

# NORTHERN TERRITORY OF AUSTRALIA

## TAXATION ADMINISTRATION ACT

As in force at 1 May 2016

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**ENDNOTES**





# NORTHERN TERRITORY OF AUSTRALIA

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As in force at 1 May 2016

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## TAXATION ADMINISTRATION ACT

An Act to make general provision for the administration and enforcement of taxation laws

### Part 1 Preliminary matters

#### 1 Short title

This Act may be cited as the *Taxation Administration Act*.

#### 2 Commencement

This Act commences on 1 January 2008.

#### 3 Interpretation

(1) In this Act:

***approved form*** means a form approved by the Commissioner for use under the provision in which the expression appears.

***assessment*** means an assessment, or a reassessment, made under this Act.

***authorised officer***, see section 15.

***Commissioner*** means the person holding or acting in the office of Commissioner of Territory Revenue.

***court*** includes a judicial or administrative tribunal or other body with power to summon witnesses.

***disclosure***, of information, includes producing a document containing the information to a person, or permitting, or assisting, a person to gain access to the information or a document containing it.

***due*** – tax falls due for payment at the end of the period allowed for its payment by or under a taxation law.

**due date** means the date on which tax falls due for payment under a taxation law.

**event** includes:

- (a) a series of events; and
- (b) a state of affairs;

**exercise** a function means, if the function is in the nature of a duty, perform the function.

**function** includes power, authority and duty.

**instalment arrangement** means an arrangement, approved by the Commissioner, for the payment of tax by instalments.

**market interest rate**, see section 35(2).

**notice** means written notice.

**overpayment**, of tax, means a payment made to the Commissioner by a taxpayer in excess of the taxpayer's tax liability and includes a payment made in purported satisfaction of a tax liability that does not actually exist.

**premises** includes:

- (a) land and a structure on land; and
- (b) a vehicle; and
- (c) a vessel; and
- (d) an aircraft.

**primary tax** means tax exclusive of interest and penalty tax.

**record** includes:

- (a) a documentary record; and
- (b) a record made by an electronic, electromagnetic, photographic or optical process; and
- (c) any other kind of record.

**refund**, of tax, includes a credit given to the taxpayer against present or future liabilities for tax.

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

- (a) a person is required or authorised under a taxation law to make or lodge; and
- (b) is liable to tax or records matters in respect of which there is or may be a tax liability.

**service**, of a document, extends to the giving, sending, or lodging of a document.

**statutory interest rate**, see section 35.

**tax** means a tax, duty or levy under a taxation law, and includes the following:

- (a) interest and penalty tax;
- (b) any other amount:
  - (i) paid or payable by a taxpayer to the Commissioner or the Territory under a taxation law; or
  - (ii) actually paid to the Commissioner in purported compliance with a taxation law.

*Examples for paragraph (b)*

- 1 *The cost (where payable by a taxpayer) of a valuation required by the Commissioner.*
- 2 *The costs of recovery of tax (including costs awarded in favour of the Commissioner in court proceedings).*
- 3 *Fines and costs awarded against a taxpayer in proceedings for a tax prosecution.*

**taxation law**, see section 3A.

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

**tax liability** means a liability to pay tax under a taxation law.

**tax officer** means:

- (a) the Commissioner; or
- (b) an authorised officer; or

- (c) any other person engaged (as an officer, employee or otherwise) in the administration or enforcement of a taxation law or in related functions.

**taxpayer** means a person:

- (a) who has paid tax; or  
(b) who has been assessed as liable (or not liable) to pay tax; or  
(c) who is or may be liable to pay tax.

**tax prosecution** means a prosecution for an offence against a taxation law.

**tax record** means a record required to be made or kept under a taxation law.

**transaction** includes an event or matter that may give rise to a tax liability under a taxation law.

**valuer** means a certified practising valuer who is a member of the Australian Property Institute, and includes a person who, in the Commissioner's opinion, has equivalent qualifications.

- (2) If a taxation law provides that a decision or assessment is not subject to judicial review, no court has jurisdiction to entertain any question about the validity or correctness of the decision or assessment.

### **3A Taxation law**

- (1) A **taxation law** is any of the following:
- (a) this Act;  
(b) the *Payroll Tax Act*;  
(c) the *Stamp Duty Act*.
- (2) In addition, a **taxation law** includes a provision of any of the following as in force at any time (whether before or after the commencement of this section) to the extent to which a tax liability accrued under the provision:
- (a) the repealed *Pay-roll Tax Act*;  
(b) the repealed *Stamp Duty Act*;

- (c) a law mentioned in subsection (1) (for example, the *Stamp Duty Act* when it was in force as the *Taxation (Administration) Act*).

#### **4 Act binds the Crown**

- (1) This Act binds the Crown in right of the Territory and, to the extent the legislative power of the Legislative Assembly permits, the Crown in all its other capacities.
- (2) This section does not affect the liability of the Crown to tax under another taxation law.

#### **5 Purpose of Act and relationship with other taxation laws**

- (1) The purpose of this Act is to make general provision for the administration and enforcement of taxation laws.
- (2) However, this Act does not derogate from a provision of another taxation law dealing with the administration or enforcement of that law.
- (3) Each taxation law (apart from this Act) must be read together with this Act as a single Act.

## **Part 2 Administration**

### **Division 1 Commissioner and staff**

#### **6 Commissioner**

- (1) There is to be a Commissioner of Territory Revenue.
- (2) The Commissioner is to be appointed by the Administrator.

#### **7 Acting Commissioner**

- (1) The Minister may appoint a public sector employee to act as Commissioner:
- (a) during a vacancy in the office of Commissioner; or
- (b) when the Commissioner is unable or unavailable to carry out official functions.
- (2) A vacancy in the office of Commissioner cannot be filled by an acting appointee for more than 12 months.

- (3) An acting appointment:
  - (a) is to be made by instrument in writing; and
  - (b) may be expressed to be subject to conditions and limitations stated in the instrument.

## **8 Deputy Commissioners**

- (1) A Deputy Commissioner of Territory Revenue may be appointed under the *Public Sector Employment and Management Act*.
- (2) There may be 2 or more Deputy Commissioners at any one time.
- (3) If:
  - (a) there is a vacancy in the office of Commissioner or the Commissioner is unable or unavailable to carry out official functions; and
  - (b) no Acting Commissioner has been appointed, or the Acting Commissioner is unable or unavailable to carry out official functions;

a Deputy Commissioner who is able and available to act in the office of the Commissioner may act in the office of the Commissioner.

## **9 Other staff**

The other staff necessary for the administration and enforcement of taxation laws are to be appointed under the *Public Sector Employment and Management Act*.

## **10 Use of consultants and contractors**

The Commissioner may engage consultants and contractors to assist in carrying out statutory responsibilities.

## **Division 2 Commissioner's role and functions**

### **11 Role of Commissioner in administration of taxation laws**

- (1) The Commissioner is responsible for the general administration and enforcement of the taxation laws.
- (2) The Commissioner may do all things necessary or convenient to give effect to the taxation laws.

- (3) The Commissioner is not subject to Ministerial control and direction in relation to:
  - (a) the interpretation of a taxation law; or
  - (b) the exercise of a function under a taxation law.

## **12 Legal proceedings in Commissioner's name**

- (1) Legal proceedings may be taken by or against the Commissioner in the name "Commissioner of Territory Revenue".
- (2) A person who states that he or she appears in legal proceedings by authority of the Commissioner will be presumed to have that authority, in the absence of evidence to the contrary.
- (3) The production of an instrument apparently signed by the Commissioner authorising a person to commence proceedings is evidence of the authority of the person to commence the proceedings in the name of the Commissioner.

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

The Commissioner may exercise the functions of a State taxation officer under Part IIIA of the *Taxation Administration Act 1953* (Cth).

## **Division 3 Delegation**

### **14 Delegation by Commissioner**

- (1) The Commissioner may delegate any of the Commissioner's functions under a taxation law.
- (2) However, the Commissioner cannot delegate:
  - (a) the power to authorise entry to residential premises; or
  - (b) the power to authorise the use of force to enter premises, or carry out a search, in circumstances where the force will, or may, result in damage to property.
- (3) This section does not limit the Commissioner's power to act through agents without a formal delegation of power.

## **Division 4 Authorised officers**

### **15 Authorised officers**

- (1) The Commissioner is an authorised officer.

- (2) The Commissioner may appoint as an authorised officer:
  - (a) a person named in the instrument of appointment; or
  - (b) a person who at any time holds or acts in an office or position designated in the instrument of appointment.
- (3) A tax officer to whom the Commissioner delegates investigative functions is, in relation to the exercise of the delegated functions, an authorised officer.

## **16            Identity cards for authorised officers**

An authorised officer must be issued with an identity card in the approved form:

- (a) containing the person's name and a photograph of the person; and
- (b) stating that the person is an authorised officer.

## **Division 5            Immunity from liability**

### **17            Protection from liability**

- (1) A tax officer incurs no personal civil or criminal liability for anything done, or omitted to be done, in good faith in the exercise, or purported exercise, of a function under a taxation law.
- (2) This section does not affect any liability the Territory would, apart from this section, have for the act or omission.

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

### **Division 1            Forms of assessment**

#### **18            General power to make assessment**

- (1) The Commissioner may assess a tax liability.
- (2) An assessment of a tax liability is:
  - (a) a determination that a specified amount of tax, or that no tax, is payable by a particular person, or in respect of a particular instrument, transaction or event, under a taxation law; or
  - (b) a determination that a particular person, or a particular instrument, transaction or event, is liable to, or exempt from, tax under a taxation law.



## **19            Information on which assessment is to be based**

- (1) The Commissioner may make an assessment on the basis of information the Commissioner has from any source.
- (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.

## **20            Negotiated assessments**

- (1) The Commissioner may, if satisfied there is good reason to do so, make an assessment (a negotiated assessment) by agreement with a taxpayer.

*Example for subsection (1)*

*The Commissioner might make an assessment by agreement with the taxpayer in a case of substantial complexity or uncertainty or if satisfied that an assessment made in the conventional way would involve undue delay or expense.*

- (2) A negotiated assessment is an assessment, made by the Commissioner with the written agreement of the taxpayer, assessing a tax liability at an amount, or on a basis, specified in the agreement.
- (3) If a tax liability is determined by negotiated assessment, the Commissioner cannot reassess the tax liability unless:
  - (a) the taxpayer agrees; or
  - (b) in the opinion of the Commissioner:
    - (i) the assessment was procured by fraud; or
    - (ii) there was a failure to disclose material information.
- (4) The Commissioner has a discretion to make, or to decline to make, a negotiated assessment and is under no obligation to do so.
- (5) The following are not subject to judicial review:
  - (a) a decision to make, or not to make, a negotiated assessment;
  - (b) a negotiated assessment, or a reassessment made with the taxpayer's agreement of a tax liability determined by negotiated assessment.

## **Division 2            Reassessment and withdrawal of assessment**

### **21            Reassessment**

- (1) Subject to this Act, the Commissioner may, after making an assessment, make a reassessment.
- (2) A reassessment may be made:
  - (a) on the Commissioner's own initiative; or
  - (b) on receipt of a written application by the taxpayer.
- (3) A reassessment may:
  - (a) confirm the earlier assessment; or
  - (b) increase the amount of the earlier assessment; or
  - (c) reduce the amount of the earlier assessment (and, if it appears on the reassessment that no tax is payable, reduce the amount of the earlier assessment to nil); or
  - (d) alter the earlier assessment in any other way.
- (4) The Commissioner cannot reassess a tax liability more than 5 years after the initial assessment of the liability, unless:
  - (a) the reassessment is necessary to give effect to a decision on an objection to, or appeal against, the earlier assessment of the liability; or
  - (b) the taxpayer failed to make a full and true disclosure of all the facts and circumstances affecting the liability and, as a result, the tax liability was assessed at a lower amount than it should have been; or
  - (c) the taxation law under which the liability arose authorises the making of a reassessment more than 5 years after the initial assessment; or
  - (d) the taxpayer applies, in writing, for the reassessment within 5 years after the date of the initial assessment.

