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Robyn Webb  
Chief Parliamentary Counsel  
Dated 25 August 2021



TASMANIA

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## **TAXATION ADMINISTRATION ACT 1997**

**No. 74 of 1997**

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## **TAXATION ADMINISTRATION ACT 1997**

**No. 74 of 1997**

**An Act to provide for the administration and enforcement  
of taxation laws**

**[Royal Assent 14 January 1998]**

Be it enacted by His Excellency the Governor of Tasmania, by  
and with the advice and consent of the Legislative Council and  
House of Assembly, in Parliament assembled, as follows:

### **PART 1 – PRELIMINARY**

#### **1. Short title**

This Act may be cited as the *Taxation  
Administration Act 1997*.

#### **2. Commencement**

This Act commences on a day to be proclaimed.

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### 3. Interpretation

In this Act, unless the contrary intention appears –

***approval*** means an approval referred to in Division 2 of Part 6;

***approved form*** means a form approved by the Commissioner;

***assessment*** means –

- (a) an assessment made under Part 3 of the tax liability of a person; and
- (b) a reassessment; and
- (c) a compromise assessment;

***authorised officer*** means –

- (a) the Commissioner; and
- (b) a person appointed as an authorised officer under section 15;

***business day*** means a day other than a Saturday, a Sunday or a statutory holiday as defined in the *Statutory Holidays Act 2000*;

***charge*** includes pass on;

***commencement day*** means the day on which this Act commences;

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***Commissioner*** means the Commissioner of State Revenue referred to in section 7;

***compromise assessment*** means an assessment under section 22;

***function*** includes a duty;

***interest*** means interest payable under Division 1 of Part 5;

***interest rate*** means the interest rate referred to in section 35;

***investigation*** means an investigation under Part 9;

***non-reviewable decision*** means a decision referred to in section 5;

***penalty tax*** means a tax referred to in Division 2 of Part 5;

***premises*** includes land, a vehicle, a vessel and an aircraft;

***reassessment*** means reassessment of tax liability under section 19;

***record*** means –

- (a) any instrument, document, record, film, tape, disc or other device or medium on which information is recorded or stored mechanically, photographically, electronically,

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electromagnetically or otherwise;  
and

- (b) any other information kept in any form or device;

***Recorder of Titles*** means the person appointed as Recorder of Titles under section 4(1) of the *Land Titles Act 1980*;

***required record*** is a record required to be kept under a taxation law;

***return*** means a return, statement, certificate, application, report or other record that –

- (a) is required or authorised under a taxation law to be lodged 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;

***tax*** means –

- (a) a tax or duty payable under a taxation law; and
- (b) interest and penalty tax; and
- (c) any other amount payable by a taxpayer under a taxation law;

***tax agent*** means a person engaged by a taxpayer for fee or reward, otherwise than as an employee, who prepares, or

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assists in the final preparation of, any instrument or return on behalf of the taxpayer;

***taxation law*** means a law referred to in section 4;

***tax default*** means a failure by a taxpayer to pay the whole or part of tax that the taxpayer is liable to pay;

***tax liability*** means a liability to pay tax;

***tax officer*** means –

- (a) an authorised officer; and
- (b) any other person engaged in the administration or execution of a taxation law;

***taxpayer*** means a person who –

- (a) is assessed as liable to pay an amount of tax; or
- (b) has paid an amount as tax; or
- (c) is liable or may be liable to pay tax;

***trustee*** includes –

- (a) a person who is a trustee under an implied or constructive trust; and
- (b) in relation to a deceased person, an executor of the will, or an

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administrator of the estate, of the deceased person; and

- (c) a receiver or manager of the property of a company, or a liquidator of a company for the purpose of its winding-up; and
- (d) a receiver, guardian, committee or manager of the property of a person under a legal or other disability; and
- (e) a person having possession, control or management of a business or property of a person who is under a legal or other disability; and
- (f) any person acting in a fiduciary capacity.

**4. Meaning of taxation laws**

The following are taxation laws:

- (a) this Act;
- (ab) *Debits Duties Act 2001*;
- (ac) *Duties Act 2001*;
- (b) *Land Tax Rating Act 2000*;
- (ba) *Land Tax Act 2000*;
- (c) *Pay-roll Tax Act 1971*;

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(d) *Payroll Tax Act 2008*.

**5. Non-reviewable decisions**

If a provision of this Act provides that a decision is a non-reviewable decision, any court or administrative review body, including the Magistrates Court (Administrative Appeals Division), does not have jurisdiction or power to entertain any question as to the validity or correctness of the decision.

**6. Act binds Crown**

- (1) This Act binds the Crown in right of Tasmania and, so far as the legislative power of Parliament permits, in all its other capacities.
- (2) This section does not affect the liability of the Crown to tax under another taxation law.

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**PART 2 – TAX OFFICERS**

**7. Commissioner**

The Minister administering the *State Service Act 2000* may appoint a State Service officer or State Service employee to be Commissioner of State Revenue, and that officer or employee holds that office in conjunction with State Service employment.

**8. Functions and powers of Commissioner**

- (1) The Commissioner has the following functions:
  - (a) the general administration of the taxation laws;
  - (b) any other function imposed on him or her by any other Act.
- (2) The Commissioner may do anything necessary or convenient to give effect to the taxation laws.

**9. Functions and powers under Commonwealth Act**

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



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**10. Legal proceedings**

- (1) Legal proceedings may be taken by or against the Commissioner in the name “Commissioner of State Revenue”.
- (2) A person who takes legal proceedings in the name of the Commissioner is taken to be authorised to take those proceedings, in the absence of evidence to the contrary.

**11. Deputy or Assistant Commissioner**

- (1) The Minister administering the *State Service Act 2000* may appoint a State Service officer or State Service employee to be a Deputy Commissioner of State Revenue or an Assistant Commissioner of State Revenue, and that officer or employee holds that office in conjunction with State Service employment.
- (2) Subject to the direction and control of the Commissioner, a Deputy Commissioner or an Assistant Commissioner has the same functions as the Commissioner under a taxation law or another law under the general administration of the Commissioner.

