keep records

- (1) For the purposes of this Act, a financial institution:

- (a) must keep records in the English language of the full particulars of all transactions in relation to which tax imposed under this Act is payable; and
- (b) must preserve those records for 5 years after the transactions to which they relate are completed.

Penalty: If the offender is a natural person – 100 penalty units.

If the offender is a body corporate – 500 penalty units.

- (2) Subsection (1) does not require the preservation of records:

- (a) in respect of which the Commissioner has notified a financial institution that preservation is not required; or
- (b) of a financial institution that has been wound up.

- (3) In this section:

record includes books, accounts and other documents.

18 Offences by bodies corporate

- (1) If a body corporate is guilty of an offence against this Act, an officer of the body corporate who was knowingly a party to the commission of the offence is also guilty of that offence and liable to the penalty for that offence.

- (2) In this section, **officer**, in relation to a body corporate, includes a person who is an officer of the body corporate within the meaning of section 9 of the Corporations Act 2001.

18A Access to books etc.

- (1) In this section:

Territory employee means a Chief Executive Officer or an employee as defined in the *Public Sector Employment and Management Act* who is authorised by the Commissioner to exercise powers under this section.

- (2) For the purposes of this Act, a Territory employee:
- (a) may, at all reasonable times, enter any land or premises; and
 - (b) is entitled to full and free access at all reasonable times to all books, documents and other records on the land or premises and to make copies of, or take extracts from, the books, documents and other records.
- (3) A Territory employee who enters land or premises in pursuance of this section is not authorised to remain on the land or premises if, on being requested by the occupier of the land or premises to do so, he or she does not produce a certificate in writing under the hand of the Commissioner certifying that he or she is authorised to exercise powers under this section.
- (4) The occupier of land or premises entered or proposed to be entered by a Territory employee under this section must provide the Territory employee with all reasonable facilities and assistance for the effective exercise of his or her powers and performance of his or her functions under this section.

Penalty: If the offender is a natural person – 100 penalty units or imprisonment for 6 months

If the offender is a body corporate – 500 penalty units.

18B Incriminating information

- (1) A person who is required under this Act to furnish information, answer a question or produce or otherwise furnish a record, book, account or other document is not excused from doing so on the ground that the information, answer, record, book, account or other document might tend to incriminate the person.

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- (2) Information furnished, an answer given or a record, book, account or other document produced or otherwise furnished by a person referred to in subsection (1) is not admissible in evidence against the person in criminal proceedings other than proceedings under this Act.

Part 6 General

19 Payments from Central Holding Authority

If the Commissioner becomes liable to pay an amount under this Act, that amount is to be paid from the public moneys of the Territory and the appropriation for that purpose is established or increased to the extent necessary.

20 Certificate of exemption

A certificate of exemption in force under section 11 of the Commonwealth Act immediately before the commencement of this section continues, until it ceases to be in force under section 11 of the applied provisions, to be a certificate of exemption for the purposes of this Act.

21 State taxation officer

The Commissioner may perform the functions of a State taxation officer for the purposes of Part IIIA of the *Taxation Administration Act 1953* of the Commonwealth.

22 Amendment of Taxation (Administration) Act

Section 116A(1) of the *Taxation (Administration) Act* is amended by omitting from the definition of ***Taxation Act*** paragraphs (d) and (e) and substituting the following:

- "(d) the Business Franchise Act;
- (e) the *Energy Resource Consumption Levy Act*; or
- (f) the *Debits Tax Act*."

Schedule 1 Amount of tax

section 7

| Column 1 | Column 2 |
|--|---------------------|
| Range of amounts of taxable debits or eligible debits | Amount of tax \$ |
| Not less than \$1 but less than \$100 | 0.15 |
| Not less than \$100 but less than \$500 | 0.70 |
| Not less than \$500 but less than \$5,000 | 1.50 |
| Not less than \$5,000 but less than \$10,000 | 3.00 |
| \$10,000 or more | 4.00 |

Schedule 2 Modifications of Commonwealth Act

section 10

| Provision | Amendment | |
|---|-------------------------------|---|
| | <i>omit</i> | <i>substitute</i> |
| Section 3(1) | | |
| – definition of "Commissioner" | the whole definition | " 'Commissioner' has the same meaning as in the <i>Taxation Administration Act</i> ," |
| – definition of "Deputy Commissioner" | the whole definition | |
| – definition of "excluded debit", paragraph (a)(ii) and (iii) | "sub-sections 8(3) and (4)" | "sub-sections 8(3) and (4) of the Commonwealth Act as in force immediately before the commencement of this Act, would have been entitled to exemption from the tax within the meaning of the Commonwealth Act by virtue of any law" |
| – definition of "excluded debit", paragraph (b) | "Australia" (twice occurring) | "the Territory" |
| – definition of "exempt account" | "Australia" | "the Territory" |
| – definition of "exempt debit" | "1936" | " 1936 of the Commonwealth" |
| – definition of "non-bank financial institution" | "1986" | " 1986 of the Commonwealth" |

