

EXPLANATORY STATEMENT

AUSTRALIAN CAPITAL TERRITORY

TAXATION (ADMINISTRATION) ORDINANCE 1987

No. 41 of 1987

The Taxation (Administration) Ordinance 1987, provides a consolidated system for the administration of Ordinances dealing with taxation in the Territory. It is based on provisions contained in the Australian Capital Territory Taxation (Administration) Act 1969 and the Taxation Administration Act 1953. The former Act will cease to apply to the Territory on the commencement of the Ordinance and the latter Act will cease to apply to the taxes which will be administered under the Ordinance.

The Commissioner for Australian Capital Territory Revenue Collections appointed under the Ordinance has the general administration of the Ordinance and associated tax laws.

Details of the Ordinance are as follows:

PART I - PRELIMINARY

Short title

Section 1 cites the Ordinance as the Taxation (Administration) Ordinance 1987.

Commencement

Section 2 provides for the commencement of the Ordinance.

Tax laws

Section 3 provides that, for the purposes of the Ordinance, each of the following Ordinances are tax laws which will be administered under the Ordinance:

- (a) the 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; and
- (f) regulations made under an Ordinance referred to in paragraphs (a) to (e) inclusive.

Interpretation

Section 4 deals with matters of interpretation.

PART II - ADMINISTRATION

Commissioner

Subsection 5(1) provides for the creation of the statutory office of Commissioner for Australian Capital Territory Revenue Collections ("the Commissioner") who is appointed by the Minister.

Subsection 5(2) gives the Commissioner the general administration of the Ordinance.

Deputy Commissioner

Subsection 6(1) provides for the creation of the statutory office of Deputy Commissioner for Australian Capital Territory Revenue Collections ("the Deputy Commissioner") who is appointed by the Minister.

Subsection 6(2) provides that:

- subject to any direction of the Commissioner, the Deputy Commissioner may exercise any power and perform any function of the Commissioner under any tax law; and
- a reference in a tax law to the Commissioner, insofar as is necessary to give effect to the subsection, includes a reference to the Deputy Commissioner.

Subsection 6(3) provides that a person dealing with the Deputy Commissioner is not bound to enquire whether the Deputy Commissioner, in exercising a power or performing a function, was either subject to a direction of the Commissioner, or complied with a direction of the Commissioner to which the Deputy Commissioner was subject.

Eligibility

Section 7 provides that only a public servant may be appointed as either Commissioner or Deputy Commissioner.

Termination of office

Subsection 8(1) provides that an appointment as Commissioner or Deputy Commissioner may be terminated at any time by the Minister.

Subsection 8(2) provides that an appointment as Commissioner or Deputy Commissioner ceases if the person ceases to be a public servant.

Delegation

Subsection 9(1) provides that the Commissioner may, by writing signed by him or her, delegate any of the Commissioner's powers or functions, except the power of delegation.

Subsection 9(2) provides that a power or function exercised or performed by the Commissioner's delegate is deemed to have been exercised or performed by the Commissioner.

Subsection 9(3) provides that the existence of a delegation does not prevent the Commissioner exercising his or her powers and performing his or her functions.

Subsection 9(4) provides that the Commissioner may make a delegation subject to a power of review and alteration by the Commissioner of any acts done pursuant to the delegation. This power of review or alteration may only be exercised within a certain time period which must be specified in the delegation.

Subsection 9(5) provides that a delegation continues in force notwithstanding a change or vacancy in the office of Commissioner. The subsection also provides that the delegation may be revoked by a subsequent Commissioner. (Subsection 27(1) of the Interpretation Ordinance 1967, which provides that a power to make an instrument includes a power to revoke the instrument, may be read as being restricted in its operation to the person granting the instrument.)

Acting appointments

Subsection 10(1) provides that the Minister may appoint a person to act as Commissioner or Deputy Commissioner:

- . during a vacancy in either office (whether or not an appointment has been made to the office); or
- . when the occupant of either office is:
 - absent from duty or from the Territory; or
 - is for any other reason unable to perform the functions of the office.

The subsection also provides that a person appointed to act during a vacancy shall not act for a period of longer than 12 months.

Subsection 10(2) provides that the holder of an acting appointment must be a public servant.

Subsection 10(3) provides that an acting appointment may be made which only comes into operation in certain circumstances described in the instrument of appointment.

Subsection 10(4) provides that where a person holds an acting appointment because the Commissioner or Deputy Commissioner is absent from duty or the Territory, or is unable to perform the functions of their office, and the office in respect of which the acting appointment has been made becomes vacant, then, the acting appointment continues until:

- . the Minister directs otherwise;

- . the vacancy is filled; or
- . the period of 12 months from the date of the vacancy expires;

whichever happens first. However, the subsection has no effect if the instrument making the acting appointment expresses a contrary intention.

Subsection 10(5) provides that the Minister may, at any time, terminate the appointment of a person to act as Commissioner or Deputy Commissioner.

Subsection 10(6) provides that an acting appointment ceases if the appointee either delivers a written and signed resignation to the Minister or ceases to be a public servant.

Subsection 10(7) provides that the holder of an acting appointment has and may exercise all the powers and perform all the functions of the appointee of the office under each tax law. The subsection also provides that a reference to the office of Commissioner or Deputy Commissioner in a tax law shall include a reference to an acting appointment.

Subsection 10(8) provides that acts done pursuant to an acting appointment cannot be held invalid because of a mistake of fact about the occasion for the making of the appointment, or a technical defect or irregularity in the appointment.

Annual report

Section 11 requires the Commissioner to report to the Minister on the working of each tax law during the preceding financial year. The report is to be made as soon as practicable after 30 June each year.

Powers of inspection

Subsection 12(1) provides that for the purposes of a tax law, an authorised tax officer shall have access to:

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

Subsection 12(2) provides that without limiting the generality of subsection 12(1), an authorised tax officer may:

- . enter and inspect any premises at any reasonable time and with such assistance as the authorised officer considers necessary;

- . require the occupier of premises to display and print out information from data processing devices;
- . take extracts and copies from any documents;
- . inspect any petroleum products or tobacco on the premises;
- . seize any tobacco that the tax officer believes on reasonable grounds to be connected with an offence against a tax law;
- . require the occupier of premises to give his or her name and address;
- . require the occupier of premises to give such assistance as is necessary to enable the authorised tax officer to exercise his or her powers; and
- . enter any premises and inspect any tobacco or petroleum products.