### **22            Withdrawal of assessment**

- (1) The Commissioner may withdraw an assessment at any time within 5 years after the initial assessment, whether or not the amount of tax specified in the assessment has been paid.

- (2) If an assessment is withdrawn:
- (a) any tax paid in satisfaction, or purported satisfaction, of the tax liability to which the assessment related is to be refunded (or credited against any other tax liability of the taxpayer); and
  - (b) if the taxpayer has lodged an objection to, or appeal against, the assessment – interest is to be allowed on the amount of the refund (or credit) on the same basis as would have applied if the assessment had been set aside on the objection or appeal; and
  - (c) a fresh assessment of the tax liability to which the withdrawn assessment related cannot be made more than 5 years after the date of the initial assessment of the tax liability unless it later appears that the assessment would not have been withdrawn if the taxpayer had made a full and true disclosure of all the facts and circumstances affecting the liability.

### **Division 3            Notice of assessment etc.**

#### **23            Notice of assessment, reassessment or withdrawal of assessment**

- (1) The Commissioner may issue a notice of assessment.
- (2) The Commissioner must issue a notice of assessment if:
  - (a) the taxpayer requests a notice of assessment within 5 years after the date of the assessment; or
  - (b) the assessment is a reassessment.
- (3) If the Commissioner withdraws an assessment, the Commissioner must issue a notice of withdrawal of assessment.
- (4) A notice of an assessment of a tax liability must specify the amount assessed.
- (5) If interest or penalty tax (or both) was payable at the date of an assessment, the notice of assessment must specify the amount of interest and penalty tax payable as at the date of the assessment.
- (6) A notice under this section is to be in the approved form.

## **Division 4 Information on which assessment is to be based**

### **24 Requirement for full and true disclosure**

- (1) A taxpayer must, when a relevant occasion arises, fully and truly disclose, in writing, to the Commissioner all the facts and circumstances affecting a tax liability.

Maximum penalty: 100 penalty units.

- (2) It is a defence to a charge of an offence against subsection (1) for the taxpayer to prove that:
- (a) the taxpayer reasonably relied on some other person who is subject to the same tax liability to ensure the requirements of that subsection were satisfied; or
  - (b) the taxpayer:
    - (i) made a full and true disclosure to a tax adviser of all facts and circumstances affecting the tax liability; and
    - (ii) reasonably relied on the tax adviser to ensure the requirements of that subsection were satisfied.

*Example for subsection (2)(a)*

*A taxpayer who is a member of a payroll tax group may be able to establish that the taxpayer reasonably relied on the designated group employer to make the disclosure.*

- (3) A tax adviser must, when a relevant occasion arises, fully and truly disclose, in writing, to the Commissioner all the facts and circumstances affecting a tax liability.

Maximum penalty: 100 penalty units.

- (4) It is a defence to a charge of an offence against subsection (3) for the tax adviser to prove that the tax adviser:
- (a) reasonably relied on an apparently full and true disclosure by the taxpayer of all the facts and circumstances affecting the tax liability; and
  - (b) fully and truly disclosed all facts and circumstances of which the tax adviser was aware.
- (5) The Commissioner may permit a taxpayer or tax adviser to correct an error in any instrument, return or information submitted to the Commissioner.

(6) In this section:

**relevant occasion** – a relevant occasion for disclosure arises when:

- (a) a taxpayer, or a tax adviser acting on behalf of a taxpayer, submits an instrument or return to the Commissioner for the assessment of tax; or
- (b) a taxpayer or a tax adviser acting on behalf of a taxpayer submits an application to the Commissioner for an assessment of tax; or
- (c) the Commissioner, by notice, requests a taxpayer, or a tax adviser acting on behalf of a taxpayer, to provide a disclosure of information under this section about a tax liability that the Commissioner proposes to assess; or
- (d) facts or circumstances become known to a taxpayer, or a tax adviser acting on behalf of a taxpayer, showing that the basis on which tax has been paid, or the basis on which the Commissioner has assessed or may be about to assess a tax liability, is incorrect.

**tax adviser** means a person engaged in a professional capacity by a taxpayer for fee or reward (but not as an employee of the taxpayer) in business involving:

- (a) the preparation on behalf of the taxpayer of an instrument or return on which, or by reference to which, tax is to be assessed; or
- (b) the submission on behalf of the taxpayer of such an instrument or return to the Commissioner; or
- (c) the provision of information, or the making of submissions, to the Commissioner relating to the taxpayer's tax liability.

## 25 Valuation of property

- (1) For the purpose of determining whether a person is liable to pay tax or a person's tax liability, the Commissioner may do one or more of the following:
  - (a) require the person to provide to the Commissioner:
    - (i) a valuer's valuation of property; or
    - (ii) other evidence of the value of property satisfactory to the Commissioner;

- (b) obtain a valuer's valuation of property;
  - (c) adopt any available valuation of property prepared for any purpose (whether or not relating to the determination of tax liability) by a valuer or other person whom the Commissioner considers suitably qualified to value the property.
- (2) The Commissioner may recover valuation costs from the taxpayer if:
- (a) the taxpayer is required to provide a valuation or other evidence under subsection (1)(a) and fails to do so; or
  - (b) a valuation obtained or adopted by the Commissioner under subsection (1)(b) or (c) exceeds the valuation provided by the taxpayer by 15% or more.
- (5) However, if the valuation obtained or adopted by the Commissioner is successfully challenged on an objection or appeal, the Commissioner may recover valuation costs only if the value on which tax is finally assessed exceeds the taxpayer's valuation by 15% or more.
- (6) If a valuation gives a range of values and does not fix a particular point in the range at which the value probably lies, the valuation is taken (but only for the purpose of comparison with other valuations under this section) to fix a value at the median point in the range.
- (7) In this section:
- valuation cost includes the cost of, or incidental to, obtaining or adopting a valuation or otherwise related to the use by the Commissioner of the valuation.

## **Division 5            Ancillary provisions**

### **26            Time as at which tax liability is to be assessed**

- (1) A tax liability is to be assessed by reference to the provisions of the relevant taxation law as in force when the liability arose.
- (2) However, the Commissioner must have regard to judicial decisions, affecting the interpretation of the relevant provisions, delivered since the tax liability arose.

**27 Certain amounts to be rounded down**

If the amount of a taxpayer's tax liability would, apart from this section, not be an exact multiple of 5c, the amount must be rounded down by an amount not exceeding 5c to the highest exact multiple of 5c that is less than that amount.

**28 Valuation of foreign currency**

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

**29 Validity of assessment**

The validity of an assessment is not affected by non-compliance with a provision of a taxation law.

**30 Acceptance of money not an assessment**

The acceptance by the Commissioner of money paid in connection with the lodging of a return or other document is not an assessment and does not imply that the Commissioner accepts the payment in full satisfaction of the tax liability to which the payment relates.

**Part 4 Refunds of tax****31 Refunds only made under this Part**

- (1) A person is not entitled to recover any amount paid, or purportedly paid, under a taxation law except under this Part.
- (2) Subsection (1) applies whether or not the amount was paid under a mistake of law or fact.

**32 Entitlement to refund**

- (1) If it appears to the Commissioner that a taxpayer has made an overpayment of tax, the Commissioner must refund to the taxpayer the amount of the overpayment.
- (2) However:
  - (a) if a taxation law provides for a refund on application by the taxpayer, a refund is only to be made, in circumstances to which the relevant provision applies, on such an application; and

- (b) a refund cannot be made more than 5 years after the overpayment was made except to give effect to a reassessment of the relevant tax liability.
- (3) The Commissioner's decision to make a refund may be based on an assessment of the relevant tax liability or on any other evidence the Commissioner considers sufficient.
- (4) The Commissioner may refund the whole or part of the refundable amount by crediting the whole or part of the refundable amount against present or future liabilities of the taxpayer under a taxation law or another law administered by the Commissioner or under which the Commissioner exercises statutory functions.

*Example for subsection (4)*

*The Commissioner might credit the amount of a refund of stamp duty against a liability of the taxpayer as a member of a payroll tax group.*

- (5) However, an amount is not to be credited against future tax liabilities unless the taxpayer consents.

### **33 Windfalls**

- (1) A taxpayer gains a windfall profit at the expense of another (the **third party**) if:
  - (a) the third party pays tax on the taxpayer's behalf or indemnifies the taxpayer for the payment of tax; and
  - (b) the amount of the tax, or a proportion of the amount, is refunded to the taxpayer under this Part.
- (2) A third party is taken to indemnify a taxpayer for the payment of tax if the taxpayer identifies the tax as a component of the price of goods or services and receives or recovers the price of the goods or services (including the component referable to tax) from the third party.
- (3) A taxpayer must reimburse a third party for the amount of any windfall profit gained at the third party's expense.
- (4) A reimbursement under this section must be made within the relevant period.
- (5) Within 7 days after the end of the relevant period, the taxpayer must:
  - (a) give the Commissioner a notice setting out the extent the windfall profit has been reimbursed as required by this section; and



- (b) return to the Commissioner any amount that has not been reimbursed together with interest at the statutory interest rate from the date the refund was made to the date the amount is returned to the Commissioner.
- (6) A taxpayer must not fail to comply with an obligation imposed by this section.

Maximum penalty: 100 penalty units.

- (7) Before the Commissioner refunds tax to a taxpayer under this Part, the Commissioner may require the taxpayer to satisfy the Commissioner that the taxpayer has made appropriate arrangements for complying with the taxpayer's obligations under this section, and, if the Commissioner is not so satisfied, the Commissioner must not refund the tax to the taxpayer.
- (8) In this section:

**relevant period** means the period of 90 days (or a longer period allowed by the Commissioner) from the date of the refund.

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

### **Division 1 Interest**

#### **34 Interest in respect of tax defaults**

- (1) If a tax default occurs, the taxpayer is liable to pay interest on the unpaid primary and penalty tax.
- (2) Interest accrues at the statutory interest rate as in force from time to time.
- (3) Interest is calculated on a daily basis from the date of the tax default to the date of payment.
- (4) However, if:
- (a) a taxpayer fails to make periodic payments of tax as required under a taxation law; and
  - (b) the Commissioner makes an assessment of the tax to which the tax defaults relate;

the Commissioner may fix, in the assessment, for each financial year to which the tax defaults relate, a date (which must be at or about the mid-point of the part of the relevant financial year to which the tax defaults relate) from which interest on the aggregate

amount involved in the tax defaults for the relevant financial year is to be calculated.

- (5) If the Commissioner exercises the power conferred by subsection (4), interest is to be calculated in accordance with the assessment.

### **35 Statutory interest rate**

- (1) The statutory interest rate is the sum of:
- (a) the market interest rate; and
  - (b) the premium interest rate.
- (2) The market interest rate is (for each financial year):
- (a) the rate prescribed by regulation as the market interest rate for the relevant financial year; or
  - (b) if no rate is prescribed by regulation as the market interest rate for the relevant financial year – the average yield (expressed as an annual rate) on 90-day bank accepted bills published by the Reserve Bank of Australia for the month of May in the financial year immediately preceding the relevant financial year.
- (3) The premium interest rate is:
- (a) up to (and including) 30 June 2008 – 7%; and
  - (b) from (and including) 1 July 2008 – 8%.

### **36 Minimum amount of interest**

Interest is not to be charged if the amount of the accrued interest is less than \$20.

### **37 Interest rate under this Division to prevail**

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), interest continues to accrue at the statutory interest rate, to the exclusion of any other interest rate, until the tax is paid.

### **38 Reduction or remission of interest**

- (1) The Commissioner may, if satisfied that it is appropriate to do so, remit interest wholly or in part.

- (2) However, the Commissioner may only remit interest to an extent that would reduce the effective rate below the market interest rate if satisfied that exceptional circumstances justify the remission.

