



AUSTRALIAN CAPITAL TERRITORY

## **Taxation (Administration) (Amendment) Act 1997**

**No. 28 of 1997**

---

---

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

*[Notified in ACT Gazette S185: 16 July 1997]*

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 1997*.

#### **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>

**Review of decisions**

4. Section 91 of the Principal Act is amended by omitting paragraphs (h) and (j) and substituting the following paragraphs:

- “(h) under subparagraph 95C (1) (a) (i) that a person has charged to, or recovered from, another person an amount paid in respect of the whole or any part of a revenue amount;
- (i) under subparagraph 95C (1) (a) (ii) that a person has not repaid an amount charged to, or recovered from, another person; or
- (j) under subsection 95D (2A) refusing an application wholly or partly.”.

**Limitation of refunds of revenue amounts**

5. Section 95C of the Principal Act is amended—

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

“(1) The Commissioner shall not refund a revenue amount unless the person claiming the refund (in this section called the “claimant”)—

(a) satisfies the Commissioner that—

- (i) he or she has not charged to, or recovered from, any other person an amount paid in respect of the whole or any part of the revenue amount; or
- (ii) if the claimant has so charged or recovered any such amount—he or she has repaid the amount; and

(b) gives the Commissioner an undertaking in writing that he or she will not charge to, or recover from, any other person an amount paid in respect of the whole or any part of the revenue amount.”;

(b) by omitting from subsection (2) “paragraph (1) (a) or (b)” and substituting “subparagraph (1) (a) (i) or (ii)”; and

(c) by adding at the end the following subsection:

“(3) A person who contravenes an undertaking that he or she has given under paragraph (1) (b) is liable to pay the Commissioner, as a penalty, an amount equal to double the amount that he or she has charged to, or recovered from, another person by the contravention.”.

**Insertion**

6. After section 95C of the Principal Act the following section is inserted:

**Judgments for the recovery of revenue amounts**

“95CA. (1) Judgment shall not be entered for a plaintiff or claimant in proceedings against the Territory for the recovery of a revenue amount unless—

- (a) the court is satisfied that—
  - (i) the plaintiff or claimant has not charged to, or recovered from, any other person an amount paid in respect of the whole or any part of the revenue amount; or
  - (ii) if the plaintiff or claimant has so charged or recovered any such amount—he or she has repaid the amount; and
- (b) the plaintiff or claimant gives to the court an undertaking in writing that he or she will not charge to, or recover from, any other person an amount paid in respect of the whole or any part of the revenue amount.

“(2) A person who contravenes an undertaking that he or she has given under paragraph (1) (b) is liable to pay to the Commissioner, as a penalty, an amount equal to double the amount that he or she has charged to, or recovered from, another person by the contravention.

“(3) In subsection (1) a reference to the Territory shall be read as including a reference to an officer, a Minister or an authority of the Territory.”.

**Recovery of revenue amounts following non-legislative change in law**

7. Section 95D of the Principal Act is amended by omitting subsection (2) and substituting the following subsections:

“(2) Notwithstanding subsection (1), a person may apply to the Commissioner for the refund of any part of a revenue amount to which that subsection applies that would have been recoverable as an overpayment if the purported tax, licence fee or duty had been valid.

“(2A) The Commissioner shall consider an application under subsection (2) and either refund the amount claimed in whole or in part or reject the application.”.

**Insertion**

8. After section 95E of the Principal Act the following section is inserted in Part XIIA:

**Application**

“95F. For the avoidance of doubt it is declared that this Part applies to revenue amounts paid, and proceedings for the recovery of revenue amounts commenced, before or after the commencement of this Part.”.

---

**NOTE**

**Principal Act**

1. Reprinted as at 28 February 1995. See also Acts No. 25, 1995; Nos. 46 and 77, 1996.

*[Presentation speech made in Assembly on 8 May 1997]*