

EXPLANATORY STATEMENT

AUSTRALIAN CAPITAL TERRITORY

TAXATION (ADMINISTRATION) (AMENDMENT) ORDINANCE (NO. 3) 1988

ORDINANCE NO. 53 OF 1988

The Taxation (Administration) Ordinance 1987 (the Taxation Ordinance) provides a system for the administration of taxation in the ACT.

The Taxation (Administration) (Amendment) Ordinance (No. 3) 1988 gives effect to undertakings given to the Senate Standing Committee on Regulations and Ordinances arising from its consideration of the Principal Ordinance. The Committee was concerned about the manner of exercising powers of inspection and seizure of goods, and with the liability of persons not directly connected with a taxation offence.

Details of the Ordinance are set out in the Attachment.

ISSUED BY THE AUTHORITY OF
THE MINISTER OF STATE FOR THE
ARTS AND TERRITORIES

Taxation (Administration) (Amendment) Ordinance (No. 3) 1988

Section 1 cites the short title of the Ordinance as the Taxation (Administration) (Amendment) Ordinance (No. 3) 1988.

Section 2 defines the Principal Ordinance to mean the Taxation (Administration) Ordinance 1987.

Section 3 amends section 11 of the Principal Ordinance by requiring the Minister to table a copy of the annual report on the working of each tax law during the last preceding financial year in each House of Parliament within 15 sitting days of receipt of the report by the Minister.

Section 4 amends section 12 of the Principal Ordinance by:

- (i) specifying that the premises referred to in paragraph (2)(f) must be premises licensed under the Business Franchise (Tobacco and Petroleum Products) Ordinance 1984; and
- (ii) limiting the assistance that an occupier of premises may be required to give to an authorised tax officer to that which is reasonable as well as necessary.

Section 5 inserts a new section 12A into the Principal Ordinance as follows.

New subsection 12A(1) provides that where any tobacco is seized under section 12, a receipt shall be given to the occupier of the premises by the tax officer who seized the tobacco, and that the tobacco shall be kept in the Commissioner's custody.

New subsection 12A(2) ensures that reasonable steps are taken to return the tobacco to the occupier within 120 days of its seizure if a prosecution for an offence against a tax law in relation to the tobacco is not instituted within 60 days of its seizure.

New subsection 12A(3) provides that the tobacco is to be forfeited to the Commonwealth and disposed of as directed by the Minister either where a person is convicted of an offence referred to in subsection 12A(2), or where tobacco is not returned under subsection 12A(2) despite reasonable steps pursuant to subsection 12A(2) having been taken to return the tobacco.

Section 6 amends section 18 of the Principal Ordinance so that a person who is required pursuant to paragraph 18(2)(b) to attend before the Commissioner for the purposes of providing further information in relation to tax liability is only required to attend at a time and place that is reasonable.

Section 7 repeals section 19 of the Principal Ordinance and will substitute a new section 19 as follows.

New subsection 19(1) provides that self-incrimination is not a legal excuse with respect to a person giving information, answering a question or producing a document in compliance with:

- (i) an instrument served under section 18; or
- (ii) an order of the court under section 47.

New subsection 19(2) provides that any information, answer or document obtained under new subsection 19(1), or obtained as a direct or indirect consequence of that information, answer or document, will not be admissible in evidence against a person in criminal proceedings other than proceedings for a tax offence.

Section 8 amends section 66 of the Principal Ordinance so that a person who is required by written notice to answer questions in relation to a matter referred for investigation pursuant to subsection 66(2)(b) need only do so at a reasonable time and place.

Section 9 inserts a new paragraph (c) into section 84 of the Principal Ordinance so that service on any agent or attorney of the company is deemed to be sufficient service on the company for the purposes of a tax law.

Section 10 amends section 86 of the Principal Ordinance by removing the power to give, serve on or take against any agent or attorney of a company a notice, process or proceeding which may be given, served or taken against a company under a tax law, and removes any liability with respect to such notice, process or proceeding from an agent or attorney of the company.

Section 11 amends section 91 of the Principal Ordinance by providing for appeals to the Administrative Appeals Tribunal from decisions by the Commissioner within 60 days of notification of the decision:

- (i) that a person is not a member of a business group under subsection 77(2) for the purposes of a tax law; and
- (ii) revoking a determination under subsection 77(5).

Section 12 amends section 92 of the Principal Ordinance so that the provisions of section 92, which provides that a statement to the effect that a decision is reviewable before the Administrative Appeals Tribunal must be included with notification of the decision, also apply to a notification of a decision under subsections 77(2) and 77(5) given or served under subsections 77(3) and 77(6) respectively.