## **Division 2 Penalty tax**

### **39 Penalty tax in respect of certain tax defaults**

- (1) If a tax default occurs, the taxpayer is liable to pay penalty tax.
- (2) Penalty tax is in addition to:
- (a) primary tax; and
  - (b) interest.
- (3) Penalty tax is not payable for a tax default that consists of a failure to pay:
- (a) interest; or
  - (b) penalty tax previously imposed.

### **40 Imposition etc. of penalty tax**

Penalty tax is imposed, and may be reduced or remitted, by assessment.

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

- (1) As a general rule, the amount of penalty tax is 25% of the amount of the tax default.
- (2) The general rule is subject to the following exceptions:
- (a) no penalty tax is to be imposed if the Commissioner is satisfied that the tax default arose from circumstances beyond the taxpayer's control (other than the taxpayer's financial incapacity to meet the tax liability) and that the taxpayer, having discovered the default, took all reasonable steps to rectify it;
  - (b) the amount of the penalty tax is 10% of the amount of the tax default if the Commissioner is satisfied that the taxpayer took reasonable care to comply with the relevant taxation law;

- (c) the amount of the penalty tax is 75% of the amount of the tax default if the Commissioner is satisfied as to one of the following, and 95% of the amount of the tax default if the Commissioner is satisfied as to both of the following:
  - (i) that the tax default arose wholly or partly from the intentional disregard by the taxpayer (or a person acting on behalf of the taxpayer) of a taxation law;
  - (ii) that the taxpayer (or a person acting on behalf of the taxpayer) deliberately concealed or suppressed information from the Commissioner relevant to the assessment of the tax liability (or the investigation of the tax default) or hindered the assessment of the tax liability (or the investigation of the tax default) in any other way.
- (3) The Commissioner has a discretion to reduce penalty tax in the following circumstances:
  - (a) the Commissioner may reduce the amount of penalty tax by up to 20% of the amount otherwise payable if the Commissioner conducts an investigation of the tax default and the taxpayer cooperates fully with the investigation;
  - (b) the Commissioner may reduce the amount of penalty tax by up to 80% of the amount otherwise payable if the Commissioner has not commenced an investigation of the tax default and the taxpayer's full and immediate disclosure of the extent of the tax default avoids the need for an investigation;

(but if the taxpayer is liable to penalty tax because of deliberate concealment or suppression of information, there is to be no discretionary reduction of penalty tax imposed on that or any other ground).
- (4) A person hinders the investigation of a tax default if the person:
  - (a) deliberately falsifies, damages, conceals or destroys tax records to which the investigation relates; or
  - (b) refuses or fails (without reasonable excuse) to comply with a requirement lawfully made in connection with the investigation; or
  - (c) hinders or obstructs an authorised officer exercising functions in the course of, or in connection with, the investigation; or
  - (d) does anything else to hinder or obstruct the investigation.

**42 Minimum amount of penalty tax**

Penalty tax is not to be imposed if the amount of the penalty tax would be less than \$20.

**43 Time for payment of penalty tax**

Penalty tax must be paid by a taxpayer within the period (not less than 14 days) specified in a notice of the assessment imposing the penalty tax.

**44 Remission of penalty tax**

The Commissioner may, if satisfied that it is appropriate to do so, remit penalty tax in whole or part.

**Part 6 Returns**

**Division 1 General**

**45 Form of returns**

A return must be in the approved form.

**46 Time of lodgement**

A return is taken to have been lodged by a person at the time the return is received by the Commissioner.

**47 Presumption about person making and signing**

A return apparently made and signed by or on behalf of a person is presumed, unless the contrary is proved, to have been made and signed by the person or with the person's authority.

**48 Modification of requirements relating to returns**

- (1) The Commissioner may, by notice to a person who is to lodge a return under a taxation law, exercise one or both of the following powers:
  - (a) extend the time for lodging the return;
  - (b) vary the period to which the return is to relate.
- (2) An extension or variation under this section:
  - (a) takes effect on, or from, a date specified in the notice; and

- (b) is subject to conditions stated in the notice or in a later notice given to the person to whom the extension or variation relates.

## **Division 2 Special tax return arrangements**

### **49 Approval of special tax return arrangements**

- (1) The Commissioner may approve a special arrangement for the lodging of returns or the payment of tax (or both) under a taxation law.
- (2) An approval:
  - (a) may provide an exemption for the taxpayer or taxpayers from specified provisions of the taxation law to which it applies; and
  - (b) may authorise or require the lodging of returns or the payment of tax (or both) by electronic means.
- (3) An approval may be given on the initiative of the Commissioner or on application.
- (4) Notice of an approval under this section must be given to the taxpayer or taxpayers affected by the approval or to an agent acting on their behalf.
- (5) The calculation of tax by a person other than the Commissioner in accordance with a special arrangement approved under this section is not an assessment.

### **50 Application for approval**

- (1) An application for an approval under this Division must be made to the Commissioner in the approved form.
- (2) The Commissioner may grant or refuse an application for an approval under this Division.
- (3) Notice of a decision under subsection (2) must be given to the applicant.

### **51 Conditions of approval**

- (1) An approval under this Division is subject to conditions specified by the Commissioner in the notice of approval or by subsequent notice.

- (2) The conditions of an approval may include:
- (a) conditions limiting the approval to tax liabilities of a specified class; and
  - (b) conditions limiting the approval to transactions effected by instruments of a specified class; and
  - (c) conditions about the content of returns and the time of lodgement; and
  - (d) conditions requiring payments of tax at specified times; and
  - (e) conditions about the means by which 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, conditions about the endorsement of the instruments; and
  - (g) conditions requiring the taxpayer or agent to whom the approval is given to keep specified records.

## **52 Effect of approval**

- (1) If an approval is given under this Division to a taxpayer, or a class of taxpayers, and a condition of the approval is not complied with, each taxpayer obliged to comply with the condition, or to ensure that it is complied with, is guilty of an offence.

Maximum penalty: 100 penalty units.

- (2) If an approval is given under this Division to an agent, and a condition of the approval is not complied with, the agent is guilty of an offence and, if the non-compliance relates to the tax liability of a taxpayer for whom the agent acts, the taxpayer is also guilty of an offence.

Maximum penalty: 100 penalty units.

- (3) However, if a taxpayer complies with the provisions of a taxation law that apply apart from an approval under this Division, no offence is committed against subsection (1) or (2) by the taxpayer or an agent for non-compliance with a condition of the approval.

## **Part 7            Payment and recovery of tax**

### **Division 1        Payment of tax**

#### **53            Payment by cheque**

If a tax officer accepts a cheque given in purported payment of tax, the payment is accepted conditionally on the cheque being honoured on first presentation and the tax will be taken to have been paid at the time of the acceptance of the cheque if (and only if) the cheque is honoured on first presentation.

#### **54            Extension of time for payment of tax**

On written application by a taxpayer, the Commissioner may, if satisfied it is appropriate to do so, extend the time for payment of tax.

#### **55            Power to bring forward the time for payment of tax**

If the Commissioner has reason to believe that a taxpayer may leave Australia before tax falls due for payment, the Commissioner may, by notice to the taxpayer, bring forward the date on which the tax falls due for payment to an earlier date specified in the notice.

#### **56            Instalment arrangements**

- (1) The Commissioner may approve an arrangement for payment of tax by instalments.
- (2) An instalment arrangement must be in writing and state the conditions applying to it.
- (3) An instalment arrangement has effect according to its terms.
- (4) An instalment arrangement must provide for the payment of interest at the statutory interest rate from the due date until the tax is paid under the arrangement.
- (4A) However, if satisfied that it is appropriate to do so, the Commissioner may remit, in whole or part, interest payable under an instalment arrangement.
- (5) The Commissioner may, at any time, by notice given to the taxpayer, terminate an instalment arrangement.
- (6) If the Commissioner terminates an instalment arrangement, amounts outstanding under the arrangement are immediately payable by the taxpayer to the Commissioner.



### **56A        Application of payment**

- (1) An amount received by the Commissioner from a taxpayer or someone on behalf of a taxpayer must be applied in the following order:
  - (a) firstly, any interest payable by the taxpayer under Part 5, Division 1;
  - (b) secondly, any penalty tax payable by the taxpayer under Part 5, Division 2;
  - (c) lastly, any tax (other than any interest or penalty tax) payable by the taxpayer.
- (2) Subsection (1) has effect except as otherwise decided by the Commissioner.
- (3) This section does not affect the operation of section 56.

## **Division 2        Recovery of tax**

### **57        Recovery of tax as a debt**

Tax, on becoming due for payment, is a debt due to the Territory recoverable by the Commissioner in a court of competent jurisdiction.

### **58        Joint and several liability**

- (1) If 2 or more persons are liable for tax, the liability is joint and several and the Commissioner may recover the tax from any one or more of them.
- (2) A person who pays tax for which another person is jointly liable has a right of contribution from the other person.
- (3) However, a right of contribution under subsection (2) may be altered or excluded by contract.

### **59        Recovery from partnerships and other groups**

- (1) If a tax liability is incurred by or on behalf of a partnership, the liability is joint and several and the tax may be recovered from any one or more of the partners.
- (2) If 2 or more persons are grouped together for the assessment of tax under a particular taxation law, a tax liability under the relevant taxation law relating to the group, or any of its members, is joint and several and the tax (including penalty tax and interest) may be

recovered from any one or more persons who were members of the group when the liability was incurred.

## **60        Recovery of tax from third parties**

- (1) The Commissioner may, by notice, require a person (the **third party**) to pay money towards a taxpayer's unsatisfied tax liability.
- (2) A payment or payments may be required from any one or more of the following sources:
  - (a) money that is due or accruing, or may become due or may accrue, to the taxpayer from the third party;
  - (b) money that the third party holds, or may subsequently hold, for or on account of the taxpayer;
  - (c) money that the third party holds or may subsequently hold on account of some other person for payment to the taxpayer;
  - (d) money that the third party is authorised to pay to the taxpayer.
- (3) A copy of the notice must be served on the taxpayer.
- (4) The notice may require:
  - (a) a single payment not exceeding the amount of the tax liability (or the amount available to make the payment); or
  - (b) if the third party is liable from time to time to make payments to the taxpayer – the whole of each payment, or a specified amount from or proportion of each payment, until the tax liability is satisfied.
- (5) The money must be paid to the Commissioner:
  - (a) within 14 days, or a longer period specified by the Commissioner, after the date of issue of the notice; or
  - (b) if the money does not become due to the taxpayer until after the end of the period referred to in paragraph (a) as soon as practicable after it becomes due to the taxpayer.
- (6) A person required to pay an amount under this section must comply with the requirement.

Maximum penalty:        100 penalty units.

- (7) A third party who makes a payment as required under this section is taken to be acting under the authority of the taxpayer and incurs no civil liability by making the payment.

- (8) If, after the Commissioner gives a notice to a third party under this section, the relevant tax liability is satisfied, in whole or part, from another source, the Commissioner must promptly, by notice to the third party:
- (a) revoke the notice under this section; or
  - (b) make any necessary amendment to that notice.
- (9) The issue of a notice to a third party under this section does not affect the liability of the taxpayer to pay the tax, except to the extent that an amount paid by the third party reduces the amount payable by the taxpayer.

## **61            Recovery from directors**

- (1) This section applies if the Commissioner issues an assessment notice to a company and the amount assessed is not paid by the due date.
- (2) The Commissioner may serve a notice on the directors of the company informing them that they will become jointly and severally liable with the company for the payment of the tax unless the company remedies its tax default within 28 days from the date of the notice.
- (3) A notice under subsection (2) must be served on each director:
- (a) personally; or
  - (b) if personal service is impracticable – by a form of non-personal service authorised under section 144.
- (4) For the purposes of this section, a company remedies a default if:
- (a) the tax liability as assessed, and any further liability for interest that has accrued since the date of the assessment, is paid; or
  - (b) the company enters into an instalment arrangement on conditions satisfactory to the Commissioner; or
  - (c) the company enters into voluntary administration under Part 5.3A of the Corporations Act 2001; or
  - (d) the company goes into liquidation.
- (5) If a company remedies its default by entering into an instalment arrangement but later contravenes a condition of the arrangement, the company's default is taken to revive and the Commissioner may serve another notice on the directors under this section.

