

1998
THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Treasurer)

Taxation Administration Bill 1998

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SCHEDULE 1

DECISIONS REVIEWABLE BY THE COMMISSIONER AND THE TRIBUNAL

SCHEDULE 2

DECISIONS REVIEWABLE BY THE COMMISSIONER ONLY

1998
THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Treasurer)

Taxation Administration Bill 1998

**A BILL
FOR**

**An Act to provide for the administration of certain
Acts relating to the imposition and collection of taxes**

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

PART I—PRELIMINARY

1. **Short title**
5 This Act may be cited as the *Taxation Administration Act 1998*.
2. **Commencement**
 - (1) Section 1 and this section commence on the day on which this Act is notified in the *Gazette*.
 - (2) The remaining provisions commence on 1 March 1999.

3. Interpretation

(1) In this Act, unless the contrary intention appears—

“assessment” means—

- 5 (a) an assessment, reassessment or compromise assessment of the tax liability of a person under a tax law, made by the Commissioner under Part III; or
- (b) an assessment substituted by the Tribunal on an appeal under Part X;

“authorised officer” means an authorised officer under section 79;

10 “business” means—

- (a) a profession or trade;
 - (b) any other activity carried on for fee or reward;
 - (c) the activity of employing persons to perform duties in connection with another business; or
 - 15 (d) the carrying on of a trust;
- whether carried on by 1 person or 2 or more persons together;

“Commissioner” means the Commissioner for Australian Capital Territory Revenue referred to in section 73;

“corporation” has the same meaning as in the *Corporations Law*;

20 “director”, in relation to a body corporate, includes a person occupying or acting in a position with responsibility for the direction of the body, by whatever name called and whether or not validly appointed to occupy, or duly authorised to act in, the position;

25 Note “document” is defined in section 17 of the *Interpretation Act 1967*, and includes information in electronic form

“function” includes a power, authority or duty;

“group” has the meaning given by section 112;

“identity card” means—

- (a) an identity card issued under subsection 80 (1); or
- 30 (b) an identity card approved under subsection 80 (2), together with a notice issued under paragraph 79 (3) (b);

“interest rate” means the interest rate set under section 26;

“lodge” has the meaning given by section 127;

35 “market rate component”, in relation to interest, has the meaning given by subsection 26 (2);

“objection” means an objection made under section 100;

“penalty unit” means—

(a) in relation to an offence committed by an individual—the amount set by section 33AA of the *Interpretation Act 1967*; and

(b) in relation to an offence committed by a body corporate—5 times the amount set by that section;

“premises” includes land, a vehicle, a vessel and an aircraft;

“premium component”, in relation to interest, has the meaning given by subsection 26 (3);

“primary group” has the meaning given by sections 113 to 116 (inclusive);

“public officer” means the public officer of a body appointed under section 117;

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

“record” means a record in any form of document;

“return” means a return, statement, application, report or other record that—

(a) is required or authorised under a tax law to be lodged by a person with the Commissioner or a specified person; and

(b) is liable to tax or records matters in respect of which there is or may be a tax liability;

“revenue amount” means an amount of money paid voluntarily or under compulsion as a tax (including penalty tax);

“tax” means a tax, duty or levy under a tax law, and includes—

(a) interest and penalty tax under Part V; and

(b) any other amount paid or payable by a taxpayer to the Commissioner under a tax law;

“tax default” means a failure by a taxpayer to pay, in accordance with a tax law, the whole or part of tax that the taxpayer is liable to pay;

“tax law”—

- (a) in relation to the Territory—has the meaning given by section 4; and
- (b) in relation to another jurisdiction—means a law of that jurisdiction that relates to the imposition of a tax, duty or levy,

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

“tax officer” means—

- (a) the Commissioner;
- (b) an authorised officer; or
- (c) any other person engaged (whether as an officer or employee or otherwise) in the administration or enforcement of a tax law;

“taxpayer” means a person who has been assessed as liable to pay an amount of tax, who has paid an amount as tax or who is liable or may be liable to pay tax;

“Tribunal” means the Administrative Appeals Tribunal.

(2) A reference to the exercise of a function includes a reference to the performance of a duty.

(3) Notes in the text of this Act do not form part of the Act.

4. Meaning of “tax laws”

The following are tax laws for the purposes of this Act:

- (a) this Act;
- (b) the *Ambulance Service Levy Act 1990*;
- (c) the *Business Franchise (Liquor) Act 1993*;
- (d) the *Debits Tax Act 1997*;
- (e) the *Duties Act 1998*;
- (f) the *Financial Institutions Duty Act 1987*;
- (g) the *Gaming Machine Act 1987*;
- (h) the *Insurance Levy Act 1998*;
- (i) the *Interactive Gambling Act 1998*;
- (j) the *Payroll Tax Act 1987*;
- (k) the *Stamp Duties and Taxes Act 1987*;
- (l) the *Tobacco Licensing Act 1984*;

- (m) an Act declared by the Regulations to be a tax law;
- (n) a regulation under any of those Acts.

5. Act binds the Crown

5 Despite subsection 7 (6) of the *Interpretation Act 1969*, this Act applies in relation to the Territory where it requires or otherwise provides for the payment of money that, upon payment, would form part of the public money of the Territory.

PART II—PURPOSE OF ACT AND RELATIONSHIP WITH OTHER TAX LAWS

10 **6. Purpose of Act and relationship with other tax laws**

(1) The purpose of this Act is to make general provision with respect to the administration and enforcement of the other tax laws.

(2) The other tax laws include provisions with respect to—

- (a) the imposition of tax and its payment;
- 15 (b) exceptions to and exemptions from liability to the tax; and
- (c) entitlements to refunds.

(3) This Act includes general provisions with respect to—

- (a) the assessment and reassessment of tax liability;
- (b) the tax liability of groups of corporations;
- 20 (c) payment of tax, where this is not provided for in the tax law concerned;
- (d) entitlements to and the obtaining of refunds of tax;
- (e) the imposition of interest and penalty tax;
- (f) approval of special tax return arrangements;
- 25 (g) the collection of tax;
- (h) record keeping obligations of taxpayers and general offences;
- (i) tax officers and their investigative powers and secrecy obligations;
- (j) objections and appeals;
- 30 (k) co-operation with other jurisdictions in conducting investigations and enforcing tax laws; and
- (l) miscellaneous matters such as the service of documents, corporate criminal liability and evidence.

PART III—ASSESSMENT OF TAX LIABILITY

7. General power to make assessment

(1) The Commissioner may make an assessment of the tax liability of a taxpayer.

5 (2) An assessment of a tax liability may—

(a) consist of a determination that there is not a particular tax liability;
or

(b) include an assessment of the value of any thing for the purpose of assessing tax liability.

10 (3) 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.

8. Tax avoidance schemes made ineffective

15 (1) Where the Commissioner is satisfied that a person has used a tax avoidance scheme, he or she may—

(a) determine the tax to which the person and other persons would have been liable but for the use of the scheme; and

(b) take such action as he or she considers necessary to allow assessments of tax so determined.

20 (2) Where the Commissioner makes a determination under subsection (1), each person benefiting from the scheme is liable for tax in accordance with the determination.

(3) In this section—

“scheme” includes—

25 (a) any plan, action or conduct of a person;

(b) any trust, agreement, arrangement or other understanding between persons, whether oral or in writing, whether express or implied and whether or not it is intended to be legally binding; and

30 (c) any series or combination of schemes referred to in paragraphs (a) and (b);

“tax avoidance scheme” means a scheme by which a person obtains or seeks to obtain a reduction in, or exemption from, tax that would otherwise be payable and where, having regard to—

35 (a) the manner in which the scheme was entered into or carried out;

(b) the form and substance of the scheme;

- (c) the time at which the scheme was entered into and the length of time during which it was carried out;
- (d) the extent to which the scheme reduces the tax that would otherwise be payable;
- 5 (e) whether the scheme has resulted in, or can reasonably be expected to result in, a change in any person's financial position, or in any other consequence for any person; or
- 10 (f) the nature of any connection (whether of a business, family or any other nature) between the person and a person referred to in paragraph (e);

it would be reasonable to conclude that the person entered into or carried out the scheme principally for the purpose obtaining the reduction in, or exemption from, tax.

- 15 (4) This section applies in relation to a scheme wherever and whenever entered into.

- (5) This section does not prevent a person from agreeing to pay tax payable by another or from entering a tax-sharing agreement.

9. Reassessment

- 20 (1) The Commissioner may make 1 or more reassessments of a tax liability of a taxpayer.

- (2) A reassessment of a tax liability shall be made in accordance with the legal interpretations and assessment practices generally applied by the Commissioner in relation to matters of that kind at the time the tax liability arose except to the extent that any departure from those interpretations and practices is required by a change in the law (whether legislative or non-legislative) made after that time.

- (3) The Commissioner shall not make a reassessment of a tax liability more than 5 years after the initial assessment of the liability, unless—

- 30 (a) the purpose of the reassessment is to give effect to a decision on an objection or appeal as to the initial assessment; or
- (b) at the time the initial assessment or a reassessment was made, all the facts and circumstances affecting the liability under the relevant tax law of the person in respect of whom the assessment or reassessment was made were not fully and truly disclosed to the Commissioner.

- 35 (4) The initial assessment of a tax liability remains the initial assessment of the liability for the purposes of this Act even if it is withdrawn under section 13.

10. Requirement for full and true disclosure of relevant facts and circumstances

- (1) A person who is liable to pay tax under a tax law shall, before or at the time an assessment of the tax liability is made, fully and truly disclose to the Commissioner all the facts and circumstances affecting the tax liability under the relevant tax law.

Penalty: 50 penalty units or imprisonment for 6 months, or both.

- (2) It is a defence to a charge under this section that the defendant reasonably relied on some other person to ensure that the requirements of this section were satisfied.

