

Serial 263

Taxation (Administration) Amendment (Objections and Appeals) Bill 2004

Mr Stirling

**A BILL
for
AN ACT**

to amend the *Taxation (Administration) Act* and, as a consequence, to amend the
Mineral Royalty Act, Pay-roll Tax Act and Pay-roll Tax Regulations



NORTHERN TERRITORY OF AUSTRALIA
TAXATION (ADMINISTRATION) AMENDMENT (OBJECTIONS AND
APPEALS) ACT 2004

No. of 2004

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NORTHERN TERRITORY OF AUSTRALIA

No. of 2004

AN ACT

to amend the *Taxation (Administration) Act* and, as a consequence, to amend the *Mineral Royalty Act*, *Pay-roll Tax Act* and *Pay-roll Tax Regulations*

[Assented to 2004]
[Second reading 2004]

The Legislative Assembly of the Northern Territory enacts as follows:

PART 1 – PRELIMINARY

1. Short title

This Act may be cited as the *Taxation (Administration) Amendment (Objections and Appeals) Act 2004*.

2. Commencement

This Act comes into operation on the date fixed by the Administrator by notice in the *Gazette*.

PART 2 – AMENDMENT OF *TAXATION (ADMINISTRATION) ACT*

3. Principal Act amended

This Part amends the *Taxation (Administration) Act*.

4. Amendment of section 56F (Notice may be registered on title)

Section 56F(10) –

omit, substitute

(10) A person may appeal against a decision of the Commissioner under subsection (8) to the Taxation and Royalty Appeals Tribunal or the Supreme Court and Part V applies (with the necessary changes) as if the decision were a decision on an objection.

5. Repeal and substitution of Part V

Part V –

repeal, substitute

PART V – OBJECTIONS AND APPEALS

Division 1 – Preliminary

100. Definitions

In this Part –

"decision maker", for a taxation decision, means –

- (a) if the decision is made under this Act or the PTA – the Commissioner; or
- (b) if the decision is made under the MRA – the Secretary;

"MRA" means the *Mineral Royalty Act*;

"PTA" means the *Pay-roll Tax Act*;

"Registrar" means the Registrar of the Local Court;

"royalty payer" has the same meaning as in the MRA;

"Secretary" has the same meaning as in the MRA;

"tax" includes –

- (a) tax within the meaning of the PTA;
- (b) royalty within the meaning of the MRA;
- (c) additional and further tax; and
- (d) an amount of penalty payable under section 96 included in a notice of assessment under section 95;

"taxation decision" means –

- (a) an assessment of a person's liability to pay tax that is made under this Act or Part II of the MRA; or

- (b) a decision, determination or assessment made under the PTA by which the person's liability to pay tax is affected,

but does not include –

- (c) an amended assessment as a result of an objection or appeal under this Part; or
- (d) a decision not to amend an assessment;

"taxpayer", for a taxation decision, means –

- (a) if the decision is made under this Act – a person in relation to whom the decision is made;
- (b) if the decision is made under the PTA – a person whose liability to pay tax is affected by the decision; or
- (c) if the decision is made under the MRA – a royalty payer in relation to whom the decision is made;

"Tribunal" means the Taxation and Royalty Appeals Tribunal established by section 105T(1).

Division 2 – Objections

101. Right to object

- (1) A taxpayer may object to a taxation decision.

(2) The taxpayer has no further right of objection in relation to a taxation decision that is an amended assessment than the taxpayer would have had if the amendment had not been made, except to the extent to which a fresh liability is imposed or an existing liability is increased because of the amendment.

102. 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 taxation decision is issued by the decision maker.

(2) The objection must state fully and in detail the grounds of objection.

103. Objections lodged out of time

If the decision maker is satisfied that the taxpayer has a reasonable excuse for not lodging the objection within the 60-day period, the decision maker may extend the time for lodgement.

104. Decision on objection

- (1) 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 an assessment made under Part II of the MRA 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;
 - (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.

105. Notice of decision

- (1) The decision maker must serve written notice of the decision on the taxpayer.
- (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 procedures for commencing an appeal under Divisions 3 and 4.

105A. Appeal to Tribunal or Supreme Court

- (1) The taxpayer may appeal against the decision on the objection to –
 - (a) the Tribunal under Division 3; or
 - (b) the Supreme Court under Division 4.
- (2) If the taxpayer's liability or assessment was reduced on the objection, the reduced liability or assessment is the liability or assessment appealed against.
- (3) The appeal is an appeal de novo.