Subsection 12(3) provides that where a tax officer fails to produce, on the request of the occupier of the premises, an identity card certifying that the tax officer is authorised to exercise the powers conferred by subsection (1), the authorised tax officer is not authorised to remain on the premises.

PART III - ASSESSMENT AND RELATED MATTERS

Authenticity of returns

Section 13 provides for a presumption that 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 their authority, unless the contrary is established.

Trustee's duty to lodge returns

Section 14 requires a trustee of a deceased person to lodge any returns the deceased person would have been required to lodge if that person was still alive.

Assessment of tax payable on returns

Section 15 provides that the Commissioner shall assess the amount of tax, duty or a licence fee from:

- . the information in the return; and
- . any other information available.

Assessment of duty payable on instruments

Subsection 16(1) requires the Commissioner to assess the duty payable on an instrument lodged for assessment and notify the person lodging the instrument.

Subsection 16(2) provides that written notice of the Commissioner's assessment is only required if it is requested in writing within 30 days of lodgement by the person lodging the instrument.

Subsection 16(3) provides that if the Commissioner has returned the instrument and subsequently receives a written request for a written assessment, the assessment does not have to be provided until the instrument is returned.

Continuation of liability

Section 17 provides that a person's liability for taxation is not stopped or suspended by the lodging of a return or instrument for assessment.

Further information

Subsection 18(1) provides that the Commissioner may, at any time, serve an instrument on a person requiring that person to furnish further information to the Commissioner within a specified period of time where the person has:

- . lodged a return or instrument for assessment;
- . given a certificate, made a statement or supplied information under section 61 of the Stamp Duties and Taxes Ordinance 1987, which deals with vehicles that are or have been the subject of a hire-purchase or leasing agreement;
- . given information for the purposes of section 62 of that Ordinance, which deals with prerequisites for registration.

Subsection 18(2) provides that the Commissioner may, if he or she reasonably believes a person can assist with information about a person's liability under a tax law, serve an instrument on such a person requiring the person to:

- . give any such information to the Commissioner within the time and in the manner specified in the instrument;
- . 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; and

to produce any such documents to the Commissioner or another person, in accordance with the instrument.

Subsection 18(3) provides that the Commissioner or the specified person may require evidence to be given on oath or affirmation and for that purpose they may administer the oath or affirmation.

Self-incrimination

Section 19 provides that a person is not excused from providing information or documents for the purposes of section 18, which provides for investigations by the Commissioner, or section 47, which provides for a court order to produce information, on the ground that the information might tend to incriminate that person. However, the information may only be used in proceedings for a tax offence and is not admissible in evidence against the person in any other criminal proceedings.

Default assessments

Paragraph 20(1)(a) provides that where the Commissioner has formed the opinion that a person is liable to pay tax, duty or a licence fee, (whether or not a return or an instrument has been lodged for assessment), the Commissioner may assess the amount of tax, duty or licence fee that is, in the Commissioner's opinion, payable.

Paragraph 20(1)(b) provides the Commissioner shall have a similar power in respect of determining the market value of a motor vehicle when a statement has been made pursuant to sub-paragraph 61(1)(d)(i) of the Stamp Duties and Taxes Ordinance 1987 in which the amount stated is, in the opinion of the Commissioner, more or less than the market value of the motor vehicle.

Subsection 20(2) prohibits the making of an assessment under subsection 20(1) more than 3 years after the vehicle was registered, unless the statement was false or misleading in a material particular.

Notice of default assessments

Section 21 requires the Commissioner to forward notice of a default assessment to the person affected as soon as practicable after the assessment is made.

Amended assessments

Subsection 22(1) provides that the Commissioner may amend an assessment of tax, duty, penalty tax or a licence fee within 3 years of the date of the original assessment.

Subsection 22(2) provides that an assessment may be amended outside the period specified in subsection (1) where the assessment is altered in order to give effect to a decision on an appeal or review by the Administrative Appeals Tribunal.

Subsection 22(3) provides that where an assessment is amended so as to reduce the amount of tax, duty, penalty tax or licence fee, then the amount by which the assessment is reduced is deemed never to have been payable for the purposes of subsection 31, which provides for interest to accrue on unpaid amounts of tax.

Subsection 22(4) requires the Commissioner to give a person notice in writing of an amended assessment, as soon as practicable after the amendment is made, containing details of:

- . the amendment;
- . the amount of tax now due;
- . the amount overpaid or underpaid; and
- . the amount of any penalty.

Assessment in relation to deceased persons

Section 23 provides that the Commissioner has the same powers of assessment in respect of the trustee of a deceased person as the Commissioner would have in relation to the person, if the person were alive.

Validity of assessments

Section 24 provides that a failure to comply with the Ordinance will not, of itself, affect the validity of an assessment.

Remissions of duty or tax

Section 25 provides that remissions of duty, taxes or licence fees may be made when payment has not been made in the same circumstances as those in which the duty, taxes or licence fees would be refunded if they had been paid.

PART IV - PAYMENT OF TAXES, DUTIES, PENALTY TAX AND INTEREST

Division 1 - Payment and related matters

Time for payment

Subsection 26(1) provides that tax in respect of a return is due on the last day on which the return is required to be lodged or within such further time as the Commissioner allows.

Paragraph 26(2)(a) provides that where an instrument is required by a tax law to be lodged with the Commissioner for assessment, duty is due and payable:

- . on the date specified in the notice of assessment;
- . if no date is specified, or no notice given, within 30 days after the person is informed of the assessment; or
- . within such further time as the Commissioner allows.

Paragraph 26(2)(b) provides that in any other case duty on an instrument is payable either when the instrument is required to be stamped under a relevant tax law or within such further time as the Commissioner allows.

Subsection 26(3) provides that tax on the registration of a vehicle is due and payable at the time of registration.

Subsection 26(4) provides that penalty tax is due and payable at the time specified in the notice assessing the penalty tax or within such further time as the Commissioner allows.

Subsections 26(5) and (6) provide for the payment of tax, duty or penalty tax by instalments. The Commissioner may determine the amount and timing of the instalments. The instalments fall due on the date specified by the Commissioner and if an instalment is not paid on time then the whole of the outstanding amount becomes payable at that time.

Treatment of related instruments or unrelated matters

Section 27 provides that for the purposes of a tax law:

- . one transaction contained in a number of instruments shall be regarded as a single instrument executed at the time of the latest instrument; and
- . each matter in an instrument containing several distinct matters shall be treated as a separate instrument.

