

NORTHERN TERRITORY OF AUSTRALIA

TAXATION ADMINISTRATION AMENDMENT ACT 2021

Act No. 13 of 2021

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NORTHERN TERRITORY OF AUSTRALIA

Act No. 13 of 2021

An Act to amend the *Taxation Administration Act 2007*

[Assented to 20 May 2021]
[Introduced 25 February 2021]

The Legislative Assembly of the Northern Territory enacts as follows:

1 Short title

This Act may be cited as the *Taxation Administration Amendment Act 2021*.

2 Commencement

This Act commences on the day after the day on which the Administrator's assent to this Act is declared.

3 Act amended

This Act amends the *Taxation Administration Act 2007*.

4 Section 3 amended (Interpretation)

(1) Section 3(1), definition **overpayment**

omit

(2) Section 3(1)

insert

agent determination means a determination made under section 52B(3) or a redetermination made under section 52C.

agent payment means an amount that an agent is required to pay to the Commissioner under:

- (a) an approval under Part 6, Division 2; or
- (b) an agent determination.

notice of liability means a notice of liability issued under section 52D.

overpayment means:

- (a) in relation to tax – 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; or
- (b) in relation to any other amount – a payment made to the Commissioner by a person in excess of the person's liability and includes a payment made in purported satisfaction of a liability that does not actually exist.

unremitted amount, see section 52B(1)(b).

- (3) Section 3(1), definition **tax**, paragraph (b)

omit

amount:

insert

amount, other than an agent payment, that is:

- (4) Section 3(1), at the end

insert

Note for subsection (1)

The Interpretation Act 1978 contains definitions and other provisions that may be relevant to this Act.

5 Section 32 amended (Entitlement to refund)

- (1) After section 32(1)

insert

- (1A) If it appears to the Commissioner that an agent, acting on behalf of a taxpayer in accordance with an approval under Part 6, Division 2, has made an overpayment of an amount required to be paid under

the approval, the Commissioner may refund to the agent or taxpayer the amount of the overpayment.

(1B) If it appears to the Commissioner that an agent has made an overpayment of an amount payable under an agent determination, the Commissioner may refund to the agent the amount of the overpayment.

(2) Section 32(2)(b)

omit

liability.

insert

liability or a redetermination under section 52C.

6 Part 6, Division 2 heading amended

Part 6, Division 2, heading

omit

tax return

7 Section 49 amended (Approval of special tax return arrangements)

(1) Section 49, heading

omit

tax return

(2) Section 49(1) and (2)

omit, insert

(1) Despite the provisions of another taxation law, the Commissioner may, by notice, approve a special arrangement for the lodging of returns and the payment of tax or other amounts under the taxation law in relation to:

(a) a specified taxpayer or specified class of taxpayers; or

(b) a specified agent, or specified class of agents, acting or proposing to act on behalf of a specified taxpayer or specified class of taxpayers.

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- (2) Without limiting subsection (1), the approval may do any of the following:
- (a) exempt the taxpayer or taxpayers from specified provisions of the taxation law to which it applies;
 - (b) authorise or require the lodging of returns and the payment of tax or other amounts by electronic means;
 - (c) provide that a tax liability is taken to be wholly or partly satisfied in specified circumstances.
- (3) Section 49(4)
omit, insert
- (4) The Commissioner may vary, suspend or cancel an approval at any time by notice to the affected taxpayer or agent.

8 Section 51 amended (Conditions of approval)

- (1) Section 51(2)(d) and (e), after "tax"
insert
or other amounts
- (2) Section 51(2)(g)
omit
records.
insert
records; and
- (3) After section 51(2)(g)
insert
- (h) conditions requiring the payment of interest in accordance with the approval on any amount that is not paid to the Commissioner when it is required under the approval to be paid; and
 - (i) conditions requiring the payment of a penalty imposed by the Commissioner on any amount that is not paid to the Commissioner when it is required under the approval to be paid; and

-
- (j) conditions about facilitating refunds under Part 4; and
 - (k) any other conditions the Commissioner considers appropriate.

9 Section 52 amended (Effect of approval)

- (1) Section 52(2)

omit

- (2) Section 52(3)

omit

or (2) by the taxpayer or an agent

insert

by the taxpayer

10 Sections 52A to 52F inserted

After section 52, in Part 6, Division 2

insert

52A Agent must remit amount collected

If, under a special arrangement approved under this Division, an agent is required to pay to the Commissioner an amount collected from a taxpayer for payment of tax, the agent must pay the amount to the Commissioner in accordance with the approval.

Maximum penalty: 200 penalty units.

52B Failure to remit amount collected

- (1) This section applies if:
- (a) a taxpayer pays an agent an amount for payment of a tax under a special arrangement approved under this Division; and
 - (b) the agent fails to pay the amount (the ***unremitted amount***) to the Commissioner in accordance with the approval.
- (2) The taxpayer is taken to have satisfied the taxpayer's tax liability to the extent that the unremitted amount would have reduced the tax liability had the unremitted amount been paid to the Commissioner.

