



AUSTRALIAN CAPITAL TERRITORY

## **Taxation (Administration) (Amendment) Act 1994**

**No. 67 of 1994**

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### **An Act to amend the *Taxation (Administration) Act 1987***

*[Notified in ACT Gazette S224:19 October 1994]*

The Legislative Assembly for the Australian Capital Territory enacts as follows:

#### **Short title**

1. This Act may be cited as the *Taxation (Administration) (Amendment) Act 1994*.

#### **Commencement**

2. This Act commences on the day on which it is notified in the *Gazette*.

#### **Principal Act**

3. In this Act, "Principal Act" means the *Taxation (Administration) Act 1987*.<sup>1</sup>

#### **Insertion**

4. Before section 13 of the Principal Act the following section is inserted in Part III:

#### **Variation of lodgment of returns**

"12B. (1) A person may, before the date on which a return is to be lodged, apply to the Commissioner for variation of the period in relation to which, or the time within which, the person is to lodge the return.

“(2) An application shall—

- (a) be in writing, addressed to the Commissioner; and
- (b) specify—
  - (i) the name and address of the applicant; and
  - (ii) the grounds on which the variation is sought.

“(3) Where the Commissioner is satisfied that it would be unduly onerous for the applicant to lodge a return in accordance with a tax law the Commissioner may, by notice in writing addressed to the applicant, vary the period in relation to which, or the time within which, the applicant is to lodge the return.

“(4) While a notice referred to in subsection (3) is in force in relation to a person, the person shall lodge returns in accordance with the notice.

“(5) Where—

- (a) a notice referred to in subsection (3) is in force in relation to a person; and
- (b) the Commissioner is no longer satisfied that it would be unduly onerous for the person to lodge returns in accordance with the relevant tax law;

the Commissioner may, by notice in writing addressed to the person, revoke the first-mentioned notice.

“(6) Where—

- (a) the Commissioner revokes a notice under subsection (5); and
- (b) because of that revocation, the person to whom the notice related would, but for this subsection, be required to lodge a return to which the notice related within a period of less than 21 days after the date of revocation;

that person is not required to lodge that return within that period but shall lodge it no later than the last date for lodgment of the next return due, being a return of a type to which the notice related.

“(7) This section does not apply to returns the lodging of which may be varied under section 17 of the *Payroll Tax Act 1987*.”.

### **Amended assessments**

**5.** Section 22 of the Principal Act is amended—

- (a) by omitting from subsection (1) “3” and substituting “6”; and
- (b) by inserting after subsection (2) the following subsection:

“(2A) The Commissioner may, at any time 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 if the Commissioner believes on reasonable grounds that—

- (a) there is evidence of tax avoidance due to fraud or evasion by the person liable to pay the amount assessed; or
- (b) a material fact has been omitted from information provided to the Commissioner by the person liable to pay the amount assessed.”.

### **Time for payment**

6. Section 26 of the Principal Act is amended by adding at the end of paragraph (1) (c) “, whether by notice under subsection 12B (3) or otherwise”.

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

7. Section 41 of the Principal Act is amended by inserting “Commissioner on behalf of the” after “by the”.

### **Review of decisions**

8. Section 91 of the Principal Act is amended—

- (a) by omitting subsection (1) and substituting the following subsection:

“(1) Application may be made to the Tribunal for a review of a decision by the Commissioner—

- (a) under subsection 12B (3) refusing to vary the period in relation to which, or the time within which, a person is to lodge a return;
- (b) under subsection 12B (3) varying the period in relation to which, or the time within which, a person is to lodge a return other than in accordance with the application for variation;
- (c) under subsection 12B (5) revoking a notice;
- (d) under subsection 77 (2) that a person is not a member of a group;
- (e) under subsection 77 (5) revoking a determination;
- (f) under subsection 89 (3) disallowing an objection wholly or partly;
- (g) under subsection 90 (3) refusing an application;
- (h) under paragraph 95C (1) (a) that a person has charged to, or recovered from, or will charge to, or recover from, another person an amount paid in respect of the whole or any part of a revenue amount; or

- (j) under paragraph 95C (1) (b) that a person has not repaid an amount charged to, or recovered from, another person.”; and

(b) by inserting in subsection (2) “12B (3) or (5),” after “subsection”.

### **Notification of decisions**

**9.** Section 92 of the Principal Act is amended by inserting in subsection (1) “12B (3) or (5),” after “subsection” (first occurring).

### **Insertion**

**10.** After section 95 of the Principal Act the following section is inserted in Part XII:

### **Burden of proof**

“95A. Under this Part, the burden of establishing on the balance of probabilities that an assessment is excessive lies on any person objecting to the assessment.”.

### **Corporations Law**

**11.** Each of the following provisions of the Principal Act is amended by omitting “*Companies Act 1981* of the Commonwealth” and substituting “Corporations Law”:

Subsection 4 (1) (definition of “corporation”), paragraph 77 (2) (b), section 78 and paragraph 80 (3) (a).

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### **NOTE**

1. Reprinted as at 31 January 1994.

*[Presentation speech made in Assembly on 25 August 1994]*