Valuation of foreign currency

Section 28 provides that where an instrument concerns an amount specified in a foreign currency, the tax or duty shall be calculated in Australian currency at the exchange rate current at the date of the instrument.

Adjustments for fractions of a cent

Section 29 provides that amounts calculated under tax laws that contain fractions of a cent shall be either decreased or increased to the closest cent as the case requires, and that a half cent shall be increased to the nearest cent.

Division 2 - Penalty taxes

Failure to lodge documents

Subsection 30(1) provides that penalty tax is imposed on a person who fails as required by a tax law to:

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

Subsection 30(2) provides that penalty tax is due where a person, by an act or omission, makes a false statement to a tax officer, with the result that the amount of tax due exceeds the amount of tax calculated on the basis of the misleading statement.

Under subsection 30(1) the penalty is double the amount of tax payable, and under subsection 30(2) it is double the amount of tax avoided by the misleading statement.

Subsection 30(3) provides that the minimum amount of penalty tax payable shall be \$20, even if the actual amount payable is less.

Subsection 30(4) requires the Commissioner to give written notice of an assessment of penalty tax as soon as practicable after making the assessment.

Subsection 30(5) provides that notice of an assessment of penalty tax may be included in any other notice of assessment under a tax law.

Subsection 30(6) provides that a reference to a statement in subsection 30(2) means a statement made orally, in writing, by means of a data processing device or in any other form.

Subsection 30(7) provides that a reference to a statement in subsection 30(2) includes a statement:

- . made in any document made or given under a tax law;
- . made in an instrument lodged for assessment under a tax law;

- . made when answering a question asked under a tax law;
- . made in any information given or purporting to be given under a tax law; or
- . made in any document given to a tax officer otherwise than under a tax law.

However, the subsection provides that the reference to a statement shall not include a document produced to the Commissioner in the exercise of his or her powers under paragraph 18(2)(c), which allows the Commissioner to require the production of documents.

Subsection 30(8) deals with the situation where a statement of the kind referred to in subsection 30(2) is made for the purpose of a tax law but is made to a person other than a tax officer. The subsection provides that subsection 30(2) will apply to that statement as if the person to whom it was made were a tax officer.

Failure to pay tax, duty or penalty tax

Subsection 31(1) provides for the payment of interest at 20% per annum on tax, duty, penalty tax and licence fees which are not paid on or before the due date. Interest will run from the due date, or a date determined by the Commissioner being a day not earlier than the due date, until the amount is paid in full. The Commissioner's power to determine the date may only be exercised where the Commissioner has already determined to either grant an extension of time or allow payment by instalments.

Subsection 31(2) provides that interest will continue to run on an amount which comes within subsection 30(1) or (2) or a licence fee even though judgement has been entered by a court in relation to such an amount. The subsection also provides that if the judgement debt includes a provision for interest, the amount of penalty tax shall be reduced by the amount of the interest awarded by the court. This procedure also applies to an amount of tax, duty, penalty tax or a licence fee not paid on or before the due date.

Remission of penalty tax

Subsection 32(1) provides that the Commissioner may remit all or part of an amount of penalty tax where he or she is satisfied:

- . that the circumstances causing the delay were not caused directly or indirectly by the person and the person took reasonable steps to mitigate the effect of those circumstances;

- . that the circumstances causing delay were caused by the person; and the person has:
 - taken reasonable steps to mitigate the effect of the circumstances; and
 - having regard to the nature of the circumstances it would be fair and reasonable to remit all or part of the penalty tax; or
- . that having regard to the nature of the circumstances that contributed to the delay, it would be fair and reasonable to remit all or part of the penalty tax.

Subsection 32(2) counters a difficulty arising from subsection 26(1) of the Interpretation Ordinance 1967, which provides that a power or duty may be exercised or performed from time to time as the occasion requires, by providing that a remission may be granted before a formal notice of a penalty is given by the Commissioner.

Division 3 - Overpayments

Refunds of overpaid amounts

Section 33 provides for the refund of amounts of tax overpaid as the result of an assessment.

Interest on overpaid amounts

Section 34 provides for the payment of interest by the Commonwealth on amounts found overpaid on consideration of an objection. If an amount is paid by instalments, each instalment is treated as a separate amount, and if only part of the total amount due was overpaid, the overpayment shall be attributed to the most recent instalments in reverse order to which the instalments were paid.

Amount of interest payable

Subsection 35(1) provides that the interest rate on an overpaid amount is the amount determined by the Minister under section 99.

Subsection 35(2) provides that interest runs from the date when the notice of assessment, determination or decision was issued or the date of payment, whichever is the later, to the date of the refund.

Circumstances in which interest is not payable

Section 36 provides that interest is not payable on an overpayment of penalty tax in respect of any period in which the amount of overpaid tax has been passed on by the taxpayer to another person and has not been refunded to that person.

Payments of small amounts of interest or tax

Subsection 37(1) provides that no interest is payable where the amount of interest is either less than \$5.00, or less than the determined amount where a determination in relation to this subsection has been made.

Subsection 37(2) provides that where an amount of interest has been applied against a person's tax liability, leaving a balance of less than 50 cents due to the person, then that balance ceases to be payable to the person.

Division 4 - Underpayments

Interest on underpaid amounts

Subsection 38(1) provides that where an assessment is amended and increased, interest is due on the underpaid amount.

Subsection 38(2) provides that if a person is liable to pay penalty tax on the underpaid amount, no interest is payable under subsection 38(1) on the underpaid amount.

Subsection 38(3) provides for the calculation of interest when a person has a liability for both interest on an underpayment and penalty interest. The penalty is multiplied by the proportion which the amount on which interest is due bears to the whole of the underpaid amount.

Subsection 38(4) requires the Commissioner to give written notice of interest due on underpaid amounts, such notice to contain all details of the amount and specifying a time for payment being not less than 30 days after service of the notice.

Subsection 38(5) provides that interest is due and payable on the date specified in the notice given under the preceding subsection.

Subsection 38(6) allows the notice under subsection 38(4) to be incorporated in any other assessment notice issued by the Commissioner.

Subsection 38(7) allows the Commissioner to remit interest on an underpayment in the same circumstances in which the Commissioner may remit penalty tax in section 32.

Amount of interest payable

Subsection 39(1) provides that interest is payable on an underpayment at a rate determined by the Minister under section 99.