- (6) If the company fails to remedy its default within the 28-day period, the directors become jointly and severally liable, with the company, for the payment of the tax liability assessed against the company.
- (7) In proceedings for recovery of tax from a director under this section, it is a defence for the director to establish that:
- (a) the director took all reasonable steps that were possible in the circumstances to get the company to remedy its default; or
  - (b) the director was unable because of illness or for some other proper reason to take steps to get the company to remedy its default.
- (8) If a director pays tax or tax is recovered from a director under this section, the director is entitled to be indemnified by the company for the amount paid or recovered.
- (9) In this section:

**director**, of a company, includes a person who was a director when the relevant tax liability was incurred by the company, or a notice under this section was issued, but has since ceased to be a director.

## Division 3            Statutory Charges

### 62            Definitions

In this Division:

**land**, see section 4(1) of the *Stamp Duty Act*.

**land-holding corporation**, see section 4(1) of the *Stamp Duty Act*.

**linked entity**, see section 56NA of the *Stamp Duty Act*.

**mining tenement**, see section 4(1) of the *Stamp Duty Act*.

**register** means:

- (a) for land registered under the *Land Title Act* – the land register; or
- (b) for a mining tenement – the appropriate statutory register.

**registration authority** means:

- (a) for land registered under the *Land Title Act* – the Registrar-General; or

- (b) for a mining tenement – the authority responsible for administering the register.

**taxable transaction** means an instrument or transaction in respect of which tax is payable.

**63 Power to secure tax by registration of statutory charge over land**

- (1) If a taxpayer acquires land as a result of a taxable transaction and the tax payable on the transaction is not paid by the due date, the unpaid tax liability becomes an overriding statutory charge over the land.
- (2) If a taxpayer who is required to lodge a statement in respect of the acquisition of an interest in a land-holding corporation fails to lodge the required statement, or to pay the tax payable in respect of the transaction, by the due date, the unpaid tax liability becomes an overriding statutory charge over the land of the land-holding corporation and of linked entities.

**64 Registration authority may be required to register charge**

- (1) If a tax liability becomes an overriding statutory charge on land under this Division, the Commissioner may lodge a request with the registration authority for the charge to be registered over land specified in the request to which the charge relates.
- (2) The registration authority must (without fee) register the charge by making appropriate entries in the register.
- (3) A charge registered under this Division has priority over all other registered and unregistered mortgages, charges and encumbrances except a previously registered overriding statutory charge.

**65 Notification of persons affected by charge**

- (1) When a charge is registered, the registration authority must notify all persons who have registered interests in or over the land.
- (2) Failure to notify one or more persons under subsection (1) does not invalidate registration of the charge.

**66            Commissioner to give notice**

- (1) A registration authority must cancel registration of a charge on receiving notice from the Commissioner that:
  - (a) the tax liability to which the charge relates has been fully satisfied; or
  - (b) the Commissioner no longer wants the charge to be registered.
- (2) When a tax liability to which a registered charge relates is fully satisfied, the Commissioner must notify the registration authority of that fact.
- (3) The registration authority must also cancel registration of a charge if a duly stamped conveyance is lodged for registration to give effect to the sale of the land under this Division.

**67            Prohibition on dealings**

- (1) While a statutory charge under this Division remains registered, the registration authority must not register an instrument affecting the land unless the Commissioner consents, in writing, to its registration.
- (2) The Commissioner has a discretion to consent, or refuse to consent, to the registration of an instrument under this section.

**68            Application for order to sell land**

- (1) The Commissioner may apply to the Supreme Court for an order for the sale of land subject to a registered overriding statutory charge.
- (2) An application may only be made for the sale of the land if:
  - (a) the Commissioner has made an assessment of the tax to which the overriding statutory charge relates; and
  - (b) at least 18 months have elapsed from the due date for payment fixed in the notice of assessment; and
  - (c) at least 6 months before the date of the application the Commissioner has given the taxpayer and anyone else with a registered interest in the land the notice required under subsection (3).

- (3) The required notice is a notice stating the Commissioner's intention to apply to the Supreme Court for an order for sale of the land unless the outstanding tax is paid within 6 months after the date of the notice.
- (4) A notice under subsection (2)(c) must be served:
  - (a) personally; or
  - (b) if personal service is impracticable – by a form of non-personal service authorised under section 144; or
  - (c) if non-personal service under section 144 is impracticable – by posting the notice on the land.

**69            Order for sale of land**

- (1) The Supreme Court must, on the application of the Commissioner, make an order for the sale of land subject to a registered overriding statutory charge (or so much of the land as is necessary to meet the tax liability) if satisfied:
  - (a) that the tax, or part of the tax, secured by the charge remains outstanding; and
  - (b) the statutory pre-conditions to the making of the application have been satisfied.
- (2) The Court may, if it thinks fit, act on the basis of affidavit evidence.
- (3) The Court may nominate an officer of the Court to execute a conveyance to give effect to a sale ordered by the Court under this section.
- (4) A conveyance giving effect to a sale of land under this section vests the land in the purchaser freed and discharged from registered and unregistered mortgages, charges, encumbrances and other interests.

**70            Proceeds of sale**

- (1) If land is sold under this Division, the proceeds are to be applied as follows:
  - (a) first – in payment of the costs, charges and expenses of and incidental to the sale;
  - (b) secondly – in payment of any money owing to a person entitled under a law of the Commonwealth to priority over an overriding statutory charge;

- (c) thirdly – in payment of money secured by an overriding statutory charge registered before the statutory charge under this Division;
- (d) fourthly – in payment of the outstanding tax liability;
- (e) fifthly – in payment of money secured by an overriding statutory charge registered after registration of the statutory charge under this Division;
- (f) sixthly – in payment of money secured by registered mortgages in the order of their priority;
- (g) seventhly – in payment of money secured by unregistered mortgages in order of their priority;
- (h) eighthly – in payment to the taxpayer.

(2) In this section:

**mortgage** includes a charge or encumbrance securing the payment of money.

#### **71            Other means of enforcement not affected**

The registration of an overriding statutory charge under this Division does not affect the Commissioner's power to recover outstanding tax in proceedings unrelated to the charge.

### **Division 4            Death of taxpayer**

#### **72            Death of taxpayer**

- (1) The death of a taxpayer does not affect a tax liability.
- (2) In particular, the death of a taxpayer does not suspend a liability to interest or to penalty tax.
- (3) A tax liability becomes, on the taxpayer's death, a first charge on the deceased taxpayer's estate.
- (4) A deceased taxpayer's non-pecuniary obligations under a taxation law pass to the taxpayer's personal representative.

*Examples for subsection (4)*

- 1 *If a taxpayer was required under a taxation law to lodge returns, the obligation passes to, and must be discharged by, the personal representative.*
- 2 *The deceased taxpayer's tax records must be kept by the personal representative for as long as the taxpayer would have been required to keep them if the taxpayer were still alive.*



- (5) Powers and remedies that would have been available against the taxpayer if the taxpayer were still alive are available against the taxpayer's personal representative.

*Examples for subsection (5)*

- 1 *The Commissioner may make an assessment of the tax payable by the taxpayer's personal representative out of the deceased taxpayer's estate.*
- 2 *The Commissioner may commence proceedings against the personal representative for the recovery of tax.*
- 3 *If proceedings commenced against a taxpayer for recovery of tax are incomplete at the time of the taxpayer's death, they may be continued and completed against the taxpayer's personal representative.*

## **Division 5      Waiver of tax**

### **73      Waiver of tax**

- (1) The Commissioner may waive a tax liability in whole or part if the amount of tax waived is less than \$20.
- (2) If the Commissioner waives stamp duty under this section, an instrument to which the waiver relates:
  - (a) may be marked as duly stamped although no stamp duty, or insufficient stamp duty, has been paid; and
  - (b) if so marked, is taken to have been duly stamped.

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

### **74      Requirement to keep proper records**

- (1) A taxpayer must keep the records that are necessary to enable the taxpayer's tax liability to be ascertained.

Maximum penalty:      100 penalty units.

- (2) This section extends to returns designated by or under another taxation law as made that are required to be kept.

### **75      Additional records**

- (1) The Commissioner may, by notice given to a person who is required to keep a record under a taxation law, require the person to keep the additional records that are specified in the notice.
- (2) The person must comply with the notice.

Maximum penalty:      100 penalty units.

**76 Keeping records that contain misleading information**

A person must not keep a tax record that the person knows to be misleading in a material particular.

Maximum penalty: 400 penalty units.

**77 Accessibility**

- (1) A person who is required under a taxation law to keep a tax record must keep the record so that it can be readily produced to the Commissioner if the Commissioner requires it.

Maximum penalty: 100 penalty units.

- (2) If a tax record is not kept as required by subsection (1), any cost incurred by the Commissioner in gaining access to the tax record, or the information contained in it, may be recovered by the Commissioner as a debt due from the person required to keep the record.

**78 Form of record – English language and Australian currency**

- (1) A person who is required to keep a tax record must keep the record:

- (a) in the form of a document expressed in the English language and in Australian currency; or
- (b) in a form from which a document expressed in the English language and in Australian currency can be readily produced.

Maximum penalty: 100 penalty units.

- (2) If a tax record is not kept as required by subsection (1), any cost incurred by the Commissioner in having the record translated into English, or converted into Australian currency, may be recovered by the Commissioner as a debt due from the person required to keep the record.

**79 Period of retention**

- (1) A person required to keep a tax record must retain the record for 5 years after the record was made or obtained, or the transaction to which it relates was completed (whichever is the later).

Maximum penalty: 100 penalty units.

- (2) However, the Commissioner may, by written approval:
- (a) reduce the period of retention required under subsection (1) for specified tax records, or tax records of a specified class; or
  - (b) authorise the destruction of specified tax records before the period of retention required under subsection (1) comes to an end.
- (3) An approval under subsection (2) operates only for the purposes of a taxation law and does not confer an exemption from other laws.

### **80 Intentional damage to, or destruction of, records**

- (1) A person must not intentionally damage or destroy a tax record required to be retained under this Act.

Maximum penalty: 400 penalty units.

- (2) This section does not prevent the destruction of a tax record if the Commissioner has authorised or approved its destruction.

### **81 Evasion of tax**

- (1) A person liable to tax must not knowingly evade the tax.

Maximum penalty: 400 penalty units.

- (2) A prosecution under this section does not prevent the Commissioner from pursuing any other right, remedy or action under this Act or any other law in relation to the evasion of tax or the tax evaded.

### **82 Misleading information and documents**

- (1) A person must not make a statement to a tax officer that the person knows to be misleading in a material particular.

Maximum penalty: 400 penalty units.

- (2) A person must not give to a tax officer a document that the person knows to be misleading in a material particular.

Maximum penalty: 400 penalty units.

- (3) This section extends to a statement or a document that is misleading because of the omission of relevant information as well as to one that is misleading because it consists of, or includes, misinformation.

- (4) However, no offence is committed against subsection (2) if the person, when giving the document to the tax officer:
- (a) draws the misleading aspect of the document to the tax officer's attention; and
  - (b) to the extent the person can reasonably do so, gives the tax officer the information necessary to correct the document.

### **83 Falsifying or concealing information**

A person must not falsify or conceal:

- (a) information about the identity of a taxpayer, or a taxpayer's residential or business address; or
- (b) information about the identity, or residential or business address, of any other person who may be able to provide information relevant to the administration or enforcement of a taxation law; or
- (c) information that is otherwise relevant to the administration or enforcement of a taxation law.

Maximum penalty: 100 penalty units.

### **84 Failure to lodge documents**

A person must lodge a document or return that is required to be lodged under a taxation law within the time allowed for its lodgement.

Maximum penalty: 100 penalty units.

### **85 Non-compliance with other requirements of a taxation law**

A taxpayer must comply with any other non-pecuniary requirement:

- (a) imposed by or under a taxation law; and
- (b) for which no penalty for non-compliance is specifically fixed.

Maximum penalty: 100 penalty units.