(4) On the appeal, the burden of proving a decision or determination of the decision maker is incorrect, or an assessment made by the decision maker is excessive, is on the taxpayer.

Division 3 – Appeals to Tribunal

105B. How to commence appeal

(1) The taxpayer may commence an appeal to the Tribunal under section 105A(1)(a) by lodging a notice of appeal with the Registrar within 60 days after notice of the decision on the objection is issued by the decision maker.

(2) However, the taxpayer cannot commence the appeal if the taxpayer has commenced an appeal against the decision on the objection to the Supreme Court under Division 4 (regardless of the outcome of that appeal).

105C. Notice of appeal

- (1) The notice of appeal must –
 - (a) be in the form prescribed by the Rules made under section 105X(1);
 - (b) state the name of the appellant;
 - (c) identify the decision being appealed against;
 - (d) state fully and in detail the grounds of appeal;
 - (e) be accompanied by any material relevant to the appeal that was not before the decision maker when making the decision being appealed against; and
 - (f) be accompanied by the prescribed fee.

(2) The taxpayer must serve the decision maker whose decision is being appealed with a copy of the notice within the 60-day period referred to in section 105B(1).

(3) The grounds of appeal are not limited to the grounds on which the objection was made.

105D. Appeal commenced out of time

If the Tribunal is satisfied that the taxpayer has a reasonable excuse for not commencing the appeal within the 60-day period, the Tribunal may extend the time for commencement.

105E. Response of decision maker to notice of appeal

(1) As soon as practicable after being served under section 105C(2) with notice of the appeal, the decision maker must lodge with the Registrar and serve on the taxpayer a copy of –

- (a) the records of the decision maker relevant to the appeal, including a copy of the decision being appealed against; and
- (b) any submissions about 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.

105F. Determining appeal

(1) In determining the appeal, the Tribunal may –

- (a) confirm the decision appealed against;
- (b) vary the decision appealed against;
- (c) substitute another decision that would have been available to the decision maker; or
- (d) remit the matter to the decision maker for reconsideration, either generally or in respect of specified matters, and for variation of the decision appealed against or substitution of another decision.

(2) If the matter is remitted, the Tribunal must –

- (a) advise the decision maker of its reasons for doing so; and
- (b) give to the decision maker the directions the Tribunal considers appropriate for the reconsideration or otherwise of the whole or any part of the matter.

(3) The Tribunal's decision under subsection (1)(a), (b) or (c) is taken to be the decision maker's decision (except for this Part and Part VA).

105G. Appeal to Supreme Court on question of law

(1) The taxpayer or the decision maker may appeal against the Tribunal's decision to the Supreme Court only on a question of law.

(2) In determining the appeal, the Court may –

- (a) confirm the decision appealed against;

- (b) vary the decision appealed against;
 - (c) substitute its own decision for the decision appealed against; or
 - (d) remit the matter to the Tribunal for reconsideration, either generally or in respect of specified matters, and for variation of the decision appealed against or substitution of another decision.
- (3) If the matter is remitted, the Court must –
- (a) advise the Tribunal of its reasons for doing so; and
 - (b) give to the Tribunal the directions the Court considers appropriate for the reconsideration or otherwise of the whole or any part of the matter.

105H. Referral to Supreme Court

(1) If the Tribunal considers that it is more appropriate for the appeal to be determined by the Supreme Court, instead of determining the appeal, the Tribunal may refer the appeal to the Court.

Example for subsection (1) –

The appeal may involve complex questions of fact or law or both.

(2) If the appeal is referred to the Court under subsection (1), it is taken to be an appeal commenced under section 105J(1).

Division 4 – Appeals to Supreme Court

105J. How to commence appeal

(1) The taxpayer may commence an appeal to the Supreme Court under section 105A(1)(b) within 60 days after notice of the decision on the objection is issued by the decision maker.

(2) However, the taxpayer cannot commence the appeal if the taxpayer has commenced an appeal against the decision on the objection to the Tribunal under Division 3 (regardless of the outcome of that appeal).

105K. Appeal commenced out of time

If the Court is satisfied that the taxpayer has a reasonable excuse for not commencing the appeal within the 60-day period, the Court may extend the time for commencement.

105L. Grounds of appeal and response

(1) The taxpayer'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.

105M. Admissibility of new evidence

(1) In hearing the appeal, the Court may admit any evidence that was not before the decision maker when making the decision being appealed against if satisfied the evidence is material to the decision.