Subsections 39(2) and (3) deal with the period in respect of which interest under subsections 38(1) and 38(2) respectively (tax and penalty tax) will be calculated. The period commences on the day when the amount of tax, duty or licence fee became due and payable, and ends when an amended assessment is made.

Subsection 39(4) provides that where there has been either an extension of time for payment or payment by instalments, the tax shall be taken as being due on the date determined by the Commissioner, but not being a date earlier than the date of the original assessment.

Payment of small amounts of interest

Section 40 provides that no interest is payable where the amount of interest is either less than \$5.00, or less than the determined amount where a determination in relation to this subsection has been made.

PART V - RECOVERY OF TAXES AND DUTIES

Recovery as a debt due

Section 41 provides that tax, duty, penalty tax and licence fees on becoming due are recoverable in a court of competent jurisdiction as a debt due to the Commonwealth.

Recovery from estate of deceased person

Subsection 42(1) provides that the Commissioner may recover taxes from the trustee of a deceased person in the same way as he could from the person, if the person were alive.

Subsection 42(2) provides that penalty tax is payable by a trustee of a deceased person as if the person were alive.

Payment by debtor of taxpayer

Subsection 43(1) provides that the Commissioner may, by notice in writing, require a debtor of a person to pay the debt due to that person directly to the Commissioner in satisfaction of the whole or part of that person's taxation liability.

Subsection 43(2) provides that the notice must specify a time for payment.

Subsection 43(3) provides that where the debt is due to be paid by instalments, the Commissioner's notice may specify an amount that is to be paid out of each instalment, and is effective until the debt or the amount of taxation liability is paid.

Subsection 43(4) provides the Commissioner shall serve a copy of the notice on the person having the tax liability.

Subsection 43(5) deems any payment made pursuant to a notice under this section to have been made with the authority of the person who is liable to pay the tax.

Subsection 43(6) deems money subscribed for shares in the capital of a Building Society, not being shares listed on the stock exchange, to be either a debt due, or money that will be a debt due.

Subsection 43(7) provides that where money is not due until a condition is fulfilled, the money shall be taken to be due or payable on demand notwithstanding that the condition has not been fulfilled.

Subsection 43(8) provides that if a debtor refuses or fails without reasonable excuse to comply with a notice under this section he or she is guilty of an offence, punishable on conviction, by a maximum fine of \$1,000.

Subsection 43(9) provides that on conviction under subsection 43(8), the court may, in addition to imposing a penalty, order the debtor to pay an amount no greater than the amount claimed in the notice.

Subsection 48(10) defines the taxation liabilities which are subject to a notice under this section.

Money held for non-residents

Subsection 44(1) allows the Commissioner to serve written notice on a non-resident's agent requiring an amount to be paid to the Commissioner in respect of the non-resident's taxation liability.

Subsection 44(2) provides the consequences for the agent of receiving a notice under subsection 44(1) which are that the agent:

- . is authorised and required to retain any money received on behalf of the non-resident in order to satisfy the non-resident's taxation liability;
- . becomes personally liable for the non-resident's taxation liability to the extent of any amount he or she is required to retain; and
- . is deemed to be indemnified by the non-resident for all payments made by the agent under a tax law.

Subsection 44(3) provides that for the purposes of this section only:

- . a person owing money to a non-resident is deemed an agent of that non-resident; and

- any money payable by a person deemed an agent shall be deemed to be money received by that person on behalf of the non-resident.

Subsection 44(4) defines who is an agent for the purposes of the section.

Refunds, interest or debts applied against liabilities

Subsection 45(1) provides that a refund due under section 33, or an amount of interest due under section 34, may be used by the Commissioner to satisfy any other taxation liabilities of the person to whom the refund or interest is due.

Subsection 45(2) requires the Commissioner to apply any amount paid by a debtor pursuant to section 43 to the person's tax liabilities.

Subsection 45(3) places the same requirement on the Commissioner in respect of money paid by the agent of a non-resident.

Subsection 45(4) deems an application of moneys paid by another person to be a payment by the person having a taxation liability.

PART VI - OFFENCES AND PROSECUTIONS

Division 1 - Offences in respect of certain tax laws

Contravening certain requirements

Subsection 46(1) creates an offence when a person contravenes a requirement of a tax law:

- to give a return, written particulars or other information to the Commissioner or another person;
- to lodge an instrument for assessment;
- to cause an instrument to be stamped;
- to notify the Commissioner or another person of a matter or thing;
- to produce a document before the Commissioner or other person; or
- to attend before the Commissioner or another person.

Subsection 46(2) creates an offence when a person attending before the Commissioner or other person in accordance with a tax law, contravenes the requirement of a tax law:

- to answer a question; or

to produce a document.

Subsections 46(1) and (2) are limited in that a person is only required to act to the extent the person is capable of so doing. The offences are punishable on conviction by a maximum fine of \$2,000.

Subsection 46(3) provides that a person attending before a Commissioner or another person in accordance with a tax law, who refuses to take an oath or make an affirmation is guilty of an offence, punishable on conviction by a maximum fine of \$2,000.

Orders to comply with requirements

Subsection 47(1) provides that where a person is convicted, or a finding of guilt is made without a conviction being entered under section 556A of the Crimes Act, 1900 for an offence against section 46, the court may, in addition to imposing a penalty or making an order in relation to the person, order the person to comply:

- with the requirement; and
- with any other requirements which have been or could be made under a tax law and which are necessary to give effect to the requirement.

Subsection 47(2) provides that if an order is made under subsection 47(1) and it is not given orally to the person, the court is to serve a copy of the order on the person.

Subsection 47(3) creates an offence for failure to comply with an order under subsection 47(1) to the extent that the person is capable of so doing. The offence is punishable on conviction by imprisonment for a maximum of 12 months, or a maximum fine of \$5,000, or both.

Second and subsequent offences

Subsections 48(1) and (2) provide that where a person is convicted of an offence against section 46 and the court is satisfied that the person has previously been convicted of a related offence, the court may, where there is one previous conviction, impose a maximum fine of \$4,000, and where a person has been convicted of two or more related offences, the court may impose a maximum fine of \$5,000 or imprisonment for a maximum of 12 months, or both.

Subsection 48(3) provides that the convictions for the previous offences must have occurred within the period of 5 years ending immediately before the second or subsequent offence is heard.

Subsection 48(4) defines a related offence for the purposes of the section.