11. Information on which assessment is made

- (1) The Commissioner may make an assessment on the information that the Commissioner has from any source at the time the assessment is made.

- (2) If the Commissioner has insufficient information to make an exact assessment of a tax liability, the Commissioner may make an assessment by way of estimate.

12. Compromise assessment

- (1) If it is difficult or impracticable for the Commissioner to determine a person's tax liability under a tax law without undue delay or expense because of the complexity or uncertainty of the case or for any other reason, the Commissioner may make an assessment in accordance with this section.

- (2) The Commissioner may, with the agreement of the taxpayer, assess liability in an amount specified in, or determined in accordance with, the agreement.

- (3) Despite section 9, the Commissioner shall not make a reassessment of a tax liability assessed in accordance with this section unless—

- (a) the taxpayer agrees to the reassessment; or
- (b) the assessment under this section was procured by fraud or there was a deliberate failure to disclose material information.

- (4) This section does not limit the power of the Commissioner to make an assessment by way of estimate under section 11.

13. Withdrawal of assessment

- The Commissioner may withdraw an assessment (being an assessment for which a notice of assessment has been issued) at any time within 5 years after the date of issue of the notice, whether or not the amount of tax specified in the assessment has been paid.

14. Notice of assessment, reassessment or withdrawal of assessment

(1) The Commissioner may issue a notice of assessment, showing the amount of the assessment.

5 (2) If the Commissioner has not issued a notice of assessment of the tax liability of a taxpayer, the Commissioner shall issue the notice if a request to do so is made by the taxpayer within 5 years after the liability arose.

10 (3) If the Commissioner makes a reassessment, the Commissioner shall issue a notice of assessment, showing the amount of the reassessment and the amount by which the assessment has been increased or decreased.

(4) If the Commissioner withdraws an assessment, the Commissioner shall issue a notice of withdrawal of assessment.

(5) A notice under this section shall be in a form approved by the Commissioner.

15 **15. Inclusion of interest and penalty tax in notice of assessment**

20 A notice of assessment of a taxpayer's tax liability issued following a tax default by the taxpayer shall specify any interest and penalty tax that are payable, or will become payable by the taxpayer under Part V in respect of the default.

16. Validity of assessment

The validity of an assessment is not affected only because a provision of a tax law has not been complied with.

17. Acceptance of money not necessarily an assessment

25 Where money is paid in connection with the lodging of any document, the acceptance of the money by the Commissioner does not, of itself, constitute an assessment.

18. Remissions of tax

30 Tax 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—REFUNDS OF TAX

19. Entitlement to refund

35 (1) If a taxpayer has paid a greater amount of tax in relation to a tax liability than the amount assessed for that liability, the Commissioner shall refund the difference to the taxpayer, subject to this Part.

(2) To avoid doubt, it is declared that an amount by which tax is overpaid shall be taken to be tax for the purposes of this Part.

20. Offset of refund against other tax liability

5 (1) Instead of making a refund to a taxpayer, the Commissioner may apply the amount that would otherwise be refunded to meet tax or any other amount payable by the taxpayer under a tax law or under the *Rates and Land Tax Act 1926*.

(2) A refund may be credited towards a taxpayer's future liability, but only with the taxpayer's consent.

10 **21. Limitation of refunds of revenue amounts**

(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—

15 (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

20 (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.

(2) If the Commissioner is not satisfied about the matters referred to in paragraph (1) (a) the Commissioner shall give the claimant notice in writing of his or her decision.

25 (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.

22. Judgments for the recovery of revenue amounts

30 (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—

35 (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.

5 (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.

10 (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.

23. No recovery of revenue amounts following non-legislative change in law

15 (1) A revenue amount paid before a non-legislative change of the law is not recoverable from the Territory on a ground of invalidity if the ground came into existence because of the change of law.

20 (2) Where a revenue amount paid before a non-legislative change of the law would have been refundable as an overpayment if the purported tax had been valid, that amount is refundable as if the purported tax had indeed been valid.

(3) In this section—

25 (a) a reference to a non-legislative change of the law shall be read as a reference to a change of the law or of legal principles, or a change in what is generally perceived to be the state of the law or of legal principles, but shall not be read as including a change made by legislation;

(b) a reference to the Territory shall be read as including a reference to an officer, a Minister or an authority of the Territory; and

30 (c) a reference to a ground of invalidity shall be read as a reference to—

(i) the ground of invalidity of a tax law;

(ii) the ground of mistake (whether law or a fact) as to the validity or invalidity of a tax law; or

35 (iii) any other restitutionary ground relating to the validity or invalidity of a tax law.

24. Characterisation

(1) For the purpose of the application of the rules of conflict of laws, this Part is part of the substantive law of the Territory.

(2) This section does not affect the characterisation of any other provision in this Act.

PART V—INTEREST AND PENALTY TAX

Division 1—Interest

5 **25. Interest in respect of tax defaults**

(1) If a tax default occurs, the taxpayer is liable to pay interest on the amount of tax unpaid calculated on a daily basis from the end of the last day for payment until the day it is paid at the interest rate from time to time applying under this Division.

10 (2) Interest is payable under this section in respect of a tax default that consists of a failure to pay penalty tax under Division 2 but is not payable in respect of any failure to pay interest under this Division.

26. Interest rate

(1) The interest rate is the sum of—

- 15 (a) the market rate component; and
 (b) the premium component.

(2) The market rate component is—

- 20 (a) unless an order is in force under paragraph (b), the rate applicable for the time being under section 214A (8) of the *Income Tax Assessment Act 1936* of the Commonwealth; or
 (b) the rate specified for the time being by order of the Minister published in the *Gazette*.

(3) The premium component is 8% per annum.

27. No interest is imposed if the amount would be small

25 No interest is payable under a tax law if the amount that would otherwise be payable is less than \$20.

28. Interest rate to prevail over interest otherwise payable on a judgment debt

30 If judgment is given by or entered in a court for an amount of unpaid tax (or an amount that includes an amount of unpaid tax), the interest rate determined in accordance with this Division continues to apply, to the exclusion of any other interest rate, until the tax is paid.

29. Remission of interest

(1) The Commissioner may remit all or part of the market rate component or the premium component of interest, or both, if—

- 5 (a) the Commissioner has determined that no penalty tax is payable under subsection 31 (3);
- (b) the amount of penalty tax has been reduced under section 32 or 33; or
- (c) penalty tax has been remitted in whole or in part under section 37.

10 (2) The Commissioner shall not remit the market rate component unless he or she is also satisfied that the circumstances are exceptional and justify the remission.

Division 2—Penalty tax

30. Penalty tax in respect of certain tax defaults

15 (1) If a tax default occurs, the taxpayer is liable to pay penalty tax in addition to the amount of tax unpaid.

(2) Penalty tax imposed under this Division is in addition to interest.

(3) Penalty tax is not payable in respect of a tax default that consists of a failure to pay—

- (a) interest under Division 1; or
- 20 (b) penalty tax previously imposed under this Division.

31. Amount of penalty tax

(1) The amount of penalty tax payable in respect of a tax default is 25% of the amount of tax unpaid, subject to this Division.

25 (2) The amount of penalty tax payable in respect of a tax default is 75% of the amount of tax unpaid if the Commissioner is satisfied that the tax default was caused wholly or partly by the intentional disregard by the taxpayer (or a person acting on behalf of the taxpayer) of a tax law.

(3) No penalty tax is payable in respect of a tax default if the Commissioner is satisfied that—

- 30 (a) the taxpayer (or a person acting on behalf of the taxpayer) took reasonable care to comply with the tax law; or
- (b) the tax default occurred solely because of circumstances beyond the taxpayer's control (or if a person acted on behalf of the taxpayer, because of circumstances beyond either the person's or
- 35 the taxpayer's control) but not amounting to financial incapacity.

32. Reduction in penalty tax for voluntary disclosure

The amount of penalty tax determined under section 31 is reduced by 80% if, before the Commissioner informs the taxpayer that an investigation relating to the taxpayer is to be carried out, the taxpayer discloses to the Commissioner, in writing, sufficient information to enable the nature and extent of the tax default to be determined.

33. Reduction in penalty tax for disclosure before investigation

The amount of penalty tax determined under section 31 is reduced by 20% if, after the Commissioner informs the taxpayer that an investigation relating to the taxpayer is to be carried out and before it is commenced, the taxpayer discloses to the Commissioner, in writing, sufficient information to enable the nature and extent of the tax default to be determined.

34. Increase in penalty tax for concealment

The amount of penalty tax payable in respect of a tax default is 90% of the amount of tax unpaid if the Commissioner is satisfied that, after the Commissioner has informed the taxpayer that an investigation is to be carried out and before the investigation is completed, the taxpayer (or a person acting on behalf of the taxpayer)—

- (a) deliberately damages or destroys records required to be kept under the tax law to which the investigation relates;
- (b) refuses or fails, without reasonable excuse, to comply with a requirement made by the Commissioner under Division 2 of Part IX for the purposes of determining the taxpayer's tax liability;
- (c) hinders or obstructs an authorised officer exercising functions under that Division for that purpose; or
- (d) otherwise shows intentional disregard for a tax law.

Note The following Table contains a summary of the effect of sections 31 to 34

Rates of penalty tax

	Basic Rate	Disclosure before investigation commences		Intentional obstruction of an investigation
		Before notification	After notification	
Original failure to take reasonable care but no intentional disregard of the law	25%	5%	20%	90%
Original intentional disregard of the law	75%	15%	60%	90%

35. Minimum amount of penalty tax

No penalty tax is payable if the amount that would otherwise be payable is less than \$20.

36. Time for payment of penalty tax

5 Penalty tax shall be paid by a taxpayer within the period specified in a notice of assessment of the tax liability of the taxpayer, being a period of not less than 14 days.