**12. Other staff**

Subject to and in accordance with the *State Service Act 2000*, there may be appointed any other persons that are necessary for the administration and execution of the taxation laws

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and other laws under the general administration of the Commissioner.

**13. Consultants and contractors**

The Commissioner may engage any consultants and contractors that may be necessary or convenient to perform the functions or exercise the powers of the Commissioner.

**14. Delegation**

The Commissioner may delegate to any person any function or power of the Commissioner under a taxation law, other than this power of delegation.

**15. Authorised officers**

The Commissioner may appoint persons as authorised officers for the purposes of the taxation laws.

**16. Identity cards**

The Commissioner is to issue an authorised officer with an identity card in an approved form –

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

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**17. Personal liability**

The Commissioner or a tax officer is not personally liable for an honest act done or omission made in the execution of a taxation law.

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**PART 3 – ASSESSMENT OF TAX LIABILITY**

**18. General power to make assessment**

- (1) The Commissioner may make an assessment of a tax liability of a taxpayer.
- (2) The Commissioner may include in an assessment a determination that there is not a particular tax liability.

**19. Reassessment**

- (1) The Commissioner may make one or more reassessments of a tax liability of a taxpayer.
- (2) The Commissioner may –
  - (a) make a reassessment of a tax liability of a taxpayer after an amount previously assessed as being payable by the taxpayer has been paid; or
  - (b) make a reassessment of a tax liability under which the taxpayer is assessed as having liabilities that are additional to, or greater than, those under the previous assessment.
- (3) The Commissioner must not make a reassessment of a tax liability more than 5 years after the initial assessment of the liability unless –
  - (a) the reassessment is to adjust tax to give effect to a decision on an objection,

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- review 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 tax liability under the relevant taxation law of the person in respect of whom the assessment or reassessment was made were not fully and truly disclosed to the Commissioner; or
- (c) the initial assessment was an assessment by way of estimate under section 21(2).
- (4) The time limited by subsection (3) applies even if the initial assessment is withdrawn.

**19A. Effect on assessment of change in interpretation**

If an assessment is based on a particular interpretation of the applicable law or a particular practice of the Commissioner that was generally applied to assessments of that kind when the assessment was made, the Commissioner cannot make a reassessment based on an interpretation or practice that applied after the assessment was made, other than to give effect to a change in interpretation or practice brought about by a legislative change.

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**20. Instruments and returns to include all relevant information**

- (1) A taxpayer and any tax agent of the taxpayer must include in an instrument that is liable to tax or in a statement that is produced to the Commissioner together with the instrument before the payment of tax, all information necessary for a proper assessment of the tax liability of the taxpayer in respect of the instrument.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 100 penalty units; or
- (b) in any other case, a fine not exceeding 20 penalty units.

- (2) A taxpayer and any tax agent of the taxpayer must include in a return required to be lodged with the Commissioner under a taxation law, in addition to the information required under that taxation law, any further information necessary for a proper assessment of the tax liability of the taxpayer in respect of the return or the matters to which the return relates.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 100 penalty units; or
- (b) in any other case, a fine not exceeding 20 penalty units.

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- (3) It is a defence in proceedings under this section –
- (a) for a taxpayer to prove that he or she reasonably relied on –
    - (i) another person who was liable or required with the taxpayer to pay the tax or lodge the return; or
    - (ii) a tax agent (whether engaged by the taxpayer or that other person) –  
  
to ensure that the requirements of this section are satisfied; or
  - (b) for a tax agent to prove that he or she reasonably relied on information supplied by the taxpayer or by another person who was liable or required with the taxpayer to pay the tax or lodge the return.

**20A. Commissioner may require information to be provided**

- (1) If an interest in land is transferred or there is a change of the beneficial ownership of an interest in land –
- (a) the transferee or the person who acquires the interest in the beneficial ownership;  
or

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- (b) a tax agent of the transferee or of the person who acquires the interest in the beneficial ownership; or
- (c) a person who is authorised under an approval and who has the express or implied consent of –
  - (i) the transferee or a tax agent of the transferee; or
  - (ii) the person who acquires the interest in the beneficial ownership or the tax agent of that person –

to so lodge the information –

must lodge with the Commissioner, in the approved form, the information specified, in an approved form, to be required to be lodged in relation to the transfer or change in beneficial ownership.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 100 penalty units; or
  - (b) in any other case, a fine not exceeding 20 penalty units.
- (1A) If an interest in land is transferred or there is a change of the beneficial ownership of an interest in land –



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- (a) the transferor or the person who held the interest immediately before the change of the beneficial ownership; or
- (b) a tax agent of the transferor or of the person who held the interest immediately before the change of the beneficial ownership; or
- (c) a person who is authorised under an approval and who has the express or implied consent of –
  - (i) the transferor or a tax agent of the transferor; or
  - (ii) the person who held the interest immediately before the change of the beneficial ownership or the tax agent of that person –

to so lodge the information –

must lodge with the Commissioner, in the approved form, the information specified, in an approved form, to be required to be lodged in relation to the transfer or change in beneficial ownership.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 100 penalty units; or
- (b) in any other case, a fine not exceeding 20 penalty units.

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- (2) The Commissioner, or an agent of the Commissioner, must not stamp or endorse an instrument that relates to a transfer of, or a change of the beneficial ownership of, an interest in land if the information specified, in an approved form for the purposes of subsection (1) or (1A), to be required to be lodged in relation to the transfer or change in beneficial ownership has not been provided or has not been provided in the approved form for the purposes of subsection (1) or (1A).
- (3) Subsection (2) does not apply in relation to an instrument that relates to a transfer of, or a change of the beneficial ownership of, an interest in land if the Commissioner has approved the stamping or endorsement of the instrument, or instruments of the kind specified in the approval, despite a failure to comply with that subsection.
- (4) A person referred to in subsection (1)(a), (b) or (c) is to be taken to have complied with subsection (1) in relation to a transfer or change in beneficial ownership if another person referred to in subsection (1)(a), (b) or (c) has complied with subsection (1) in relation to the transfer or change in beneficial ownership.
- (5) A person referred to in subsection (1A)(a), (b) or (c) is taken to have complied with subsection (1A) in relation to a transfer or change in beneficial ownership if any of the following persons has complied with subsection (1A) in relation to the transfer or change in beneficial ownership:

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- (a) another person referred to in subsection (1A)(a), (b) or (c);
  - (b) a person acting on behalf of the person referred to in subsection (1A)(a), (b) or (c);
  - (c) another person referred to in subsection (1)(a), (b) or (c).
- (6) Without limiting the information that may be specified in an approved form, for the purposes of subsection (1) or (1A), as information required to be lodged in relation to a transfer or change in beneficial ownership, the information so specified may consist of, or include, information that is required to be provided by the State under Schedule 1, subsection 396-55 of the *Taxation Administration Act 1953* of the Commonwealth.
- (7) As soon as practicable after receiving information under subsection (1) or (1A), the Commissioner is to provide to –
- (a) the Valuer-General so much of the information as is required by the Valuer-General for the purposes of the *Valuation of Land Act 2001*; and
  - (b) the Recorder of Titles so much of the information as is required by the Recorder of Titles for the purposes of the *Land Titles Act 1980*.

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**21. 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.

**22. Compromise assessment**

- (1) If it is difficult or impracticable for the Commissioner to determine a person's tax liability under a taxation 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 of that liability in accordance with this section.
- (2) The Commissioner, with the agreement of a person, may assess the person's tax liability in an amount specified in, or determined in accordance with, the agreement.
- (3) The Commissioner must not make a reassessment of a tax liability assessed under this section –
  - (a) except with the agreement of the taxpayer; or
  - (b) unless, in the opinion of the Commissioner –

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- (i) the assessment under this section was procured by fraud; or
  - (ii) there was a deliberate failure to disclose material information.
- (4) An assessment or reassessment made under this section with the agreement of a taxpayer is a non-reviewable decision.

**23. Withdrawal of assessment**

The Commissioner may withdraw an assessment within 3 years after the date of service of the notice of assessment, whether or not the amount of tax specified in the notice of assessment has been paid.

**24. Notice of assessment or withdrawal of assessment**

- (1) If the Commissioner makes or withdraws an assessment, the Commissioner –
- (a) may serve a notice of assessment or withdrawal on the taxpayer; and
  - (b) must serve such a notice on the taxpayer if the taxpayer so requests.
- (2) A notice of assessment is to –
- (a) be expressed to be an assessment of liability to a tax; and
  - (b) show the amount of tax assessed; and

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- (c) specify the rate of interest or penalty tax payable in respect of any tax default; and
- (d) specify the date on or before which any assessment is payable.

**25. Receipt of tax is not assessment**

The receipt by the Commissioner of a return or an amount as payment of a tax does not constitute the making of an assessment of tax liability.

**26. Validity of assessment**

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

## **PART 4 – REFUNDS OF TAX**

### **27. Application of Part**

- (1) Proceedings for the refund or recovery of tax paid or purportedly paid under a taxation law, whether before or after the commencement of this Act, may only be brought as provided in this Part.
- (2) Subsection (1) and section 28 do not apply to a taxpayer if the taxpayer claims to be entitled to receive a refund or to recover tax paid or purportedly paid under a taxation law by reason of the invalidity of a provision of that law.
- (3) This Part has effect despite the provisions of any other taxation law.
- (4) An amount by which tax is overpaid is taken to be tax for the purpose of this Part.

### **28. Application for refund**

- (1) A taxpayer may apply to the Commissioner for the refund of any tax paid or purportedly paid if the taxpayer claims to be entitled to the refund or recovery of that tax.
- (2) A taxpayer may not apply for, and is not entitled to, a refund if the Commissioner has previously served a notice of assessment of the tax liability of the taxpayer in respect of the matter in respect of which the payment was made to the Commissioner.

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- (2A) Subsection (2) does not apply in relation to a refund of tax paid under the *Land Tax Act 2000*.
- (3) An application in relation to an amount –
- (a) is to be in an approved form; and
  - (b) is to be –
    - (i) lodged with the Commissioner within 5 years after the date on which the amount was paid; or
    - (ii) if the amount is one of 2 or more amounts, to which the application relates, that were instalments paid under section 13 of the *Land Tax Act 2000* in the same financial year and were not paid under an arrangement under section 59 of this Act – lodged with the Commissioner within 4 years after the most recent payment in relation to those amounts was made.

**29. Refund**

- (1) The Commissioner, if satisfied that a person has overpaid an amount, is to –
- (a) refund the overpaid amount; or
  - (b) apply the overpaid amount against any liability of the person under a taxation law, or another Act of which the Commissioner has the general



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administration, and refund any part of the overpayment that is not so applied.

- (2) The Commissioner may only take an action under subsection (1) in relation to an amount that a person has overpaid, if –
- (a) the person has lodged an application under section 28 in relation to the overpayment; or
  - (b) the overpayment has been identified during an investigation conducted in accordance with Part 9 or Part 9A.
- (3) A person who has lodged an application under section 28 in relation to an amount is not entitled to a refund of the amount, or to have the amount applied against any liability referred to in subsection (1)(b), unless the application is –
- (a) lodged with the Commissioner within 5 years after the date on which the amount was paid; or
  - (b) if the amount is one of 2 or more amounts, to which the application relates, that were instalments paid under section 13 of the *Land Tax Act 2000* in the same financial year and were not paid under an arrangement under section 59 of this Act – lodged with the Commissioner within 4 years after the most recent payment in relation to those amounts was made.

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**29AA. Effect on refund of change in interpretation**

If a person has paid, or purportedly paid, an amount of tax, the Commissioner cannot refund all or part of the amount based on a particular interpretation of the applicable law or a particular practice of the Commissioner that applied after the time at which it was paid, other than to give effect to a change in interpretation or practice brought about by a legislative change.

**29A. Payment of interest**

- (1) In addition to the amount of an overpayment of tax refunded under section 29, the Commissioner is required to pay interest on the amount of the overpayment, calculated on a daily basis from the date of payment of the amount overpaid until the date the refund is approved by the Commissioner.
- (2) Interest is to be calculated at the rate specified as the market rate component in section 35(2).
- (3) The Commissioner is not required to pay interest under subsection (1) on an amount refunded unless the amount of interest exceeds \$20.
- (4) Despite subsection (1), the Commissioner may apply, against any liability of a person under a taxation law, or another Act of which the Commissioner has the general administration, an amount of interest that the Commissioner would otherwise be required under that subsection to pay to the person.