(2) If the Court admits evidence under subsection (1), the Court must –

- (a) adjourn the hearing; and
- (b) direct the decision maker to reconsider the objection, having regard to that evidence and any other evidence obtained by the decision maker.

(3) However, subsection (2) does not apply if the decision maker requests the Court to continue to hear the appeal without the decision maker reconsidering the objection.

(4) In reconsidering the matter, the decision maker has the same powers the decision maker had when making the decision being appealed against.

(5) If, on reconsideration, the decision maker amends or varies the decision in the taxpayer's favour, the Court may order the taxpayer to pay all or a specified part of the decision maker's costs in the appeal if satisfied that it is fair to do so, having regard to the nature of the amendment or variation.

105N. Determining appeal

(1) In determining the appeal, the Court may –

- (a) confirm the decision appealed against;
- (b) vary the decision appealed against;
- (c) substitute another decision that would have been available to the decision maker; or
- (d) remit the matter to the decision maker for reconsideration, either generally or in respect of specified matters, and for variation of the decision appealed against or substitution of another decision.

- (2) If the matter is remitted, the Court must –
 - (a) advise the decision maker of its reasons for doing so; and
 - (b) give to the decision maker the directions the Court considers appropriate for the reconsideration or otherwise of the whole or any part of the matter.
- (3) The Court's decision under subsection (1)(a), (b) or (c) is taken to be the decision maker's decision (except for this Part and Part VA).

Division 5 – Other matters

105P. Recovery of tax pending objection or appeal

A pending objection or appeal does not affect –

- (a) the operation of a taxation decision to which the objection or appeal relates; or
- (b) the recovery of the tax to which the objection or appeal relates.

105Q. Adjustment of tax on objection or appeal

(1) If a matter is remitted to a decision maker by the Tribunal under section 105F(1)(d) or the Supreme Court under section 105N(1)(d) for reconsideration, the decision maker must reconsider the matter as soon as practicable.

(2) If a taxpayer's liability or assessment is varied on or as a result of an objection or appeal, the decision maker must –

- (a) adjust the liability or assessment as necessary; and
- (b) serve written notice of the adjusted liability or assessment on the taxpayer.

(3) If a taxpayer's liability or assessment is varied on or as a result of an objection or appeal –

- (a) any excess in the amount of tax paid must be refunded; and
- (b) any shortfall in the amount of tax paid may be recovered as arrears.

105R. Interest payable on refunded tax

(1) If an amount is required to be refunded to a taxpayer under section 105Q(3)(a), the taxpayer is also entitled to be paid interest on that amount in accordance with subsection (2).

(2) The interest is payable at the prescribed rate for the period commencing on the day on which the amount was paid by the taxpayer and ending on the day on which the refund is paid to the taxpayer.

(3) In subsection (2) –

"prescribed rate" means –

- (a) the rate prescribed by regulation; or
- (b) if paragraph (a) does not apply – the daily average of the 90-day bank accepted bill rate published by the Reserve Bank of Australia for the month of May in the financial year immediately preceding the financial year in which the refund became due.

105S. Certain decisions final

(1) Subsection (2) applies in relation to the following decisions of the Commissioner:

- (a) under section 56BAB(3)(b) that the addition of a beneficiary or a class of beneficiaries under a discretionary trust described in section 56BAB is or is not a tax avoidance scheme or part of such a scheme;
- (b) under section 56BAC(3) that the changes in relation to a discretionary trust described in section 56BAC are or are not a tax avoidance scheme or part of such a scheme;
- (c) under section 56M(2)(c)(vi)(B) that the addition of a beneficiary or class of beneficiaries under a discretionary trust to which Part III, Division 8AAA applies is or is not a tax avoidance scheme or part of a tax avoidance scheme;
- (d) under section 56M(2)(c)(vii) that a change in control of a beneficiary under, and a change of or in control of a trustee of, a discretionary trust to which Part III, Division 8AAA applies are or are not a tax avoidance scheme or part of a tax avoidance scheme.

(2) Despite another law of the Territory (including the common law) and except as provided by this Part –

- (a) the decision is final and conclusive;
- (b) the decision cannot be investigated, inquired into, reviewed or otherwise called into question by any person or body; and

- (c) no proceedings can be brought, and no judgment or order can be given or made, in relation to the decision for an injunction, declaration or order for certiorari, prohibition or mandamus.