37. Remission of penalty tax

10 The Commissioner may remit all or part of an amount of penalty tax payable by a person if the Commissioner is satisfied that—

(a) either—

(i) the person has taken reasonable steps to mitigate, or to mitigate the effects of, the circumstances that resulted in the liability for penalty tax; or

15 (ii) the circumstances that resulted in the liability for penalty tax were exceptional; and

(b) it would be fair and reasonable to remit all or part of the penalty tax.

PART VI—RETURNS

20 ***Division 1—General***

38. Form of returns

A return shall be in a form approved by the Commissioner.

39. Time of lodgment

25 Subject to section 18 of the *Interpretation Act 1967*, a return is lodged by a person when the action referred to in paragraph 127 (a), (b), (c) or (d) is taken.

40. Variation of time for lodgment of return or of period covered by return

(1) A person may apply to the Commissioner to—

30 (a) extend the time by which a return must be lodged; or

(b) vary the period to which the return is to relate.

(2) An application shall—

- (a) be in writing, addressed to the Commissioner; and
- (b) specify—

- (i) the name and address of the applicant; and
- 5 (ii) the grounds on which the variation is sought.

(3) Where the Commissioner is satisfied that it would be unduly onerous for a person 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 under this section is in force in relation to a person, the person shall lodge returns in accordance with the notice.

(5) Where 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 a notice under this section.

(6) A notice of revocation has effect 21 days after it is made.

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

20 **41. Authenticity of returns**

A return purporting to be made and signed by or on behalf of a person shall be presumed to have been made and signed by the person or with his or her authority.

25 **Division 2—Special arrangements for making returns and paying tax**

42. Special arrangements for classes of persons

(1) The Commissioner may, by notice published in the *Gazette*, approve special arrangements that vary the provisions of a tax law in relation to—

- (a) the lodging of returns; and
- 30 (b) the manner of payment of amounts of tax;

that are due under a tax law.

(2) An approval shall apply in relation to—

- (a) a specified class of taxpayers; or
- 35 (b) a specified class of persons who act as agents on behalf of a specified class of taxpayers.

(3) An approval, among other things, may—

- (a) provide an exemption for the taxpayers from specified provisions of the tax law to which it applies;
- (b) authorise payments of tax to be made by return; and
- 5 (c) authorise the lodging of returns and payments of tax by electronic means.

(4) An approval under this section is a disallowable instrument for the purposes of section 10 of the *Subordinate Laws Act 1989*.

43. Special arrangements for individual applicants

10 (1) The Commissioner may, on an application by—

- (a) a taxpayer; or
- (b) a person who acts, or proposes to act, as an agent for taxpayers of a specified class;

15 by written notice approve special arrangements that vary the provisions of a tax law in relation to—

- (c) the lodging of returns; and
 - (d) the manner of payment of amounts of tax;
- that are due under a tax law.

(2) An approval, among other things, may—

- 20 (a) provide an exemption for the taxpayer or taxpayers from specified provisions of the tax law to which it applies; or
- (b) authorise payments of tax to be made by return.

(3) An application for an approval under this section shall be made to the Commissioner in a form approved by the Commissioner.

25 (4) The Commissioner may grant or refuse an application.

(5) The Commissioner shall not grant an application under this section for an arrangement consisting only of 1 or more of the following:

- (a) an extension of time for lodgment of a return;
- (b) a variation of a period covered by a return;
- 30 (c) an extension of time for payment of tax;
- (d) an arrangement to pay by instalments;
- (e) an approval of a means of payment.

Note These variations can be granted under sections 40, 52 and 122

44. Conditions of approval

(1) An approval under section 42 or 43 is subject to conditions specified by the Commissioner in the notice of approval or by subsequent written notice.

- 5 (2) The conditions of an approval may include conditions—
- (a) limiting the approval to tax liabilities of a specified class;
 - (b) limiting the approval to transactions effected by instruments of a specified class;
 - 10 (c) requiring the lodging of returns at specified times and as to the contents of the returns;
 - (d) requiring payments of tax at specified times;
 - (e) as to the means by which returns are to be lodged or payments of tax are to be made;
 - 15 (f) if the approval provides an exemption from a requirement for the stamping of instruments—as to the endorsement of the instruments; and
 - (g) requiring a taxpayer or agent to whom the approval applies to keep specified records.

45. Variation and cancellation of approvals

20 The Commissioner may vary or cancel an approval under section 43 by written notice served on the taxpayer or agent to whom the approval was given.

46. Taxpayers and agents must comply with conditions

25 (1) A taxpayer who relies on an approval under paragraph 42 (2) (a) or 43 (1) (a) in relation to the lodgment of a return or the payment of an amount of tax shall not breach a condition attaching to the approval.

Penalty: 50 penalty units.

30 (2) An agent for a class of taxpayers who acts under an approval under paragraph 42 (2) (b) or 43 (1) (b) in relation to the lodgment of returns or the payment of amounts of tax shall not breach a condition attaching to the approval.

Penalty: 50 penalty units.

47. Stamping of instruments

(1) If—

- (a) an approval under this Division provides for an exemption from a requirement for the stamping of an instrument; and
- 5 (b) the instrument is endorsed in accordance with the conditions of the approval;

the instrument is deemed to be duly stamped, but the liability for the payment of tax in relation to the instrument under the relevant tax law is not affected.

- 10 (2) A person shall not endorse an instrument otherwise than under and in accordance with an approval under this Division so as to suggest or imply that the instrument is properly so endorsed and as a result is deemed to be duly stamped.

Penalty: 100 penalty units or imprisonment for 12 months, or both.

15 **PART VII—COLLECTION OF TAX**

48. Tax payable to the Commissioner

- (1) Tax that is payable is payable to the Commissioner, who may recover any amount unpaid in a court of competent jurisdiction as a debt to the Commissioner.
- 20 (2) The Commissioner has the same powers and remedies in relation to the trustee of a deceased person for the recovery of tax from the person's estate as the Commissioner would have in relation to the person if the person were alive.

49. Costs of recovery are payable to the Commissioner

- 25 Where an amount by way of tax, penalty tax or interest payable under a tax law has not been paid, the person who is liable to pay that amount is also liable to pay to the Territory an amount equal to the costs and expenses reasonably incurred by the Territory in attempting to recover the amount of tax, penalty tax or interest.

30 **50. Joint and several liability**

- (1) If 2 or more persons are jointly or severally liable to pay an amount under a tax law, the Commissioner may recover the whole of the amount from them, or any of them, or any 1 of them.
- 35 (2) Nothing in this Act prevents a person who is jointly or severally liable to pay an amount of tax and who pays the amount to the Commissioner from recovering a contribution from any other person who is liable to pay the whole or part of that amount.

51. Time for payment of tax

Subject to this Act, tax is due and payable—

- (a) in accordance with the relevant tax law; or
- 5 (b) if that law makes no provision in relation to the time for payment—
on the last day on which the return or other document in respect of
the tax is required to be lodged under that law.

52. Arrangements for payment of tax

- (1) The Commissioner may extend the time for payment of tax by a taxpayer and may accept the payment of tax by instalments.
- 10 (2) A decision of the Commissioner under this section may be made subject to such conditions (for example, as to the payment of interest) as the Commissioner may determine.
- (3) Where the Commissioner has accepted the payment of tax by instalments, each instalment is due and payable at the time determined by the
15 Commissioner in relation to the instalment.
- (4) If an instalment of 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.

53. Duties of agents, trustees etc.

- 20 (1) This section applies where—
 - (a) a person (in this section called “the agent”) has possession, control or management of a business or property of a taxpayer as an agent or trustee or in any other capacity; and
 - 25 (b) obligations under a tax law (whether as to the payment of tax or otherwise) remain undischarged by the taxpayer or will arise in relation to the business or property.
- (2) The agent shall, as soon as and so far as is practicable, ensure that—
 - (a) the obligations of the taxpayer under a tax law that remain undischarged are discharged; and
 - 30 (b) all further obligations that arise under a tax law in relation to the business or property are discharged while the person continues to have possession, control or management of the business or property.

35 **Penalty:** a penalty not greater than could be imposed on the taxpayer for a failure to fulfil the obligation concerned.

(3) For those purposes the agent shall set aside (and, so far as necessary, liquidate) assets of the taxpayer (or the taxpayer's estate) to the value of any tax that has become or becomes payable and use those assets to pay the tax.

5 Penalty: 50 penalty units.

(4) If the agent fails, without the Commissioner's written permission, to set aside, liquidate and use sufficient assets to pay the tax, the Commissioner may recover from the agent as a debt the whole or a part of an amount that is assessed as being payable as tax in relation to the business
10 or property and remains unpaid, but the agent will not otherwise be personally liable for the payment of the tax.

(5) The agent is entitled to be indemnified by the taxpayer (or out of the taxpayer's estate) for payments made or action taken in pursuance of this section.

15 (6) This section does not prevent the making of a payment to the agent out of the assets, in priority to tax, of any reasonable remuneration, charges and expenses to which the agent would, apart from this section, be entitled in relation to his or her performance of the agent's functions.

54. Collection of tax from third parties

20 (1) The Commissioner may require any of the following persons instead of the taxpayer to pay tax that is payable but remains unpaid:

- (a) a person from whom any money is due or accruing or may become due to the taxpayer;
- 25 (b) a person who holds or may subsequently hold money for or on account of the taxpayer;
- (c) a person who holds or may subsequently hold money on account of some other person for payment to the taxpayer;
- (d) a person having authority from some other person to pay money to the taxpayer.

30 (2) The Commissioner's requirement shall be made by notice in writing to the person concerned (in this section called "the debtor").

(3) A copy of the notice shall be served on the taxpayer.

(4) If the money due to the taxpayer is payable in instalments, the Commissioner may specify in the notice an amount to be paid by the debtor
35 to the Commissioner out of each instalment.

(5) Where, but for this subsection, money is not due or repayable on demand to the taxpayer unless a condition is fulfilled, for the purposes of this section the money is deemed to be respectively due or payable on demand even if the condition has not been fulfilled.