**30. Recovery of overpaid amounts**

A taxpayer may bring proceedings for the recovery of an overpaid amount if the taxpayer lodged an application under section 28.

**31. Refusal to refund**

The Commissioner must not make a refund of tax to a person unless satisfied that the person –

- (a) has not charged to, or recovered from, and is not likely to charge to, or recover from, any other person any amount in respect of the whole or any part of that tax; or
- (b) having charged or recovered such an amount, is likely to reimburse, or take all reasonable steps to reimburse, each other person for the amount charged or recovered.

**32. Reimbursement after refund**

- (1) If a refund is made to a person to whom section 31(b) applies –
  - (a) the person must –
    - (i) within 90 days after receiving the refund, reimburse each other person for the amount charged to or recovered from that person; and

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- (ii) notify the Commissioner in writing within 7 days after the end of that period that all amounts charged or recovered have been reimbursed; or
- (b) if the amount is not reimbursed within that period, the person, within 7 days after the end of that period, is to –
  - (i) notify the Commissioner in writing of any amount not reimbursed; and
  - (ii) pay any amount to the Commissioner, together with interest at a rate not exceeding 20% per annum as the Commissioner specifies from the date the refund was made to the date of payment.

Penalty: Fine not exceeding 50 penalty units.

- (2) An amount payable under subsection (1)(b)(ii) is a debt due to the Crown.
- (3) This section prevails over sections 29 and 30.

**33. Application of certain sections**

Sections 31 and 32 apply in respect of proceedings for the refund or recovery of tax paid or purportedly paid as if –

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- (a) a reference to the Commissioner in those sections, except in section 32(1)(b)(ii), were a reference to the court; and
- (b) a reference to the making of a refund in those sections were a reference to the making of an order or decision that a refund be made.

**PART 5 – INTEREST AND PENALTY TAX**

*Division 1 – Interest*

**34. 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.
- (2) Interest is payable in respect of a tax default that consists of a failure to pay penalty tax.
- (3) Interest is not payable in respect of a tax default that consists of a failure to pay interest.

**34A. Imposition of interest where making of duty assessment delayed**

- (1) If in the opinion of the Commissioner the actions of the taxpayer or the taxpayer's representative, or both the taxpayer and the taxpayer's representative, unnecessarily delay the making of a duty assessment, the Commissioner may impose interest from the end of the last day for payment until the day on which the duty is paid.
- (2) For the purposes of subsection (1), the “**last day for payment**” is the last day of the period of 3 months after the liability for duty arises as provided in section 10 of the *Duties Act 2001*.

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**35. Interest rate**

- (1) The interest rate is the sum of –
  - (a) the market rate component; and
  - (b) the premium component.
- (2) The market rate component is –
  - (a) unless an order is in force under paragraph (b), the Bank Accepted Bill rate rounded to the second decimal place (rounding 0.005 upwards); or
  - (b) the rate the Minister specifies by order published in the *Gazette*.
- (3) The Bank Accepted Bill rate in respect of any day is the yield rate for 90-day Bank Accepted Bills published by the Reserve Bank for the month of May in the financial year preceding the financial year in which the day occurs.
- (4) The premium component is –
  - (a) unless an order is in force under paragraph (b), 8% per annum; or
  - (b) the rate the Minister specifies by order published in the *Gazette*.

**36. Minimum amount of interest**

Interest in respect of a tax default is not payable until the amount of that interest exceeds \$20.

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**37. Interest rate prevails over other interest**

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 payable under this Division continues to apply to the exclusion of any other interest rate until the tax is paid.

**38. Remission of interest**

- (1) The Commissioner, in any circumstances the Commissioner considers appropriate, may remit interest payable by a taxpayer by any amount.
- (2) If the Commissioner remits any interest under this section, he or she may, at any time, reimpose all or part of the interest in any circumstances that the Commissioner considers appropriate.

*Division 2 – Penalty tax*

**39. Penalty tax in respect of certain tax defaults**

- (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 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; or
  - (b) penalty tax previously imposed.



**40. Amount of penalty tax**

- (1) The amount of penalty tax payable is 25% of the amount of tax unpaid.
- (2) The Commissioner may increase the amount of penalty tax payable to 75% of the amount of tax unpaid if 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 taxation law.
- (3) The Commissioner may determine that a penalty tax is not payable if satisfied that –
  - (a) the taxpayer or a person acting on behalf of the taxpayer took reasonable care to comply with the taxation law; or
  - (b) the tax default occurred solely because of circumstances not amounting to financial incapacity that are beyond the control of the taxpayer or a person acting on behalf of the taxpayer.

**41. Reduction in penalty tax for disclosure**

- (1) The amount of penalty tax is to be 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.

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- (2) The amount of penalty tax is to be 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 completed, the taxpayer discloses to the Commissioner, in writing, information that identifies the precise nature and extent of the tax default without the need for further investigation by the Commissioner.

**42. Increase in penalty tax for concealment**

- (1) The amount of penalty tax is to be increased by 20% if, after the Commissioner has informed the taxpayer that an investigation is to be carried out and before the investigation is completed, the taxpayer took steps to prevent or hinder the Commissioner from becoming aware of the nature and extent of the tax default in whole or part.
- (2) For the purposes of this section, a taxpayer takes steps to prevent or hinder the Commissioner if the taxpayer –
  - (a) deliberately damages or destroys records required to be kept under the taxation law to which the investigation relates; or
  - (b) without reasonable excuse, refuses or fails to comply with a requirement made by the Commissioner under Part 9 for the purposes of determining the taxpayer's tax liability; or

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- (c) hinders or obstructs an authorised officer performing functions or exercising powers under that Part for that purpose.

**43. Minimum amount of penalty tax**

Penalty tax is not to be imposed if the amount of the penalty tax is less than \$20.

