

# AUSTRALIAN CAPITAL TERRITORY

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## Taxation (Administration) Ordinance 1987

No. 41 of 1987

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# AUSTRALIAN CAPITAL TERRITORY

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## Taxation (Administration) Ordinance 1987

No. 41 of 1987

I, THE GOVERNOR-GENERAL of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, hereby make the following Ordinance under the *Seat of Government (Administration) Act 1910*.

Dated 29 July 1987.

N. M. STEPHEN  
Governor-General

By His Excellency's Command,

JOHN BROWN  
Minister of State for the Arts, Sport, the Environment,  
Tourism and Territories

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An Ordinance to provide for the administration of certain Ordinances relating to the imposition and collection of certain taxes, duties and fees

### PART I—PRELIMINARY

#### Short title

1. This Ordinance may be cited as the *Taxation (Administration) Ordinance 1987*.<sup>1</sup>

#### Commencement

2. This Ordinance shall come into operation on such date as is fixed by the Minister by notice in the *Gazette*.

**Tax laws**

- 3.** For the purposes of this Ordinance, each of the following is a tax law:
- (a) this Ordinance;
  - (b) the *Stamp Duties and Taxes Ordinance 1987*;
  - (c) the *Financial Institutions Duty Ordinance 1987*;
  - (d) the *Payroll Tax Ordinance 1987*;
  - (e) the *Business Franchise (Tobacco and Petroleum Products) Ordinance 1984*;
  - (f) regulations under an Ordinance referred to in paragraphs (a) to (e) (inclusive).

**Interpretation**

- 4. (1)** In this Ordinance, unless the contrary intention appears:

“accounting records” includes:

- (a) invoices, receipts, orders for the payment of money, bills of exchange, cheques, promissory notes, vouchers and other documents of prime entry;
- (b) the working papers and other documents necessary to explain the methods and calculations by which accounts are made up; and
- (c) any prescribed documents;

“accounts” means:

- (a) ledgers, journals, profit and loss accounts and balance sheets; and
- (b) any statements, reports and notes attached to, or intended to be read with, any books or documents of a kind referred to in paragraph (a);

“assessment” means an assessment, or amended assessment, made by the Commissioner of:

- (a) an amount of tax, duty, penalty tax or a licence fee payable under a tax law; or

(b) pursuant to section 20, of the market value of a vehicle;

“Australian stock exchange” means the Sydney Stock Exchange, the Stock Exchange of Melbourne, the Brisbane Stock Exchange, the Stock Exchange of Adelaide, the Stock Exchange of Perth or the Hobart Stock Exchange;

“authorised tax officer” means a tax officer, or an authorised officer within the meaning of Part VII, who is authorised by the Commissioner to exercise powers under section 12;

“authority”, in relation to the Territory, means a body corporate (not being an incorporated company, association or society) incorporated for a public purpose under a law of the Territory;

“broker” means a member of an Australian stock exchange;

“building society” has the same meaning as in the *Co-operative Societies Ordinance 1939*;

“business” means:

- (a) a profession or trade;
- (b) any other activity carried on for fee or reward; or
- (c) the activity of employing persons to perform duties in connection with another business;

whether carried on by one person or 2 or more persons together;

“Commissioner” means the Commissioner for Australian Capital Territory Revenue Collections appointed under subsection 5 (1);

“company” includes a body, society, association, authority or institution, whether corporate or unincorporate, but does not include a partnership;

“confidential document” means a document made or obtained under or for the purposes of a tax law;

“confidential information” means:

- (a) information contained in a confidential document; or
- (b) any other information with respect to the affairs of a person, being information disclosed or obtained under or for the purposes of a tax law;

“corporation” has the same meaning as in the *Companies Act 1981*;

“court” means the Magistrates Court or the Supreme Court;

“Crimes Act, 1900” means the Crimes Act, 1900 of the State of New South Wales in its application to the Territory;

“data processing device” means a computer or other device by means of which information can be stored and from which stored information can be retrieved, whether with or without the use of any other device;

“debt”, in relation to a person, means:

- (a) money that is due or accruing, or that may become due, to the person;
- (b) money that is or will be held for or on account of the person or for or on account of another person for payment to the first-mentioned person; or
- (c) money authorised by another person to be paid to the first-mentioned person;

“debtor”, in relation to a person, means a person who owes a debt to the first-mentioned person, being:

- (a) a natural person or partnership;
- (b) a company; or
- (c) any other body, society, association, authority or institution, whether incorporated or not;

“Deputy Commissioner” means the Deputy Commissioner for Australian Capital Territory Revenue Collections appointed under subsection 6 (1);

“determined amount”, in relation to tax, duty, a licence fee or interest, means:

- (a) the amount determined under subsection 99 (1) for the purposes of the provision in which the expression appears; or
- (b) the amount calculated at the rate determined by the Minister under subsection 99 (1) for the purposes of the provision in which the expression appears;

“director”, in relation to a corporation, includes:

- (a) a person occupying or acting in the position of a director of the corporation, by whatever name called and whether or not

validly appointed to occupy, or duly authorised to act in, the position; or

- (b) a person in accordance with whose directions or instructions the directors of the corporation are accustomed to act;

“duly stamped” has the same meaning as in the *Stamp Duties and Taxes Ordinance 1987*;

“duty” means stamp duty or other duty payable under a tax law;

“group” means a group as mentioned in subsection 77 (1);

“instrument” includes any document;

“licence fee” means a licence fee payable under the *Business Franchise (Tobacco and Petroleum Products) Ordinance 1984*;

“lodge” means lodge with the Commissioner;

“marketable security” has the same meaning as in the *Stamp Duties and Taxes Ordinance 1987*;

“Minister of State” means a Minister of State of the Commonwealth, a Minister of the Crown of a State or a Minister of the Northern Territory;

“non-resident” means a person who is not residing in Australia;

“objection” means an objection under section 89;

“occupier”, in relation to premises, means the person who is, or is reasonably believed to be, in charge of the premises;

“overpaid amount” means the amount by which an amount of tax, duty, penalty tax or a licence fee paid to the Commissioner in respect of a matter exceeds the amount payable in respect of the matter;

“penalty tax” means an additional amount payable under subsection 30 (1) or (2) or 31 (1);

“premises” includes any place, vehicle, vessel or aircraft;

“primary group” means a primary group as mentioned in section 78, 79, 80 or 81;

“public officer”, in relation to a company, means a person appointed in accordance with Part XI to be the public officer of the company;

“public servant” means a person who is an officer or employee within the meaning of the *Public Service Act 1922*;

“return” means a return required to be lodged pursuant to a tax law;

“stamp duty” means stamp duty payable under the *Stamp Duties and Taxes Ordinance 1987*;

“tax” means tax or levy payable under a tax law;

“tax law” means an Ordinance or regulations specified in section 3;

“tax liability” means a liability to the Commonwealth arising under or by virtue of a tax law;

“tax offence” means an offence against a tax law;

“tax officer” means a person exercising powers or performing functions under or in relation to a tax law;

“Tribunal” means the Administrative Appeals Tribunal;

“trustee” includes:

- (a) a person who is a trustee under an implied or constructive trust;
- (b) in relation to a deceased person—an executor of the will, or an administrator of the estate, of the deceased person;
- (c) a receiver, guardian, committee or manager of the property of a person under a legal or other disability;
- (d) a receiver or manager of the property of a company, or a liquidator of a company for the purpose of its winding up;
- (e) a broker who executes a transfer of a marketable security as transferee on behalf of another person for the purpose of safeguarding the interests of that person in relation to dividends payable to the holder of the marketable security or in relation to the issue of other marketable securities to which the holder of the first-mentioned marketable security becomes entitled because of being the holder; and
- (f) a person who may be required to exercise his or her voting power in relation to a marketable security at the direction of another person, or who holds a marketable security for the benefit of another person;

“underpaid amount” means the amount by which the amount of tax, duty or a licence fee payable under an amendment of an assessment referred to in subsection 38 (1) exceeds the amount payable under the assessment that was amended;

“vehicle” means:

- (a) a motor vehicle within the meaning of the *Motor Traffic Ordinance 1936*; or
- (b) a trailer within the meaning of that Ordinance.

(2) In this Ordinance, a reference to a broker shall, if the broker is a member of a firm of brokers, be read as including a reference to that firm.

(3) For the purposes of the definition of “director” in subsection (1), a person shall not be regarded as a person in accordance with whose directions or instructions the directors of a corporation are accustomed to act only because the directors act on advice given by that person in the proper performance of the functions attaching to the person’s professional capacity or the person’s business relationship with the directors.

## PART II—ADMINISTRATION

### Commissioner

5. (1) There shall be a Commissioner for Australian Capital Territory Revenue Collections appointed by the Minister.

(2) The Commissioner has the general administration of this Ordinance.

### Deputy Commissioner

6. (1) There shall be a Deputy Commissioner for Australian Capital Territory Revenue Collections appointed by the Minister.

(2) The Deputy Commissioner may, subject to any direction of the Commissioner, exercise any power and perform any function of the Commissioner under a tax law, and reference in a tax law to the Commissioner shall be read, so far as is necessary for the purpose of giving effect to this subsection, as including a reference to the Deputy Commissioner.

(3) A person dealing with the Deputy Commissioner is not bound to enquire whether the Deputy Commissioner, in exercising a power or performing a function in connection with the dealing:

- (a) was subject to a direction of the Commissioner; or

- (b) complied with a direction of the Commissioner to which the Deputy Commissioner was subject.

### **Eligibility for office**

7. A person is not eligible for appointment as Commissioner or Deputy Commissioner unless the person is a public servant.

### **Termination of office**

8. (1) The Minister may, at any time, terminate the appointment of a person as Commissioner or Deputy Commissioner.

(2) If a person appointed as Commissioner or Deputy Commissioner ceases to be a public servant, the person ceases to hold office as Commissioner or Deputy Commissioner respectively.

### **Delegation**

9. (1) The Commissioner may, either generally or as otherwise provided by the instrument of delegation, by writing signed by him or her, delegate any of his or her powers or functions under a tax law, other than this power of delegation.

(2) A delegated power or function, when exercised or performed by the delegate, shall, for the purposes of the tax law, be deemed to have been exercised or performed by the Commissioner.

(3) A delegation does not prevent the exercise of a power or the performance of a function by the Commissioner.

(4) A delegation may be made subject to a power of review and alteration by the Commissioner, within a period specified in the instrument of delegation, of acts done pursuant to the delegation.

(5) A delegation under this section continues in force notwithstanding a change in the occupancy of, or a vacancy in, the office of Commissioner, but, for the purposes of the application of subsection 27 (1) of the *Interpretation Ordinance 1967*, nothing in any law shall be taken to preclude the revocation or variation of the delegation by the same or a subsequent holder of that office.