(6) The amount of money required to be paid to the Commissioner is—

- (a) if the amount of money so held or due or authorised to be paid does not exceed the amount payable by the taxpayer to the Commissioner—all the money; or
- 5 (b) if the amount of money exceeds the amount so payable—sufficient money to pay the amount so payable.

(7) The money shall be paid to the Commissioner—

- (a) on receipt of the notice;
- 10 (b) when the money is held by the debtor and becomes due to the taxpayer; or
- (c) after such period (if any) as may be specified by the Commissioner;

whichever is the later.

15 (8) A debtor subject to a requirement of the Commissioner under this section shall comply with the requirement.

Penalty: 50 penalty units.

20 (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.

25 (10) A debtor who makes a payment in accordance with this section is deemed to be acting under the authority of the taxpayer and of all other persons concerned and is indemnified by this section in respect of the payment.

30 (11) If, after a person is given a notice under this section by the Commissioner, the whole or a part of the amount is paid by another person, the Commissioner shall promptly notify the person to whom the notice is given of the payment and the notice is deemed to be amended accordingly.

(12) In this section—

“tax” includes—

- (a) a judgment debt or costs in respect of tax;
- 35 (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.

55. Money held for non-residents

(1) This section applies where a person (in this section called “the agent”)—

- 5 (a) has authority to receive, control or dispose of money belonging to;
or
(b) is liable to pay money to;
a tax-payer who is not residing in Australia.

10 (2) The Commissioner may, by notice in writing served on the agent in relation to an amount of a tax liability of the taxpayer, 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 (3) (a), whichever is less.

(3) On receiving a notice, the agent is, by force of this section—

- 15 (a) authorised and required to retain from time to time—
(i) any money received by the agent on behalf of the taxpayer;
or
(ii) any money due to be paid by the agent to the taxpayer;
or so much of it as is equal to the amount payable in respect of the liability, whichever is less;
20 (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 taxpayer for all payments made on behalf of the taxpayer under a tax law.

25 **56. Enforcement of payment orders**

(1) Where—

- (a) the Supreme Court or the Magistrates Court orders a person to pay an amount to the Commissioner; and
30 (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) Act 1982*;

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

35 (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) Act 1982*, the Registrar 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.
- 5 (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.
- 10 (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 judgment of the Supreme Court in favour of the Commissioner.
- 15 (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.

PART VIII—RECORD KEEPING AND GENERAL OFFENCES

Division 1—Record keeping

57. Requirement to keep proper records

- 20 (1) A person shall keep, or cause to be kept, such records as are necessary to enable the person's tax liability under a tax law to be properly assessed.
- (2) This section does not affect a provision of any other tax law concerning the keeping of records.

58. Additional records

- 25 (1) The Commissioner may, by written notice given to a person who is required by a tax law to keep a record or cause a record to be kept, require the person to keep, or cause to be kept, such additional records as are specified in the notice.
- 30 (2) A person to whom a notice is given under this section shall comply with the notice.

Penalty: 50 penalty units.

59. Failure to keep proper records

- (1) A person who is required pursuant to a tax law to keep any accounts, accounting records or other records shall not keep them in such a way that they do not correctly record and explain the matters, transactions, acts or operations to which they relate.

Penalty: 30 penalty units.

- (2) It is a defence to a charge under subsection (1) that the person 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.

- (3) A person who is required pursuant to a tax law to make a record of any matter, transaction, act or operation shall not make it in such a way that it does not correctly record the matter, transaction, act or operation.

Penalty: 30 penalty units.

- (4) It is a defence to a charge under subsection (3) that the person 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.

60. Reckless or deliberate failure to keep proper records

- (1) A person who is required pursuant to a tax law to keep any accounts, accounting records or other records shall not recklessly or knowingly keep them in such a way that they do not correctly record and explain the matters, transactions, acts or operations to which they relate.

Penalty: 50 penalty units or imprisonment for 6 months, or both.

- (2) A person who is required pursuant to a tax law to make a record of any matter, transaction, act or operation shall not recklessly or knowingly make it in such a way that it does not correctly record the matter, transaction, act or operation.

Penalty: 50 penalty units or imprisonment for 6 months, or both.

61. Keeping accounts or records intended to deceive

- A person shall not—

- (a) keep 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) cannot be displayed and printed out or otherwise reproduced in legible form;

- (b) make 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;
- 5 (c) alter, deface, mutilate, falsify, damage, remove, conceal or destroy any accounts, accounting records or other records (whether wholly or partly); or
- (d) do or omit to do any other act or thing to any accounts, accounting records or other records;

with the intention of—

- 10 (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);
- 15 (h) hindering, obstructing or defeating the administration, execution or enforcement of a tax law; or
- (i) defeating the purposes of a tax law.

Penalty: 50 penalty units or imprisonment for 6 months, or both.

62. Accessibility

20 A person who is required by a tax law to keep a record shall keep the record so that it is able to be readily produced to the Commissioner if the Commissioner requires its production.

Penalty: 20 penalty units.

63. Records must be accessible in English

25 A person who is required by a tax law to keep a record shall keep the record in English.

Penalty: 20 penalty units.

64. Period of retention

(1) A person who is required by a tax law to keep a record shall retain the record for not less than 5 years after—

- 30 (a) the date it was made or obtained; or
- (b) the date of completion of the transaction or act to which it relates;

whichever is the later.

Penalty: 20 penalty units.

35 (2) A person may, with the written approval of the Commissioner, destroy a record within the 5 year period unless another law requires the record to be retained for not less than 5 years.

Division 2—General offences

65. Avoidance of tax

(1) A person liable to pay an amount of tax shall not knowingly avoid paying, or disclosing his or her liability to pay, part or all of that amount.

5 Penalty: 100 penalty units or imprisonment for 12 months, or both.

(2) On convicting a person of an offence under this section, the court may, in addition to imposing the penalty for the offence and without affecting the person's liability to pay the amount of tax avoided, order the person to pay to the Commissioner an amount not exceeding double the
10 amount of tax avoided.

66. Giving false or misleading information

(1) A person shall not—

- (a) give information to a tax officer that is false or misleading in a material particular; or
- 15 (b) omit from information given to a tax officer any matter or thing without which the information is misleading in a material particular.

Penalty: 30 penalty units.

(2) It is a defence to a charge under paragraph (1) (a) that the person did
20 not know, and could not reasonably be expected to have known, that the information was false or misleading.

(3) It is a defence to a charge under paragraph (1) (b) that the person did not know, and could not reasonably be expected to have known, that the omission caused the information to be misleading.

25 (4) A person shall not recklessly or knowingly—

- (a) give information to a tax officer that is false or misleading in a material particular; or
- (b) omit from information given to a tax officer any matter or thing
30 without which the information is false or misleading in a material particular.

Penalty: 50 penalty units or imprisonment for 6 months, or both.

- (5) This section applies to the giving of information—
- (a) whether orally, in writing or by any other means;
 - (b) whether in the form of a statement, application, certificate, notification or return or otherwise; and
 - 5 (c) whether or not giving of the information was required by a tax law or requested by a tax officer.
- (6) This section does not apply to information given under section 82.
- (7) This section applies in relation to information given to a person other than a tax officer, for a purpose in connection with the operation of a tax law, as if the person were a tax officer.
- 10

67. Failure to lodge documents

- (1) A person shall not fail or refuse to lodge a document, instrument, statement or return that is required to be lodged by a tax law.
- Penalty: 50 penalty units.
- 15 (2) A person shall not fail or refuse to notify the Commissioner or another person of any matter or thing of which notice is required to be lodged by a tax law.
- Penalty: 50 penalty units.
- (3) A person shall not fail or refuse to submit for stamping an instrument required to be stamped by a tax law.
- 20 Penalty: 50 penalty units.

68. Falsifying or concealing identity

- A person shall not—
- 25 (a) falsify or conceal the identity, or the address or location of a place of residence or business, of a taxpayer or of another person; or
 - (b) do, by act or omission, anything that facilitates the falsification or concealment of the identity, or the address or location of a place of residence or business, of a taxpayer or of another person.
- Penalty: 50 penalty units or imprisonment for 6 months, or both.

30 ***Division 3—Supplementary offence provisions***

69. General defence to a charge under a tax law

- It is a defence to a charge of an offence against a tax law if the defendant proves that the offence was not committed deliberately and did not result from any failure by the defendant to take reasonable care to avoid the commission of the offence.
- 35

70. Penalties for second and subsequent offences against certain provisions

(1) Where a person is convicted of an offence against—

- 5 (a) section 10, 67 or 82 (offences of failing to provide information, lodge documents, or appear to answer questions); or
(b) section 59, 60, 61, 64, 66 or 68 (offences of failure to keep proper records, making false statements or concealing identity);

(in this section called the “subsequent offence”) and either—

- 10 (c) at the same sitting, the person is convicted of a related offence that was committed within the period of 10 years ending on the day on which the subsequent offence was committed; or
(d) the court is satisfied that the person has been convicted within that period of a related offence;

15 the court may impose twice the penalty otherwise provided for the subsequent offence.

(2) In this section—

“related offence” means—

- 20 (a) where the subsequent offence is an offence against section 10, 67 or 82—an offence against—
(i) section 10, 67 or 82;
(ii) Subdivision A of Division 2 of Part III of the *Taxation Administration Act 1953* of the Commonwealth; or
25 (b) where the subsequent offence is an offence against section 59, 60, 61, 64, 66 or 68—an offence against—
(i) section 59, 60, 61, 64, 66 or 68;
(ii) Subdivision B of Division 2 of Part III of the *Taxation Administration Act 1953* of the Commonwealth;
30 (iii) the *Crimes (Taxation Offences) Act 1980* of the Commonwealth; or
(iv) section 29D of the *Crimes Act 1914* of the Commonwealth, being an offence that relates to a tax liability.