**44. Time for payment of penalty tax**

A taxpayer is to pay penalty tax within the period specified for that purpose in a notice of assessment of the tax liability of the taxpayer.

**45. Remission of penalty tax**

- (1) The Commissioner, in any circumstances the Commissioner considers appropriate, may remit penalty tax by any amount.
- (2) If the Commissioner remits any penalty tax under this section, he or she may, at any time, reimpose all or part of the penalty tax in any circumstances that the Commissioner considers appropriate.

**PART 6 – RETURNS**

*Division 1 – General*

**46. Form of returns**

A return is to be in an approved form.

**47. Time of lodgment**

A return is taken to have been lodged by a person at the time the return is received by the Commissioner.

**48. Extending time or period for lodgment**

The Commissioner may extend the time or period for lodgment of a return by a person.

*Division 2 – Approval of special tax return arrangements*

**49. Approval of special tax return arrangements**

- (1) Despite the provisions of another taxation law, the Commissioner, by written notice, may give approval for a special arrangement for the lodging of returns and payment of tax under the taxation law to –
  - (a) a specified taxpayer or taxpayers of a specified class; or
  - (b) a specified agent on behalf of a specified taxpayer or taxpayers of a specified class.

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- (2) An approval may –
  - (a) provide an exemption or a partial exemption for the taxpayer or taxpayers from specified provisions of the taxation law to which it applies; and
  - (b) authorise the lodging of returns and payments of tax by electronic means.
- (3) An approval may be given on the initiative of the Commissioner or on application.
- (4) The Commissioner may vary or cancel an approval by written notice.

**50. Application for approval**

- (1) An application for an approval under this Division is to be made to the Commissioner in an approved form.
- (2) The Commissioner may –
  - (a) grant an application for an approval; or
  - (b) refuse to grant the application.
- (3) If the Commissioner has not received an application for an approval under this Division from –
  - (a) a specified taxpayer or a taxpayer of a specified class referred to in section 49(1); or

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- (b) a specified agent on behalf of a specified taxpayer or a taxpayer of a specified class referred to in section 49(1) –

the Commissioner, by written notice provided to that taxpayer or agent and for the purpose of exercising his or her initiative under section 49(3), may require that taxpayer or agent to make that application, and to provide any other information specified in the notice, to the Commissioner.

- (4) A taxpayer or agent must comply with a notice provided under subsection (3) within the period specified in that notice or within such further period as the Commissioner allows.

Penalty: In –

- (a) the case of a body corporate, a fine not exceeding 500 penalty units; or
- (b) any other case, a fine not exceeding 100 penalty units.

**51. Conditions of approval**

- (1) An approval is subject to any conditions specified by the Commissioner in the notice of approval or by subsequent written notice.
- (2) Without limiting the conditions to which an approval may be subject, those conditions may include –

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- (a) conditions limiting the approval to matters of a specified class; and
- (b) conditions limiting the approval to transactions effected by instruments of a specified class; and
- (c) conditions requiring the lodging of returns at specified times and conditions as to the contents of the returns; and
- (d) conditions requiring payments of tax at specified times; and
- (da) conditions requiring the payment of interest at the interest rate on any amount of tax not paid at the specified time; and
- (e) conditions as to the means by which returns are to be lodged or payments of tax are to be made; and
- (f) if the approval provides an exemption from a requirement for the stamping of instruments, conditions as to the endorsement of the instruments; and
- (g) conditions requiring the taxpayer or agent to whom the approval was given to keep specified records.

**52. Effect of approval**

- (1) A tax agent, taxpayer or taxpayers of a class specified in an approval must comply with any condition of the approval.

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Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 100 penalty units; or
- (b) in any other case, a fine not exceeding 20 penalty units.

(2) . . . . .

**53. Stamping of instruments**

- (1) An instrument is taken to be duly stamped but without affecting liability for the payment of tax in relation to the instrument under the relevant taxation law if –
  - (a) an approval provides that the instrument is exempt from a requirement for the stamping; and
  - (b) the instrument is endorsed in accordance with the conditions of the approval.
- (2) A person must not endorse an instrument otherwise than under and in accordance with an approval so as to suggest or imply that the instrument is properly so endorsed and as a result is taken to be duly stamped.

Penalty: Fine not exceeding 100 penalty units.

- (3) The endorsement of an instrument as referred to in subsection (1)(b) is not evidence of an assessment of the duty payable under the *Duties Act 2001* in respect of the instrument.



## **PART 7 – COLLECTION OF TAX**

### **54. Tax payable to Commissioner**

Tax is payable to the Commissioner and is a debt due to the Crown.

### **54A. Payment to authorised person or body**

The Commissioner may authorise any person or body as an agent of the Commissioner to whom tax payable to the Commissioner may be paid.

### **55. Recovery of tax, &c.**

- (1) The Commissioner, in a court of competent jurisdiction, may do either or both of the following:
  - (a) recover an amount of tax that is due and unpaid;
  - (b) recover, as a debt due to the Crown, any costs and expenses incurred by the Commissioner in connection with the recovery, or attempted recovery, by any means of an amount of unpaid tax.
- (2) Before proceeding under subsection (1), the Commissioner may use any other lawful means to recover, or attempt to recover, an amount of unpaid tax and, if he or she does so, may also recover the reasonable costs and expenses incurred in using those other means.

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**56. Joint and several liability**

- (1) If 2 or more persons are jointly or severally liable to pay an amount under a taxation law, the Commissioner may recover the whole of the amount from them, or any of them, or any one of them.
- (2) If 2 or more persons are jointly and severally liable to pay an amount of tax under a taxation law that is payable by any one of them, each person is also jointly and severally liable to pay –
  - (a) any amount payable to the Commissioner under a taxation law in relation to that amount, including any interest and penalty tax; and
  - (b) any costs and expenses incurred in relation to the recovery of that amount that the Commissioner is entitled to recover from any such person.
- (3) A person who pays an amount of tax in accordance with this section has rights of contribution or indemnity from the other person or persons as are just.