### **86 General defence under this Part**

It is a defence to a charge of an offence against this Part if the defendant proves that:

- (a) the defendant took reasonable care to comply with the relevant provision; or

- (b) the contravention arose solely from circumstances beyond the defendant's control.

## **Part 9            Investigations**

### **Division 1        Preliminary matters**

#### **87            Definitions**

In this Part:

***authorised investigation*** means an investigation under section 88 or 89.

***corresponding authority*** means the authority responsible for the administration of a corresponding law.

***corresponding law*** means a law of the Commonwealth, of a State or another Territory:

- (a) corresponding to a taxation law; or
- (b) dealing with taxation; or
- (c) declared by regulation to be a corresponding law for the purposes of this Part.

***powers of entry and search*** means the powers of an authorised officer under sections 93, 94 and 95(1)(a) to (e).

***relevant material*** means an instrument, document, record or other thing relevant to an authorised investigation.

***residential premises*** – if premises are used partly for residential and partly for non-residential purposes, a reference to residential premises refers only to the part of the premises used for residential purposes.

***search warrant*** means a warrant under section 94.

***taxation law*** includes the *First Home Owner Grant Act*.

#### **88            Authorised investigations**

An authorised investigation is an investigation undertaken by an authorised officer for one or more of the following purposes:

- (a) to ascertain whether a tax liability exists;

- (b) to assess the amount of a tax liability;
- (c) to decide an application under a taxation law;

*Example for paragraph (c)*

*An application for a first home owner grant, an exemption from tax, or a rebate or refund of tax.*

- (d) to audit records required to be kept under a taxation law;
- (e) to gather information relevant to an objection or appeal under a taxation law;
- (f) to ascertain whether a person is entitled to a grant, concession, rebate or exemption under a taxation law;
- (g) to ascertain whether a condition on which a grant, concession, rebate or exemption has been paid or granted under a taxation law has been complied with;
- (h) to ascertain whether a contravention of a taxation law has occurred or to gather evidence of a suspected contravention of a taxation law;
- (i) to gather information or evidence that is relevant in some other way to the administration or enforcement of a taxation law.

**89            Investigations for purposes of corresponding laws**

- (1) The Commissioner may, by agreement with a corresponding authority:
  - (a) authorise an investigation under this Part, on behalf of the corresponding authority, for the purposes of a corresponding law; or
  - (b) authorise the corresponding authority to carry out an investigation under this Part for the purposes of a corresponding law.
- (2) For the purposes of such an investigation:
  - (a) a reference in this Part to tax is to be read as a reference to tax payable under the corresponding law; and
  - (b) a reference in this Part to a tax liability is to be read as a reference to a tax liability under the corresponding law; and

- (c) a reference in this Part to records required to be kept under a taxation law is to be read as a reference to records required to be kept under, or for the purposes of, the corresponding law; and
  - (d) a reference in this Part to a taxation law is to be read as a reference to the corresponding law.
- (3) If the Commissioner authorises a corresponding authority to carry out an investigation under this Part:
- (a) a reference in this Part to the Commissioner is to be read as a reference to the corresponding authority; and
  - (b) a reference in this Part to an authorised officer is to be read as a person authorised under the corresponding law to carry out an investigation in the jurisdiction of the corresponding law or to exercise under a corresponding law functions corresponding to those of an authorised officer under this Act; and
  - (c) a reference in this Part to an identity card is a reference to a card, certificate or other document issued under a corresponding law identifying the holder as a person entitled to exercise investigative powers under a corresponding law.

## **Division 2            Powers of investigation**

### **90            Access to public records without fee**

An authorised officer may, for the purposes of an authorised investigation, inspect and take copies of any public record without payment of any fee.

### **91            Power to request information and production of records**

- (1) An authorised officer may, for the purposes of an authorised investigation, ask a person:
- (a) to answer specified questions or provide specified information; or
  - (b) to produce specified relevant material or relevant material of a specified kind, in the person's possession or control.
- (2) The request may be made:
- (a) if an oral response is required – orally; or

- (b) in any other case by notice given to the person to whom the request is addressed.
- (3) The authorised officer must disclose to the person to whom the request is addressed:
- (a) that the request is made for the purposes of an authorised investigation; and
  - (b) if the person to whom the request is addressed is under investigation – that fact;
- (but the authorised officer is not required to make any further disclosure about the nature or purpose of the investigation).
- (4) A person requested, by notice under this section, to provide written information must, if the notice requires, verify the information by statutory declaration.
- (5) A request made by one authorised officer may be complied with by providing the information or relevant material to another authorised officer (whether or not both are present at the same time).
- (6) The person to whom a request is made must comply with it to the extent the person is able to do so and, if asked to answer a question, must do so to the best of the person's knowledge, information and belief.

Maximum penalty:        100 penalty units.

**92            Power to require person to attend for examination**

- (1) An authorised officer may, for the purposes of an authorised investigation, require a person to attend for examination before an authorised officer.
- (2) The person must be given a notice:
- (a) requiring the person to attend for examination at a specified time and place; and
  - (b) specifying the subject of the examination.
- (3) The notice may require the person to bring and produce to the authorised officer any relevant material in the person's possession or control relating to the subject of the examination.



- (4) An authorised officer may require a person attending for examination to do any one or more of the following:
  - (a) to take an oath to answer all questions truthfully;
  - (b) to answer a question relevant to the examination asked by the officer or by another person present at the examination;
  - (c) to produce at the examination any relevant material in the person's possession or control.
- (6) The Commissioner may reimburse reasonable travelling expenses actually incurred by a person who attends for examination before an authorised officer.
- (7) An authorised officer may have a written transcript or audio recording (or both) made of oral evidence.
- (8) A person must comply with a requirement under this section to the extent the person is able to do so and, if required to answer a question, must do so to the best of the person's knowledge, information and belief.

Maximum penalty:        100 penalty units.

### **93            Power to enter premises**

- (1) An authorised officer may, for the purposes of an authorised investigation, enter and remain on premises if the officer has reason to suspect there is relevant material on the premises.
- (2) The power may be exercised:
  - (a) with the consent of the occupier; or
  - (b) with the authority of a search warrant.
- (3) The power may also be exercised without the consent of the occupier and without a search warrant if:
  - (a) the premises are non-residential premises; or
  - (b) the premises are residential premises and the Commissioner gives an authorisation under subsection (4).
- (4) If the Commissioner believes, on reasonable grounds, that it is urgently necessary for an authorised officer to enter residential premises in order to prevent destruction of, or interference with, relevant material, the Commissioner may authorise the officer, orally or in writing, to do so.

- (5) No authorisation is to be given by the Commissioner under subsection (4) if an application has, within the preceding 14 days, been made for a search warrant and the application has been refused.
- (6) The authorised officer must, at the reasonable request of a person apparently in charge of the premises or any other person on the premises, display the officer's identity card.

#### **94            Search warrants**

- (1) An authorised officer may apply to a justice of the peace for a search warrant if the officer has reason to suspect there is relevant material on the premises.
- (2) If the justice of the peace is satisfied by evidence on oath that there are reasonable grounds to suspect that there is relevant material on the premises to which the application relates, the justice of the peace may issue a search warrant.
- (3) A search warrant authorises an authorised officer to enter and remain on the premises specified in the warrant for the purpose of carrying out a search of the premises under this Part.
- (4) A search warrant may authorise the exercise of the powers conferred by the warrant:
  - (a) at any time; or
  - (b) subject to limitations as to hours of the day (or night) when the powers may be exercised or other limits as to the time when the powers may be exercised.
- (5) A search warrant may be executed by the authorised officer to whom it is issued or by any other authorised officer.
- (6) A search warrant remains in force for a period specified in the warrant.
- (7) An authorised officer executing a warrant must, at the reasonable request of a person apparently in charge of the premises or any other person on the premises, display the warrant.

**95            Powers of authorised officers while on premises**

- (1) An authorised officer who enters premises under this Part for the purposes of an authorised investigation may exercise one or more of the following powers:
- (a) search the premises and examine anything on the premises (opening it if necessary and, if specifically authorised to do so by the Commissioner, breaking it open);
  - (b) photograph or film anything on the premises;
  - (c) operate equipment or facilities on the premises;
  - (d) take possession of relevant material found on the premises and retain it for as long as may be necessary for one or more of the following purposes:
    - (i) to examine it to determine its evidentiary value;
    - (ii) to copy it;
    - (iii) if it is relevant to possible legal proceedings – for the purposes of the proceedings;
  - (e) if relevant material found on the premises cannot be conveniently removed – secure it against interference;
  - (f) ask any person on the premises to do any of the following:
    - (i) to state the person's full name, date of birth and address;
    - (ii) to answer (orally or in writing) questions asked by the officer;
    - (iii) to produce relevant material;
    - (iv) to operate equipment or facilities on the premises;
    - (v) to give the officer any translation, code, password or other information necessary to gain access to or to interpret and understand any relevant material located or obtained by the officer in the course of exercising the officer's functions under this Part;
    - (vi) to give other assistance the officer reasonably requires.

- (2) A person to whom a request is addressed under subsection (1)(f) must comply with the request to the extent the person is able to do so and, if asked to answer a question, must do so to the best of the person's knowledge, information and belief.

Maximum penalty:        100 penalty units.

- (3) If an authorised officer takes anything from the premises, the officer must issue a receipt in the approved form and:
- (a) if the occupier or a person apparently responsible to the occupier is present, give it to him or her; or
  - (b) otherwise, leave it on the premises in an envelope addressed to the occupier.

### **Division 3            Ancillary provisions**

#### **96            Authorised officer may obtain assistance**

An authorised officer may make use of assistance from other persons in exercising functions under this Part.

*Examples*

- 1 *An authorised officer might take assistants to help overcome any physical barriers to the entry and search of premises.*
- 2 *An authorised officer might take a technical assistant to a place where tax records are kept on computer to help in gaining access to the computer files.*

#### **97            Obstructing etc. authorised officer**

- (1) A person must not obstruct or hinder:
- (a) an authorised officer who is exercising a function under this Part; or
  - (b) a person who is assisting an authorised officer in the exercise of such a function.

Maximum penalty:        100 penalty units or imprisonment for  
6 months.

- (2) A person must not, without reasonable excuse, refuse or fail to comply with a requirement of an authorised officer under this Part.

Maximum penalty:        100 penalty units or imprisonment for  
6 months.

**98            Use of force**

- (1) An authorised officer may use reasonable force to exercise any of the powers of entry and search.
- (2) However, if the use of reasonable force is likely to cause damage to property, the officer is not to use force unless the Commissioner has in the particular case authorised the officer, orally or in writing, to do so.

**99            General defence**

It is a defence to a charge of an offence against this Part involving a failure to comply with a requirement or request made by an authorised officer (including a requirement or request to answer a question or provide information) for the defendant to prove:

- (a) that the officer did not, before making the requirement or request, identify himself or herself to the defendant as an authorised officer by producing the officer's identity card or in some other way; or
- (b) that the officer did not warn the defendant that failure to comply with the requirement or request would constitute an offence.

**100          Self-incrimination**

- (1) A person is not excused from answering a question, providing information or producing relevant material, when required to do so under this Part, on the ground that to do so might tend to incriminate the person or make the person liable to a penalty.
- (2) However, the answer, information or material is not admissible against the person in criminal proceedings other than:
  - (a) proceedings for an offence under a taxation law; or
  - (b) proceedings for an offence in the nature of perjury.

## Part 10 Disclosure of information

### 101 Definitions

In this Part:

**confidential information** means information obtained under, or in the course of the administration of, a taxation law about the identity, or the personal or financial affairs, of a person but does not include information in the public domain.

**corresponding authority** means an authority or person responsible for the administration or enforcement of a corresponding law.

**corresponding law** means a law of the Commonwealth, a State or another Territory corresponding to a taxation law or dealing with taxation.