### **Acting appointments**

10. (1) The Minister may appoint a person to act as Commissioner or Deputy Commissioner:

- (a) during a vacancy in the office of Commissioner or Deputy Commissioner respectively, whether or not an appointment has previously been made to the office; or
- (b) during any period, or during all periods, when the Commissioner or Deputy Commissioner respectively is absent from duty or from the Territory or is, for any other reason, unable to perform the functions of the respective office;

but a person appointed to act during a vacancy shall not continue to act for more than 12 months.

(2) A person is not eligible for appointment unless he or she is a public servant.

(3) An appointment may be expressed to have effect only in circumstances specified in the instrument of appointment.

(4) Where:

- (a) a person is acting in the office of Commissioner or Deputy Commissioner during a period referred to in paragraph (1) (b); and
- (b) the respective office becomes vacant during that period;

then, unless the contrary intention appears in the instrument of appointment, the person may continue to act in the office until the Minister otherwise directs, the vacancy is filled or the period of 12 months after the date on which the vacancy occurred expires, whichever happens first.

(5) The Minister may, at any time, terminate the appointment of a person to act as Commissioner or Deputy Commissioner.

(6) The appointment of a person to act as Commissioner or Deputy Commissioner ceases to have effect if:

- (a) the person resigns the appointment by writing signed by him or her and delivered to the Minister; or
- (b) the person ceases to be a public servant.

(7) While a person is acting as Commissioner or Deputy Commissioner the person has and may exercise all the powers, and shall perform all the functions under each tax law of the Commissioner or Deputy Commissioner respectively, and, for the purposes of the exercise of those powers and the performance of those functions, a tax law has effect as if a reference in it to the Commissioner

or Deputy Commissioner included a reference to a person acting in the office of Commissioner or Deputy Commissioner respectively.

(8) The validity of anything done by a person purporting to act pursuant to an appointment under subsection (1) is not invalid because the occasion for the appointment had not arisen, there is a defect or irregularity in connection with the appointment, the appointment had ceased to have effect or the occasion for the person to act had not arisen or had ceased.

### **Annual report**

11. The Commissioner shall, as soon as practicable after 30 June each year, prepare and give to the Minister a report on the working of each tax law during the last preceding financial year.

### **Powers of inspection**

12. (1) For the purposes of a tax law, an authorised tax officer shall have full and free access to:

- (a) all books, records, instruments and other papers; and
- (b) any petroleum products or tobacco to which the *Business Franchise (Tobacco and Petroleum Products) Ordinance 1984* applies.

(2) Without limiting the generality of subsection (1), an authorised tax officer may:

- (a) at any reasonable time, with such assistance as the authorised tax officer thinks necessary, enter and inspect any premises;
- (b) if information, books or records are stored or kept by means of a data processing device—require the occupier of the premises to display and print out all or part of the information, books or records;
- (c) take extracts from, and make copies of, any books, records, instruments or other papers;
- (d) inspect any petroleum products or tobacco on the premises;
- (e) seize any tobacco that the tax officer believes on reasonable grounds to be connected with an offence against a tax law;
- (f) require the occupier of the premises to give the authorised tax officer the occupier's name and address; and
- (g) require the occupier of the premises to give the authorised tax officer such assistance as is necessary to enable the authorised tax officer to exercise his or her powers under this section.

(3) An authorised tax officer who enters premises pursuant to subsection (1) is not authorised to remain on the premises if, on the request of the occupier, the officer does not produce an identity card certifying that the officer is authorised to exercise the powers conferred by subsections (1) and (2).

### **PART III—ASSESSMENTS AND RELATED MATTERS**

#### **Authenticity of returns**

13. A return purporting to be made and signed by or on behalf of a person shall be taken to have been made and signed by the person or with his or her authority unless the contrary is established.

#### **Trustees' duties to lodge returns**

14. A trustee of a deceased person shall lodge any returns that the person would be required to lodge if he or she were alive.

#### **Assessment of tax payable on returns**

15. The Commissioner shall assess the amount of tax, duty or a licence fee payable in respect of a return from the information in the return and any other information available.

#### **Assessment of duty payable on instruments**

16. (1) The Commissioner shall:

- (a) assess the amount of duty (if any) payable in respect of an instrument lodged for assessment; and
- (b) notify the person who lodged the instrument of the assessment.

(2) The Commissioner is not required to give the person written notice of the assessment unless so requested in writing by the person within 30 days after the instrument was lodged for assessment.

(3) If an instrument lodged for assessment is returned to the person before a request for written notice of the assessment is made, the Commissioner may refuse to give written notice unless the instrument is returned to the Commissioner.

#### **Continuation of liability**

17. (1) Lodging a return for assessment shall not be taken to relieve the person liable to pay tax, duty, or a licence fee in relation to the return from the liability to pay it in accordance with the relevant tax law.

(2) Lodging an instrument for assessment shall not be taken to relieve the person liable to pay duty in relation to the instrument from liability to pay it in accordance with the relevant tax law.

### Further information

18. (1) The Commissioner may, at any time, by instrument served on a person who has:

- (a) lodged a return or instrument for assessment;
- (b) given a certificate, made a statement or given information for the purposes of section 61 of the *Stamp Duties and Taxes Ordinance 1987*; or
- (c) given information for the purposes of section 62 of that Ordinance;

require the person to give the Commissioner, within a specified period, further information in connection with the return, instrument, certificate or information.

(2) If the Commissioner reasonably believes that a person is able to give information or produce documents that may be used for the purpose of assessing, amending an assessment of, enquiring into or ascertaining the liability of a person under a tax law, the Commissioner may, by instrument served on the first-mentioned person, require the person:

- (a) to give any such information to the Commissioner within the time and in the manner specified in the instrument;
- (b) to attend before the Commissioner or another person specified in the instrument at a specified time and place and there to answer questions for that purpose; or
- (c) to produce any such document to the Commissioner or another person specified in the instrument, in accordance with the instrument.

(3) The Commissioner or other person before whom a person is required to attend may require evidence to be given on oath or affirmation, and for that purpose the Commissioner or other person may administer an oath or affirmation.

**Self-incrimination**

**19.** A person is not excused from giving information or producing a document in compliance with an instrument served on the person pursuant to section 18, or in compliance with an order of a court pursuant to section 47, on the ground that the information or document might tend to incriminate the person, but the person's answer to any question asked in the order or instrument or any information given by the person pursuant to the order or instrument is not admissible in evidence against him or her in criminal proceedings other than proceedings for a tax offence.

**Default assessments**

**20. (1)** Where:

- (a) the Commissioner is of the opinion that a person is liable to pay tax, duty or a licence fee (whether or not any return or instrument has been lodged for assessment); or
- (b) a person has made a statement for the purposes of subparagraph 61 (1) (d) (i) of the *Stamp Duties and Taxes Ordinance 1987* in which the amount stated as the market value of the vehicle concerned is more or less than the amount that, in the Commissioner's opinion, was the market value of the vehicle at the time when the application for registration of the vehicle was made;

the Commissioner may respectively assess the amount of tax, duty or the licence fee that, in his or her opinion, is payable, or assess for those purposes the market value of the vehicle concerned at that time.

**(2)** An assessment shall not be made under subsection (1) in relation to the registration of a vehicle more than 3 years after the registration was effected unless the statement referred to in that paragraph was false or misleading in a material particular.

**Notice of default assessments**

**21.** As soon as practicable after making an assessment pursuant to section 20 under which an amount of tax, duty or a licence fee is assessed to be payable, the Commissioner shall cause notice of the assessment, the amount payable, and the amount (if any) of the tax, duty or licence fee that was overpaid or underpaid, to be given to the person adjudged by the Commissioner to be liable to pay the tax, duty or licence fee.

**Amended assessments**

**22. (1)** The Commissioner may, within the period of 3 years after assessing an amount of tax, duty, penalty tax payable under section 30 or a licence fee, amend the assessment by making such alterations or additions to it as he or she thinks necessary.

**(2)** Subsection (1) shall not be taken to prohibit the amendment of an assessment after that period:

- (a) by way of reduction, on an objection under Part XII or pending an appeal or review under that Part; or
- (b) in order to give effect to a decision on an appeal or review under that Part.

**(3)** If, as a result of amending an assessment, the amount payable of tax, duty, penalty tax under section 30 or a licence fee is reduced, the amount by which it is reduced shall be taken, for the purposes of section 31, never to have been payable.

**(4)** As soon as practicable after amending an assessment pursuant to this section, the Commissioner shall give the person adjudged by the Commissioner to be liable to pay the tax, duty, penalty tax or licence fee to which the assessment relates, notice in writing of:

- (a) the amended assessment;
- (b) the amount of tax, duty, penalty tax or the licence fee payable under the amended assessment;
- (c) the amount by which the tax, duty, penalty tax or licence fee was overpaid or underpaid; and
- (d) the amount of penalty tax (if any) payable under section 31 by virtue of the amendment.

**Assessments in relation to deceased persons**

**23.** The Commissioner has the same powers of assessment in relation to a trustee of a deceased person as he or she would have in relation to the person if the person were alive.

**Validity of assessments**

**24.** The validity of an assessment shall not be taken to be affected only because this Ordinance has not been complied with.

### **Remissions of duty or tax**

**25.** Tax, duty or a licence fee that is payable but has not been paid shall be remitted in the same circumstances as those in which it would be refunded under a tax law if it had been paid.

## **PART IV—PAYMENT OF TAXES, DUTIES, PENALTY TAX AND INTEREST**

### *Division 1—Payment and related matters*

#### **Time for payment**

**26. (1)** Tax in respect of a return is due and payable on the last day on which the return is required to be lodged under the relevant tax law, or within such further time as the Commissioner allows.

**(2)** Duty on an instrument is due and payable:

**(a)** if the instrument is required by a tax law to be lodged with the Commissioner for assessment:

**(i)** on the date specified for the purpose in the notice of assessment;

**(ii)** if a date is not specified, or a notice is not served on the person by whom the duty is payable—within 30 days after the person is informed of the assessment; or

**(iii)** within such further time as the Commissioner allows; or

**(b)** in any other case:

**(i)** at the time when the instrument is required by a tax law to be duly stamped; or

**(ii)** within such further time as the Commissioner allows.

**(3)** Tax in respect of the registration of a vehicle is due and payable at the time of registration.

**(4)** Penalty tax is due and payable on the date specified for the purpose in the notice of assessment of the penalty tax, or within such further time as the Commissioner allows.

**(5)** The Commissioner may permit the payment of tax, duty or penalty tax to be made by instalments in such amounts and at such times as the

Commissioner determines, and each instalment of the tax, duty or penalty tax is due and payable at the time determined by the Commissioner in relation to the instalment.

(6) If an instalment of tax, duty or penalty tax is not paid on or before the time that payment is due, the whole of the outstanding amount of the tax, duty or penalty tax becomes due and payable at that time.

#### **Treatment of related instruments or unrelated matters**

27. (1) Where 2 or more instruments together but not separately relate to the same matter, for the purposes of a tax law the instruments shall be treated as a single instrument executed at the time when the later or last instrument respectively was executed.