35 **(3) For the purposes of this section—**

- (a) a reference to an offence against a law of the Territory includes a reference to an offence against section 345, 346, 347 or 349 of the *Crimes Act 1900* that relates to an offence against that law of the Territory; and

- (b) a reference to an offence against a law of the Commonwealth includes a reference to an offence against section 6, 7, 7A or 86 of the *Crimes Act 1914* of the Commonwealth that relates to an offence against that law of the Commonwealth.

- 5 (4) For the purposes of paragraph (1) (c) or (d), a reference to a person's conviction includes 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* of the Commonwealth.

71. Orders to comply with requirements

- 10 (1) Where—

- (a) a person is convicted before a court of an offence against a provision of a tax law that requires the person to—

- (i) provide to or lodge with the Commissioner any information or document;
 - 15 (ii) attend before the Commissioner or any other person; or
 - (iii) cause an instrument to be duly stamped; or

- (b) a court makes an order under section 556A of the *Crimes Act 1900* in relation to a person in respect of such an offence;

20 the court may, in addition to imposing a penalty on the person or making that order in respect of the person, 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
- 25 (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.

- 30 (2) Where an order under this section 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 shall comply with an order under this section to the extent that the person is capable of doing so.

Penalty: 100 penalty units or imprisonment for 12 months, or both.

72. Orders to pay additional amounts

(1) Where—

(a) a person (in this subsection called the “convicted person”) is convicted of—

5 (i) an offence against section 59 or 60 in relation to keeping any accounts, accounting records or other records (in this subsection called the “relevant accounts”) or the making of a record; or

10 (ii) an offence against section 66 in relation to giving information to a tax officer; and

 (b) the court is satisfied that the proper amount of tax 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 double the amount of the excess.

20 **(2) Where—**

(a) a person (in this subsection called the “convicted person”) is convicted of an offence against section 61 or 68 in relation to an act or omission; and

25 (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 double that amount.

30 **PART IX—TAX OFFICERS, INVESTIGATION AND
 SECURITY PROVISIONS**

Division 1—Tax officers

73. The Commissioner

35 There shall be a Commissioner for Australian Capital Territory Revenue appointed by the Minister.

74. General administration of the tax laws

The Commissioner has the general administration of this Act and the other tax laws and may do all such things as are necessary or convenient to give effect to this Act and the other tax laws.

5 **75. Commissioner may perform functions under Commonwealth Act**

The Commissioner may exercise the functions of a State taxation officer under Part IIIA of the *Taxation Administration Act 1953* of the Commonwealth.

10 **76. Other staff**

Such other staff as may be necessary for the administration of the tax laws may be appointed under Division 3 of Part V of the *Public Sector Management Act 1994*.

77. Use of consultants and contractors

15 The Commissioner may engage such consultants and contractors as may be necessary or convenient to exercise the Commissioner's functions.

78. Delegation by Commissioner

The Commissioner may delegate to any person any function of the Commissioner under a tax law.

20 **79. Authorised officers**

(1) The Commissioner is an authorised officer.

(2) The Commissioner may appoint persons to be authorised officers.

(3) A person who—

25 (a) is engaged in the administration or enforcement of a tax law of a reciprocating jurisdiction; and

(b) is recognised in a notice issued by the Commissioner as an authorised officer for the purposes of this subsection;

is an authorised officer for the time and for the purpose specified in the notice.

30 (4) A tax officer to whom the Commissioner delegates functions under Division 2 is an authorised officer.

80. Identity cards for authorised officers

(1) An authorised officer shall be issued with an identity card in a form approved by the Commissioner—

- (a) containing the person's name and a photograph of the person; and
- 5 (b) stating that the person is an authorised officer for the purposes of the tax laws.

(2) When recognising an officer of a reciprocating jurisdiction for the purposes of subsection 79 (3), the Commissioner may approve the use of the identity card issued by that jurisdiction, together with the notice issued
10 under paragraph 79 (3) (b), for the purposes of subsection (1).

(3) A person who has been issued with an identity card under subsection (1) and ceases to be an authorised officer shall return the card to the Commissioner as soon as practicable.

Penalty: 1 penalty unit.

15 **81. Personal liability**

A matter or thing done or omitted by the Commissioner or a tax officer does not, if the matter or thing was done or omitted in good faith for the purpose of—

- (a) administering or enforcing a tax law of the Territory; or
- 20 (b) administering or enforcing a tax law of a reciprocating jurisdiction in accordance with Division 3;

subject the Commissioner or the tax officer so acting personally to any action, liability, claim or demand.

Division 2—Powers of investigation

25 **82. Power to require information, instruments or records or attendance for examination**

(1) The Commissioner may, for a purpose related to the administration or enforcement of a tax law, by written notice served on a person, require the person—

- 30 (a) to provide to the Commissioner (either orally or in writing) information that is described in the notice;
- (b) to attend and give evidence before the Commissioner or an authorised officer; or
- (c) to produce to the Commissioner a record or other document
35 described in the notice that is in the person's custody or control.

(2) Where a notice to a person under subsection (1) is made in order to determine that person's tax liability, the notice shall state that the requirement is made for that purpose, but the Commissioner is not otherwise required to identify a person in relation to whom any information, evidence, record or other document is required under this section.

(3) The Commissioner—

- (a) may specify whether information or evidence to be provided or given under this section shall be given orally or in writing;
- (b) may require any information or evidence given in writing to be in the form of, or verified by, a statutory declaration; and
- (c) may require any information or evidence given orally to be given on oath or affirmation.

(4) A person shall not, without reasonable excuse, refuse or fail—

- (a) to comply with the requirements of a notice under this section within the period specified in the notice or any further period allowed by the Commissioner; or
- (b) to comply with any other requirement of the Commissioner as to the giving of evidence or the manner in which information or evidence is to be provided or given under this section.

Penalty: 50 penalty units.

(5) A person required to attend before an authorised officer to give oral evidence shall be paid expenses in accordance with the scale of allowances determined under section 139.

(6) Subsection (5) does not apply to a person, or a representative of a person, giving evidence in relation to the person's own tax liability.

83. Powers of entry and inspection

(1) An authorised officer may, for a purpose related to the administration or enforcement of a tax law, enter and inspect any premises at any reasonable time and do any of the following:

- (a) remain on the premises;
- (b) examine all documents and seize and remove, or take copies of or extracts from, any document on behalf of the Commissioner;
- (c) inspect any gaming machines and seize any gaming machine that the tax officer believes on reasonable grounds to be connected with an offence against a tax law;
- (d) require any person on the premises to answer questions or otherwise furnish information, including information as to the identity of the person or another person;

- (e) require any person on the premises to give access to any document in the person's custody or control, and to—
- (i) produce or display the document; or
 - (ii) provide a copy of the document or a version of it in some form other than that in which it is normally kept;
- in any printed, electronic or other form that it is reasonably practicable to provide;
- (f) require any person on the premises to produce any gaming machine in the person's custody or control;
- (g) require the owner or occupier of the premises to provide the authorised officer with such assistance and facilities as is or are reasonably necessary to enable the authorised officer to exercise powers under this Part.
- (2) An authorised officer who enters premises under subsection (1) and is requested by the occupier to identify himself or herself is not authorised to remain on the premises unless he or she produces his or her identity card to the occupier.
- (3) The powers of entry and inspection under this section shall not be exercised in relation to premises, or a part of premises, used for residential purposes except with the consent of the owner or occupier of the premises or part.
- (4) In this section—
- “occupier”, in relation to premises, includes a person apparently in charge of or responsible for the premises.

84. Search warrant

- (1) If a magistrate is satisfied, on the application of the Commissioner supported by an affidavit or other sworn evidence, that there is a reasonable ground for suspecting that a document relevant to the assessment or payment of tax may be found in certain premises, the magistrate may issue a warrant authorising an authorised officer together with any assistants named or described in the warrant—
- (a) to enter those premises, using such force as is necessary for the purpose;
 - (b) to search the premises and to break open and search anything in the premises in which a document or gaming machine may be stored or concealed; and

(c) to seize and remove, on behalf of the Commissioner—

- 5 (1) any document that appears to be relevant to the assessment or payment of tax; or
- (11) any gaming machine that the authorised officer believes on reasonable grounds to be connected with an offence against a tax law.

(2) The powers conferred by this section are in addition to, and not in derogation of, any other powers conferred by law.

10 **85. Use and inspection of documents and records produced or seized**

(1) This section applies to a document that has been produced to the Commissioner or seized and removed by an authorised officer.

15 (2) The document may be retained for as long as is reasonably necessary to enable it to be inspected, copies of, or extracts or notes from it to be made, and for a determination to be made as to whether subsection (3) applies.

(3) Where the document is liable to tax, it may be retained until the tax is paid.

20 (4) Where the document is required by the Commissioner as evidence for the purposes of legal proceedings, it may be retained until the proceedings are finally determined.

(5) The Commissioner shall permit a person who would be entitled to inspect the document if it were not in the possession of the Commissioner to inspect the document at any reasonable time.

25 (6) Nothing in this section prejudices a lien a person has on the document.

86. Use of goods produced or seized

30 (1) This section applies to any thing, other than a document, that has been produced to the Commissioner or seized and removed by an authorised officer.

(2) The thing may be retained for as long as is reasonably necessary to enable it to be inspected and for a determination to be made as to whether subsection (3) applies.

(3) If the thing is liable to tax, it may be retained until the tax is paid.

35 (4) If the thing is required by the Commissioner as evidence for the purposes of legal proceedings, it may be retained until the proceedings are finally determined.

(5) If the owner of the thing is convicted as a result of the legal proceedings, the court may direct that the thing be forfeited to the Territory, and in that case it may be disposed of as the Minister directs.

5 (6) If the thing is no longer required by the Commissioner, but the Commissioner is unable to return it to the owner within 12 months despite reasonable efforts to do so (for example because the owner has left the Territory), the Commissioner may direct that the thing be disposed of by auction and the proceeds held for the owner in lieu of the thing.