**law enforcement agency** means any of the following:

- (a) a member of the police force of the Territory;
- (b) the Director of Public Prosecutions;
- (c) any other authority or person responsible for the enforcement of laws of the Territory;
- (d) the Australian Crime Commission;
- (e) ASIC;
- (f) the Australian Federal Police;
- (g) Centrelink;
- (h) the Commonwealth department or agency primarily responsible for regulating immigration;
- (i) a member of the police force of a State or another Territory;
- (j) any other authority or person responsible for enforcement of the laws of the Commonwealth, a State or another Territory.

**taxation law** includes:

- (a) the *First Home Owner Grant Act*, and
- (b) any other law administered by the Commissioner or under which the Commissioner exercises statutory functions.

**102 Prohibition on certain disclosures of information by tax officers**

- (1) A person who is or was a tax officer must not disclose confidential information, except as permitted under this Part.

Maximum penalty: 400 penalty units or imprisonment for 2 years.

- (2) The following disclosures are permitted:
- (a) a disclosure made in the course of official functions for purposes related to the administration or enforcement of a taxation law;
  - (b) a disclosure to a corresponding authority, or a person authorised by the corresponding authority to receive the disclosure, of information relevant to the administration or enforcement of a corresponding law;
  - (c) a disclosure to:
    - (i) the Auditor-General; or
    - (ii) the Ombudsman; or
    - (iii) an officer of the Agency; or
    - (iv) the Registrar of Motor Vehicles; or
    - (v) the Valuer-General;
  - (d) a disclosure to a law enforcement agency;
  - (e) a disclosure made to, or with the express or implied consent of, the person to whom the confidential information relates or a person who appears to be the agent of that person;
  - (f) a disclosure authorised under the regulations.

**103 Obligations of persons (other than tax officers) who gain access to confidential information**

- (1) A person (other than a tax officer) who gains access to confidential information as a result of its lawful disclosure under this Part must not disclose the information except:
- (a) as may be necessary for the purposes for which the disclosure was made; or

(b) as authorised by the Commissioner.

Maximum penalty: 400 penalty units or imprisonment for 2 years.

*Example for subsection (1)*

*An officer of another jurisdiction to whom information is disclosed for purposes related to the administration or enforcement of a corresponding law must not disclose the information except as may be necessary for those purposes (unless the Commissioner authorises disclosure for some other purpose).*

(2) A person who gains unauthorised access to confidential information must not disclose the information except as may be authorised by the Commissioner.

Maximum penalty: 400 penalty units or imprisonment for 2 years.

*Example for subsection (2)*

*A cleaner comes across a document containing confidential information in the course of cleaning a tax officer's office or a person other than the intended recipient receives a misdirected fax or email containing confidential information.*

#### **104 Compellability of disclosure before court**

A person who is or was a tax officer cannot be compelled to disclose (or to produce a document containing) confidential information to a court unless the disclosure is necessary for the administration or enforcement of a taxation law.

#### **105 Protection of tax informants**

(1) A person who is or was a tax officer cannot be compelled to disclose to a court or any other body or person:

(a) whether a tax informant provided the Commissioner with information leading to an investigation, prosecution or other proceeding; or

(b) the identity of a tax informant; or

(c) information provided by a tax informant.

(2) In this section:

**tax informant** means a person who gives information to the Commissioner about a contravention, or suspected contravention, of a taxation law by someone else.



## **106            Required disclosures of information**

- (1) An Agency must, at the request of the Commissioner, disclose to the Commissioner information held by the Agency relevant to the administration or enforcement of a taxation law.

*Example for subsection (1)*

*The Commissioner might require an Agency to provide its client database so that the Commissioner may use the information in data matching procedures for the purpose of detecting undisclosed tax liabilities.*

- (2) This section prevails over a law that is inconsistent with it.
- (3) Information must be provided to the Commissioner under this section free of charge.
- (4) In this section:

**Agency** includes a statutory corporation that is declared to be a Government owned corporation by the Act by which it is incorporated or continued in existence.

## **Part 11            Objections and appeals**

### **Division 1        Preliminary**

#### **107            Definitions**

In this Part:

**decision maker** means:

- (a) for a decision made under the MRA – the Secretary; or
- (b) for any other decision – the Commissioner.

**first home owner grant decision** means a decision made by the Commissioner under the *First Home Owner Grant Act*.

- (a) on an application for a first home owner grant; or
- (b) requiring the repayment of money paid by way of first home owner grant; or
- (c) relating to penalties or interest.

**MRA** means the *Mineral Royalty Act*.

**person affected** by a relevant decision means:

- (a) if the decision is a taxation decision – the taxpayer; or
- (b) if the decision is a first home owner grant decision – the applicant for the first home owner grant.

**Registrar** means a registrar of the Local Court.

**relevant decision** means a taxation decision or a first home owner grant decision.

**royalty**, see section 4 of the MRA.

**royalty assessment** means an assessment of liability to pay royalty under Part II of the MRA.

**royalty payer**, see the MRA.

**Secretary**, see the MRA.

**tax** includes royalty.

**taxation decision** means:

- (a) an assessment by the Commissioner under this Act; or
- (b) a decision affecting a taxpayer's liability to pay tax made by the Commissioner under a taxation law or the MRA; or
- (c) a royalty assessment;

but does not include:

- (d) a decision not to make a reassessment; or
- (e) a decision not to withdraw an assessment; or
- (f) a decision not to make a negotiated assessment; or
- (g) a negotiated assessment; or
- (h) a reassessment made with the taxpayer's agreement of a tax liability determined by negotiated assessment.

**tax liability** includes a liability to pay royalty.

**taxpayer** includes a royalty payer.

**Tribunal** means the Taxation and Royalty Appeals Tribunal continued by section 130.

**108      Certain decisions not subject to challenge except in proceedings by way of objection or appeal**

The validity or correctness of a relevant decision (or of a procedural decision leading to the making of a relevant decision) cannot be challenged except in proceedings by way of objection or appeal under this Act.

**Division 2      Objections**

**109      Right to object**

- (1) A person affected by a relevant decision may object to the decision.
- (2) However, if the relevant decision is the reassessment of a tax liability, the decision is only liable to objection to the extent that it increases the assessed amount of the tax liability.

**110      How to object**

- (1) The objection must be in writing and must be lodged with the decision maker within 60 days after notice of the relevant decision is issued by the decision maker.
- (2) The objection must state fully and in detail the grounds of objection.

**111      Objections lodged out of time**

- (1) If the decision maker is satisfied an objector has a reasonable excuse for not lodging the objection within the 60-day period, the decision maker may extend the time for lodgement.
- (2) An extension of time may only be granted under this section on written application for the extension setting out fully and in detail the reasons for the failure to lodge the objection within the 60-day period.

**112      Onus on the objector**

The objector bears the burden of establishing that the decision subject to the objection was wrong.

**113      Decision on objection**

- (1) If an objection is properly made within the time allowed by or under this Act, the decision maker must consider the objection and may:
  - (a) allow it in whole or in part; or
  - (b) disallow it.

- (2) If an objection to a royalty assessment alleges the incorrect exercise of a discretion by the Minister under the MRA, the Secretary must refer the objection to the Minister as soon as practicable.
- (3) Within 60 days after the referral, the Minister:
  - (a) must consider the allegation; and
  - (b) may confirm or vary the exercise of the discretion; and
  - (c) must inform the Secretary accordingly.
- (4) In making a decision on the objection under subsection (1), the Secretary must give effect to the Minister's confirmation or variation.

#### **114      Notice of decision**

- (1) The decision maker must give written notice of the decision to the objector.
- (2) If the objection is disallowed or allowed in part only, the notice must:
  - (a) state the reasons for the decision; and
  - (b) set out the objector's rights of appeal and the procedures for commencing an appeal.

### **Division 3      Right of appeal**

#### **115      Appeal to Tribunal or Supreme Court**

- (1) The objector may appeal against the decision on the objection to:
  - (a) the Tribunal; or
  - (b) the Supreme Court.
- (2) However:
  - (a) if the decision subject to the objection is a first home owner grant decision, the objector may only appeal to the Tribunal against the decision on the objection; and
  - (b) if an appeal against a decision has been commenced before the Tribunal, the objector cannot appeal against the same decision to the Supreme Court and if an appeal against a decision has been commenced before the Supreme Court, the objector cannot appeal against the same decision to the

Tribunal.

**116      Onus on the appellant**

On the appeal, the appellant bears the burden of establishing that the decision maker's decision on the objection was wrong.

**117      Time for commencing appeal**

- (1) An appeal must be commenced within 60 days after the date of notice of the decision subject to the appeal.
- (2) The appellate authority, if satisfied that the appellant has a reasonable excuse for not commencing the appeal within the 60-day period, may extend the time for its commencement.
- (3) An extension of time may only be granted under this section on written application for the extension:
  - (a) made in accordance with the rules of the appellate authority; and
  - (b) setting out fully and in detail the reasons for the failure to commence the appeal within the 60-day period.

- (4) In this section:

***appellate authority*** means:

- (a) if the appeal is to the Tribunal – the Tribunal; or
- (b) if the appeal is to the Supreme Court – the Supreme Court.

**Division 4      Appeals to Tribunal**

**118      How to commence an appeal to Tribunal**

- (1) An appeal to the Tribunal is commenced by lodging a notice of appeal with a registrar.
- (2) The notice of appeal must:
  - (a) be in the form prescribed by the Rules of the Tribunal; and
  - (b) state the name of the appellant; and
  - (c) identify the decision subject to the appeal; and
  - (d) state fully and in detail the grounds of appeal.

- (3) The notice of appeal must be accompanied by:
  - (a) any material relevant to the appeal that was not before the decision maker when making the decision on the objection; and
  - (b) the prescribed fee.
- (4) The grounds of appeal are not limited to the grounds on which the objection was made.

**119      Service of notice on the decision maker**

The appellant must, within 7 days after lodgement of the notice of appeal, serve the decision maker whose decision is under appeal with a copy of:

- (a) the notice of appeal; and
- (b) any other relevant material lodged with the notice.

**120      Response of decision maker to notice of appeal**

- (1) As soon as practicable after receiving the notice of the appeal, the decision maker must lodge with a registrar and serve on the appellant a copy of:
  - (a) the records of the decision maker relevant to the appeal, including a copy of the decision subject to the appeal; and
  - (b) any submissions on the questions raised by the appeal the decision maker wishes to make to the Tribunal.
- (2) The decision maker's response is not limited to the reasons for disallowing the objection or allowing it in part only.

**121      Reference of appeal to Supreme Court**

- (1) If the Tribunal considers that an appeal should be referred to the Supreme Court because of the complexity of the questions of fact or law (or both) involved, or for any other reason, the Tribunal may refer the appeal to the Supreme Court for hearing and determination.
- (2) If an appeal is referred to the Supreme Court it proceeds in that Court as if originally commenced in that Court.

## **122 Determining appeal**

In determining the appeal, the Tribunal may:

- (a) confirm the decision subject to the appeal; or
- (b) vary the decision subject to the appeal; or
- (c) substitute another decision that would have been available to the decision maker.

## **123 Appeal to Supreme Court on question of law**

- (1) The appellant or the decision maker may appeal against the Tribunal's decision to the Supreme Court.
- (2) However, an appeal to the Supreme Court under this section is limited to a question of law.
- (3) In determining the appeal, the Court may:
  - (a) confirm the Tribunal's decision; or
  - (b) vary the Tribunal's decision; or
  - (c) substitute its own decision for the Tribunal's decision; or
  - (d) remit the matter to the Tribunal for reconsideration.
- (4) If the Court remits the matter to the Tribunal for reconsideration:
  - (a) the Court must advise the Tribunal of its reasons for doing so and give the Tribunal appropriate directions about the matters to be reconsidered; and
  - (b) the Tribunal must proceed with the reconsideration in accordance with the Court's directions and vary its earlier decision, or substitute a new decision, as may be appropriate in view of its reconsideration and the directions of the Court.

## **Division 5 Appeals to Supreme Court against decision on an objection**

### **124 How to commence appeal**

An appeal to the Supreme Court is commenced in accordance with the *Supreme Court Rules*.