**57. Collection of tax from third parties**

- (1) The Commissioner, by notice in writing, may require any of the following persons instead of the taxpayer to pay any unpaid tax:

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- (a) a person by whom any money is due or accruing or may become due to the taxpayer;
  - (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 who has authority from some other person to pay money to the taxpayer.
- (2) A copy of the notice is to be served on the taxpayer.
- (3) The amount of money required to be paid by a person under subsection (1) is –
- (a) if the amount of the money held or due or authorised to be paid does not exceed the amount payable by the taxpayer to the Commissioner, all the money; or
  - (b) if the amount of the money exceeds the amount payable, sufficient money to pay the amount payable.
- (4) A person required to pay money under this section must pay the money to the Commissioner at whichever of the following is the later:
- (a) on receipt of the notice;

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- (b) when the money is held by the person;
  - (c) after any period the Commissioner specifies.
- (5) A person subject to a requirement of the Commissioner under this section must comply with the requirement.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 100 penalty units; or
  - (b) in any other case, a fine not exceeding 20 penalty units.
- (6) If the whole or a part of an amount is paid by another person –
- (a) the Commissioner is to promptly notify the person to whom the notice is given of the payment; and
  - (b) the notice is taken to be amended accordingly.
- (7) In this section,

*tax* includes a judgment debt and costs in respect of such an amount.

**58. Indemnification of third party**

A person who makes a payment under section 57 –

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- (a) is to be taken to be acting under the authority of the taxpayer and of all other persons concerned; and
- (b) is indemnified by this section in respect of the payment.

**59. Arrangements for payment of tax**

- (1) The Commissioner may –
  - (a) extend the time for payment of tax by a taxpayer; and
  - (b) accept the payment of tax by instalments.
- (2) A decision of the Commissioner under this section may be made subject to any condition the Commissioner determines.
- (3) The Commissioner may remit, in whole or in part, the payment of any interest required to be paid by a condition imposed under subsection (2) in any circumstances the Commissioner considers appropriate.

**59A. Payment of amount of tax to liquidators, &c.**

The Commissioner may, in satisfaction of a demand by a liquidator, pay to the liquidator an amount of tax, received by the Commissioner, that constitutes all or part of a voidable transaction under the Corporations Act.

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Part 8 – Record keeping

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**PART 8 – RECORD KEEPING**

**60. Keeping records**

- (1) A person must keep, or cause to be kept, all records that are necessary to enable the person's tax liability under a taxation law to be properly assessed.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 500 penalty units; or
  - (b) in any other case, a fine not exceeding 100 penalty units.
- (2) Subsection (1) does not affect a provision of any other taxation law concerning the keeping of records.
- (3) The Commissioner, by written notice to a person who is required to keep a required record or cause a required record to be kept, may require the person to keep, or cause to be kept, additional records specified in the notice.
- (4) A person must comply with a notice under subsection (3).

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 500 penalty units; or
- (b) in any other case, a fine not exceeding 100 penalty units.

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**61. Accessibility**

A person must keep a required record so that it is able to be readily produced to the Commissioner when required.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 200 penalty units; or
- (b) in any other case, a fine not exceeding 40 penalty units.

**62. Form of record**

- (1) A person must keep a required record in English or in a form that can be readily converted or translated into English.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 200 penalty units; or
  - (b) in any other case, a fine not exceeding 40 penalty units.
- (2) The Commissioner may recover in a court of competent jurisdiction from a person referred to in subsection (1) the costs reasonably incurred in converting or translating a record into English.

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**63. Period of retention**

- (1) A person must retain a required record for not less than 5 years after whichever of the following is the later:
- (a) the date it was made or obtained;
  - (b) the date of completion of the transaction or act to which it relates.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 500 penalty units; or
  - (b) in any other case, a fine not exceeding 100 penalty units.
- (2) Subsection (1) does not apply to a person if the Commissioner authorises the person in writing to destroy the record before the end of the period referred to in that subsection.

**64. Destroying records**

A person must not intentionally damage or destroy a record required to be kept by a taxation law.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 500 penalty units; or
- (b) in any other case, a fine not exceeding 100 penalty units.



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**PART 9 – INVESTIGATIONS AND SECRECY**

*Division 1 – Investigations*

**65. Notice of requirements**

- (1) An authorised officer, by written notice, may require a person to do any one or more of the following for the purpose of a taxation law:
  - (a) to provide any information specified in the notice;
  - (b) to attend and give evidence before the authorised officer;
  - (c) to provide the authorised officer with any record in the person's custody or control that is specified in the notice.
- (2) If the requirement is made of a person to determine that person's tax liability, the authorised officer is to indicate this in the notice, but the authorised officer is not otherwise required to identify a person in relation to whom any information or record is required under this section.
- (3) An authorised officer may require information or evidence that is not given orally to be provided in the form of or verified by a statutory declaration.
- (4) An authorised officer may require evidence that is given orally to be given on oath or by affirmation and for that purpose the authorised officer may administer an oath or affirmation.

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- (5) An authorised officer may make a recording by any means of the evidence given orally by a person.

**66. Compliance with notice**

- (1) A person to whom the notice is given under section 65 must comply with the notice within the period specified in the notice or any extended period the Commissioner allows.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 500 penalty units; or
  - (b) in any other case, a fine not exceeding 100 penalty units.
- (2) The court, in addition to imposing a penalty on a person under subsection (1), may order the person to comply, within the period specified in the order, with –
- (a) the requirement specified in the notice; and
  - (b) any other requirement that could be made in relation to the person under a taxation law that the court considers necessary to ensure the effectiveness of the requirement referred to in paragraph (a).

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**67. Retention and inspection of records**

- (1) An authorised officer may take and retain possession of any record provided under section 65 or produced under section 71(1)(a) only –
- (a) to enable the record to be inspected; and
  - (b) for copies of, or extracts or notes from, the record to be made or taken by or on behalf of the authorised officer.
- (1A) If a record is provided or produced to an authorised officer on the premises where the record is usually kept, the authorised officer may remove it from those premises only –
- (a) with the consent of the owner, the occupier of the premises or the person in physical occupation of the premises; or
  - (b) if it is not practicable to inspect or copy, or take extracts or notes from, the record on the premises.
- (1B) An authorised officer may remove an instrument seized under section 71(1)(d) from the premises where the instrument is usually kept if any tax payable in respect of that instrument has not been paid.
- (1C) An authorised officer may retain possession of –
- (a) an instrument if the instrument is seized under section 71(1)(d), until the tax

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payable in respect of that instrument has been paid; or

- (b) any other record for up to and including 28 days, without the consent of the person entitled to possession of it.
- (2) An authorised officer is to permit a person who would be entitled to inspect the record if it were not in the possession of the authorised officer to inspect the record at any reasonable time.
- (3) This section does not –
  - (a) prejudice a lien a person has on the record; or
  - (b) limit or affect section 70.