(7) Nothing in this section prejudices a lien a person has on the thing.

10 **87. Self-incrimination**

(1) A person is not excused from answering a question, providing information or producing a document, when required to do so under section 71 or 82, on the ground that to do so might tend to incriminate the person or make the person liable to a penalty.

15 (2) If the person objects to answering the question, providing the information or producing the document on that ground, the answer, information or document is not admissible against the person in any criminal proceedings other than—

- 20 (a) proceedings for an offence with respect to false or misleading statements, information or records; or
(b) proceedings for an offence in the nature of perjury.

88. Hindering or obstructing authorised officers etc.

(1) A person shall not, without reasonable excuse, hinder or obstruct an authorised officer in the exercise of a power under this Division.

25 Penalty: 50 penalty units or imprisonment for 6 months, or both.

(2) A person shall not, without reasonable excuse, refuse or fail to comply with a requirement of an authorised officer under this Division.

Penalty: 50 penalty units.

30 (3) A person is not guilty of an offence under this section arising from the entry of an authorised officer onto premises unless it is established that, at the material time, the authorised officer had—

- (a) identified himself or herself as an authorised officer; and
(b) warned the person that a refusal or failure to comply with the requirement constituted an offence.

35 **89. Impersonating authorised officer**

A person shall not impersonate or falsely claim to be an authorised officer.

Penalty: 50 penalty units or imprisonment for 6 months, or both.

90. Access to public records without fee

The Commissioner may inspect and take copies of any public record kept under an Act or law of the Territory without payment of any fee that would otherwise be payable.

5 ***Division 3—Co-operation with other jurisdictions***

91. Co-operative agreements

The Commissioner may make agreements with the responsible authorities of reciprocating jurisdictions governing co-operation under this Division.

10 **92. Investigation at request of reciprocating jurisdiction**

(1) On the request in writing of an officer of a reciprocating jurisdiction who exercises powers or performs functions in relation to a tax law of that jurisdiction, the Commissioner may authorise a tax officer of the Territory or of the reciprocating jurisdiction to investigate a matter that relates to the
15 administration or enforcement of a tax law of the reciprocating jurisdiction.

(2) This Act applies in relation to an investigation under this section as if it were an investigation into a matter relating to the administration or enforcement of a tax law of the Territory.

93. Disclosure of information to a reciprocating jurisdiction

20 Despite any secrecy provision in a tax law of the Territory—

- (a) the Commissioner may give information disclosed or obtained under such a tax law to a tax officer of a reciprocating jurisdiction; and
- 25 (b) a tax officer of a reciprocating jurisdiction may give information disclosed or obtained under such a tax law to another person;

for the purposes of the administration or enforcement of a tax law of that jurisdiction.

Division 4—Secrecy

94. Interpretation

30 In this Division—

“tax officer” includes any person who has acquired a confidential document or confidential information under a tax law or as a result of exercising powers or performing functions under or in relation to a tax law.

95. Tax officers shall respect confidentiality

(1) A person who is or has been a tax officer shall not, otherwise than in the performance of the person's duties as a tax officer, make a record of any confidential information about another person.

5 Penalty: 50 penalty units or imprisonment for 6 months, or both.

(2) A person who is or has been a tax officer shall not disclose any information obtained under or in relation to the administration of a tax law, except as permitted by this Part.

Penalty: 50 penalty units or imprisonment for 6 months, or both.

10 (3) The Commissioner may require a tax officer to make an oath or affirmation, in a manner and form specified by the Commissioner in writing, to maintain secrecy in accordance with this section.

15 (4) For the purposes of subsection (2), 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 is information obtained under this Act.

96. Permitted disclosures of a general nature

(1) The Commissioner may disclose information obtained under or in relation to the administration of a tax law that does not and is not likely to—

- 20 (a) directly or indirectly identify a particular taxpayer; or
 (b) disclose matters concerning the personal affairs of a particular taxpayer.

(2) The Commissioner may disclose statistical information that does not satisfy subsection (1) if—

- 25 (a) the reason that a taxpayer or his or her affairs might be identified is that there are few taxpayers in particular categories; and
 (b) the Commissioner is satisfied that it is in the public interest to disclose that information.

97. Permitted disclosures to particular persons

30 A tax officer may disclose information obtained under or in relation to the administration of a tax law—

- (a) with the consent of the person to whom the information relates or of a person acting on behalf of the person to whom the information relates;
35 (b) in connection with the administration or execution of a tax law (including for the purpose of any legal proceedings arising out of a tax law or a report of any such proceedings);
 (c) in accordance with a requirement imposed under an Act; or

(d) to any of the following persons, or to a person authorised to receive the information by any of the following persons:

- (i) the Ombudsman;
- (ii) for the purpose of investigating an offence against a law of the Territory, the Commonwealth, a State or another Territory—the Commissioner of Police;
- (iii) the Auditor-General;
- (iv) for the purposes of the *Workers' Compensation Act 1951*—the nominal insurer;
- (v) for the purposes of section 64 or 65 of the *Financial Management Act 1996*—the Treasurer;
- (vi) the Registrar of Motor Vehicle Dealers;
- (vii) the Registrar of Liquor Licences;
- (viii) the Australian Statistician;
- (ix) the National Crime Authority;
- (x) a person prescribed by the regulations for the purposes of this section.

98. Prohibition on secondary disclosures of information

A person shall not disclose any information provided to the person by a tax officer in accordance with this Act unless the disclosure is made with the consent of the Commissioner or so as to enable the person to exercise a function conferred on the person by law for the purpose of the enforcement of a law or protecting the public revenue.

Penalty: 50 penalty units or imprisonment for 6 months, or both.

99. Further restrictions on disclosure

(1) 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 the court considers that it is necessary to do so for the purposes of the administration or execution of a tax law.

(2) In this section—

“court” includes any tribunal, authority or person having power to require documents to be produced or questions to be answered.

PART X—OBJECTIONS AND APPEALS

Division 1—Objections

100. Objection

A taxpayer who is dissatisfied with—

- 5 (a) an assessment, other than a compromise assessment, that is shown
 in a notice of assessment served on the taxpayer; or
 (b) a decision of a kind listed in Schedule 1 or 2;

may lodge a written objection with the Commissioner.

101. Grounds for objection

- 10 (1) The grounds for the objection shall be stated fully and in detail, and
 shall be in writing.
 (2) The grounds for the objection, in the case of a reassessment, are
 limited to the extent of the reassessment.
 (3) The burden of showing that an objection should be sustained lies
15 with the taxpayer making the objection.

102. Time for lodging objection

An objection shall be lodged with the Commissioner not later than
60 days after the date that the notice of the assessment, or of the decision
objected to, is served on the taxpayer, except as provided by section 103.

20 103. Objections lodged out of time

- (1) The Commissioner may permit a person to lodge an objection after
 the 60 day period.
 (2) The person seeking to lodge the objection shall state fully and in
 detail, in writing, the circumstances concerning and the reasons for the
25 failure to lodge the objection within the 60 day period.
 (3) The Commissioner may grant permission unconditionally or subject
 to conditions or may refuse permission.
 (4) The Commissioner shall give notice to the person of the
 Commissioner's decision.
30 (5) If the Commissioner does not grant permission unconditionally, the
 Commissioner shall include in the notice an explanation for refusing to grant
 permission or for imposing conditions on the permission.
 (6) The notice shall be in a form approved by the Commissioner.

104. Determination of objection

(1) The Commissioner shall consider an objection and either allow the objection in whole or in part or disallow the objection.

5 (2) The Commissioner shall take such steps as are necessary (for example, by delegating the functions conferred by this section) to ensure that the individual who considers the objection is not the individual who made the assessment or decision against which the objection was lodged.

105. Notice of determination

10 (1) The Commissioner shall give notice to the objector of the determination of the objection.

(2) If the objection is not upheld, the Commissioner shall, in the notice, give an explanation for disallowing an objection or for allowing an objection in part only.

(3) The notice shall be in a form approved by the Commissioner.

15 **106. Recovery of tax pending objection or appeal**

The fact that an objection or appeal is pending does not in the meantime affect the assessment or decision to which the objection or appeal relates and tax may be recovered as if no objection or appeal were pending.

Division 2—Appeals to the Tribunal

20 **107. Right of appeal to the Tribunal**

(1) A taxpayer who is dissatisfied with a determination by the Commissioner of an objection by the taxpayer to an assessment or to a decision of a kind listed in Schedule 1 may apply to the Tribunal for a review of the determination.

25 (2) For the purposes of section 24 of the *Administrative Appeals Tribunal Act 1989*, the tax laws together constitute a single enactment.

108. Grounds of appeal

(1) Subject to this section, the appellant's and respondent's cases on an appeal are not limited to the grounds of the objection.

30 (2) If the objection was to a reassessment, the grounds of the appeal are limited to the extent of the reassessment.

109. Giving effect to decision on appeal

35 (1) Within 60 days after a decision 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 this section, a decision by the Tribunal becomes final when a period of 30 days has passed after a relevant decision and no appeal against the relevant decision has been instituted within that period.

(3) In this section—

5 “relevant decision” means—

(a) the decision of the Tribunal; or

(b) a decision by a court hearing an appeal from—

(i) the decision of the Tribunal; or

10 (ii) a decision of a lower court in relation to the decision of the Tribunal.

Division 3—Interest

110. Interest payable on amounts to be paid by taxpayer

Where a taxpayer is required to pay an amount of tax following the determination of an objection, Division 1 of Part V applies to the amount.

15 111. Interest payable on refunds

(1) Where the taxpayer is entitled to a refund of an amount following the determination of an objection or a decision of the Tribunal, the Commissioner shall pay interest on the amount calculated on a daily basis from the date of its payment by the taxpayer until the date of the refund at the market rate component under section 26.