-
- (3) The Commissioner may determine that the unremitted amount, together with the following amounts, are payable by the agent:
 - (a) interest on the unremitted amount in accordance with the approval, unless the amount of interest would be less than \$20;
 - (b) a penalty equal to 20% of the unremitted amount, unless the amount of the penalty would be less than \$20;
 - (c) interest on the amount of the penalty in accordance with the approval, unless the amount of interest would be less than \$20.
 - (4) The Commissioner may make a determination under subsection (3) on the basis of information the Commissioner has from any source.
 - (5) The Commissioner may, if satisfied it is appropriate to do so, remit, in whole or in part, any of the following:
 - (a) interest mentioned in subsection (3)(a) or (c);
 - (b) a penalty mentioned in subsection (3)(b).

52C Redetermination of amount payable

- (1) Subject to subsection (4), the Commissioner may redetermine the amount payable by an agent after making:
 - (a) a determination under section 52B(3); or
 - (b) a redetermination under this section.
- (2) A redetermination may be made:
 - (a) on the Commissioner's own initiative or on receipt of a written application made by the agent; and
 - (b) on the basis of information the Commissioner has from any source.
- (3) A redetermination may:
 - (a) confirm the earlier agent determination; or
 - (b) increase the amount of the earlier agent determination; or
 - (c) reduce the amount of the earlier agent determination (including reducing the amount of the earlier agent determination to nil); or

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- (d) alter the earlier agent determination in any other way.
- (4) The Commissioner cannot redetermine the amount payable by an agent more than 5 years after the date on which the initial determination in relation to the agent was made under section 52B(3) unless:
- (a) the redetermination is necessary to give effect to a decision on an objection to, or appeal against, the earlier agent determination; or
 - (b) the agent failed to make a full and true disclosure of all the facts and circumstances affecting the agent's liability and, as a result, the liability was determined or redetermined at a lower amount than it should have been; or
 - (c) the agent applied, in writing, for the redetermination within 5 years after the date of the initial determination.

52D Notice of liability

- (1) The Commissioner must issue a notice of liability if the Commissioner makes an agent determination.
- (2) A notice of liability must:
 - (a) specify the name of the agent to whom the agent determination relates; and
 - (b) set out the agent determination; and
 - (c) include the following details:
 - (i) the unremitted amount and the date it became payable;
 - (ii) the amount of any interest or penalty payable at the date of the notice.

52E Payment and recovery of amount payable

- (1) The amount an agent is required to pay under an agent determination is a debt payable to the Territory and recoverable by the Commissioner in a court of competent jurisdiction.
- (2) Subject to subsection (3), the amount must be paid within 14 days after the date of issue of the notice of liability that sets out the agent determination.

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- (3) Part 7, Divisions 1 and 2 apply to the payment and recovery of the amount as if:
 - (a) the agent named in the notice of liability were a taxpayer; and
 - (b) the amount were a tax, tax liability or amount assessed; and
 - (c) interest payable under the agent determination were interest payable under Part 5, Division 1; and
 - (d) any penalty payable under the agent determination were penalty tax payable under Part 5, Division 2; and
 - (e) the notice of liability were a notice of assessment.

52F Withdrawal of agent determination

- (1) The Commissioner may withdraw an agent determination at any time within 5 years after the date of the determination, whether or not the amount payable under it has been paid.
- (2) If the Commissioner withdraws an agent determination, the Commissioner must issue a notice withdrawing the notice of liability issued in relation to the agent determination.
- (3) If an agent determination is withdrawn, the following apply:
 - (a) any amount paid in satisfaction, or purported satisfaction, of the amount that was payable under it is to be refunded;
 - (b) if the agent to whom it relates has lodged an objection to, or appeal against it – interest is to be allowed on the amount of the refund on the same basis as would have applied if the agent determination had been set aside on the objection or appeal;
 - (c) a fresh determination of the liability to which the withdrawn agent determination related cannot be made more than 5 years after the date of the initial determination under section 52B(3) of the agent's liability.
- (4) However, if it later appears that the agent determination would not have been withdrawn if the agent to whom it related had made a full and true disclosure of all the facts and circumstances affecting the liability, subsection (3)(c) does not apply.

11 Section 61 amended (Recovery from directors)

Section 61(1)

omit

an assessment notice

insert

a notice of assessment

12 Section 107 amended (Definitions)

(1) Section 107, definition **relevant decision**

omit, insert

relevant decision means a taxation decision, first home owner grant decision or agent determination.

(2) Section 107, definition **person affected**, paragraph (b)

omit

grant.

insert

grant; or

(3) Section 107, definition **person affected**, after paragraph (b)

insert

(c) if the decision is an agent determination – the agent to whom the determination relates.

13 Section 109 amended (Right to object)

Section 109(2)

omit, insert

(2) However, if the relevant decision is the reassessment of a tax liability or a redetermination made under section 52C, the decision is only liable to objection to the extent that it increases the assessed amount of the tax liability or the amount payable by the agent.

14 Section 129 amended (Giving effect to decision on objection or appeal)

After section 129(1)(a)

insert

(ab) if the decision affects a determination made under section 52B(3) – the Commissioner must make a redetermination under section 52C to accord with the decision on the objection or appeal;

15 Section 139 amended (Effect of criminal penalty)

(1) Section 139

omit

taxpayer

insert

person

(2) Section 139

omit

taxpayer's tax liability.

insert

person's liability to pay tax, or any other amount, under a taxation law.

16 Repeal of Act

This Act is repealed on the day after it commences.