Subsection 48(5) provides that a conviction for an attempted offence under section 46 and section 7 of the Crimes Act 1914 is, for the purposes of this section, a conviction for an offence under section 46.

Subsection 48(6) provides that a finding of guilt without proceeding to conviction under section 556A of the Crimes Act, 1900 or section 19B of the Crimes Act 1914 shall, for the purposes of calculating the time of previous offences, be regarded as a conviction.

Division 2 - Offences related to statements, accounts and records

Interpretation

Section 49 deals with the interpretation of terms used in this Division.

False or misleading statements

Subsection 50(1) provides that a person who, by an act or omission, makes a statement to a tax officer that is false or misleading in a material particular is guilty of an offence, punishable on conviction by a maximum fine of \$2,000.

Subsection 50(2) provides that a person is not guilty of an offence under the preceding subsection if the person adduces evidence to show the person did not know, or could not reasonably have been expected to know, that the statement was false or misleading, and this evidence is not rebutted by the prosecution.

Subsection 50(3) provides that a person who recklessly or knowingly, by an act or omission, makes a statement to a tax officer that is false or misleading in a material particular is guilty of an offence, punishable on conviction by a maximum fine of \$3,000.

Incorrect records

Subsection 51(1) provides that a person who is required pursuant to a tax law to keep records, and who keeps them so that they do not correctly record or explain the matters therein (paragraph 51(1)(a)), or keeps the records so that they do not correctly record or explain the matters (paragraph 51(1)(b)), is guilty of an offence, punishable on conviction by a maximum fine of \$2,000.

Subsections 51(2) and (3) provide defences to the charge under subsection 51(1) if the person adduces evidence that the person did not know, or could not have reasonably been expected to have known, that the records:

- . did not correctly record and explain the matters to which they related; or
- . did not correctly record the matter;

and this evidence is not rebutted by the prosecution.

Subsection 51(4) provides that if a person who is required pursuant to a tax law to keep records:

- . keeps records that do not correctly record and explain the matters therein; or
- . keeps records that do not correctly record the matters therein;

and the person does so recklessly or knowingly, then the person is guilty of an offence punishable on conviction by a maximum fine of \$3,000

Subsection 51(5) creates as an offence the:

- . keeping of accounts or records that:
 - do not correctly record and explain the matters to which they relate;
 - are illegible, indecipherable or unidentifiable; or
 - cannot be reproduced in a legible form from data processing equipment;
- . making of an incorrect record;
- . altering, damaging, concealing or destroying of accounts or records; or
- . doing, or omitting to do, anything to accounts or records;

with the intention of deceiving or hindering the Commissioner or another tax officer or with the intention of avoiding or hindering the enforcement of a tax law. The offence is punishable on conviction by imprisonment not exceeding 12 months, or a maximum fine of \$5,000, or both.

Falsifying or concealing identity

Section 52 creates offences relating to falsifying or concealing identities, addresses or the location of the place of a residence or business or of a person with the intention of deceiving,

misleading, hindering or obstructing the Commissioner or tax officers or with the intention of avoiding, hindering, defeating or obstructing the operation of a tax law. The offence is punishable on conviction by imprisonment not exceeding 12 months, or a maximum fine of \$5,000, or both.

Second and subsequent offences

Subsection 53(1) provides that where a person has been convicted of an offence against subsection 50(1) or (2) and the court is satisfied that the person has been convicted of a related offence, the court may impose a maximum fine of \$4,000.

Subsection 53(2) provides that where a person has been convicted of an offence against subsection 50(3) or 51(4) and the court is satisfied that the person has been convicted of a related offence, the court may impose a maximum period of imprisonment of 12 months, or a maximum fine of \$5,000, or both.

Subsection 53(3) provides that where a person has been convicted of an offence against subsection 51(5) or section 52 and the court is satisfied that the person has been convicted of a related offence the court may impose a penalty on conviction of a maximum of 2 years imprisonment, or a maximum fine of \$10,000, or both.

Subsection 53(4) provides that the convictions for the previous offences must have occurred within the period of 10 years ending immediately before the second or subsequent offence is heard.

Subsections 53(5) and (6) define a related offence for the purposes of the section.

Subsection 53(7) provides that a finding of guilt without proceeding to conviction under section 556A of the Crimes Act, 1900 or section 19B of the Crimes Act 1914 shall, for the purpose of calculating the time of previous offences, be regarded as a conviction.

Orders to pay additional amounts

Subsection 54(1) provides that if a person is convicted of an offence against subsection 50(1), 50(3), 51(1) or 51(3) and the court is satisfied that the convicted person is liable to pay an amount of tax in excess of the amount actually assessed on the basis of false or misleading information, then the court may order that the convicted person pay the Commissioner an amount not exceeding double the excess, or where subsection 53(2) applies, not exceeding three times the excess.

Subsection 54(2) relates to offences where a person is convicted of an offence against subsection 51(5) or section 52, and the court is satisfied the act or omission was intended to facilitate the avoidance of a tax liability by the convicted person or another person; the court may, in addition to imposing a penalty on a convicted person, order that the convicted person pay to the Commissioner an amount not exceeding double the amount of the tax liability, or where subsection 53(3) applies, the court may order the convicted person to pay the Commissioner an amount not exceeding three times the amount of the tax liability.

Division 3 - Miscellaneous offences

Obstructing tax officers

Section 55 creates as offences circumstances where a person, without reasonable excuse:

- obstructs or hinders a tax officer carrying out his or her duties under a tax law; or
- contravenes a reasonable requirement of a tax officer who has entered premises in pursuance of his or her powers under a tax law.

Both offences are punishable on conviction by imprisonment for 6 months or a maximum fine of \$2,000, or both.

Offences by corporations

Subsection 56(1) provides that a person concerned in the management of a corporation shall be taken to have committed any tax offences arising from the corporation's actions.

Subsection 56(2) provides a defence to a charge under subsection 56(1) where the person adduces evidence, which is not rebutted by the prosecution, that the person:

- did not aid, abet, counsel or procure the corporation's offence; and
- was not in any way knowingly concerned in the corporation's offence.

Subsection 56(3) provides that an officer of a corporation is deemed to be concerned in the management of the corporation unless the officer adduces evidence to the contrary which is not rebutted by the prosecution.

Subsection 56(4) defines an officer of a corporation as being statutory and non-statutory officer holders, receivers, liquidators and trustees.

Avoidance of tax or duty

Subsection 57(1) provides that a person who is liable to pay tax, duty or licence fees who knowingly avoids payment is guilty of an offence punishable on conviction by a maximum fine of \$1,000.