(2) Where one instrument relates to several distinct matters in respect of which tax or duty is payable, for the purposes of a tax law, each matter shall be treated as if it were dealt with in a separate instrument.

#### **Valuation of foreign currency**

28. Where tax or duty in relation to an instrument is payable in respect of an amount expressed in the instrument otherwise than in Australian currency, the tax or duty shall be calculated in Australian currency at the rate of exchange current at the date of the instrument.

#### **Adjustments for fractions of a cent**

29. Where an amount of tax, duty, penalty tax, a licence fee or interest calculated in accordance with a tax law is not a multiple of 1 cent, the amount shall:

- (a) if the amount is a multiple of 0.5 cents—be increased by 0.5 cent; or
- (b) in any other case—be increased or decreased, as the case requires, to the nearest multiple of 1 cent.

#### ***Division 2—Penalty taxes***

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

30. (1) A person who fails:

- (a) to lodge a return, or to give any information, in relation to a matter or thing;
- (b) to lodge an instrument for assessment; or
- (c) to cause an instrument to be duly stamped;

as required by a tax law, is liable to pay, as a penalty, an additional amount equal to double the amount of tax or duty payable in respect of the matter, thing or instrument respectively.

**(2)** Where:

- (a) a person makes a statement to a tax officer that is false or misleading in a material particular, or omits from a statement made to a tax officer any matter or thing without which the statement is misleading in a material particular; and
- (b) the amount of duty, tax or the licence fee payable by the person exceeds the amount that would have been payable if it were assessed or determined on the basis that the statement was not false or misleading;

the person is liable to pay, as a penalty, an additional amount equal to double the amount of the excess.

**(3)** Where, but for this subsection, the amount of penalty tax payable under subsection (1) or (2) is less than \$20, the amount payable shall be taken to be \$20.

**(4)** The Commissioner shall assess the amount of penalty tax payable by a person under subsection (1) or (2) and shall, as soon as practicable after making the assessment, give the person written notice of the assessment.

**(5)** Nothing in this Ordinance shall be taken to preclude notice of an assessment made in relation to a person under subsection (4) from being incorporated in notice of any other assessment made in relation to the person under a tax law.

**(6)** A reference in subsection (2) to a statement shall be read as a reference to a statement made orally, in writing, by means of a data processing device or in any other form.

**(7)** A reference in subsection (2) to a statement shall be read as including a statement:

- (a) made in an application, certificate, declaration, notification, objection, return or other document made or given pursuant to a tax law;
- (b) made in an instrument lodged for assessment pursuant to a tax law;
- (c) made in answer to a question asked of a person pursuant to a tax law;

- (d) made in any information given or purporting to be given pursuant to a tax law; or
- (e) made in a document given to a tax officer otherwise than pursuant to a tax law;

but shall not be read as including a reference to a statement made in a document produced pursuant to paragraph 18 (2) (c).

**(8) Where:**

- (a) a statement referred to in subsection (2) is made for a purpose in connection with the operation of a tax law; and
- (b) the statement is made:
  - (i) in an application, certificate, declaration, notification or other document made or given to a person other than a tax officer;
  - (ii) in answer to a question asked by a person other than a tax officer; or
  - (iii) in any information given to a person other than a tax officer;

that subsection applies in relation to the person who makes the statement as if the person to whom the statement is made were a tax officer.

**Failure to pay tax, duty, penalty tax or licence fees**

**31. (1)** If an amount of tax, duty, penalty tax payable under subsection 30 (1) or (2) or a licence fee is not paid on or before the due date, the person liable to pay it is liable to pay an additional amount, calculated at the rate of 20% per annum of the unpaid amount, from and including:

- (a) if the Commissioner allowed further time for payment, or allowed payment to be made in instalments—a day determined by the Commissioner, being a day not earlier than the day on which the whole amount of the tax, duty, penalty tax or the licence fee, as the case may be, was originally due and payable; or
- (b) in any other case—the day after the due date;

to and including the day on which an amount equal to the unpaid amount is paid.

**(2)** Where judgement is entered by a court for the payment of an amount of tax, duty, penalty tax payable under subsection 30 (1) or (2) or a licence fee, or

of an amount that includes an amount of tax, duty, penalty tax payable under subsection 30 (1) or (2) or a licence fee:

- (a) the tax, duty, penalty tax or licence fee shall not be taken, for the purposes of subsection (1), to have ceased to be due and payable only because the judgement was entered; and
- (b) if interest is payable on the judgement debt, the penalty tax that would, but for this paragraph, be payable under subsection (1) in relation to the tax, duty, penalty tax or licence fee shall, by force of this paragraph, be reduced:
  - (i) in the case of an amount of tax, duty, penalty tax or a licence fee—by the amount of the interest; or
  - (ii) in the case of an amount that includes an amount of tax, duty, penalty tax or a licence fee—by an amount that bears the same proportion to the amount of the interest as the tax, duty, penalty tax or licence fee bears to the amount of the judgement debt.

### **Remission of penalty tax**

**32. (1)** The Commissioner may remit all or part of an amount of penalty tax payable by a person in relation to an amount of tax, duty, penalty tax or a licence fee if the Commissioner is satisfied:

- (a) where the Commissioner is of the opinion that the circumstances that contributed to the delay in payment of the tax, duty, penalty tax or licence fee were not caused directly or indirectly by an act or omission of the person—that the person has taken reasonable steps to mitigate, or to mitigate the effects of, those circumstances;
- (b) where the Commissioner is of the opinion that the circumstances that contributed to the delay in payment of the tax, duty, penalty tax or licence fee were caused directly or indirectly by an act or omission of the person—that:
  - (i) the person has taken reasonable steps to mitigate, or to mitigate the effects of, those circumstances; and
  - (ii) having regard to the nature of those circumstances, it would be fair and reasonable to remit part or all of the penalty tax; or

- (c) that, having regard to the nature of the circumstances that contributed to the delay in payment of the tax, duty, penalty tax or licence fee it would be fair and reasonable to remit all or part of the penalty tax.

(2) For the purposes of the application of subsection 26 (1) of the *Interpretation Ordinance 1967* to the power of remission conferred by subsection (1), subsection 30 (4) shall not be taken to preclude the exercise of the power before an assessment of the amount of penalty tax payable is made under section 30.

### ***Division 3—Overpayments***

#### **Refunds of overpaid amounts**

33. If, because of an assessment in relation to a return or an instrument, or an assessment pursuant to subsection 20 (1) in relation to the registration of a vehicle, a person has overpaid an amount of tax, duty or a licence fee, the overpaid amount shall be refunded to the person.

#### **Interest on overpaid amounts**

34. (1) Where, on considering an objection, the Commissioner, the Tribunal or a court finds that part or all of an amount of tax, duty or a licence fee paid by a person has been overpaid, interest calculated in accordance with this Part is payable to the person by the Commonwealth on the overpaid amount.

(2) Where the amount was paid in instalments, for the purposes of subsection 35 (1) each instalment shall be treated as a separate amount.

(3) If the amount was paid in instalments, and part only of the amount is found to have been overpaid, the overpaid amount shall be attributed to the instalments in reverse order to the order in which the instalments were paid.

#### **Amount of interest payable**

35. (1) The determined amount of interest is payable on an overpaid amount.

(2) Interest payable on an overpaid amount shall be calculated in respect of the period beginning on:

- (a) the day on which notice of the assessment in relation to the original amount of the tax, duty or licence fee was issued by the Commissioner; or
- (b) the day on which the original amount was paid;

whichever is later, and ending on the day on which the overpaid amount was refunded to the person who paid it, or applied against a liability of the person under a tax law, as the case may be.

**Circumstances in which interest is not payable**

**36.** Interest is not payable to a person on an overpaid amount of penalty tax payable under section 31 in respect of any periods in relation to which the overpaid amount has been passed on by the person to another person and has not been refunded to the other person by the first-mentioned person.

**Payments of small amounts of interest or tax**

**37. (1)** Where the amount of interest that would, but for this subsection, be payable on an overpaid amount is:

- (a) if an amount has been determined for the purposes of this subsection under subsection 99 (1)—less than the determined amount; or
- (b) in any other case—less than \$5.00;

no interest is payable on the overpaid amount.

**(2)** Where:

- (a) an amount of interest payable to a person under this Division is applied by the Commissioner against a tax liability of the person; and
- (b) the amount (if any) remaining to be paid by the person to the Commissioner, or to be refunded to the person by the Commissioner, would, but for this section, be less than 50 cents;

then, by force of this subsection, the remaining amount ceases to be payable by the person or to the person, as the case requires.

***Division 4—Underpayments***

**Interest on underpaid amounts**

**38. (1)** Where, under an amendment of an assessment of an amount of tax, duty or a licence fee payable by a person, the amount payable is increased, interest calculated in accordance with this Division is payable by the person on the underpaid amount.

**(2)** Where:

- (a) but for this subsection, interest would be payable on an underpaid amount; and

- (b) a person is liable to pay penalty tax in respect of the matter to which the underpaid amount, or part of it, relates;

no interest is payable under subsection (1) on the underpaid amount.

**(3) Where:**

- (a) a person is liable, or would, but for subsection (7), be liable, to pay interest on an amount (in this subsection referred to as the “base amount”), being an amount that is part or all of an underpaid amount; and
- (b) as a result of the amendment by virtue of which the interest became payable, an amendment is made of an assessment of an amount of penalty tax payable by the person, under which the amount of penalty tax payable is increased;

interest calculated in accordance with this Division is payable by the person to the Commissioner on the amount ascertained in accordance with the formula

$\frac{\mathbf{P} \times \mathbf{B}}{\mathbf{U}}$ , where:

**P** is the amount by which the increased amount of penalty tax payable exceeds the amount payable under the assessment that was amended;

**B** is the number of whole dollars in the base amount; and

**U** is the number of whole dollars in the underpaid amount.

**(4)** The Commissioner shall serve on a person by whom interest is payable notice in writing specifying:

- (a) the period in respect of which the interest is payable;
- (b) the amount of interest payable; and
- (c) the date, being a date not less than 30 days after the date of service of the notice, on which the amount becomes due and payable.

**(5)** Interest is due and payable on the date specified for the purpose in accordance with paragraph (4) (c).

**(6)** A notice referred to in subsection (4) may be incorporated in a notice of assessment.

**(7)** The Commissioner may remit all or part of an amount of interest payable by a person under this section in relation to an underpaid amount of tax, duty, penalty tax or a licence fee if the Commissioner is satisfied:

- (a) where the Commissioner is of the opinion that the circumstances that contributed to the underpayment were not caused directly or indirectly by an act or omission of the person—that the person has taken reasonable steps to mitigate, or to mitigate the effects of, those circumstances;
- (b) where the Commissioner is of the opinion that the circumstances that contributed to the underpayment were caused directly or indirectly by an act or omission of the person—that:
  - (i) the person has taken reasonable steps to mitigate, or to mitigate the effects of, those circumstances; and
  - (ii) having regard to the nature of those circumstances, it would be fair and reasonable to remit all or part of the interest; or
- (c) that, having regard to the nature of the circumstances that contributed to the underpayment, it would be fair and reasonable to remit all or part of the interest.