**68. Access to public records**

An authorised officer may inspect and take copies of any public record relevant to the assessment or collection of tax kept under any Act without payment of any applicable fee.

**69. Expenses for attendance**

- (1) A person who is required to attend and give evidence orally is to be paid expenses in accordance with the scale of allowances to witnesses under the Rules of the Supreme Court.
- (2) Subsection (1) does not apply to a person, or a representative of a person, whose liability under

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a taxation law is being investigated by the Commissioner.

**70. Entry on premises**

- (1) An authorised officer may enter and remain on premises at any reasonable time if the authorised officer reasonably believes that there are records at the premises that are relevant to the administration of a taxation law.
- (2) The power of an authorised officer to enter premises may not be exercised unless the authorised officer produces his or her identity card if requested to do so by the owner or occupier of the premises or a person in physical occupation of the premises.
- (3) Before entering premises, the authorised officer must give the owner or occupier of the premises or a person in physical occupation of the premises reasonable notice of the intention to enter unless –
  - (a) entry is made with the consent of the owner, occupier or person; or
  - (b) the giving of notice would, in the opinion of the authorised officer, defeat the purpose for which it is intended to enter the premises.
- (4) The power of entry is not exercisable in relation to premises or a part of premises used for residential purposes except –

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- (a) with the consent of the owner or occupier of the premises or part or a person in physical occupation of the premises or part; or
- (b) under the authority conferred by a search warrant under section 72.

**71. Powers on entry**

- (1) An authorised officer who has entered premises in accordance with section 70 may –
  - (a) require any person at those premises to produce any record in the custody or possession or under the control of the person; and
  - (b) require any person at those premises to answer questions or otherwise provide information; and
  - (c) require the owner or occupier of the premises or any person physically in occupation of the premises to provide the authorised officer with any assistance and facilities reasonably necessary to enable the authorised officer to exercise any power under this Part; and
  - (d) seize an instrument that ought to be but is not stamped or is insufficiently stamped.
- (2) An authorised officer is to issue a receipt for anything removed.

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- (3) Anything seized may be destroyed by the Commissioner if –
  - (a) the taxpayer refuses to accept its return;  
or
  - (b) the taxpayer cannot be located or ceases to exist.
- (4) This section does not limit or affect section 67.

**72. Search warrants**

- (1) The Commissioner may apply to a magistrate for a warrant to search any premises if the Commissioner reasonably believes that any records are to be found there to which the Commissioner would have access if they were kept on premises to which the Commissioner has access.
- (2) A magistrate, if satisfied that there are reasonable grounds for doing so, may issue a search warrant authorising the Commissioner –
  - (a) to enter and search the premises; and
  - (b) to seize any records found there to which access would otherwise have been available to the Commissioner.

**73. Obstruction of Commissioner or authorised officer**

- (1) A person must not –

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- (a) prevent the Commissioner or an authorised officer from exercising a power under this Part; or
- (b) hinder or obstruct the Commissioner or an authorised officer in the exercise of that power; or
- (c) without reasonable excuse, fail to comply with a requirement made or to answer a question asked under this Part.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 500 penalty units; or
  - (b) in any other case, a fine not exceeding 100 penalty units.
- (2) It is a defence in any proceedings for an offence under subsection (1) relating to entry onto premises for a person to prove that the authorised officer did not –
- (a) identify himself or herself as an authorised officer; and
  - (b) warn the person that a failure to comply with the requirement may constitute an offence.

**74. Defence of reasonable compliance**

It is a defence in any proceedings for an offence under this Part for a person to prove that he or she –



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- (a) could not, by the exercise of reasonable diligence, have complied with the requirement to which the charge relates; or
- (b) complied with the requirement to the extent of their ability to do so.

**75. Impersonating Commissioner or authorised officer**

A person must not impersonate or falsely represent that he or she is the Commissioner or an authorised officer.

Penalty: Fine not exceeding 100 penalty units.

*Division 2 – Secrecy*

**76. Prohibited disclosures**

A person who is or was a tax officer must not disclose any information obtained under or in relation to the administration or execution of a taxation law except as permitted under this Part.

Penalty: Fine not exceeding 100 penalty units.

**76A. Right to information**

The *Right to Information Act 2009* does not apply to information obtained under or in relation to the administration or execution of a taxation law.

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**77. Permitted disclosures**

- (1) A tax officer may disclose information obtained under or in relation to the administration of a taxation law –
  - (a) with the consent of the person to whom the information relates or at the request of a person acting on behalf of that person; or
  - (b) in connection with the administration or enforcement of a taxation law or a law of another State or Territory of the Commonwealth relating to taxation; or
  - (c) for the purpose of any legal proceedings arising out of a taxation law or a report of those proceedings; or
  - (d) in accordance with a requirement imposed under any Act other than the *Right to Information Act 2009*; or
  - (e) to any of the following:
    - (i) the Ombudsman under the *Ombudsman Act 1978*;
    - (ia) the Recorder of Titles, within the meaning of the *Land Titles Act 1980*;
    - (ii) a commissioned police officer;
    - (iii) the State Archivist under the *Archives Act 1983*;

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- (iv) the Australian Statistician;
  - (v) the Auditor-General appointed under the *Audit Act 2008*;
  - (vi) the Australian Securities and Investments Commission (ASIC);
  - (vii) the Australian Crime Commission;
  - (viii) the Australian Federal Police;
  - (ix) a police officer, above the rank of inspector, of the police force of another State, or a Territory, of the Commonwealth;
  - (x) a prescribed person.
- (2) The Commissioner may disclose information obtained under or in relation to the administration of a taxation law unless that information is likely to identify a particular taxpayer.