Subsection 57(2) provides that where a corporation is liable to pay tax, duty, or licence fees and a director, servant or agent of the corporation knowingly avoids payment, both the corporation and the person concerned are guilty of an offence punishable on conviction by a maximum fine of \$1,000.

Subsection 57(3) provides that where a court convicts a person of an offence under subsection 57(1) or (2), the court may impose an additional penalty by ordering the person to pay the Commissioner an amount not exceeding double the amount so avoided.

Continuing offences

Section 58 provides that where a person contravenes a tax law requiring him or her to do anything within a period, an offence is committed on each day on which the failure continues.

Division 4 - Prosecution of tax offences

Commencement of prosecution

Section 59 provides that tax offences may be prosecuted at any time.

Prosecution of corporations

Subsection 60(1) provides a corporation's tax offences are punishable on summary conviction.

Subsection 60(2) provides that when it is required to show an intention of a corporation to commit an offence, it is enough to show that a servant or agent had the necessary intention.

Subsection 60(3) provides that the acts or omissions of a director, servant, agent of a corporation, or a person, either directed by or acting with the consent of a director, servant or agent of the corporation, are the acts of the corporation.

Penalties for corporations

Section 61 provides that where a corporation is convicted of an offence punishable by imprisonment, or an offence under subsection 48(2) or 53(2), the court may impose a penalty on the corporation of a fine not exceeding five times the maximum fine otherwise provided for.

Prosecution instead of penalty taxes

Subsection 62(1) provides that when a prosecution is bought under subsection 46(1), 50(1) or 50(3), a person is excused from any obligation to pay penalty tax in respect of the subject matter of the prosecution.

Subsection 62(2) provides for the refund of any amounts applied by the Commissioner towards penalty tax when a prosecution is initiated in respect of the abovementioned offences. However, the Commissioner is not obliged to refund penalty tax if it can be applied to other outstanding tax liabilities of a person. Further, if the prosecution is withdrawn, penalty tax is again due.

Subsection 62(3) defines penalty tax.

Enforcement of payment orders

Subsection 63(1) provides that where the Supreme Court or the Magistrates Court orders a person to pay an amount to the Commissioner, and 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 (this being \$10,000), the order is enforceable as if it were a judgement of the court.

Subsections 63(2), (3), (4), (5) and (6) provide for the situation where the Magistrates Court makes an order for payment to the Commissioner for an amount in excess of \$10,000. The Clerk of the Magistrates Court is required to give the Commissioner a certificate containing specified particulars, including the order made, which may be registered in the Supreme Court although the leave of the court is required if the certificate is more than 12 months old. Once registered, the certificate is enforceable as if it were a judgement of the Supreme Court and the costs of registering the certificate and enforcing the order are payable by the person to whom the order relates.

Penalties payable in addition to tax

Section 64 provides that where a court makes an order for the payment of a penalty, or a person pays a penalty, a person is not relieved of liability for any amount for which the person is otherwise liable.

PART VII - CO-OPERATION WITH OTHER TAXATION AUTHORITIES

Interpretation

Section 65 deals with the interpretation of terms used in this Part.

Investigation of referred matters

Subsection 66(1) provides that on receipt of a written reference from a tax officer of a reciprocating jurisdiction, the Commissioner may authorise a tax officer of the Territory or of that reciprocating jurisdiction to investigate that matter.

Subsection 66(2) provides that for the purposes of such an investigation, the Commissioner may, by notice in writing, require any person to:

- . provide information;
- . answer questions; or
- . produce documents which are in that person's control or custody.

Subsection 66(3) provides that the Commissioner or authorised officer may require information to be verified by oath or affirmation and to administer the oath or affirmation.

Subsection 66(4) authorises the Commissioner to copy documents produced to him in the course of such an investigation.

Subsection 66(5) allows a person required to attend before the Commissioner to claim prescribed expenses.

Disclosure of information to reciprocating jurisdictions

Section 67 provides for the exchange of information between reciprocating jurisdictions, notwithstanding secrecy provisions of tax laws.

PART VIII - DISCLOSURE OF INFORMATION TO NATIONAL CRIME AUTHORITY

Interpretation

Section 68 deals with the interpretation of terms used in this Part.

Information in respect of tax-related investigations

Section 69 provides that the Commissioner may disclose information to the National Crime Authority ("the Authority") for the purposes of a tax-related investigation, notwithstanding the secrecy provisions of the Ordinance.

Information in respect of special investigations

Subsection 70(1) provides that if the Authority considers that the Commissioner has information acquired under a tax law relevant to a special investigation, a member of the Authority may apply to a Judge of the Supreme Court for an order under subsection 70(4).

Subsection 70(2) requires an application to be in writing and be supported by an affidavit giving details of the investigation and information sought.

Subsection 70(3) provides for the Commissioner to be notified in writing of the application and particulars sought.

Subsection 70(4) provides that on considering the application, the Judge may order the Commissioner to disclose to the Authority part or all of the information sought.

Subsection 70(5) provides that where an order is made under subsection 70(4), the Judge may further order that the Authority is prohibited from disclosing the information except in a specified manner. This order may be revoked or varied on application of the Commissioner or Authority.

Subsection 70(6) requires an application to vary or revoke an order to be notified to the other party, that is, the Commissioner or Authority as the case may be.

Subsection 70(7) prohibits the making of an order under either subsection 70(4) or (5) unless:

- . the Commissioner has been given an opportunity to be heard;
- . the Authority has put evidence before the Judge satisfying any questions the Judge has about the special investigation; and
- . the Judge is satisfied:
 - that there are reasonable grounds for believing the information sought is relevant to the special investigation; and
 - the information is not readily obtainable from a source from other than the Commissioner.

Subsection 70(8) provides the Judge shall consider any prejudice to the conduct of the special investigation if the Authority has to obtain the information from another source.

PART IX - EVIDENCE

Evidence of previous convictions

Section 71 provides that for the purposes of providing evidence about previous offences to a court in respect of subsection 48(1), 48(2), 53(1), 53(2) or 53(3), which provide for increased penalties on second and subsequent offences, the Commissioner may issue a certificate which is to be accepted as evidence of the matters stated in the certificate and the facts on which they are based.

Evidence of authority to institute proceedings

Section 72 provides for a presumption that a prosecution commenced in the Commissioner's name is authorised.