| | | |
|---------------------------------------|----------------------------------|--|
| – definition of "officer" | the whole definition | " 'officer' means a Chief Executive Officer or employee, as defined in the <i>Public Sector Employment and Management Act</i> ; 'Part', in the applied provisions, means Part of the applied provisions;" |
| – definition of "Second Commissioner" | the whole definition | |
| – definition of "tax" | the whole definition | " 'section', in the applied provisions, means section of the applied provisions; 'tax' means tax imposed by Part 2 of the <i>Debits Tax Act 1990</i> ." |
| – definition of "taxable account" | "Australia" | "the Territory" |
| – definition of "Tribunal" | the whole definition | " 'This Act' means the <i>Debits Tax Act 1990</i> ; 'Tribunal' means the Supreme Court;" |
| Section 3(2) | "Australia" (wherever occurring) | "the Territory" |
| Section 3(8) | "Commonwealth" (twice occurring) | "Territory" |
| Section 4 | the whole section | "4. GENERAL ADMINISTRATION OF ACT "The Commissioner has the general administration of this Act. |

| | | |
|--|--|---|
| | | 4A. DELEGATION OF FUNCTIONS |
| | | "The Commissioner may delegate to a person engaged in the administration of this Act any of the Commissioner's functions, other than this power of delegation." |
| Section 7 | "Commonwealth" (wherever occurring) | "Territory" |
| Section 7(4) | All words before paragraph (a) | "(4) Nothing in this section prohibits the Commissioner or a person authorised by the Commissioner from communicating any information to –" |
| Section 7(7) | "a Second Commissioner or a Deputy Commissioner" | |
| Section 9(1)(a) | "sub-section 8(1)" | "sub-section 9(1) of the <i>Debits Tax Act 1990</i> " |
| Section 11(1) | "Australia" | "the Territory" |
| Section 11(4)(a) | "account" | "account before 1 July 2005" |
| Section 11(4)(b) | "30 days" | "30 days but before 1 July 2005" |
| Section 12 | subsection (2) | |
| Section 12(1) | "any month" | "any month before 1 July 2005" |
| Section 12(4) | "sub-section 8(2)" (twice occurring) | "sub-section 9(2) of the <i>Debits Tax Act 1990</i> " |
| Sections 13(1)(b) and (5) and 14(1)(b) | "Commonwealth" (wherever occurring) | "Territory" |

| | | |
|---------------------------------|--|---|
| Section 17 | subsection 6 | "(6) The Commissioner may, in the Commissioner's discretion, remit the whole or any part of the additional tax payable by a person under this section and may do so before an assessment is made under subsection (4) of the additional tax." |
| Section 18 | "Commonwealth" (wherever occurring) | "Territory" |
| Section 20 | | |
| – definition of "Federal Court" | the whole definition | |
| Section 23 | paragraph (b) | |
| Section 25A(1) | "as soon as practicable – " | "as soon as practicable" |
| | paragraphs (a) and (b) | "send the application to the Supreme Court." |
| Section 25A | subsection (2) | |
| Section 25A | subsections (3) and (4) | "(3) The sending of an application to the Supreme Court under sub-section (1) constitutes the making by the person concerned of an application to the Court to extend the time within which the request concerned may be lodged with the Commissioner. (4) The Supreme Court may grant or refuse the application." |
| Section 25B | subsection (2) | |

| | | |
|----------------------|---|---|
| Section 25B(3) | "Federal Court" | "Supreme Court" |
| Section 25D | "a review before the Tribunal or on appeal to a court" | "appeal to the Supreme Court" |
| Section 25D(a) | "Tribunal or court" | "Supreme Court" |
| Section 25E | the whole section | |
| Section 26 | "Federal Court" | "Supreme Court" |
| Section 29A(1) | "Tribunal or of a court" | "Supreme Court" |
| Section 29A(2) | "Tribunal or of the Federal Court" (twice occurring) | "Supreme Court" |
| Section 29A(2)(b) | "Federal Court" | "Supreme Court" |
| Section 31(1) | "Tribunal or of a court" | "Supreme Court" |
| Section 31(1)(c)(ii) | "Commonwealth" | "Territory" |
| Section 33 | "a Second Commissioner or a Deputy Commissioner" (twice occurring) | |
| Section 34(1) | "Commonwealth" | "Territory" |
| Section 34(2) | "or a Deputy Commissioner" | |
| Section 37(1) | "a Second Commissioner or a Deputy Commissioner" (wherever occurring) | |
| Section 37(1)(d) | "Commonwealth" | "Territory" |
| Section 56 | "subsequent year" | "subsequent year that commences before 1 July 2005" |
| Section 56(1) | "1983" | "1991" |
| Section 57 | "Australia" (wherever occurring) | "the Territory" |

| | | |
|---------------|---|---------------------|
| Section 58(2) | "or a Deputy Commissioner" | |
| Section 59(1) | "the Commonwealth, of a State or of a Territory" | "the Territory" |
| Section 62 | "Governor-General" | "the Administrator" |

