



AUSTRALIAN CAPITAL TERRITORY

Taxation (Administration) (Amendment) Act (No. 2) 1991

No. 114 of 1991

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

[Notified in ACT Gazette S162: 10 January 1992]

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 (No. 2) 1991*.

Principal Act

2. In this Act, “Principal Act” means the *Taxation (Administration) Act 1987*.¹

Insertion

3. After section 4 of the Principal Act the following section is inserted in Part I:

Position of Crown

“4A. This Act binds the Crown.”.

Further information

4. Section 18 of the Principal Act is amended by omitting from subsection (2) “liability of a person” and substituting “liability of that person or another person”.

Insertion

5. After section 22 of the Principal Act the following section is inserted:

Compromise assessments

“22A. (1) This section applies where—

- (a) the facts of a case are so complex or uncertain; or
- (b) for any other reason;

it is difficult or impracticable for the Commissioner to make an accurate assessment of a person’s liability for tax, duty or a licence fee under a tax law without undue delay or expense.

“(2) Where this section applies, the Commissioner may, by agreement in writing with the person, assess as the amount of the liability an amount specified in, or ascertained in accordance with, the agreement.

“(3) Notwithstanding section 89, Part XII does not apply in relation to the agreed assessment.

“(4) The Commissioner may accept payment of the amount to which the agreement relates in full discharge of the relevant liability and payment of that amount has effect accordingly unless it was procured by fraud or a wilful failure to disclose material facts.”.

Remission of penalty tax

6. Section 32 of the Principal Act is amended by omitting from paragraphs (1) (a), (b) and (c) “that contributed to the delay in payment of the tax, duty, penalty tax or licence fee” and substituting “that resulted in the person’s liability for the first-mentioned penalty tax”.

Membership of groups

7. Section 77 of the Principal Act is amended—

- (a) by inserting in paragraph (2) (a) “substantially” before “independently”;
- (b) by omitting subsections (2A) and (3) and substituting the following subsections:

“(2A) In determining, for the purposes of paragraph (2) (a), whether a person carries on business substantially independently of the other member or members of a group, the Commissioner shall have regard to the nature and degree of ownership or control of the business of each member of the group, the nature of each of those businesses and any other matter that the Commissioner considers relevant.

“(3) The Commissioner shall give notice in writing of a determination to the person in respect of whom the determination is made and to each member of the group.

“(3A) A determination takes effect—

- (a) on the date on which notice under subsection (3) is given to the person excluded from the group; or
 - (b) if another date of effect (including an earlier date) is specified in the notice—on that other date.”; and
- (c) by omitting from subsection (4) “comes into force on being made and”.

Groups of commonly controlled businesses

8. Section 80 of the Principal Act is amended by omitting paragraph 80 (2) (c) and substituting the following paragraph:

“(c) in the case of a business carried on by a corporation—

- (i) the person or each of the persons is a director of the corporation and one of them is, or 2 or more of them together are, entitled to exercise more than one half of the voting power at meetings of the directors of the corporation; or

- (ii) a director or directors of the corporation (who is, or together are, entitled to exercise more than one half of the voting power at meetings of the corporation) is or are under an obligation, whether formal or informal, to act in accordance with the direction, instructions or wishes of that person, or of those persons acting together;”.

Giving effect to Tribunal’s decisions

9. Section 93 of the Principal Act is amended by omitting subsection (2) and substituting the following subsection:

“(2) If no appeal to a court from—

- (a) a decision of the Tribunal in relation to this Part; or
- (b) the decision of the Supreme Court or the Federal Court in an appeal to the Court in relation to the Tribunal’s decision;

is instituted within 30 days after the day on which the decision (or the later or latest of those decisions) is made, the decision of the Tribunal shall be taken, for the purposes of subsection (1), to have become final at the end of that period.”.

Determination of amounts payable under tax laws

10. Section 99 of the Principal Act is amended by omitting from paragraph (1) (b) “or a licence fee” and substituting “, a licence fee or interest”.

NOTE

1. Ordinance No. 41, 1987 as amended by Nos. 6, 33, 53 and 54, 1988; Nos. 20, 21 and 38, 1989; Acts Nos. 2, 8 and 17, 1990; No. 44, 84 and 115, 1991.

[Presentation speech made in Assembly on 12 December 1991]