Evidence of claim

Subsection 73(1) provides for a statement or averment contained in the information or other documents instituting proceedings for a tax offence to be evidence of the matters and the facts on which they are based.

Sub-section 73(2) provides that a statement or averment only relates to matters of fact.

Subsection 73(3) provides that the section does not apply to an averment of the defendant's intention.

Certification of documents

Subsection 74(1) provides for documents obtained pursuant to a tax law (including those of the Commonwealth, a State or another Territory) to be copied and certified in whole or in part as a true copy or true extract respectively, and for copies of documents thus certified to be certified in whole or in part as a true copy or true extract respectively, by the Commissioner or a tax officer.

Subsection 74(2) provides for documents obtained pursuant to a tax law to be certified as true copies.

Subsection 74(3) provides for extracts from such documents to be certified as true extracts.

Subsection 74(4) provides that documents certified under subsection 74(1), (2) or (3) shall be admissible in evidence in all proceedings under a tax law unless:

- . in the case of an offence, evidence is adduced that the document is not a true copy or a true extract; or
- . in any other case, it is proved the document is not a true copy or a true extract.

Subsection (5) defines tax laws and tax officers for the purposes of this section.

Documents issued by Commissioner

Subsection 75(1) provides that the production of a notice of assessment or a copy signed by the Commissioner shall be evidence that the assessment was duly made and is correct. The subsection does not apply to proceedings relating to an appeal against the assessment.

Subsection 75(2) provides that the production of a document signed by the Commissioner is evidence that the Commissioner issued it.

Subsection 75(3) provides the Commissioner's certificate that a person was or was not the holder of a licence is evidence of that fact.

Judicial notice of Commissioner's signature

Section 76 provides for judicial notice to be taken of the signature of a person who has held or holds the office of Commissioner.

PART X - BUSINESS GROUPS

Membership of a business group

Subsection 77(1) provides that for the purposes of a tax law, a group is constituted by the persons who, by virtue of sections 78, 79, 80 or 81, constitute a primary group for the purposes of this subsection, being persons who are not the subject of a determination under subsection 77(2).

Subsection 77(2) provides the Commissioner may by determination exclude a person from membership of a group. In order to do this the Commissioner must be satisfied either that the person:

- . has continuously carried on business, and will continue to do so, independently of the other members of the group and is not subject to control by any other member of the group; or
- . is not carrying on a 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.

Subsection 77(3) requires notice of such determination to be:

- . given to the person;
- . given to every other member of the group; and
- . published in the Gazette.

Subsection 77(4) provides the determination is effective from making until notice of revocation is served on the person.

Subsection 77(5) allows the determination to be revoked if the circumstances in which it was made have changed.

Subsection 77(6) requires notice of revocation to be given to the person and to every 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

Section 78 provides that groups of corporations that are related corporations within the meaning of the Companies Act 1981 are a primary group for the purposes of section 77(1).

Groups where employees work in another business

Subsection 79(1) provides that a primary group will exist for the purposes of subsection 77(1) where an employee works:

- for a business carried on by the employer and another person or a business carried on by another person; or
- for an employer who has an agreement with another person in respect of that person's business if the agreement relates to work done by the employee for the employer.

Subsection 79(2) provides that an agreement for the purposes of this section need not necessarily deal expressly with the supply of goods and services. Instead, it means any agreement, formal or informal, express or implied, giving rise to the relationship.

Groups of commonly controlled businesses

Subsection 80(1) provides that a primary group exists for the purposes of subsection 77(1) where a person or persons have a controlling interest in each of two businesses. The subsection provides that the persons who carry on those businesses constitute a primary group.

Subsection 80(2) defines the situations when persons will be taken, for the purposes of this section, to have a controlling interest in a business, as follows:

- the sole owner, including a trustee;
- two or more people who are together exclusive owners, including trustees;
- a person or persons who can direct or instruct the director or directors of a corporation, whether under a formal or informal obligation, if the director or directors have more than half of the voting power at directors' meetings;
- a person or persons acting together, who can control or substantially influence the exercise of more than half of the voting power of the voting shares in a corporation having a share capital;

- a partnership when the person or persons together either own more than half of the partnership capital or are entitled to more than half of the partnership profits; or
- a person or persons who, whether as trustees of another trust or otherwise, are beneficiaries of more than half of the value of the interests in another trust which carries on a business.

Subsection 80(3) provides that when two corporations are related within the meaning of the Companies Act 1981, and one corporation has a controlling interest in the business, the other corporation shall also be taken to have a controlling interest in the business.

Subsection 80(4) provides that when a person or persons have a controlling interest in a business, and all of the persons carrying on the business have a controlling interest in a second business, then the persons carrying on the first business shall be taken to have a controlling interest in the second business.

Subsection 80(5) provides that a person or persons having as beneficiaries an interest in more than half of the value of the interests of a trust shall be taken to have a controlling interest in any business of the trust controlled by a trustee.

Subsection 80(6) provides that for the purposes of subsection 80(5) a person having the possibility of benefiting from a discretionary trust shall be taken to be a beneficiary in respect of more than half of the value of the trust.

Subsection 80(7) provides that subsection 80(1) does not apply in relation to a person or persons having a controlling interest in two businesses if:

- in the case of one person, that person owns both businesses, whether as trustee or otherwise; or
- in the case of two or more persons, both persons wholly own the businesses as trustees.

Smaller groups subsumed under larger groups

Section 81 deals with the situations where a person is a member of two or more primary groups constituted under sections 78, 79, 80 or this section. (The groups are termed "the smaller group" in this section.) Paragraphs 81(a) and (b) provide that:

- the members of the smaller groups themselves constitute a primary group for the purposes of subsection 77(1); and
- accordingly, when determining whether a person is a member of a group under subsection 77(1), the smaller groups are disregarded.

PART XI - REPRESENTATION AND LIABILITY OF COMPANIES

Appointment of public officer

Subsection 82(1) requires a company carrying on business in the Territory to be represented for the purpose of tax laws by a public officer. The public officer is to be appointed by the company or by its agent. The Commissioner may grant an exemption from this requirement.

Subsection 82(2) provides a public officer is to be appointed within one month of the company commencing business, or of the commencement of the Ordinance, whichever is the later.

Subsection 82(3) requires the company to keep the office of public officer filled.

Subsection 82(4) requires the name and address for service of a public officer to be given to the Commissioner before the appointment is valid.