#### **Amount of interest payable**

**39. (1)** The determined amount of interest payable in respect of an underpaid amount.

**(2)** Interest payable under subsection 38 (1) shall be calculated in respect of the period beginning on the day on which the tax, duty or licence fee became due and payable under the assessment referred to in that subsection and ending on the day on which the current amendment of the assessment was made.

**(3)** Interest payable under subsection 38 (3) shall be calculated in respect of the period beginning on the day on which the penalty tax became due and payable under the assessment referred to in paragraph 38 (3) (b) or, if that assessment amended one or more earlier assessments, under the earliest of the assessments, and ending on the day on which the current amendment of the assessment is made.

**(4)** Where the Commissioner:

- (a) has granted an extension of time for the payment of tax, duty, penalty tax or a licence fee; or
- (b) has permitted the payment of tax, duty or penalty tax by instalments;

the tax, duty, penalty tax or licence fee shall be taken, for the purposes of this section, to have become due and payable on the date determined for the purpose by the Commissioner, not being a date before the date on which the tax, duty or penalty tax was originally due and payable.



### **Payment of small amounts of interest**

**40.** Where the amount of interest that would, but for this subsection, be payable on an underpaid amount is:

- (a) if an amount has been determined for the purposes of this section under subsection 99 (1)—less than the determined amount; or
- (b) in any other case—less than \$5.00;

no interest is payable on the underpaid amount.

## **PART V—RECOVERY OF TAXES AND DUTIES**

### **Recovery as a debt due**

**41.** Tax, duty, penalty tax or a licence fee, on becoming due and payable, is recoverable by the Commonwealth in a court of competent jurisdiction as a debt due.

### **Recovery from estate of deceased person**

**42. (1)** The Commissioner has the same powers and remedies in relation to the trustee of a deceased person for the recovery of tax, duty, penalty tax or a licence fee from the person's estate as the Commissioner would have in relation to the person if the person were alive.

**(2)** Penalty tax is payable by a trustee in respect of a deceased person's estate to the same extent as it would be payable by the person if the person were alive.

### **Payment by debtor of taxpayer**

**43. (1)** The Commissioner may, by notice in writing served on a debtor of a person in relation to an amount of a tax liability of the person, require the debtor to pay to the Commissioner an amount equal to the debt owed by the debtor to the person, or equal to the amount payable in respect of the liability, whichever is less.

**(2)** The Commissioner shall specify in the notice the time within which the amount payable by the debtor under subsection (1) is to be paid, not being a time before the debt becomes due.

**(3)** If the debt is payable in instalments, the Commissioner may specify in the notice an amount to be paid by the debtor to the person out of each instalment as it becomes due until the amount of tax, duty, penalty tax or the licence fee, or so much of it as is equal to the amount of the debt, as the case requires, has been paid.

(4) The Commissioner shall cause a copy of the notice to be served on the person.

(5) A payment made in accordance with a notice shall be taken to have been made with the authority of the person and of all other persons served with the notice or a copy of it.

(6) Where:

(a) money has been paid by a person to a building society in respect of the issue of shares in the capital of the society (not being shares listed for quotation on a stock exchange); and

(b) the money has not been repaid;

the money shall, for the purposes of this section, be taken:

(c) if the money is repayable on demand—to be a debt due to the person; or

(d) in any other case—to be money that will become a debt due to the person.

(7) Where, but for this subsection, money is not due or repayable on demand to a person unless a condition is fulfilled, for the purposes of this section the money shall be taken to be respectively due or payable on demand notwithstanding that the condition has not been fulfilled.

(8) A debtor who, without reasonable excuse, refuses or fails to comply with a notice is guilty of an offence punishable, on conviction, by a fine not exceeding \$1,000.

(9) Where a debtor is convicted of an offence under subsection (8) in relation to the refusal or failure of the debtor to pay an amount to the Commissioner in accordance with a notice, the court may, in addition to imposing a penalty on the debtor, order the debtor to pay to the Commissioner an additional amount not exceeding the first-mentioned amount.

(10) In this section, “tax, duty, penalty tax or a licence fee” includes:

(a) a judgement debt or costs in respect of tax, duty, penalty tax or a licence fee;

(b) a fine or costs imposed by a court in respect of a tax offence; and

(c) an amount ordered by a court to be paid to the Commissioner by a person convicted of a tax offence.

### **Money held for non-residents**

**44. (1)** The Commissioner may, by notice in writing served on an agent of a non-resident in relation to an amount of a tax liability of the non-resident, require the agent to pay to the Commissioner an amount equal to the amount payable in respect of the liability, or equal to any amount that the agent is required to retain under paragraph (2) (a), whichever is less.

**(2)** On receiving a notice, the agent is, by force of this section:

- (a) authorised and required to retain from time to time any money received by the agent on behalf of the non-resident, or so much of it as is equal to the amount payable in respect of the liability, whichever is less;
- (b) made personally liable for the amount payable in respect of the liability, after it becomes payable, to the extent of any amount that the agent is required to retain under paragraph (a); and
- (c) indemnified by the non-resident for all payments made on behalf of the non-resident under a tax law.

**(3)** For the purposes of this section:

- (a) a person who is liable to pay money to a non-resident shall be taken to be an agent of the non-resident; and
- (b) any money payable by a person referred to in paragraph (a) to the non-resident shall be taken to be money received by the person on behalf of the non-resident.

**(4)** In this section “agent”, in relation to a non-resident, means a person who has authority to receive, control or dispose of money belonging to the non-resident.

### **Refunds, interest or debts applied against liabilities**

**45. (1)** If:

- (a) an overpaid amount is to be refunded under section 33 to a person who has a tax liability; or
- (b) an amount of interest is payable under section 34 to a person who has a tax liability;

the Commissioner may apply the amount, or so much of it as is equal to the amount payable in respect of the liability, whichever is less, against the liability.

(2) Where, pursuant to a notice under subsection 43 (1), a debtor pays to the Commissioner an amount in relation to a person's tax liability, the Commissioner shall apply the amount against the liability.

(3) Where, pursuant to a notice under subsection 44 (1), an agent of a non-resident pays to the Commissioner an amount in relation to the non-resident's tax liability, the Commissioner shall apply the amount against the liability.

(4) Where the Commissioner applies an amount that has been paid by a person against the liability of another person to pay an amount of tax, duty or a licence fee, for the purposes of this Part the other person shall be taken to have paid an amount of tax, duty or a licence fee, as the case requires, equal to the amount applied, on the day on which the amount was paid to the Commissioner.

## **PART VI—OFFENCES AND PROSECUTIONS**

### *Division 1—Offences in respect of certain tax laws*

#### **Contravening certain requirements**

**46. (1)** A person who contravenes a requirement of a tax law:

- (a) to give a return, written particulars or other information to the Commissioner or another person;
- (b) to lodge an instrument with the Commissioner for assessment;
- (c) to cause an instrument to be duly stamped;
- (d) to notify the Commissioner or another person of a matter or thing;
- (e) to produce a book, paper, record or other document to the Commissioner or another person; or
- (f) to attend before the Commissioner or another person;

to the extent that the person is capable of doing so, is guilty of an offence punishable, on conviction, by a fine not exceeding \$2,000.

(2) A person who, when attending before the Commissioner or another person in accordance with a tax law, contravenes a requirement of a tax law:

- (a) to answer a question; or
- (b) to produce a book, paper, record or other document;

to the extent that the person is capable of doing so, is guilty of an offence punishable, on conviction, by a fine not exceeding \$2,000.

(3) A person who, when attending before the Commissioner or another person in accordance with a tax law, contravenes a requirement of a tax law either to take an oath or to make an affirmation is guilty of an offence punishable, on conviction, by a fine not exceeding \$2,000.

### **Orders to comply with requirements**

47. (1) Where:

- (a) a person is convicted before a court of an offence against section 46; or
- (b) a court makes an order under section 556A of the Crimes Act, 1900 in relation to a person in respect of an offence against section 46;

in relation to the contravention of a requirement of a tax law, the court may, in addition to imposing a penalty on the person or making that order in respect of the person, as the case may be, and whether or not the time for complying with the requirement or any other such requirement has passed, order the person to comply, within a specified time or at a specified place and time:

- (c) with the requirement; and
- (d) with such other requirements that have or could have been made in relation to the person pursuant to a tax law as the court considers necessary to ensure compliance with the first-mentioned requirement.

(2) Where an order under subsection (1) is not given orally by the court to the person in relation to whom the order is made, the proper officer of the court shall cause a copy of the order to be served on the person.

(3) A person who does not comply with an order under subsection (1) to the extent that the person is capable of doing so is guilty of an offence punishable, on conviction, by a fine not exceeding \$5,000 or imprisonment for a period not exceeding 12 months, or both.

### **Second and subsequent offences**

48. (1) Where:

- (a) a person is convicted of an offence against section 46; and
- (b) the court which convicted the person is satisfied that the person has previously been convicted of a related offence;

the court may impose a fine not exceeding \$4,000 in respect of the first-mentioned offence.

(2) Where:

- (a) a person is convicted of an offence against section 46; and
- (b) the court which convicted the person is satisfied that the person has previously been convicted of 2 or more related offences;

the court may impose in respect of the first-mentioned offence a fine not exceeding \$5,000 or imprisonment for a period not exceeding 12 months, or both.

(3) For the purposes of subsections (1) and (2), a person who is convicted of an offence (in this section referred to as the “subsequent offence”) shall be taken to have been previously convicted of a related offence (in this subsection referred to as the “earlier offence”) if:

- (a) the person was convicted of the earlier offence within the period of 5 years ending immediately before the person is convicted of the subsequent offence; or
- (b) the person is convicted of the earlier offence and the subsequent offence by the same court at the same sitting, and the earlier offence was committed:
  - (i) within the period of 5 years ending immediately before the subsequent offence was committed; or
  - (ii) on the same day as the subsequent offence.

(4) A reference in this section to a related offence shall be read as a reference to:

- (a) an offence against this Division or Subdivision A of Division 2 of Part III of the *Taxation Administration Act 1953*; or
- (b) an offence against:
  - (i) section 6, 7 or 7A of the *Crimes Act 1914*; or
  - (ii) subsection 86 (1) of the *Crimes Act 1914*, by virtue of paragraph (a) of that subsection;

being an offence that relates to an offence referred to in paragraph (a) of this subsection.

(5) A reference in this section to an offence against section 46 shall be read as including a reference to an offence against section 7 of the *Crimes Act 1914* that relates to an offence against section 46.