PART VA – TAXATION AND ROYALTY APPEALS TRIBUNAL

105T. Establishment and jurisdiction

- (1) The Taxation and Royalty Appeals Tribunal is established.
- (2) The Tribunal has jurisdiction to determine appeals under Part V, Division 3.

105U. Constitution

The Tribunal is constituted for an appeal by –

- (a) the Chief Magistrate; or
- (b) another magistrate chosen by the Chief Magistrate.

105V. Conduct of appeals generally

- (1) The Tribunal –
 - (a) is not bound by the rules of evidence but is bound by the rules of natural justice;
 - (b) must determine an appeal on the material lodged by the parties with the Registrar, unless the Tribunal is satisfied the circumstances of the appeal require a hearing to be conducted; and
 - (c) may only conduct a hearing if satisfied the circumstances of the appeal require it.
- (2) The practice and procedure of the Tribunal is –
 - (a) as prescribed by any rules and practice directions made under section 105X; and
 - (b) if paragraph (a) does not apply – as determined by the Tribunal.
- (3) The Tribunal must keep a record of its proceedings.
- (4) The Tribunal must publish written reasons for its decisions.

105W. Costs

- (1) Subject to this section, each party to an appeal to the Tribunal must bear his or her own costs.

(2) The Tribunal may order a party to pay all or a specified part of the costs of another party.

(3) The Tribunal may make an order under subsection (2) if satisfied it is fair to do so, having regard to the following:

- (a) whether a party conducted the appeal in a way that unnecessarily disadvantaged another party to the appeal, such as –
 - (i) failing to comply with an order or direction of the Tribunal;
 - (ii) attempting to deceive another party or the Tribunal; or
 - (iii) vexatiously conducting the proceeding;
- (b) whether a party has been responsible for prolonging unreasonably the time taken to complete the appeal;
- (c) the relative strengths of the claims made by each of the parties, including whether a claim made by a party was untenable in fact or law;
- (d) the nature and complexity of the appeal;
- (e) any other matter the Tribunal considers relevant.

(4) If the Tribunal considers the representative of a party (rather than the party) is responsible for conduct described in subsection (3)(a) or (b), the Tribunal may order the representative in his or her own capacity to compensate another party for costs incurred unnecessarily.

105X. Rules and practice directions

(1) The Chief Magistrate may make rules, not inconsistent with this Act –

- (a) relating to the practice and procedure of the Tribunal; or
- (b) prescribing fees in respect of appeals to the Tribunal.

(2) The Chief Magistrate 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.

105Y. Contempt

A person must not –

- (a) insult a magistrate in relation to the performance of his or her functions or the exercise of his or her powers as the Tribunal;

- (b) interrupt a hearing of the Tribunal;
- (c) create a disturbance, or take part in creating or continuing a disturbance, in or near a place where a hearing of the Tribunal is being conducted; or
- (d) do any other act or thing that would, if the Tribunal were a court of record, constitute contempt of that court.

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

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

6. New Part IX

After section 129 –

insert

**PART IX – TRANSITIONAL MATTERS FOR TAXATION
(ADMINISTRATION) AMENDMENT (OBJECTIONS AND APPEALS)
ACT 2004**

130. Definitions

In this Part –

"amendment Act" means the *Taxation (Administration) Amendment (Objections and Appeals) Act 2004*;

"commencement day" means the day on which the amendment Act commences;

"new Part V" means Part V as inserted by the amendment Act;

"old objection and appeal provisions" means –

- (a) for a taxation decision under this Act – Part V of this Act as in force immediately before the commencement day;
- (b) for a taxation decision under the *Mineral Royalty Act* – Part III of that Act as in force immediately before the commencement day; or
- (c) for a taxation decision under the *Pay-roll Tax Act* – Part VI of that Act as in force immediately before the commencement day;

"taxation decision" has the same meaning as in new Part V.

131. Application

(1) Except as provided by this Part, new Part V does not apply in relation to a taxation decision made before the commencement day.

(2) Despite their repeal, the old objection and appeal provisions continue to apply in relation to a taxation decision to which new Part V does not apply.

132. Taxation decisions for which no objection lodged before commencement

(1) Subsection (2) applies in relation to a taxation decision if –

- (a) the date on which the decision was made is not earlier than 60 days before the commencement day; and
- (b) immediately before the commencement day, no objection to the decision had been lodged.

(2) New Part V applies in relation to the decision as if that Part had come into operation on the date on which the decision was made.

133. Objections lodged but not decided before commencement

New Part V applies in relation to an objection to a taxation decision that had been lodged but not decided immediately before the commencement day as if it were an objection lodged under section 102.