ENDNOTES

1**KEY**

Key to abbreviations

| | |
|------------------------------|-------------------------------------|
| amd = amended | od = order |
| app = appendix | om = omitted |
| bl = by-law | pt = Part |
| ch = Chapter | r = regulation/rule |
| cl = clause | rem = remainder |
| div = Division | renum = renumbered |
| exp = expires/expired | rep = repealed |
| f = forms | s = section |
| Gaz = <i>Gazette</i> | sch = Schedule |
| hdg = heading | sdiv = Subdivision |
| ins = inserted | SL = Subordinate Legislation |
| lt = long title | sub = substituted |
| nc = not commenced | |

2**LIST OF LEGISLATION*****Debits Tax Act 1990 (Act No. 55, 1990)***

| | |
|-------------|----------------------|
| Assent date | 14 December 1990 |
| Commenced | 1 January 1991 (s 2) |

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

| | |
|-------------|--|
| Assent date | 14 December 1990 |
| Commenced | 1 January 1991 (s 2, s 2 <i>Corporations (NT) Act 1990</i> (Act No. 56, 1990) and Gaz S76, 21 December 1990) |

Statute Law (Miscellaneous Amendments) Act 1991 (Act No. 77, 1991)

| | |
|-------------|------------------|
| Assent date | 16 December 1991 |
| Commenced | 16 December 1991 |

Public Sector Employment and Management (Consequential Amendments) Act 1993 (Act No. 28, 1993)

| | |
|-------------|---|
| Assent date | 30 June 1993 |
| Commenced | 1 July 1993 (s 2, s 2 <i>Public Sector Employment and Management Act 1993</i> (Act No. 11, 1993) and Gaz S53, 29 June 1993) |

Debits Tax Amendment Act 1993 (Act No. 44, 1993)

| | |
|-------------|----------------------|
| Assent date | 27 September 1993 |
| Commenced | 1 October 1993 (s 2) |

Sentencing (Consequential Amendments) Act 1996 (Act No. 17, 1996)

| | |
|-------------|--|
| Assent date | 19 April 1996 |
| Commenced | 1 July 1996 (s 2, s 2 <i>Sentencing Act 1995</i> (Act No. 39, 1995) and Gaz S15, 13 June 1996) |

Statute Law Revision Act (No. 2) 1998 (Act No. 92, 1998)

Assent date 11 December 1998
 Commenced ss 7 and 11: 13 January 1999; ss 6 and 15: 10 March 1999;
 s 3: 1 April 1999; s 25: 20 September 1999;
 rem: 11 December 1998 (Gaz G1, 13 January 1999, p 6, Gaz
 G9, 10 March 1999, p 2 and Gaz S15, 1 April 1999)

Statute Law Revision Act 1999 (Act No. 27, 1999)

Assent date 18 June 1999
 Commenced 18 June 1999

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)

Debits Tax Amendment Act 2001 (Act No. 46, 2001)

Assent date 19 July 2001
 Commenced 1 July 2001 (s 2)

Statute Law Revision (Financial Provisions) Act 2002 (Act No. 38, 2002)

Assent date 13 September 2002
 Commenced 30 October 2002 (Gaz G43, 30 October 2002, p 3)

Debits Tax Amendment Act 2002 (Act No. 54, 2002)

Assent date 10 October 2002
 Commenced s 4: 20 August 2002; rem: 10 October 2002 (s 2)

Statute Law Revision Act 2003 (Act No. 12, 2003)

Assent date 18 March 2003
 Commenced 18 March 2003

Debits Tax Amendment Act 2004 (Act No. 37, 2004)

Assent date 6 July 2004
 Commenced 1 July 2005 (s 2)

Statute Law Revision Act 2008 (Act No. 6, 2008)

Assent date 11 March 2008
 Commenced 11 March 2008

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)

Financial Management Amendment Act 2009 (Act No. 15, 2009)

Assent date 18 June 2009
 Commenced 18 June 2009

3 LIST OF AMENDMENTS

s 6 amd No. 77, 1991, s 13; No. 37, 2004, s 4
 s 8 sub No. 38, 2002, s 4
 s 9 amd No. 54, 2002, s 4
 s 13 amd No. 17, 1996, s 6; No. 54, 2002, s 5
 s 14 amd No. 54, 2002, s 6

ENDNOTES

| | |
|-------|--|
| s 17 | amd No. 54, 2002, s 7 |
| s 17A | ins No. 46, 2001, s 3 amd No. 54, 2002, s 8 |
| s 18 | amd No. 59, 1990, s 4; No. 17, 2001, s 21 |
| s 18A | ins No. 54, 2002, s 9 amd No. 12, 2003, s 18 |
| s 18B | ins No. 54, 2002, s 9 |
| s 19 | amd No. 27, 1999, s 15; No. 6, 2008, s 3; No. 15, 2009, s 16 |
| sch 1 | sub No. 44, 1993, s 3 |
| sch 2 | amd No. 28, 1993, s 3; No. 92, 1998, s 7; No. 37, 2004, s 5; No. 23, 2008, s 21 |