(6) A reference in paragraph (3) (a) or (b) to a person's conviction shall be read as including a reference to an order made in relation to the person under section 556A of the Crimes Act, 1900 or section 19B of the *Crimes Act 1914*.

***Division 2—Offences related to statements, accounts and records***

**Interpretation**

49. (1) A reference in this Division to a statement made to a tax officer shall be read as a reference to a statement made to a tax officer orally, in writing, by means of a data processing device or in any other way.

(2) Without limiting the generality of subsection (1), a reference in this Division to a statement made to a tax officer shall be read as including a statement:

- (a) made in an application, certificate, declaration, notification, objection, return or other document made or given, or purporting to be made or given, pursuant to a tax law;
- (b) made in an instrument lodged for assessment pursuant to a tax law;
- (c) made in answer to a question asked of a person pursuant to a tax law;
- (d) made in any information given, or purporting to be given, pursuant to a tax law; or
- (e) made in a document given to a tax officer otherwise than pursuant to a tax law;

but shall not be read as including a statement made in a document produced pursuant to paragraph 18 (2) (c).

(3) A reference in this Division to a statement made to a tax officer shall be read as including a reference to a statement made to a person other than a tax officer for a purpose in connection with the operation of a tax law, being a statement made orally, in writing, by means of a data processing device or in any other way.

(4) Without limiting the generality of subsection (3), the reference in that subsection to a statement made to a person other than a tax officer shall be read as including a statement:

- (a) made in an application, certificate, declaration, notification or other document made or given to the person;
- (b) made in answer to a question asked by the person; or

- (c) made in any information given to the person.

**False or misleading statements****50. (1)** A person who:

- (a) makes a statement to a tax officer that is false or misleading in a material particular; or
- (b) omits from a statement made to a tax officer any matter or thing without which the statement is misleading in a material particular;

is guilty of an offence punishable, on conviction, by a fine not exceeding \$2,000.

(2) A person is not guilty of an offence against subsection (1) in relation to a statement if the person adduces evidence that he or she did not know, and could not reasonably be expected to have known, that the statement was false or misleading, and the evidence is not rebutted by the prosecution.

**(3)** A person who recklessly or knowingly:

- (a) makes a statement to a tax officer that is false or misleading in a material particular; or
- (b) omits from a statement made to a tax officer any matter or thing without which the statement is false or misleading in a material particular;

is guilty of an offence punishable, on conviction, by a fine not exceeding \$3,000.

**Incorrect records****51. (1)** If:

- (a) a person who is required pursuant to a tax law to keep any accounts, accounting records or other records keeps them in such a way that they do not correctly record and explain the matters, transactions, acts or operations to which they relate; or
- (b) a person who is required pursuant to a tax law to make a record of any matter, transaction, act or operation makes it in such a way that it does not correctly record the matter, transaction, act or operation;

the person is guilty of an offence punishable, on conviction, by a fine not exceeding \$2,000.

(2) A person is not guilty of an offence against subsection (1) by virtue of paragraph (a) in relation to any accounts, accounting records or other records if the person adduces evidence that he or she did not know, and could not reasonably be expected to have known, that the accounts, accounting records or other records did not correctly record and explain the matters, transactions, acts or operations to which they relate, and the evidence is not rebutted by the prosecution.

(3) A person is not guilty of an offence against subsection (1) by virtue of paragraph (b) in relation to a record of any matter, transaction, act or operation if the person adduces evidence that he or she did not know, and could not reasonably be expected to have known, that the record did not correctly record the matter, transaction, act or operation, and the evidence is not rebutted by the prosecution.

(4) If:

- (a) a person who is required pursuant to a tax law to keep any accounts, accounting records or other records recklessly or knowingly keeps them in such a way that they do not correctly record and explain the matters, transactions, acts or operations to which they relate; or
- (b) a person who is required pursuant to a tax law to make a record of any matter, transaction, act or operation recklessly or knowingly makes it in such a way that it does not correctly record the matter, transaction, act or operation;

the person is guilty of an offence punishable, on conviction, by a fine not exceeding \$3,000.

(5) A person who:

- (a) keeps any accounts, accounting records or other records in such a way that they:
  - (i) do not correctly record and explain the matters, transactions, acts or operations to which they relate;
  - (ii) are (whether wholly or partly) illegible, indecipherable or incapable of being identified; or
  - (iii) if they are stored or kept by means of a data processing device—cannot be displayed and printed out or otherwise reproduced in legible form;

- (b) makes a record of any matter, transaction, act or operation in such a way that it does not correctly record the matter, transaction, act or operation;
- (c) alters, defaces, mutilates, falsifies, damages, removes, conceals or destroys any accounts, accounting records or other records (whether wholly or partly); or
- (d) does or omits to do any other act or thing to any accounts, accounting records or other records;

with the intention of:

- (e) deceiving or misleading the Commissioner or another tax officer;
- (f) hindering or obstructing the investigation of a tax offence;
- (g) hindering or obstructing the Commissioner or another tax officer (otherwise than in the investigation of a tax offence);
- (h) hindering, obstructing or defeating the administration, execution or enforcement of a tax law; or
- (i) defeating the purposes of a tax law;

is guilty of an offence punishable, on conviction, by a fine not exceeding \$5,000 or imprisonment for a period not exceeding 12 months, or both.

### **Falsifying or concealing identity**

**52.** A person who:

- (a) falsifies or conceals the identity, or the address or location of a place of residence or business, of the person or of another person; or
- (b) does or omits to do any act or thing of which the doing or omission facilitates the falsification or concealment of the identity, or the address or location of a place of residence or business, of the person or another person;

with the intention of:

- (c) deceiving or misleading the Commissioner or another tax officer;
- (d) hindering or obstructing the investigation of a tax offence;
- (e) hindering or obstructing the Commissioner or another tax officer (otherwise than in the investigation of a tax offence);

- (f) hindering, obstructing or defeating the administration, execution or enforcement of a tax law; or
- (g) defeating the purposes of a tax law;

is guilty of an offence punishable, on conviction, by a fine not exceeding \$5,000 or imprisonment for a period not exceeding 12 months, or both.

### **Second and subsequent offences**

#### **53. (1) Where:**

- (a) a person is convicted of an offence against subsection 50 (1) or 51 (1); and
- (b) the court that convicted the person is satisfied that the person has previously been convicted of a related offence;

the penalty that the court may impose in respect of the first-mentioned offence is a fine not exceeding \$4,000.

#### **(2) Where:**

- (a) a person is convicted of an offence against subsection 50 (3) or 51 (4); and
- (b) the court that convicted the person is satisfied that the person has previously been convicted of a related offence;

the penalty that the court may impose in respect of the first-mentioned offence is a fine not exceeding \$5,000 or imprisonment for a period not exceeding 12 months, or both.

#### **(3) Where:**

- (a) a person is convicted of an offence against subsection 51 (5) or section 52; and
- (b) the court that convicted the person is satisfied that the person has previously been convicted of a related offence;

the penalty that the court may impose in respect of the first-mentioned offence is a fine not exceeding \$10,000 or imprisonment for a period not exceeding 2 years, or both.

**(4)** For the purposes of subsections (1), (2) and (3), a person who is convicted of an offence (in this subsection referred to as the “subsequent offence”) shall be taken to have been previously convicted of a related offence (in this subsection referred to as the “earlier offence”) if:

- (a) the person was convicted of the earlier offence within the period of 10 years ending immediately before the person is convicted of the subsequent offence; or
  - (b) the person is convicted of the earlier offence and the subsequent offence by the same court at the same sitting, and the earlier offence was committed:
    - (i) within the period of 10 years ending immediately before the subsequent offence was committed; or
    - (ii) on the same day as the subsequent offence.
- (5) A reference in this section to a related offence shall be read as a reference to:
- (a) an offence against:
    - (i) this Division;
    - (ii) Subdivision B of Division 2 of Part III of the *Taxation Administration Act 1953*; or
    - (iii) the *Crimes (Taxation Offences) Act 1980*;
  - (b) an offence against:
    - (i) section 6, 7 or 7A of the *Crimes Act 1914*; or
    - (ii) subsection 86 (1) of the *Crimes Act 1914* by virtue of paragraph (a) of that subsection;
 being an offence that relates to an offence of a kind referred to in paragraph (a) of this subsection; or
  - (c) an offence against section 29D or 86A of the *Crimes Act 1914*, being an offence that relates to a tax liability.
- (6) A reference in paragraph (1) (a), (2) (a) or (3) (a) to an offence shall be read as including a reference to an offence against section 7 of the *Crimes Act 1914* that relates to the first-mentioned offence.
- (7) A reference in paragraph (4) (a) or (b) to a person's conviction shall be read as including a reference to an order made in relation to the person under section 556A of the *Crimes Act, 1900* or section 19B of the *Crimes Act 1914*.

### **Orders to pay additional amounts**

#### **54. (1) Where:**

- (a) a person (in this subsection referred to as the “convicted person”) is convicted by a court of:
  - (i) an offence against subsection 50 (1) or (3) in relation to a statement made to a tax officer; or
  - (ii) an offence against subsection 51 (1) or (3) in relation to keeping any accounts, accounting records or other records (in paragraph (b) referred to as the “relevant accounts”) or the making of a record; and
- (b) the court is satisfied that the proper amount of tax, duty, penalty tax or the licence fee, as the case may be, that the convicted person or another person is liable to pay exceeds the amount that would have been payable if the amount had been assessed on the basis that the statement was not false or misleading, on the basis of the relevant accounts as they were kept, or on the basis that the record was correct, as the case requires;

the court may, in addition to imposing a penalty on the convicted person, order the convicted person to pay to the Commissioner an amount not exceeding:

- (c) if subsection 53 (2) applies in relation to the convicted person—3 times the amount of the excess; or
- (d) in any other case—double the amount of the excess.

**(2) Where:**

- (a) a person (in this subsection referred to as the “convicted person”) is convicted by a court of an offence against subsection 51 (5) or section 52 in relation to an act or omission; and
- (b) the court is satisfied that the act or omission was intended to facilitate the avoidance of a tax liability of the convicted person or another person;

the court may, in addition to imposing a penalty on the convicted person, order the convicted person to pay to the Commissioner an amount not exceeding:

- (c) if subsection 53 (3) applies in relation to the convicted person—3 times that amount; or
- (d) in any other case—double that amount.

***Division 3—Miscellaneous offences***

**Obstructing tax officers**

**55.** A person who, without reasonable excuse:

- (a) obstructs or hinders a tax officer in the exercise of the tax officer's powers under a tax law; or
- (b) contravenes a reasonable requirement of a tax officer who has entered premises pursuant to a tax law;

is guilty of an offence punishable, on conviction, by a fine not exceeding \$2,000 or imprisonment for 6 months, or both.

### **Offences by corporations**

**56. (1)** If a corporation does or omits to do any act or thing of which the doing or omission constitutes a tax offence, a person (by whatever name called and whether or not the person is an officer of the corporation) who is concerned in, or takes part in, the management of the corporation shall be taken to have committed the tax offence and is punishable accordingly.