(2) Interest under this section is not payable to a person on an overpaid amount of interest or penalty tax under Part V 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.

25 (3) Section 20 applies to an amount of interest payable under this section as if it were a refund.

(4) No interest is payable under this section if the amount that would otherwise be payable is less than \$1.

(5) Where—

30 (a) an amount of interest payable to a person under this section 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 subsection, be less than \$1;

35 then the remaining amount ceases to be payable by the person or to the person, as the case requires.

PART XI—MISCELLANEOUS PROVISIONS

Division 1—Business groups

112. Membership of groups

- 5 (1) For the purposes of a tax law, a group is constituted by all the persons forming a primary group that is not a part of any larger primary group, apart from persons in respect of whom a determination under subsection (2) is in force.
- 10 (2) The Commissioner may, by instrument, determine that a person who would, but for the determination, be a member of a group arising under section 114 is not a member of the group if the Commissioner is satisfied that the person has continuously carried on business, and will continue to carry on business, substantially independently of the other members of the group.
- 15 (3) In determining, for the purposes of subsection (2), 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.
- 20 (4) 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.
- (5) A determination takes effect—
- 25 (a) on the date on which notice under subsection (4) 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.
- 30 (6) A determination 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.
- (7) The Commissioner may revoke a determination if the circumstances referred to in subsection (2) that applied to the person when the determination was made cease to apply to the person.
- 35 (8) 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).

113. Primary groups of corporations

(1) Corporations constitute a primary group if they are related corporations within the meaning of the *Corporations Law*.

5 (2) For the purpose of assessing whether corporations are related under the *Corporations Law*, they are deemed to carry on business and not to be trustee companies.

114. Primary groups arising from the use of common employees

10 (1) If 2 persons have an agreement under which an employee of 1 of them works solely or mainly in connection with a business carried on by—

- (a) the other; or
- (b) both of them;

then the 2 persons constitute a primary group.

(2) In this section—

15 “agreement” means 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;

“person” includes a set of several persons.

20 **115. Primary groups of commonly controlled businesses**

(1) If a person or set of persons has a controlling interest in each of 2 businesses, the persons who carry on those businesses constitute a primary group.

25 (2) For the purposes of this section, a person or set of persons has a controlling interest in a business if—

- (a) in the case of 1 person—the person is the sole owner (whether or not as trustee) of the business;
- (b) in the case of a set of persons—the persons are together the exclusive owners (whether or not as trustees) of the business;
- 30 (c) in the case of a business carried on by a corporation—
 - (i) the person or each of the set of persons is a director of the corporation and the person or set of persons is entitled to exercise more than 50% of the voting power at meetings of the directors of the corporation; or

- 5 (ii) a director or set of directors of the corporation that is entitled to exercise more than 50% of the voting power at meetings of the corporation is under an obligation, whether formal or informal, to act in accordance with the direction, instructions or wishes of that person or set of persons;
- (d) in the case of a business carried on by a corporation that has a share capital—that person or set of persons can, directly or indirectly, exercise, control the exercise of, or substantially influence the exercise of, more than 50% of the voting power attached to the voting shares issued by the corporation;
- 10 (e) in the case of a business carried on by a partnership—that person or set of persons—
- (i) own (whether beneficially or not) more than 50% of the capital of the partnership; or
- 15 (ii) is entitled (whether beneficially or not) to more than 50% of the profits of the partnership; or
- (f) in the case of a business carried on under a trust—the person or set of persons (whether or not as a trustee or trustees of another trust) is the beneficiary in respect of more than 50% of the value of the interests in the first mentioned trust.
- 20 (3) If—
- (a) 2 corporations are related to each other within the meaning of the *Corporations Law*; and
- (b) 1 of the corporations has a controlling interest in the business;
- 25 the other corporation has a controlling interest in the business.
- (4) If—
- (a) a person or set of persons has a controlling interest in a business; and
- (b) a person or set of persons who carry on the business has a controlling interest in another business;
- 30 the person or set of persons referred to in paragraph (a) has a controlling interest in that other business.
- (5) If—
- (a) a person or set of persons is the beneficiary of a trust in respect of more than 50% of the value of the interests in the trust; and
- 35 (b) the trustee has a controlling interest in a business of the trust;
- the person or set of persons has a controlling interest in the business.

5 (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, is deemed, for the purposes of subsection (5), to be a beneficiary in respect of more than 50% of the value of the interests in the trust.

(7) Subsection (1) does not apply in relation to a person or set of persons that has a controlling interest in 2 businesses if—

- 10 (a) in the case of 1 person—both businesses are wholly owned by the person, whether as trustee or otherwise; or
- (b) in the case of a set of persons—both businesses are wholly owned by the persons as trustees.

116. Smaller primary groups are subsumed under larger groups

15 If a person is a member of 2 or more primary groups, the members of all the groups together constitute a primary group.

Division 2—Treatment of bodies corporate

117. Public officer of body corporate

20 (1) The Commissioner may require a body corporate to appoint, and thereafter maintain at all times, a public officer of the body for the purposes of the tax laws.

(2) A body corporate shall maintain a public officer if required to do so by the Commissioner.

Penalty: 50 penalty units.

25 (3) A person shall not be appointed as or remain a public officer unless the person—

- (a) is an individual who has attained the age of 18 years;
- (b) is ordinarily resident in Australia; and
- (c) is capable of understanding the nature of his or her appointment as public officer.

30 (4) An appointment of a public officer is not duly made until written notice of the appointment, specifying the name and residential address of the officer, has been lodged with the Commissioner.

35 (5) If a body corporate required by the Commissioner to maintain a public officer fails to do so, the Commissioner may appoint a person as the public officer of the body by written notice served on the person and the body.

5 (6) Service of a document on the public officer of a body corporate shall be sufficient service on the body for the purposes of a tax law, and, if at any time a body corporate required to have a public officer does not have one, then service on a person acting or appearing to act in the business of the body shall be sufficient.

(7) The public officer of a body corporate shall be answerable for the discharge of all obligations imposed on the body under a tax law, and, in case of default, is liable—

10 (a) in the case of a prosecution for an offence—to the penalty applying to an individual who commits that offence; or

(b) in any other case—to the same penalties as the body.

15 (8) Everything that the public officer of a body corporate is required to do and does in his or her representative capacity is deemed to have been done by the body, but the absence or non-appointment of a public officer shall not excuse the body from the necessity of complying, or from a penalty for failure to comply, with a provision of a tax law and the body is liable to comply with the tax laws as if there were no requirement to appoint a public officer.

20 (9) A document served on or requirement made of the public officer of a body corporate is deemed to have been served on or made of the body.

25 (10) Any civil or criminal proceedings brought under a tax law against the public officer of a body corporate are deemed to have been brought against the body, and the body is liable jointly with the public officer for any penalty imposed on the public officer, or for compliance with any order made against the public officer.

118. Liability of directors or other officers

30 Without limiting, altering or transferring the liability of the public officer of a body corporate, 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 body may, if the Commissioner thinks fit, be given to, served on or taken against a director, secretary or other officer of the body, and the director, secretary or officer then has the same liability in respect of the notice, process or proceeding as the public officer or the body corporate would have if it had been given to, served on or taken against the public officer.
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119. Offences by persons involved in management of bodies corporate

5 (1) If a body corporate contravenes, by act or omission, a provision of a tax law, a person who is concerned in, or takes part in, the management of the body is deemed to have contravened the same provision unless the person satisfies the court that—

- (a) the body contravened the provision without the person's knowledge;
- 10 (b) the person was not in a position to influence the conduct of the body in relation to its contravention of the provision; or
- (c) the person, if in such a position, used all due diligence to prevent the contravention by the body.

15 (2) A person may be convicted under this section of a contravention of a provision of a tax law whether or not the body corporate has been convicted of its contravention.

(3) This section does not affect a liability imposed on a body corporate for an offence committed by it against a tax law.

(4) For the purposes of this section the following are persons who are concerned in, or take part in, the management of a body corporate:

- 20 (a) a director;
- (b) a secretary;
- (c) a receiver and manager of property;
- (d) an official manager or deputy official manager;
- 25 (e) a liquidator of the body corporate appointed in a voluntary winding up;
- (f) a trustee or other person administering a compromise or arrangement made between the body and another person or other persons.

120. Prosecution of bodies corporate

30 (1) A charge against a body corporate for a tax offence may be dealt with summarily.

(2) Where, in a prosecution for a tax offence constituted by an act done by a body corporate, it is necessary to establish the intention of the body, it is sufficient to show that a servant or agent of the body, being a servant or
35 agent by whom the act was done, had the intention.

(3) In a prosecution for a tax offence, any act done by or on behalf of a body corporate by—

(a) a director, servant or agent; or

(b) any other person—

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(i) at the direction; or

(ii) with the consent or agreement, whether express or implied;

of a director, servant or agent;

is deemed to have been done also by the body corporate.

121. Notice of appointment of liquidators etc.

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A person who is appointed as a liquidator, receiver, manager or administrator of a body corporate shall notify the Commissioner of the appointment within 14 days.

Penalty: 10 penalty units.

Division 3—Payments

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122. Means and time of payment

(1) Tax may be paid to the Commissioner—

(a) by a cash payment made at, or a bank cheque or postal money order delivered to, an office of the Commissioner; or

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(b) by any other means, including electronic means, approved by the Commissioner.

(2) An approval of the Commissioner may be—

(a) general or limited to particular taxes, persons or payments; and

(b) unconditional or subject to conditions.

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(3) If the Commissioner approves payment by a personal cheque, payment is effected—

(a) if the cheque is paid when the Commissioner first presents the cheque to the bank for payment—when the cheque was received by the Commissioner; or

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(b) if the cheque is not paid when the Commissioner first presents the cheque to the bank for payment, but is paid on a subsequent presentation—when payment is actually effected.