## **125 Grounds of appeal and response**

- (1) The appellant's grounds of appeal are not limited to the grounds on which the objection was made.
- (2) The decision maker's response to the grounds of appeal is not limited to the reasons for disallowing the objection or allowing it in part only.

## **126 Admissibility of new evidence**

- (1) In hearing the appeal, the Supreme Court may admit any evidence that was not before the decision maker when making the decision subject to appeal (***new evidence***) if satisfied the new evidence is material to the decision.
- (2) However, if the Court admits new evidence:
  - (a) the Court must, unless the decision maker asks the Court to proceed with the appeal, adjourn the proceedings to allow the decision maker to reconsider the decision subject to the appeal; and
  - (b) if the decision maker's decision on the reconsideration (the ***new decision***) is acceptable to the appellant, the Court will resolve the appeal in accordance with the new decision; but
  - (c) if the new decision is not acceptable to the appellant:
    - (i) the Court will continue with the hearing of the appeal; and
    - (ii) the appeal will become, from that point, an appeal against the new decision.
- (3) If, on reconsideration, the decision maker amends or varies the decision in the appellant's favour, the Court may order the appellant to pay all or a specified part of the respondent's costs in the appeal if satisfied that it is fair to do so having regard to the nature of the amendment or variation.

## **127 Determining appeal**

In determining the appeal, the Supreme Court may:

- (a) confirm the decision appealed against; or
- (b) vary the decision appealed against; or



- (c) substitute another decision that would have been available to the decision maker.

## **Division 6      Other matters**

### **128      Objection or appeal not to suspend recovery of tax etc.**

An objection or appeal does not suspend:

- (a) the operation of a decision to which the objection or appeal relates; or
- (b) the recovery of any tax or other amount that is, assuming the validity and correctness of that decision, recoverable.

### **129      Giving effect to decision on objection or appeal**

- (1) Effect is to be given to a decision on objection or appeal as follows:
  - (a) if the decision affects an assessment of a tax liability – the Commissioner must make a reassessment to accord with the decision on the objection or appeal;
  - (b) the Commissioner must make any payment required to give effect to the decision;
  - (c) the Commissioner may recover any amount found to be payable to the Commissioner or the Territory as a debt due to the Territory.
- (2) However, if a decision on objection or appeal is subject to appeal or further appeal, the Commissioner is not required to act under subsection (1):
  - (a) until the time for commencing appellate proceedings has passed; or
  - (b) if appellate proceedings are commenced – until all appeals have been finally resolved.
- (3) If an amount is required to be refunded as a result of an objection or appeal, the objector or appellant is entitled to the amount with interest.
- (4) The interest is payable at the market interest rate for the period from the date of the appellant's payment to the date of the refund.

## **Part 12 Taxation and Royalty Appeals Tribunal**

### **130 Tribunal and its jurisdiction**

- (1) The Taxation and Royalty Appeals Tribunal continues in existence.
- (2) The Tribunal has the jurisdiction conferred on it by this Act.
- (3) The Tribunal is constituted for an appeal of:
  - (a) the Chief Judge; or
  - (b) another Local Court Judge chosen by the Chief Judge.

### **131 Conduct of appeals generally**

- (1) The Tribunal is not bound by the rules of evidence but is bound by the rules of natural justice.
- (2) The Tribunal must determine an appeal on the basis of the written material submitted by the parties unless satisfied that it is necessary to conduct a hearing in view of the nature and circumstances of the appeal.
- (3) The practice and procedure of the Tribunal is:
  - (a) as prescribed by the rules and practice directions of the Tribunal; and
  - (b) subject to the rules and practice directions – as determined by the Tribunal.
- (4) The Tribunal must keep a record of its proceedings.
- (5) The Tribunal must publish written reasons for its decisions.

### **132 Costs**

- (1) Subject to this section, each party to an appeal to the Tribunal must bear the party's own costs.
- (2) The Tribunal may order a party to pay all or a specified part of the costs of another party if satisfied it is fair to do so, having regard to the following:
  - (a) the conduct of each party and, in particular:
    - (i) any failure by a party to comply with an order or direction of the Tribunal; or

- (ii) any attempt by a party to deceive another party or the Tribunal; or
  - (iii) conduct that unreasonably complicates or prolongs the proceedings; or
  - (iv) any other form of conduct that is vexatious or unfairly disadvantages another party to the appeal;
- (b) the strength (or weakness) of the case for each party;
  - (c) the nature and complexity of the appeal;
  - (d) any other matter the Tribunal considers relevant.
- (3) If the Tribunal considers the representative of a party (rather than the party) responsible for conduct that justifies an award of costs against the party, the Tribunal may order the representative to pay the costs personally.

### **133 Rules and practice directions**

- (1) The Chief Judge may make rules, not inconsistent with this Act:
- (a) relating to the practice and procedure of the Tribunal; or
  - (b) prescribing fees for appeals to the Tribunal.
- (2) The Chief Judge may issue practice directions, not inconsistent with this Act or any rules made under subsection (1), relating to the practice and procedure of the Tribunal.

### **134 Contempt**

A person must not:

- (a) insult the Tribunal or Local Court Judge in the Judge's capacity as presiding officer of the Tribunal; or
- (b) interrupt or obstruct a hearing of the Tribunal; or
- (c) do anything else that would, if the Tribunal were a court of record, amount to a contempt of court.

Maximum penalty: 100 penalty units or imprisonment for 6 months.

## **Part 13 Prosecutions and offence provisions**

### **Division 1 Prosecutions**

#### **135 Time for commencing prosecutions**

- (1) A tax prosecution must be commenced within 5 years after the day on which the offence is alleged to have been committed.
- (2) However, if the alleged offence involves tax evasion, a prosecution may be commenced at any time.

#### **136 Evidentiary matters**

- (1) In a tax prosecution, an allegation of fact by the prosecutor in the information or complaint is evidence of the fact alleged.
- (2) However, this section does not operate to the exclusion of other evidence and all relevant evidence (whether it tends to support or rebut the allegation) must be considered on its merits.
- (3) This section does not apply to:
  - (a) an allegation as to a mental element of an offence; or
  - (b) proceedings for an indictable offence or an offence punishable by imprisonment.

### **Division 2 Offence provisions**

#### **137 Criminal liability of executive officer of body corporate**

- (1) An executive officer of a body corporate commits an offence if:
  - (a) the body corporate commits an offence by contravening a declared provision (a **relevant offence**) and the officer knew, or could reasonably have been expected to have known, that the contravention would happen; and
  - (b) the officer was in a position to influence the conduct of the body corporate in relation to the contravention; and
  - (c) the officer failed to take reasonable steps to prevent the contravention.

Maximum penalty: The maximum penalty that may be imposed on an individual for the relevant offence.

- (2) In deciding whether the executive officer took (or failed to take) reasonable steps to prevent the contravention, a court must consider the following:
- (a) any action the officer took directed towards ensuring the following (to the extent the action is relevant to the contravention):
- (i) the body corporate arranged regular professional assessments of the body corporate's compliance with the declared provision;
  - (ii) the body corporate implemented any appropriate recommendation arising from an assessment under subparagraph (i);
  - (iii) the body corporate's employees, agents and contractors had a reasonable knowledge and understanding of the requirement to comply with the declared provision;
- (b) any action the officer took when the officer became aware that the contravention was, or could be, about to happen.
- (3) Subsection (2) does not limit the matters the court may consider.
- (4) This section does not affect the liability of the body corporate.
- (5) This section applies whether or not the body corporate is prosecuted for, or found guilty of, the relevant offence.
- (6) This section does not apply if the body corporate would have a defence to a prosecution for the relevant offence.
- (7) In this section:

**declared provision** means:

- (a) section 24(1) or (3), 33(6), 52(1) or (2), 60(6), 74(1), 75(2), 76, 77(1), 78(1), 79(1), 80(1), 81(1), 82(1) or (2), 83, 84, 85, 91(6) or 97(1) or (2); or
- (b) section 24(2), 39(1), 56K(9), 56W(3), 57(1), 59(5) or 83B(5) of the *Stamp Duty Act*, or
- (c) a provision of regulations made under this Act or the *Stamp Duty Act* prescribed by regulation.

**executive officer**, of a body corporate, means a director or other person who is concerned with, or takes part in, the management of the body corporate.

### **138        Further offences**

- (1) If a contravention of a provision of a taxation law amounts to an offence, and the contravention continues after the offender is convicted, the offender is liable to be charged with, and convicted of, a further offence against the same provision.
- (2) If a person is convicted of an offence against a provision of a taxation law, and is convicted of a further offence against the same provision within 5 years, the maximum penalty for the further offence is double the maximum prescribed by the taxation law for the offence.

### **Division 3        Effect of criminal penalty**

#### **139        Effect of criminal penalty**

A criminal penalty imposed on a taxpayer for contravention of a taxation law does not affect the taxpayer's tax liability.

## **Part 14        Miscellaneous**

### **Division 1        Appropriation**

#### **140        Appropriation of Central Holding Authority**

If the Commissioner is authorised or required to pay an amount under a taxation law, the amount must be paid from the Central Holding Authority which is appropriated by this section to the necessary extent.

### **Division 2        Notice of certain appointments to be given**

#### **141        Notice of appointment of administrator or liquidator**

- (1) If a person is appointed to be the administrator or liquidator of a corporate taxpayer, the person must notify the Commissioner of the appointment within 30 days of the appointment.

Maximum penalty:        100 penalty units.

- (2) If:
  - (a) a taxpayer is absent from the Territory; and
  - (b) a person (the **agent**) is appointed to wind up the business of the taxpayer in the Territory;

the agent must notify the Commissioner of the appointment within 30 days of the appointment and must reserve out of the assets of the business sufficient to satisfy the tax liabilities of the taxpayer.

Maximum penalty:        100 penalty units.

- (3) If the agent contravenes subsection (2), the Commissioner may recover the unpaid tax from the agent personally.

### **Division 3            Service of documents**

#### **142            Service of documents on Commissioner**

- (1) A document authorised or required to be served on the Commissioner under a taxation law may be served:
- (a) by delivering it to an office of the Commissioner; or
  - (b) by leaving it with a person who has authority to accept documents on the Commissioner's behalf; or
  - (c) by post addressed to the Commissioner to the Commissioner's postal address (which must be the number of a box or locked bag at a post office); or
  - (d) by faxing the document to a fax number nominated by the Commissioner; or
  - (e) by a means of service approved by the Commissioner.
- (2) The Commissioner may, under subsection (1)(e), approve a means of service for documents generally or a particular class of documents.

*Example*

*The Commissioner might approve service by document exchange or by email to a nominated email address.*

#### **143            Time of service**

- (1) If a document is received by the Commissioner after normal business hours, the document is taken to have been served on the Commissioner on the following business day.
- (2) If a payment of money is received by the Commissioner after normal business hours, the payment is taken to have been made on the following business day.

(3) In this section:

***normal business hours*** means the hours when the Commissioner's offices are normally open to the public for business.

#### **144        Service of documents by Commissioner**

A document authorised or required to be served on or given to a person by the Commissioner for a taxation 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; or
- (c) if there is a postal service to the last address of the person known to the Commissioner – by post addressed to the person at that address; or
- (d) if the person has notified the Commissioner of a fax, email or DX address – by sending or transmitting the document to the person at that address; or
- (e) by any means provided for the service of the document by another Act or law.

#### **145        Service on an agent and other forms of subrogated service**

- (1) If the Commissioner effects service of a document on an agent who has actual or apparent authority to accept service of the document on behalf of the agent's principal, the principal is taken, for the purposes of a taxation law, to have been duly served.
- (2) If the Commissioner effects service of a document relating to a partnership on a member of a partnership, each member of the partnership is taken, for the purposes of a taxation law, to have been served.
- (3) If the Commissioner effects service of a document relating to an unincorporated association on a member of the committee or management of the association, each member of the association is taken, for the purposes of a taxation law, to have been served.
- (4) Subject to the regulations, if 2 or more taxpayers are jointly liable for tax, service on any one of them is taken, for the purposes of a taxation law, to be service on each one of them.