**(2)** A person shall not be taken, pursuant to subsection (1), to have committed a tax offence if the person adduces evidence that the person:

- (a) did not aid, abet, counsel or procure the corporation's act or omission; and
- (b) was not in any way, by act or omission, directly or indirectly, knowingly concerned in, or a party to, the act or omission;

and that evidence is not rebutted by the prosecution.

**(3)** For the purposes of subsection (1), an officer of a corporation shall be presumed to be concerned in, and to take part in, the management of the corporation unless the officer adduces evidence to the contrary and that evidence is not rebutted by the prosecution.

**(4)** In this section, "officer", in relation to a corporation, means:

- (a) a director of the corporation;
- (b) a secretary of the corporation;
- (c) a receiver and manager of property of the corporation;
- (d) an official manager or deputy official manager of the corporation;
- (e) a liquidator of the corporation appointed in a voluntary winding up of the corporation; or

- (f) a trustee or other person administering a compromise or arrangement made between the corporation and another person or other persons.

### **Avoidance of tax or duty**

**57. (1)** A person liable to pay an amount of tax, duty or a licence fee who knowingly avoids paying, or disclosing his or her liability to pay, part or all of that amount is guilty of an offence punishable, on conviction, by a fine not exceeding \$1,000.

**(2)** If:

- (a) a corporation is liable to pay an amount of tax, duty, penalty tax or a licence fee; and
- (b) a director, servant or agent of the corporation knowingly avoids paying, or disclosing the liability to pay, part or all of that amount;

the director, servant or agent, as the case may be, and the corporation, are each guilty of an offence punishable, on conviction, by a fine not exceeding \$1,000.

**(3)** On convicting a person of an offence under subsection (1) or (2) the court may, in addition to imposing a penalty under the respective subsection, and without affecting the person's liability to pay the amount of tax, duty or the licence fee avoided, order the person to pay to the Commissioner an amount not exceeding double the first-mentioned amount.

### **Continuing offences**

**58.** If a person contravenes a tax law by which the person is required to do anything within a particular period, the person commits an offence on each day on which the failure to do that thing continues (including any such day on which the person is convicted of the offence and any subsequent such day).

## ***Division 4—Prosecution of tax offences***

### **Commencement of prosecution**

**59.** A prosecution for a tax offence may be commenced at any time.

### **Prosecution of corporations**

**60. (1)** A tax offence committed by a corporation is punishable on summary conviction.

**(2)** Where, in a prosecution for a tax offence constituted by an act done, or omitted to be done, by a corporation, it is necessary to establish the intention of the corporation, it is sufficient to show that a servant or agent of the

corporation, being a servant or agent by whom the act was done or omitted, as the case may be, had the intention.

(3) In a prosecution for a tax offence, any act done or omitted to be done on behalf of a corporation by:

- (a) a director, servant or agent of the corporation; or
- (b) any other person:
  - (i) at the direction; or
  - (ii) with the consent or agreement (whether expressed or implied);

of a director, servant or agent of the corporation, shall be taken to have been done or omitted, as the case requires, also by the corporation.

### **Penalties for corporations**

61. Where a corporation is convicted of:

- (a) a tax offence that is punishable by imprisonment; or
- (b) an offence to which subsection 48 (2) or 53 (2) applies;

the penalty that the court may impose in respect of the offence is a fine not exceeding 5 times the maximum fine that, but for this section, the court could impose as a penalty for the offence.

**Prosecution instead of penalty taxes**

**62. (1)** If a prosecution is instituted against a person for an offence against subsection 46 (1) or 50 (1) or (3) constituted by an act or omission, the person is not liable to pay any penalty tax that he or she would, but for this subsection, be liable to pay in respect of the act or omission.

**(2)** Where:

- (a) an amount has been paid or applied by the Commissioner in total or partial discharge of a person's liability to pay an amount of penalty tax in relation to an act or omission of the person; and
- (b) a prosecution is or has been instituted against the person for an offence against subsection 46 (1) or 50 (1) or (3) constituted by the act or omission;

an amount equal to the first-mentioned amount shall be refunded to the person, or applied by the Commissioner in total or partial discharge of a tax liability of the person, but, if the prosecution is withdrawn, the person again becomes liable to pay the penalty tax.

**(3)** In this section, "penalty tax" means penalty tax payable under section 30.

**Enforcement of payment orders**

**63. (1)** Where:

- (a) the Supreme Court or the Magistrates Court orders a person to pay an amount to the Commissioner; and
- (b) in the case of the Magistrates Court—the amount does not exceed the amount referred to in subsection 5 (1) of the *Magistrates Court (Civil Jurisdiction) Ordinance 1982*;

the order is enforceable in all respects as a final judgment of the court in favour of the Commissioner.

**(2)** Where the Magistrates Court orders a person to pay to the Commissioner an amount exceeding the amount referred to in subsection 5 (1) of the *Magistrates Court (Civil Jurisdiction) Ordinance 1982*, the Clerk of the court shall give the Commissioner a certificate containing the following particulars:

- (a) the name of the Court;
- (b) the date on which the order was made;

- (c) the tax law under which the order was made;
- (d) the amount to be paid to the Commissioner;
- (e) the name and address of the person ordered to pay the amount.

(3) A certificate may be registered in the Supreme Court, by the Registrar of the court, by entering the particulars in a book kept for the purpose.

(4) If the order to which a certificate relates was made more than 12 months before registration is sought, the certificate shall not be registered without the leave of the court.

(5) Upon registration, a certificate is enforceable in all respects as if it were a final judgement of the Supreme Court in favour of the Commissioner.

(6) The costs of registering a certificate and of any other proceedings in relation to the enforcement or registration of an order for payment of an amount to the Commissioner are, subject to any prescribed conditions, payable by the person to whom the order relates.

#### **Penalties payable in addition to tax**

**64.** Where:

- (a) a court orders a person to pay an amount by way of penalty to the Commissioner; or
- (b) a person pays an amount in accordance with an order of a court, or pays any other penalty in respect of a tax offence;

the order, or the payment, as the case requires, shall not be taken to relieve the person from liability to assessment or to the payment of any amount (whether by way of tax or duty, or a licence fee, charge or otherwise) for which the person is otherwise liable.

## PART VII—CO-OPERATION WITH OTHER TAXATION AUTHORITIES

### Interpretation

**65.** In this Part, unless the contrary intention appears:

“authorised officer” means a person authorised under subsection 66 (1) to conduct an investigation;

“reciprocating jurisdiction” means a jurisdiction, being the Commonwealth, a State or another Territory, under a law of which a tax officer is authorised to give to the Commissioner, for the purposes of the administration of a tax law, information within the knowledge of the tax officer;

“tax law” means:

- (a) in relation to the Territory—a tax law within the meaning of this Ordinance; or
- (b) in relation to a reciprocating jurisdiction—a law of that jurisdiction with respect to the imposition of tax or duty, or a law in relation to such a law;

“tax officer” means:

- (a) in relation to the Territory—a tax officer within the meaning of this Ordinance; or
- (b) in relation to a reciprocating jurisdiction:
  - (i) a person or authority, not being a Minister of State, who or that exercises powers or performs functions under or in relation to a tax law of that jurisdiction; or
  - (ii) a person, not being a Minister of State, who is authorised in writing to act under this Part by a person or authority referred to in paragraph (a).

### Investigation of referred matters

**66. (1)** If a tax officer of a reciprocating jurisdiction refers a matter, in writing, to the Commissioner for investigation, the Commissioner may authorise a tax officer of the Territory or of that jurisdiction to conduct an investigation into the matter.

(2) For the purposes of conducting an investigation, the Commissioner may, by notice in writing, require any person:

- (a) to give the Commissioner, either orally or in writing, such information within the person's knowledge as the Commissioner requires for the purposes of the investigation;
- (b) to answer questions in relation to the matter being investigated, either in writing, or orally before the Commissioner or an authorised officer at a time and place specified in the notice; or
- (c) to produce to the Commissioner or an authorised officer any documents relating to the matter under investigation that are in the custody or under the control of the person.

(3) The Commissioner or the authorised officer may require information or answers to be verified or given on oath or affirmation, and for that purpose the Commissioner or the authorised officer may administer an oath or affirmation to the effect that the information is, or the answers will be, true.

(4) The Commissioner may cause copies to be made of, or extracts to be taken from, any documents produced pursuant to paragraph (2) (c).

(5) A person required to attend before the Commissioner or before an authorised officer is entitled to payment of an allowance of the determined amount in respect of his or her expenses.

### **Disclosure of information to reciprocating jurisdictions**

67. Notwithstanding any secrecy provision of a tax law within the meaning of this Ordinance, the Commissioner may give information disclosed or obtained under such a tax law to a tax officer of a reciprocating jurisdiction for the purposes of the administration of a tax law of that jurisdiction.

## **PART VIII—DISCLOSURE OF INFORMATION TO NATIONAL CRIME AUTHORITY**

### **Interpretation**

68. In this Part, unless the contrary intention appears:

“Act” means the *National Crime Authority Act 1984*;

“acting member”, in relation to the Authority, has the same meaning as in the Act;

“Authority” means the National Crime Authority;

“member”, in relation to the Authority, has the same meaning as in the Act;

“prescribed investigation” has the same meaning as in the Act;

“special investigation” has the same meaning as in the Act;

“tax-related investigation” means a prescribed investigation to the extent that it relates to a tax offence or tax offences.

### **Information in respect of tax-related investigations**

**69.** Notwithstanding section 97, the Commissioner may disclose information to the Authority for the purposes of a tax-related investigation.

### **Information in respect of special investigations**

**70. (1)** If the Authority considers that the Commissioner may have acquired information under a tax law that is relevant to a special investigation being conducted by the Authority, a member of the Authority may apply to a Judge of the Supreme Court for an order under subsection (4).

**(2)** An application shall be in writing and shall be accompanied by an affidavit of the applicant:

- (a) setting out details of the special investigation; and
- (b) specifying particulars of the information sought.

**(3)** The applicant shall notify the Commissioner in writing of the application and of the particulars of the information sought.

**(4)** On considering an application, the Judge may order the Commissioner to disclose to the Authority the information sought, or so much of it as is specified in the order.

**(5)** If the Judge makes an order under subsection (4), he or she may:

- (a) make a further order prohibiting the Authority from disclosing the information except in the manner, and to the persons, specified in the order, being persons to whom the Authority is otherwise entitled to disclose the information; and
- (b) at any time, on the application of the Commissioner or a member of the Authority, vary or revoke the further order.

**(6)** Where the Commissioner or a member of the Authority makes an application referred to in paragraph (5) (b), notice of the application shall be given by the applicant to the Authority or the Commissioner respectively.