(4) The Commissioner is not required to present a cheque to the bank for payment more than once if it is not paid on the first presentation.

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(5) An approval of a means of payment (other than by personal cheque) may include a stipulation as to when payment by that means will be taken to be effected and any such stipulation will have effect according to its terms.

(6) The Commissioner may vary or cancel an approval under this section.

123. Adjustments of amounts

5 If an amount of tax payable by a taxpayer, whether a single amount or an aggregate of several amounts, is not a multiple of 5 cents, the Commissioner may decrease the amount to the nearest such multiple.

124. Valuation of foreign currency

10 If an amount involved in the calculation of tax is not in Australian currency, the amount shall be converted to Australian currency at the rate of exchange last reported by the Reserve Bank before the liability to pay the tax arose.

125. Appropriation of public money

15 If the Commissioner is authorised or required to pay an amount under this Act, the amount shall be paid from the public moneys of the Territory which is appropriated accordingly.

Division 4—Notices and service of documents

126. Notification of decisions

A notice given or served by the Commissioner of—

- 20 (a) an assessment or a decision of a kind referred to in Schedule 1; or
(b) a determination of an objection under section 105 to a decision referred to in paragraph (a);

shall be in accordance with the requirements of the Code of Practice in force under subsection 25B (1) of the *Administrative Appeals Tribunal Act 1989*.

127. Service of documents on Commissioner

25 A document authorised or required to be served on, given to or lodged with the Commissioner for the purposes of a tax law may be served, given or lodged—

- 30 (a) by delivering it to an office of the Commissioner;
(b) by post addressed to the Commissioner at an office of the Commissioner;
(c) by a means indicated by the Commissioner as being an available means of service (such as by facsimile transmission or other electronic means or by delivering it, addressed to the Commissioner, to the facilities of a document exchange); or
35 (d) by leaving it with a person who has authority to accept documents on the Commissioner's behalf.

128. Day of service of document or payment of money

If a document is served on the Commissioner or a payment of money is tendered to the Commissioner at a time on a day that is after the ordinary hours of business when the offices of the Commissioner are open to the public on that day, the document or money is deemed to have been served on or tendered to the Commissioner on the following business day.

129. Service of documents by Commissioner

(1) A document authorised or required to be served on or given to a person by the Commissioner for the purposes of a tax law may be served on or given to the person—

- (a) personally;
- (b) by leaving it at the last address of the person known to the Commissioner (including, in the case of a corporation, the registered address or a business address of the corporation);
- (c) by post addressed to the person at the last address of the person known to the Commissioner (including, in the case of a corporation, the registered address or a business address of the corporation);
- (d) by a means indicated by the person as being an available means of service (such as by facsimile transmission or by delivering it, addressed to the person, to the facilities of a document exchange); or
- (e) by any means provided for the service of the document by another Act or law.

(2) If a person ("the agent") has actual or apparent authority to accept service of a document on behalf of another, the Commissioner may, for the purposes of a tax law, serve the document on the agent as if the agent were that other person.

(3) Service of a document on a member of a partnership, or on a member of the committee of management of an unincorporated association or other body of persons, for the purposes of a tax law, constitutes service of the document on each member of the partnership, or on each member of the association or other body of persons.

Division 5—Proceedings and evidence

130. Judicial notice of Commissioner's name and signature

All courts and tribunals, and all judges and persons acting judicially or authorised by law or consent of parties to hear, receive or examine evidence, shall take judicial notice of—

- (a) the name of a person who holds or has held the office of Commissioner; and

- (b) the signature of a person who holds or has held the office of Commissioner.

131. Presumption of regularity as to issue of documents

- 5 A document or a copy of a document bearing the written, printed or stamped signature or name of the Commissioner or a person described in the document as a delegate of the Commissioner shall be presumed to have been lawfully issued by the Commissioner.

132. Legal proceedings in Commissioner's name

- 10 (1) Legal proceedings may be taken by or against the Commissioner in the name "Commissioner for Australian Capital Territory Revenue".

(2) A person who takes legal proceedings in the name of the Commissioner shall be presumed to be authorised to take those proceedings.

133. Evidence of claim

- 15 (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.

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

134. Evidence of assessments and determinations

- 25 (1) Production of a notice of assessment, or of a document signed by the Commissioner purporting to be a copy of a notice of assessment, is conclusive evidence—

(a) of the due making of the assessment; and

(b) that the amount and all particulars of the assessment are correct, except in objection or appeal proceedings where it is *prima facie* evidence only.

- 30 (2) Production of a notice of determination of an objection, or of a document signed by the Commissioner purporting to be a copy of a notice of such a determination, is conclusive evidence of the making of the determination and of its terms.

135. Commissioner may certify copies of documents

- 35 Production of a document, certified by the Commissioner as being a copy of, or extract from, a document received by the Commissioner, is sufficient evidence of the matters set out in the document without production of the original.

136. Certificate evidence

A certificate signed by the Commissioner that states any of the following matters is admissible in proceedings under a tax law and, in the absence of evidence to the contrary, is proof of the matters stated in the certificate:

- 5 (a) the person named in the certificate is liable to pay tax;
- (b) an assessment of tax has been made in relation to circumstances specified in the certificate;
- 10 (c) notice of an assessment was issued to a person named in the certificate, or the person's agent, on the day specified in the certificate;
- (d) the amount of tax, penalty tax or interest specified in the certificate is payable by a person named in the certificate or has been paid in whole or in part by or on behalf of a person so named;
- 15 (e) a document specified in the certificate was posted to, delivered to, or served personally on, a person named in the certificate on a day specified in the certificate;
- (f) a person named in the certificate is, or is not, registered or licensed as required by the relevant tax law;
- 20 (g) a return or statement required by a tax law has been, or has not been, lodged by or on behalf of a person named in the certificate on or as at a day specified in the certificate;
- (h) a person named in the certificate is, or was, an authorised officer on the date specified in the certificate.

25 137. Evidence of previous convictions

In proceedings for an offence for which, under this Act, a person is liable for a heavier penalty if the person has committed previous offences of a relevant kind, a certificate of the Commissioner setting out such facts as the Commissioner considers relevant with respect to any such convictions of
30 the person is evidence of the matters stated in the certificate and of the facts on which they are based.

Division 6—Miscellaneous

138. Tax liability unaffected by payment of penalty

35 The payment by a person of a penalty imposed by a court does not relieve the person from the payment of any other amount the person is liable to pay under a tax law.

139. Determination of amounts payable under tax laws

- (1) The Minister may, by notice in the *Gazette*, determine the following:
 - (a) the amount of tax, duty or licence fee payable under a tax law;

- 5 (b) the rate or differential rates at which, or the method by which, an amount of tax, duty, a licence fee or interest, payable under a tax law is to be calculated;
- (c) a scale of allowances for expenses of witnesses for the purpose of subsection 82 (5);
- (d) the value of meals or other sustenance or the value of the use of premises for the purposes of subsection 3 (2) of the *Payroll Tax Act 1987*;
- 10 (e) a rate for the purposes of subsection 10 (1) or (2), 11 (1), (2) or (3), 12 (1) or (2) or 13 (1) or (2) of the *Payroll Tax Act 1987*;
- (f) an amount for the purposes of subsection 16 (1) of the *Payroll Tax Act 1987*;
- (g) an amount for the purposes of subsection 10 (1) or 16 (7) or (8) of the *Debits Tax Act 1997*.
- 15 (2) A determination is a disallowable instrument for the purposes of section 10 of the *Subordinate Laws Act 1989*.

(3) In this section—

“tax law” does not include the *Ambulance Service Levy Act 1990*.

140. Regulations

- 20 (1) The Executive may make regulations for the purposes of this Act.
- (2) A regulation may create an offence punishable by a penalty not exceeding 20 penalty units.
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SCHEDULE 1

Sections 100, 107 and 126

DECISIONS REVIEWABLE BY THE COMMISSIONER AND THE TRIBUNAL

1. Objections and appeals

- 5 A person dissatisfied with a decision listed in clause 2 may—
- (a) lodge an objection under section 100; and
 - (b) if dissatisfied with the determination of the objection—apply to the Tribunal under section 107.

2. Kinds of decision subject to objection or appeal

- 10 Clause 1 applies to a decision—
- (a) under section 8 determining the existence and effect of a tax avoidance scheme;
 - (b) under subsection 31 (3) to impose penalty tax;
 - (c) under subsection 31 (2) to impose increased penalty tax;
 - 15 (d) under section 34 to impose increased penalty tax;
 - (e) under section 37 refusing to remit penalty tax;
 - (f) under subsection 40 (5) revoking a variation previously granted in relation to requirements for a return;
 - (g) under section 43 refusing an application for special arrangements for lodgment of returns or methods of payment;
 - 20 (h) under section 44 imposing conditions on an approval under section 43;
 - (i) under section 45 varying or cancelling an approval under section 43;
 - 25 (j) under section 103 refusing permission to lodge a late objection; or
 - (k) under section 112 refusing to determine that a person is not a member of a group, or revoking such a determination.
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SCHEDULE 2

Section 100

DECISIONS REVIEWABLE BY THE COMMISSIONER ONLY

1. Objections

- 5 A person dissatisfied with a decision listed in clause 2 may lodge an objection under section 100.

2. Kinds of decision subject to objection

Clause 1 applies to a decision—

- 10 (a) under section 29 refusing to remit interest in accordance with the taxpayer's application;
- (b) under subsection 40 (3), refusing to vary the time for lodging a return in accordance with the taxpayer's application;
- (c) under subsection 40 (3), refusing to vary the period to which a return relates in accordance with the taxpayer's application;
- 15 (d) under section 52—
- (i) refusing to extend the time for payment of tax;
- (ii) refusing to accept payment by instalments; or
- (iii) imposing a condition on an extension of time or acceptance of payment by instalments; or
- 20 (e) under section 103 imposing conditions on a grant of permission to lodge a late objection.