## **Division 4      Evidence**

### **146      Judicial notice of Commissioner's name and signature**

Judicial notice must be taken of the Commissioner's name and signature.

### **147      Presumption of regularity as to issue of documents**

A document apparently signed or issued by, or under the authority of, the Commissioner or the Commissioner's delegate is, in the absence of evidence to the contrary, taken to have been lawfully signed or issued by, or under the authority of, the Commissioner on the date appearing on the document.

### **148      Evidentiary value of notice or certificate**

- (1) A decision, determination or assessment made by the Commissioner under a taxation law must be accepted in any legal proceedings (other than proceedings by way of objection or appeal under this Act) as valid and correct.
- (2) A certificate or notice, signed by the Commissioner, of a decision, determination or assessment must be accepted, in any legal proceedings, as proof of the making of a decision, determination or assessment on the terms stated in the certificate or notice.

### **149      Certificate evidence**

- (1) A certificate signed by the Commissioner that states any of the following matters is admissible in proceedings under a taxation law:
  - (a) the person named in the certificate:
    - (i) is liable to pay tax; or
    - (ii) was liable to pay tax on a day specified in the certificate; or
    - (iii) paid tax on a day specified in the certificate;
  - (b) notice of a decision, determination or assessment was issued to a person named in the certificate, or the person's agent, on the day specified in the certificate;
  - (c) the amount of tax, interest or penalty tax 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;

- (d) a document specified in the certificate was served on a person named in the certificate on a day specified in the certificate;
  - (e) a person named in the certificate was, or was not, on a date specified in the certificate, registered or licensed as required by a specified taxation law;
  - (f) a person named in the certificate had, or had not, complied with a specified requirement under a taxation law;
  - (g) a return required by a taxation 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 document specified in the certificate:
    - (i) was not received by the Commissioner on a day specified in the certificate; or
    - (ii) was not received by the Commissioner at all;
  - (i) a person named in the certificate is, or was, an authorised officer on the date specified in the certificate.
- (2) In the absence of evidence to the contrary, a certificate is proof of the matters stated in the certificate.

## **Division 5      Regulations**

### **150      Regulations**

- (1) The Administrator may make regulations under this Act.
- (2) The regulations may prescribe fees to be paid on an application, request, objection or appeal under this Act or for any service provided under this Act.

## **Part 15              Transitional provisions for Taxation Administration Act 2007**

### **151      Definitions**

In this Part:

***date of transition*** means 1 January 2008.

**old law** means relevant provisions of the following Acts (and regulations under the following Acts) as in force before the date of transition:

- (a) the *Taxation (Administration) Act*,
- (b) the *Stamp Duty Act*,
- (c) the *Pay-roll Tax Act*,
- (d) the *First Home Owner Grant Act*.

## **152 Administration**

- (1) A person holding office under the old law as Commissioner of Taxes immediately before the date of transition continues in office after the date of transition as Commissioner of Territory Revenue.
- (2) A person holding office under the old law as Deputy Commissioner of Taxes immediately before the date of transition continues in office after the date of transition as a Deputy Commissioner of Territory Revenue.
- (3) A person holding office under the old law as an Assistant Commissioner of Taxes immediately before the date of transition continues in office after the date of transition as a Deputy Commissioner of Territory Revenue.
- (4) The terms and conditions on which a person holds office are unaffected by this section.
- (5) Any legal proceedings that were commenced before the date of transition by or against the Commissioner of Taxes and had not been completed by the date of transition may be continued and completed by or against the Commissioner of Territory Revenue.
- (6) A reference in any statutory or other instrument to the Commissioner of Taxes is (where the context admits) to be read as a reference to the Commissioner of Territory Revenue.

## **153 Investigators**

- (1) A person who was, immediately before the date of transition vested with powers of investigation or inquiry under the old law because of an appointment, authorisation or delegation made by the Commissioner of Taxes is, on the date of transition, taken to have been appointed by the Commissioner as an authorised officer.

- (2) A presumptive appointment under subsection (1) terminates, or may be terminated, in the same way as an actual appointment made under this Act.

#### **154 Assessments**

- (1) The provisions of this Act relevant to the assessment of a tax liability apply whether the liability was incurred before, on or after the date of transition.
- (2) A tax liability assessed under the old law is subject to reassessment under this Act as if this Act had been in force when the assessment had been made and it had then been made under this Act.
- (3) However, a liability to stamp duty assessed under the old law before 1 January 2005 cannot be reassessed.

#### **155 Refunds of tax**

The provisions of this Act governing the refund of tax apply whether the tax was paid before, on or after the date of transition.

#### **156 Interest and penalty tax**

- (1) Interest accrues on a tax default that occurs before, but continues after, the date of transition as if this Act had been in force when the relevant tax liability was incurred.
- (2) Penalty tax may be imposed under this Act for a tax default occurring before the date of transition.
- (3) The powers conferred by this Act to remit interest or penalty tax extend to interest that accrued before the date of transition and to any penalty or additional tax payable under the old law.

#### **157 Special arrangement for filing returns or paying tax**

Any special arrangement for filing returns or paying tax in force under the old law immediately before the date of transition continues in force under this Act (subject to revocation by the Commissioner) as if it were an arrangement approved under Part 6.

#### **158 Collection and recovery of tax**

- (1) Part 7 applies to the collection and recovery of tax whether the relevant tax liability arose before, on or after the date of transition.

- (2) However, Part 7, Division 3 applies only in relation to:
- (a) a tax liability incurred under a provision of the *Stamp Duty Act*, Part 3, Division 8A; or
  - (b) a tax liability incurred before the date of transition, under a provision of an old law that corresponds to a provision mentioned in paragraph (a); or
  - (c) a tax liability incurred on or after the date of transition.

**159      Records**

Part 8 extends to tax liabilities, and records relevant to tax liabilities, incurred before the date of transition.

**160      Investigations**

Part 9 extends to the investigation of a tax liability incurred, an offence committed, or circumstances occurring before the date of transition.

**161      Disclosure of information**

Part 10 extends to confidential information obtained under the old law.

**162      Objections and appeals**

- (1) Part 11 extends to an objection or appeal against a decision made before the date of transition.
- (2) However, if at the date of transition proceedings by way of objection or appeal had been commenced under the old law, those proceedings are to be dealt with under the old law and, if those proceedings lead to an appeal or further appeal, that is also to be dealt with under the old law.

**163      Offences**

The provisions of this Act regarding the time for commencement of a tax prosecution apply whether the offence is alleged to have been committed before or after the date of transition.

**164 Evidence**

The provisions of this Act creating evidentiary presumptions or providing for evidence by certificate extend, subject to their terms, to proceedings related to civil or criminal causes of action arising before the date of transition or to tax liabilities arising before the date of transition.

**165 Substantive criminal law unaffected by this Part**

This Part does not affect the substantive law by reference to which criminal liability for an offence committed before the date of transition is determined.

**Part 16 Transitional matters for Revenue and Other Legislation Amendment Act 2010****166 Application**

- (1) The amendments relating to the definition **taxation law** in sections 3 and 3A made by the *Revenue and Other Legislation Amendment Act 2010* apply in relation to a tax liability mentioned in section 3A accrued at any time before, on or after the commencement of this section.
- (2) Subsection (1) has effect except as otherwise provided by Part 15.

**Part 17 Transitional matters for Statute Law Amendment (Directors' Liability) Act 2015****167 Offences – before and after commencement**

- (1) Section 137, as inserted by the *Statute Law Amendment (Directors' Liability) Act 2015*, (the **new section**) applies in relation to a relevant offence committed by a body corporate after the commencement of Part 2, Division 37 of that Act (the **commencement**) only if:
  - (a) all the conduct constituting the relevant offence occurred after the commencement; and
  - (b) all the conduct of the executive officer constituting the offence against the new section occurred after the commencement.
- (2) Section 137, as in force before the commencement:
  - (a) continues to apply in relation to offences committed by a company before the commencement; and

- (b) applies in relation to relevant offences committed by a body corporate after the commencement to which, as a result of subsection (1), the new section does not apply.

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**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*****Taxation Administration Act 2007 (Act No. 28, 2007)***

Assent date            29 October 2007  
 Commenced            1 January 2008 (s 2)

***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)

***Revenue Legislation Amendment Act 2009 (Act No. 17, 2009)***

Assent date            25 June 2009  
 Commenced            pt 1 and pt 3, divs 1 and 2: 1 October 2008;  
                                  pt 3, div 3: 6 May 2009; pt 2, divs 1 and 2, pt 3, div 4 and  
                                  pts 4 and 5: 25 June 2009; pt 3, div 5: 1 July 2009; pt 2, div 3  
                                  and pt 3, div 6: 1 January 2010 (s 2 and Gaz G49,  
                                  9 December 2009, p 3)

***Payroll Tax Act 2009 (Act No. 18, 2009)***

Assent date            25 June 2009  
 Commenced            1 July 2009 (s 2)

***Revenue and Other Legislation Amendment Act 2010 (Act No. 21, 2010)***

Assent date            30 June 2010  
 Commenced            pt 2 and pt 4, divs 1 and 2: 4 May 2010; rem: 1 July 2010 (s 2)

***Oaths, Affidavits and Declarations (Consequential Amendments) Act 2010 (Act No. 40, 2010)***

Assent date            18 November 2010  
 Commenced            1 March 2011 (s 2, s 2 *Oaths, Affidavits and Declarations*  
                                  *Act 2010* (Act No. 39, 2010) and Gaz G7, 16 February 2011,  
                                  p 4)



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**Revenue Legislation Amendment Act 2011 (Act No. 21, 2011)**

Assent date 24 June 2011  
 Commenced pt 2: 3 May 2011; rem: 1 July 2011 (s 2)

**Statute Law Revision Act 2014 (Act No. 38, 2014)**

Assent date 13 November 2014  
 Commenced 13 November 2014

**Revenue and Other Legislation Amendment Act 2015 (Act No. 18, 2015)**

Assent date 23 June 2015  
 Commenced pt 2 and pt 5, divs 1 to 4: 28 April 2015; pts 3 and 4, pt 5, divs 5 to 8 and pt 6: 1 July 2015; rem: 23 June 2015 (s 2)

**Statute Law Amendment (Directors' Liability) Act 2015 (Act No. 26, 2015)**

Assent date 18 September 2015  
 Commenced 14 October 2015 (*Gaz* G41, 14 October 2015, p 3)

**Local Court (Related Amendments) Act 2016 (Act No. 8, 2016)**

Assent date 6 April 2016  
 Commenced 1 May 2016 (s 2, s 2 *Local Court (Repeals and Related Amendments) Act 2016* (Act No. 9, 2016) and *Gaz* S34, 29 April 2016)

**3 LIST OF AMENDMENTS**

s 3	amd No. 18, 2009, s 114; No. 21, 2010, s 29
s 3A	ins No. 21, 2010, s 30
s 25	amd No. 18, 2015, s 45
s 41	amd No. 21, 2011, s 33
s 56	amd No. 21, 2011, s 34
s 56A	ins No. 21, 2010, s 31
s 59	amd No. 23, 2008, s 19
pt 9	
div 1 hdg	amd No. 21, 2011, s 35
s 87	amd No. 38, 2014, s 2
s 92	amd No. 40, 2010, s 118
s 94	amd No. 8, 2016, s 45
s 101	amd No. 23, 2008, s 20
s 102	amd No. 38, 2014, s 2
s 107	amd No. 8, 2016, s 45
s 118	amd No. 8, 2016, s 45
s 120	amd No. 8, 2016, s 45
s 130	amd No. 8, 2016, s 45
ss 133 – 134	amd No. 8, 2016, s 45
s 137	sub No. 26, 2015, s 115
pt 15 hdg	amd No. 21, 2010, s 32
s 158	amd No. 17, 2009, s 42
pt 16 hdg	ins No. 21, 2010, s 33
s 166	ins No. 21, 2010, s 33
pt 17 hdg	sub No. 26, 2015, s 116
s 167	sub No. 26, 2015, s 116