(7) An order under subsection (4) or (5) in relation to an application shall not be made unless:

- (a) the Commissioner has been given an opportunity to bring to the notice of the Judge any matter to which the Commissioner thinks the Judge should have regard when considering the application; and
- (b) the applicant has given to the Judge, on oath or affirmation, or by affidavit, any further information within the applicant's knowledge that the Judge requires concerning the special investigation in relation to which the application is made; and
- (c) the Judge is satisfied:
  - (i) that there are reasonable grounds for believing that the information sought is relevant to the special investigation; and
  - (ii) that the information is not readily obtainable by the Authority from a source other than the Commissioner.

(8) When considering whether or not particular information is readily obtainable from a source other than the Commissioner, the Judge shall have regard to any prejudice to the conduct of the special investigation that may result if the Authority is required to obtain the information from another source.

## PART IX—EVIDENCE

### Evidence of previous convictions

71. For the purposes of subsection 48 (1) or (2) or 53 (1), (2) or (3), in proceedings for an offence under Division 1 or 2 of Part VI, a certificate of the Commissioner setting out such facts as the Commissioner considers relevant with respect to:

- (a) a person's conviction of an offence against Division 1 or 2 of Part VI or Subdivision B of Division 2 of Part III of the *Taxation Administration Act 1953*;
- (b) a person's conviction of an offence against:
  - (i) section 6, 7 or 7A of the *Crimes Act 1914*; or
  - (ii) subsection 86 (1) of the *Crimes Act 1914* by virtue of paragraph (a) of that subsection;

being an offence of a kind that relates to an offence against those Divisions or that Subdivision;

- (c) a person's conviction of an offence against section 29D or 86A of the *Crimes Act 1914*, being an offence that relates to a tax liability; or
- (d) an order made under section 556A of the *Crimes Act, 1900* or under section 19B of the *Crimes Act 1914* in relation to a person in respect of an offence of a kind referred to in paragraph (a), (b) or (c);

is evidence of the matters stated in the certificate and of the facts on which they are based.

### **Evidence of authority to institute proceedings**

**72.** Where a prosecution for a tax offence is instituted by a person in the official name of the Commissioner, the prosecution shall be presumed, unless the contrary is established, to have been instituted with the authority of the Commissioner.

### **Evidence of claim**

**73. (1)** In proceedings in respect of a tax offence that is punishable on summary conviction, a statement or averment in the information, claim or complaint by which the proceedings were instituted is evidence of the matters stated or averred and of the facts on which they are based.

**(2)** If a matter stated or averred relates to a question of mixed law and fact, the statement or averment shall be taken to be evidence of the fact only.

**(3)** This section does not apply in relation to an averment of the intention of the defendant in the proceedings.

### **Certification of documents**

**74. (1)** Where a document is obtained pursuant to a tax law within the meaning of this Ordinance, or a tax law of the Commonwealth, a State or another Territory, the Commissioner or a tax officer of the Commonwealth, the State or the other Territory respectively may:

- (a) certify a copy of the document to be a true copy (in this section referred to as a "certified primary copy");
- (b) certify an extract from the document to be a true extract (in this section referred to as a "certified primary extract");
- (c) certify a copy of a certified primary copy or a certified primary extract to be a true copy (in this section referred to as a "certified secondary copy"); or

- (d) certify an extract from a certified primary copy or a certified primary extract to be a true extract (in this section referred to as a “certified secondary extract”).

(2) Where, pursuant to a tax law within the meaning of this Ordinance or a tax law of the Commonwealth or a State or another Territory, a copy is made of a document, the Commissioner or a tax officer of the Commonwealth, the State or the other Territory respectively may certify the copy to be a true copy (in this section referred to as a “certified copy”).

(3) Where, pursuant to a tax law within the meaning of this Ordinance or a tax law of the Commonwealth, a State or another Territory, an extract is taken from a document, the Commissioner or a tax officer of the Commonwealth, the State or the other Territory respectively may certify the extract to be a true extract (in this section referred to as a “certified extract”).

- (4) A document purporting to be:

- (a) a certified primary copy;
- (b) a certified primary extract;
- (c) a certified secondary copy;
- (d) a certified secondary extract;
- (e) a certified copy; or
- (f) a certified extract;

is admissible in evidence in all proceedings arising out of a tax law as if it were the respective original document unless:

- (g) in the case of proceedings for an offence—evidence is adduced that the document is not a true copy, or a true extract, as the case requires; or
- (h) in any other case—it is proved that the document is not a true copy, or a true extract, as the case requires.

- (5) In this section, unless the contrary intention appears:

“tax law”, in relation to the Commonwealth, a State or another Territory, means a law of the Commonwealth, the State or the other Territory with respect to the imposition and collection of taxes, duties or licence fees;

“tax officer”, in relation to the Commonwealth, a State or another Territory, means:

- (a) a person or authority, not being a Minister of State, that is for the time being authorised under a law of the Commonwealth, the State or the other Territory respectively to perform the functions of a tax officer; or
- (b) a person, not being a Minister of State, authorised in writing by a person or authority referred to in paragraph (a) to perform the functions of a tax officer.

### **Documents issued by Commissioner**

**75. (1)** The production of a notice of assessment or of a document signed by the Commissioner purporting to be a copy of a notice of assessment shall be taken to be evidence that the assessment was duly made and (except in proceedings on appeal against the assessment) that the amount and all the particulars of the assessment are correct.

**(2)** The production of a document signed by the Commissioner purporting to be a document issued by the Commissioner shall be taken to be evidence that the Commissioner issued it.

**(3)** A certificate signed by the Commissioner stating that the person specified in the certificate was or was not the holder of a licence of a kind specified in the certificates shall be taken to be evidence of the matters stated in the certificate and of the facts on which they are based.

### **Judicial notice of Commissioner's signature**

**76.** For the purposes of a tax law, all courts and tribunals and all judges and persons acting judicially or authorised by law to receive and examine evidence shall take judicial notice of the signature of a person who holds or has held the office of Commissioner.

## **PART X—BUSINESS GROUPS**

### **Membership of a group**

**77. (1)** For the purposes of a tax law, a group is constituted by the persons who, by virtue of section 78, 79, 80 or 81, constitute a primary group for the purposes of this subsection, being persons in respect of whom a determination under subsection (2) is not in force.

**(2)** The Commissioner may, by instrument, determine that a person who would, but for the determination, be a member of a group is not a member of the group if the Commissioner is satisfied that the person:

- (a) has continuously carried on business, and will continue to carry on business, independently of the other member or members of the group, and is not subject to control by any other member of the group; and
- (b) is not carrying on business of the same kind as any other business carried on by another member of the group, and has no intention of carrying on such a business.

**(3) Notice of a determination:**

- (a) shall be given by the Commissioner to the person in respect of whom the determination was made, and to each remaining member of the group; and
- (b) shall be published in the *Gazette*.

**(4)** A determination comes into force on being made and continues in force until it is revoked and notice of the revocation has been served on the person in respect of whom the determination was made.

**(5)** The Commissioner may revoke a determination if the circumstances referred to in paragraph (2) (a) or (b) that applied to the person when the determination was made cease to apply to the person.

**(6)** Notice of the revocation of a determination shall be given by the Commissioner:

- (a) to the person in respect of whom the determination was made; and
- (b) to each other member of the group of which the person is a member, as a result of the revocation, by virtue of subsection (1).

### **Groups of corporations**

**78.** Corporations constitute a primary group for the purposes of subsection 77 (1) if they are related corporations within the meaning of the *Companies Act 1981*.

### **Groups where employees work in another business**

**79. (1)** If:

- (a) an employee works solely or mainly in connection with a business carried on by his or her employer and another person or other persons, or by another person or other persons; or
- (b) an employer has, in respect of work done by an employee, an agreement with another person or other persons in relation to a

business carried on by the other person or persons (whether alone or with another person or other persons);

the employer and the other person, or the employer and each of the other persons, as the case requires, constitute a primary group for the purposes of subsection 77 (1).

(2) In paragraph (1) (b), the reference to an agreement shall be read as a reference to an agreement, arrangement or undertaking, whether formal or informal, whether expressed or implied, and whether or not the agreement, arrangement or undertaking includes provisions in respect of the supply of goods or services.

### **Groups of commonly controlled businesses**

**80. (1)** If a person or persons has, or have together, a controlling interest in each of 2 businesses, the persons who carry on those businesses constitute a primary group for the purposes of subsection 77 (1).

(2) For the purposes of this section, a person or persons shall be taken to have a controlling interest in a business if:

- (a) in the case of one person—the person is the sole owner (whether or not as trustee) of the business;
- (b) in the case of 2 or more persons—the persons are together the exclusive owners (whether or not as trustees) of the business;
- (c) in the case of a business carried on by a corporation—a director or directors of the corporation (being a director or directors who is, or who are together, entitled to exercise more than half of the voting power at meetings of the directors of the corporation) is or are under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of that person, or of those persons acting together;
- (d) in the case of a business carried on by a corporation that has a share capital—that person, or those persons acting together, can, directly or indirectly, exercise, control the exercise of, or substantially influence the exercise of, more than half of the voting power attached to the voting shares issued by the corporation;
- (e) in the case of a business carried on by a partnership—that person, or those persons together:
  - (i) own (whether beneficially or not) more than half of the capital of the partnership; or

- (ii) are entitled (whether beneficially or not) to more than half of the profits of the partnership; or
- (f) in the case of a business carried on under a trust—the person, or those persons (whether or not as a trustee or trustees of another trust) are the beneficiaries in respect of more than half of the value of the interests in the first-mentioned trust.

**(3) If:**

- (a) 2 corporations are related to each other within the meaning of the *Companies Act 1981*; and
- (b) one of the corporations has a controlling interest in the business;

the other corporation shall be taken to have a controlling interest in the business.

**(4) If:**

- (a) a person or persons has or have together a controlling interest in a business; and
- (b) the person or persons who carry on the business has, or have together, a controlling interest in another business;

the person or persons referred to in paragraph (a) shall be taken to have a controlling interest in that other business.

**(5) If:**

- (a) a person or persons is or are the beneficiary or beneficiaries of a trust in respect of more than half of the value of the interests in the trust; and
- (b) the trustee has a controlling interest in a business of the trust;

the beneficiary or the beneficiaries shall be taken to have a controlling interest in the business.

**(6)** A person who may benefit from a discretionary trust as a result of the exercise of a power of discretion by the trustee or another person, or by the trustee and another person, shall, for the purposes of subsection (5), be taken to be a beneficiary in respect of more than half of the value of the interests in the trust.

**(7)** Subsection (1) does not apply in relation to a person or persons who has or have a controlling interest in 2 businesses if:

- (a) in the case of one person—both businesses are wholly owned by the person, whether as trustee or otherwise; or
- (b) in the case of 2 or more persons—both businesses are wholly owned by the persons as trustees.