134. Decisions on objections under MRA made before 18 May 2004

(1) This section applies in relation to a decision on an objection to a taxation decision made under the MRA if the decision on the objection was made after 1 January 2004 but before 18 May 2004, even though immediately before the commencement day an application for review of the decision on the objection had been made under the old objection and appeal provisions but not decided.

(2) New Part V (except section 105A(1)(a) and Division 3) applies in relation to the decision as if –

- (a) that Part had come into operation on the date on which the decision was made; and
- (b) the 60-day period referred to in section 105J(1) commences on the day after the commencement day.

135. Decisions on objections made on or after 18 May 2004

(1) Subsection (2) applies in relation to a decision on an objection to a taxation decision if –

- (a) the decision on the objection was made on or after 18 May 2004 but before the commencement day; and
- (b) immediately before the commencement day, no appeal against or application for review of the decision on the objection had been made under the old objection and appeal provisions.

(2) New Part V applies in relation to the decision on the objection as if –

- (a) that Part had come into operation on the date on which that decision was made; and
- (b) the 60-day periods referred to in sections 105B(1) and 105J(1) commence on the day after the later of the following:
 - (i) the commencement day;
 - (ii) the day on which notice of the decision on the objection was or is issued.

PART 3 – AMENDMENT OF *MINERAL ROYALTY ACT*

7. Principal Act amended

This Part amends the *Mineral Royalty Act*.

8. Amendment of section 4 (Definitions)

Section 4, definition of "Board" –

omit

9. Repeal and substitution of Part III

Part III –

repeal, substitute

Note to Part II –

Part V of the Taxation (Administration) Act provides for objections and appeals in relation to assessments made in relation to a royalty payer under Part II of this Act.

10. Amendment of section 42A (Penalty royalty)

Section 42A(3) –

omit, substitute

(3) The royalty payer may object to the assessment of penal royalty under Part V of the *Taxation (Administration) Act* in the same manner as any other assessment.

11. Amendment of section 47 (Refusal to give evidence or produce documents)

Section 47(a) –

omit, substitute

(a) to attend before the Secretary or an authorized person;

12. Amendment of section 49 (False returns or statements)

Section 49 –

omit

, an authorized person or a Board

substitute

or an authorized person

PART 4 – AMENDMENT OF PAY-ROLL TAX ACT

13. Principal Act amended

This Part amends the *Pay-roll Tax Act*.

14. New note after section 11B

After section 11B in Part III –

insert

Note to Part III –

Part V of the Taxation (Administration) Act provides for objections and appeals in relation to decisions, determinations and assessments made under Part III of this Act by which the person's liability to pay tax is affected.

15. New note after section 17L

After section 17L in Part IVA –

insert

Note to Part IVA –

Part V of the Taxation (Administration) Act provides for objections and appeals in relation to decisions, determinations and assessments made under Part IVA of this Act by which the person's liability to pay tax is affected.

16. Amendment of section 19 (Assessments)

- (1) Section 19(2), after "objection" –

insert

under Part V of the *Taxation (Administration) Act*

- (2) Section 19(2B) –

omit

an objection

substitute

on objection under Part V of the *Taxation (Administration) Act*

17. Amendment of section 30 (Where no administration of estate of deceased employer)

- (1) Section 30(3) –

omit, substitute

(3) A person claiming an interest in the estate of the deceased employer may object to the assessment under Part V of the *Taxation (Administration) Act* and that Part applies in relation to the objection as if the person were the deceased employer.

- (2) Section 30(7) –

omit, substitute

(7) Despite subsections (4), (5) and (6), if at any time there is a grant of probate of the deceased employer's will or a grant of letters of administration of the deceased employer's estate, the person granted probate or letters of administration may, within 60 days after the grant, object to the assessment under

Part V of the *Taxation (Administration) Act* and that Part applies in relation to the objection accordingly.

18. Repeal and substitution of Part VI

Part VI –

repeal, substitute

Note to Part V –

Part V of the Taxation (Administration) Act provides for objections and appeals in relation to decisions, determinations and assessments made under Part V of this Act by which the person's liability to pay tax is affected.

19. Amendment of section 64 (Regulations)

Section 64(2) –

omit

objection,

PART 5 – AMENDMENT OF PAY-ROLL TAX REGULATIONS

20. Repeal of regulations 28 and 29

(1) This section amends the Pay-roll Tax Regulations.

(2) Regulations 28 and 29 –

repeal