Eligibility for appointment as public officer

Section 83 requires a public officer to be a natural person over 18 years of age who is ordinarily resident in the Territory. The person is required to be capable of understanding the nature of the appointment.

Service of documents

Section 84 provides as sufficient service for a tax law service on:

- . the public officer or at the public officer's address for service; or
- . in the absence of a public officer, on a person acting or apparently acting in the business of the company.

Liability of company and public officer

Subsection 85(1) provides that the public officer is responsible for fulfilling the company's obligations under a tax law, and, in the case of default is liable to the same penalty as the company.

Subsection 85(2) deems the public officer's actions those of the company, in respect of things required to be done under a tax law.

Subsection 85(3) provides that the absence of the public officer or a vacancy in the office of public officer, shall not excuse the company from its obligations under tax laws.

Subsection 85(4) provides that tax laws apply to a company as if there was no requirement to appoint a public officer.

Subsection 85(5) deems a requisition or notice given to the public officer to have been given to the company.

Subsection 85(6) deems action taken against the public officer to have been taken against the company and the company is jointly and severally liable with the public officer for any penalty imposed on the public officer.

Liability of directors or other officers

Section 86 allows the Commissioner to take proceedings against a company's statutory office holders, managers, or agents instead of a public officer and, notwithstanding anything in this Part, those proceedings shall be effective as if the proceedings had been taken against the public officer.

Failure to appoint a public officer

Section 87 provides that a company failing to appoint a public officer commits an offence for each day on which the failure continues, punishable by a maximum fine of \$50.

Notice of a liquidator's appointment

Section 88 provides that a liquidator appointed to wind up a company shall notify the Commissioner of his or her appointment within 14 days of the date of the appointment. Failure to do so is punishable by a fine not exceeding \$1,000.

PART XII - OBJECTIONS AND REVIEWS

Objections

Subsection 89(1) provides that a person who is dissatisfied with an assessment made by the Commissioner under a tax law may lodge an objection. The objection must be in writing and lodged within 60 days of the notification to the person of the decision.

Subsection 89(2) provides that an objection shall state fully and in detail the grounds on which it is made.

Subsections 89(3) and (4) require the Commissioner to consider the objection and to either disallow it or allow it in whole or in part, and to give the objector written notice of his or her decision.

Late lodgement of objections

Subsections 90(1) and (2) require a late objection to be accompanied by a written application for it to be treated as having been duly lodged and to include details of the reasons for the failure to lodge it in time.

Subsections 90(3) and (4) require the Commissioner to consider the application and give written notification of his or her decision to the applicant.

Subsection 90(5) provides that if the application is granted, the objection is treated as having been duly lodged.

Review of decisions

Subsection 91(1) provides for review by the Administrative Appeals Tribunal ("the Tribunal") of a decision by the Commissioner:

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

Subsection 91(2) requires the application to the Tribunal to be made within 60 days after the objector is served with notice of the Commissioner's decision under subsection 89(4) or 90(4).

Notification of decisions

Subsection 92(1) requires the notification of a decision to an objector pursuant to subsection 89(4) or 90(4) to include advice on the objector's appeal rights to the Tribunal.

Subsection 92(2) provides that a failure to include this advice will not invalidate the decision.

Giving effect to Tribunal's decision

Subsection 93(1) provides that the Commissioner is to take action to implement the Tribunal's decision within 60 days of the decision becoming final.

Subsection 93(2) provides that a decision of the Tribunal, the subject of an appeal to the Federal Court, becomes final if an appeal to the High Court is not lodged within 30 days after the Federal Court's decision.

Effect of pending objection, review or appeal

Section 94 provides that an objection or appeal does not affect liability to pay tax, duty, penalty taxes or licence fees which may be recovered notwithstanding the objection or appeal.

Reduction of amounts payable

Section 95 provides that for the purposes of section 31 the amount by which a decision is reduced on objection or appeal shall be taken to have never been payable.

PART XIII - MISCELLANEOUS

Records to be kept

Subsection 96(1) provides that a person carrying on business shall:

- . keep books and accounts of all matters relating to which a taxation liability arises under a tax law;
- . keep those books in English; and
- . preserve the records for at least 6 years.

A conviction for disobeying this requirement is punishable by a maximum fine of \$2,000.

Subsection 96(2) provides that a person is not required to preserve the books or records if either the Commissioner has notified the person that their preservation is not required, or they relate to a company which has been wound up.

Secrecy

Subsection 97(1) creates an offence if a present or former tax officer, except for the purposes of a tax law or the carrying out of the tax officer's duties:

- . records confidential information; or
- . discloses confidential information.

The subsection provides for a fine of \$5,000 or imprisonment for 12 months, or both.

Subsection 97(2) protects a tax officer from being required to produce or disclose confidential information in court, unless the court forms the opinion that the confidential information is necessary to give effect to a tax law.

Subsection 97(3) allows the exchange of confidential information between the Commissioner, the Deputy Commissioner, persons authorised by either of them and tax officers.

Subsection 97(4) provides that disclosure by a tax officer to a Minister of State is an offence if the information was not acquired for the purposes of Part II.

Subsection 97(5) allows the Commissioner to specify in writing a form of oath or affirmation as to secrecy and to require a tax officer to take that oath or make that affirmation.

Subsection 97(6) provides that information obtained from a reciprocal jurisdiction is deemed to be information disclosed for the purposes of this Ordinance, and accordingly, is subject to these secrecy provisions.

Subsection 97(7) and (8) define certain terms for the purposes of the section.

Appearance by Commissioner

Section 98 provides for the Commissioner to appear either personally or by a person authorised in writing to appear in any proceedings or actions, arising out of a tax law, to which the Commissioner is a party.

Determination of amounts payable under tax laws

Subsection 99(1) provides that the Minister may, by notice in the Gazette, determine the following matters:

- the amount of tax, duty or licence fee payable under a tax law;
- the rate at which an amount of tax, duty or a licence fee payable under a tax law is calculated; or
- an amount for the purposes of subsection 37(1) or section 40, both of which deal with interest.

Subsections 99(2) and (3) provide that a determination is to be tabled by the Minister before each House of Parliament within 15 sitting days after the determination has been made. The determination is void if this is not done.

Subsections 99(4) and (5) provide that the provisions of the Seat of Government (Administration) Act 1910 apply to determinations as if the determinations were Ordinances made under that Act.

Regulations

Section 100 provides the Minister may make regulations prescribing all matters needed to give effect to the Ordinance.

Ord. 35/87