#### **Smaller groups subsumed under larger groups**

**81.** If a person is a member of 2 or more primary groups constituted by virtue of this section or section 78, 79 or 80 (in this section referred to as the “smaller groups”):

- (a) the members of the smaller groups constitute a primary group for the purposes of subsection 77 (1); and
- (b) for the purposes of determining whether or not a person is a member of a group under subsection 77 (1), the smaller groups shall be disregarded.

### **PART XI—REPRESENTATION AND LIABILITY OF COMPANIES**

#### **Appointment of public officer**

**82. (1)** A company carrying on business in the Territory (in this Part referred to as “the company”) shall at all times, unless exempted by the Commissioner, be represented for the purposes of a tax law by a public officer appointed by the company or by its authorised agent or attorney.

**(2)** A public officer shall be appointed within one month after the commencement of this Ordinance or after the company begins carrying on business in the Territory, whichever is later.

**(3)** The company shall appoint a public officer as often as is necessary to keep the office of public officer constantly filled.

**(4)** An appointment of a public officer shall not be taken to have been made unless written notice of the appointment, specifying the name and the address for service of the appointee, has been given to the Commissioner.

#### **Eligibility for appointment as public officer**

**83.** A person is not eligible for appointment as the public officer of a company unless the person:

- (a) is a natural person who has attained the age of 18 years;
- (b) is ordinarily resident in the Territory; and

- (c) is capable of understanding the nature of his or her appointment as public officer.

### **Service of documents**

#### **84. Service of a document:**

- (a) on the public officer or at the public officer's address for service; or
- (b) if there is no public officer—on any person acting or appearing to be acting in the business of the company;

shall be taken to be sufficient service on the company for the purposes of a tax law.

### **Liability of company and public officer**

#### **85. (1) The public officer:**

- (a) is responsible for doing anything required to be done by the company under a tax law; and
- (b) is, in the case of default, liable to the same penalty as the company.

(2) Anything done by the public officer that the public officer is required by a tax law to do in his or her capacity as representative of the company shall be deemed to have been done by the company.

(3) The absence of the public officer, or a vacancy in the office of the company's public officer, shall not be taken to excuse the company from a duty to comply with a tax law, or from liability to a penalty for contravening a tax law.

(4) A tax law shall be taken to apply in relation to a company as if the company were not required to appoint a public officer.

(5) A notice given to or requisition made on the public officer shall be taken to have been given to or made on the company.

(6) Any proceedings taken against a public officer under a tax law shall be deemed to have been taken against the company, and the company is liable jointly and severally with the public officer for any penalty imposed on the public officer.

### **Liability of directors or other officers**

**86.** Notwithstanding anything in this Part, and without limiting, altering or transferring the liability of the public officer, every notice, process or

proceeding which, under a tax law, may respectively be given to, served on or taken against the public officer or the company may, if the Commissioner thinks fit, be given to, served on or taken against a director, secretary or other officer of the company or any agent or attorney of the company, and the director, secretary, officer, agent or attorney then has the same liability in respect of the notice, process or proceeding as the public officer or the company would have if it had been given to, served on or taken against the public officer of the company.

#### **Failure to appoint public officer**

**87.** A company that contravenes subsection 79 (3) is, in respect of each day on which it contravenes that subsection (including any such day on which the company is convicted of an offence under this subsection and any subsequent such day), guilty of an offence punishable, on conviction, by a fine not exceeding \$50.

#### **Notice of liquidator's appointment**

**88.** A liquidator appointed to wind up a company shall notify the Commissioner of his or her appointment within 14 days after the date of the appointment.

Penalty: \$1,000.

### **PART XII—OBJECTIONS AND REVIEWS**

#### **Objections**

**89. (1)** A person who is dissatisfied with an assessment may lodge with the Commissioner a written objection to the assessment within 60 days after the date on which notice of it is served on the person.

**(2)** An objection shall state fully and in detail the grounds on which it is made.

**(3)** The Commissioner shall consider an objection, and may either disallow it, or allow it wholly or partly.

**(4)** The Commissioner shall cause written notice of his or her decision to be served on the objector.

#### **Late lodgement of objections**

**90. (1)** If the period within which a person may lodge an objection has ended, the person may nevertheless send an objection to the Commissioner with a written application to treat the objection as having been duly lodged.

**(2)** An application shall state fully and in detail the circumstances concerning, and the reasons for, the person's failure to lodge the objection within that period.

**(3)** The Commissioner shall consider each application and may grant or refuse it.

**(4)** The Commissioner shall give the applicant written notice of his or her decision on an application.

**(5)** If the Commissioner grants an application, the objection to which the application relates shall, for the purposes of this Part, be treated as having been duly lodged.

### **Review of decisions**

**91. (1)** Application may be made to the Tribunal for a review of a decision by the Commissioner:

- (a) disallowing an objection wholly or partly; or
- (b) refusing an application under subsection 90 (1).

**(2)** An application shall be made within 60 days after the date of service of the notice served on the objector under subsection 89 (4) or 90 (4).

### **Notification of decisions**

**92. (1)** A notice given or served on an objector under subsection 89 (4) or 90 (4) shall:

- (a) include a statement to the effect that, subject to the *Administrative Appeals Tribunal Act 1975*, an application may be made to the Administrative Appeals Tribunal, within the period of 60 days after the date of service of the notice, for a review of the decision to which the notice relates; and
- (b) except where subsection 28 (11) of that Act applies—include a statement to the effect that a person whose interests are affected by the decision may request a statement pursuant to section 28 of that Act.

**(2)** The validity of a decision referred to in subsection 91 (1) shall not be taken to have been affected by a failure to comply with subsection (1).

**Giving effect to Tribunal's decisions**

**93. (1)** Within 60 days after a decision in relation to this Part by the Tribunal becomes final, the Commissioner shall take any action, including amending any relevant assessment, that is necessary to give effect to the decision.

**(2)** For the purposes of subsection (1), if an appeal has been made to the Full Court of the Federal Court of Australia in relation to a decision of the Tribunal, but no application for special leave to appeal to the High Court in relation to that decision is made within 30 days after the determination of the first-mentioned appeal, the decision of the Federal Court of Australia shall be taken to have become final when that period ends.

**Effect of pending objection, review or appeal**

**94.** The fact that a consideration of an objection, or a review or appeal in relation to a decision, is pending does not in the meantime interfere with or affect the assessment or decision to which the objection, review or appeal relates, and duty, tax, penalty tax or a licence fee may be recovered as if no consideration, review or appeal were pending.

**Reduction of amounts payable**

**95.** If, as a result of a decision in relation to this Part by the Commissioner, the Tribunal or a court, an amount of tax, duty, penalty tax or a licence fee payable is reduced, the amount by which it is reduced shall be taken, for the purposes of section 31, never to have been payable.

**PART XIII—MISCELLANEOUS****Records to be kept**

**96. (1)** A person carrying on business shall:

- (a) keep books and accounts in the English language recording particulars of all matters in relation to which tax, duty or a licence fee is payable under a tax law; and
- (b) preserve the books and accounts, and any other documents or papers, including copies of instruments, relating to such a matter for at least 6 years after the matter is completed.

Penalty: \$2,000.

**(2)** A person is not required to preserve any books, accounts, documents, papers or copies of instruments if:

- (a) the Commissioner has notified the person that their preservation is not required; or
- (b) they relate to a company that has been wound up.

### **Secrecy**

**97. (1)** A person who is or has been a tax officer shall not, except for the purposes of a tax law, nor otherwise than in the performance of the person's duties as a tax officer, directly or indirectly:

- (a) make a record of any confidential information with respect to the affairs of a second person; or
- (b) disclose to a second person any confidential information with respect to the affairs of a third person.

Penalty: \$5,000 or imprisonment for 12 months, or both.

**(2)** A person who is or has been a tax officer shall not be required:

- (a) to produce a confidential document in court; or
- (b) to disclose any confidential information to a court;

unless, in the opinion of the court, the production of the document or the disclosure of the information is necessary for the purposes of giving effect to a tax law.

**(3)** Nothing in subsection (1) shall be taken to prohibit the Commissioner or Deputy Commissioner, or a person authorised for the purpose by the Commissioner or Deputy Commissioner, from communicating any information to a tax officer performing duties, as a tax officer, in relation to a tax law for the purpose of enabling the tax officer to perform those duties.

**(4)** A tax officer shall be taken to have disclosed confidential information to a second person in contravention of subsection (1) if:

- (a) the tax officer communicated the information to a Minister of State; and
- (b) the information was not acquired by the tax officer for the purposes of Part II.

**(5)** A tax officer shall, when required by the Commissioner or Deputy Commissioner to do so, make an oath or affirmation, in a manner and form specified by the Commissioner by instrument in writing, to maintain secrecy in accordance with this section.

(6) For the purposes of this section, information disclosed to the Commissioner by a person performing a function, or exercising a power, under a law of the Commonwealth, a State or another Territory in relation to taxation shall be taken to have been disclosed to the Commissioner for the purposes of this Ordinance.

(7) In this section, a reference to a tax officer shall be read as including a reference to a person who has acquired any confidential document or confidential information pursuant to a tax law or as a result of exercising powers or performing functions under or in relation to a tax law.

(8) In subsection (2), “court” includes any tribunal, authority or person having power to require documents to be produced or questions to be answered.

#### **Appearance by Commissioner**

98. In any action, prosecution or other proceeding under or arising out of, a tax law, being an action, prosecution or other proceeding instituted by the Commissioner, or to which the Commissioner is a party, or in which the Commissioner intervenes or seeks to intervene, the Commissioner may appear personally, or may be represented by a person authorised by the Commissioner, in writing, to appear for the Commissioner.

#### **Determination of amounts payable under tax laws**

99. (1) The Minister may, by notice in the *Gazette*, determine:

- (a) the amount of tax, duty or a licence fee payable under a tax law;
- (b) the rate at which an amount of tax, duty or a licence fee, payable under a tax law, is to be calculated; or
- (c) an amount for the purposes of subsection 37 (1), section 40 or subsection 66 (5).

(2) The Minister shall cause a copy of a determination to be laid before each House of the Parliament within 15 sitting days of that House after the day on which the determination was made.

(3) If a determination is not laid before each House of the Parliament in accordance with subsection (2) it is void and of no effect.

(4) Subsections 12 (4) to (7) (inclusive) of the *Seat of Government (Administration) Act 1910* apply in relation to a determination laid before a House of Parliament as if the references in those subsections to an Ordinance were references to the determination.

(5) In the application, by virtue of subsection (4), of subsections 12 (6) and (6A) of the *Seat of Government (Administration) Act 1910*, the references in those subsections to subsection 12 (3) of that Act shall be read as references to subsection (2) of this section.

### **Regulations**

**100.** The Minister may make regulations, not inconsistent with this Ordinance, prescribing all matters which by this Ordinance are required or permitted to be prescribed or which are necessary or convenient to be prescribed for carrying out or giving effect to this Ordinance.

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### **NOTE**

1. Notified in the *Commonwealth of Australia Gazette* on 31 July 1987.