**78. Prohibition on secondary disclosures of information**

A person must not disclose any information obtained from a tax officer in accordance with section 77 unless –

- (a) the disclosure is made to enable the person to exercise a power conferred on the person by law for the purpose of the enforcement of a law or protecting the

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public revenue and the Commissioner consents to the disclosure; or

- (b) the disclosure is made to enable the collection of outstanding debts imposed under a taxation law and the Commissioner consents to the disclosure.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 500 penalty units; or
- (b) in any other case, a fine not exceeding 100 penalty units.

**79. Disclosure in court**

A person who is or was a tax officer is not required to disclose or produce in any court any information obtained under or in relation to the administration or execution of a taxation law unless –

- (a) it is necessary to do so for the purposes of the administration or execution of a taxation law; or
- (b) the requirement is made to enable a person referred to in section 77(1)(e) to exercise a power conferred or perform a function imposed on the person by law.

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**PART 9A – RECIPROCAL ARRANGEMENTS**

**79A. Interpretation of Part 9A**

In this Part –

*authorised person* means a corresponding authorised person and a State authorised person;

*Commissioner* means a corresponding Commissioner and a State Commissioner;

*corresponding authorised person* means a person authorised under section 79B;

*corresponding Commissioner* means the holder of an office under any corresponding law declared by the Minister by order to be a corresponding Commissioner;

*corresponding law* means a law of the Commonwealth or of another State or of a Territory declared by the Minister by order to be a corresponding law that –

- (a) corresponds to this Act; or
- (b) is a Commonwealth, State or Territory Taxation Act within the meaning of an Act of the Commonwealth, State or Territory;

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*investigation power* means a power specified in Division 1 of Part 9;

*State authorised person* means a person authorised under section 79C;

*State Commissioner* means any of the following:

- (a) the Commissioner of State Revenue;
- (b) the holder of any other office declared by the Minister by order to be a State Commissioner;

*State Taxation Act* means –

- (a) a taxation law; or
- (b) any Act declared by the Minister by order to be a State Taxation Act.

**79B. Investigations by corresponding Commissioners**

- (1) In relation to an investigation in this State to ascertain any person's liability or entitlement under a corresponding law, a corresponding Commissioner may exercise any investigation power that the corresponding Commissioner may exercise under the corresponding law.
- (2) A corresponding Commissioner may only exercise an investigation power –

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- (a) with the written approval of the State Commissioner; and
  - (b) while that approval is in force; and
  - (c) in accordance with any conditions of that approval.
- (3) The State Commissioner, by notice in writing, may –
- (a) give an approval subject to any condition; and
  - (b) vary or revoke an approval; and
  - (c) vary or revoke a condition of an approval.
- (4) A corresponding Commissioner, by a certificate of authority, may authorise a person to exercise in accordance with this section any investigation power the corresponding Commissioner may exercise under this section.

**79C. Investigations on behalf of corresponding Commissioners**

- (1) A corresponding Commissioner, by notice in writing, may request a State Commissioner to exercise on his or her behalf or on behalf of a corresponding authorised person any investigation power that he or she may exercise under the corresponding law.

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- (2) A State Commissioner may only exercise a power on behalf of a corresponding Commissioner in accordance with any –
  - (a) conditions specified by the corresponding Commissioner at any time and approved by the State Commissioner; and
  - (b) conditions specified by the State Commissioner.
- (3) A State Commissioner, by a certificate of authority, may authorise a person to exercise in accordance with this section any power requested to be exercised by the State Commissioner under subsection (1).

**79D. Investigation powers**

- (1) Subject to subsection (3), a Commissioner may exercise any power under Part 9 as if he or she were the Commissioner for the purposes of that Part.
- (2) Subject to subsection (3), an authorised person may exercise any power under Part 9 as if he or she were an authorised officer.
- (3) A Commissioner or an authorised person may not exercise any power referred to in subsection (1) or (2) unless he or she produces at the time of exercising the power a certificate of authority given under section 79B or 79C.



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**79E. Disclosure of information**

- (1) A State Commissioner and a State authorised person may disclose any information relating to the affairs of a person obtained under this Part to any of the following:
  - (a) the Commissioner, Second Commissioner or a Deputy Commissioner under any law of the Commonwealth relating to taxation, or to any person authorised by that Commissioner, Second Commissioner or Deputy Commissioner;
  - (b) the Commissioner or any other officer of any State or Territory of the Commonwealth administering any law of the State or Territory relating to taxation, or to any person authorised by that Commissioner or other officer;
  - (c) a person or body specified in section 77(1)(e).
  - (d - 1) . . . . .
- (2) If a State Commissioner consents to the disclosure of any information relating to the affairs of a person obtained under this Part by a corresponding Commissioner, the corresponding Commissioner and corresponding authorised person may, subject to any terms of the consent, disclose the information –
  - (a) to any person referred to in subsection (1); and

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- (b) to any person to whom he or she is permitted under the corresponding law to disclose information obtained under the corresponding law.
- (3) If a corresponding Commissioner consents to the disclosure of any information relating to the affairs of a person obtained under a corresponding law by a State Commissioner, the State Commissioner and a State authorised person may, subject to any terms of the consent, disclose the information –
  - (a) to any person referred to in subsection (1); and
  - (b) to any person to whom he or she is permitted under a State Taxation Act to disclose information obtained under that State Taxation Act.
- (4) . . . . .

**79F. Confidentiality**

Any records or information obtained under this Part or under a corresponding law are exempt from the provisions of the *Right to Information Act 2009*.

**79G. Evidence**

The production of a document purporting to be certified by a corresponding Commissioner as a copy of, or extract from, a document furnished to, or issued by, the corresponding

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Commissioner is, for all purposes, sufficient evidence of the matter contained in the document, without production of the original.

**79H. Immunity from liability**

A Commissioner or an authorised person is not personally liable for an honest act or omission done or made in the exercise or purported exercise of a power under this Part or a corresponding law.

**PART 10 – OBJECTIONS, REVIEWS AND APPEALS**

*Division 1 – Objections*

**80. Objection**

(1) A taxpayer may object to –

- (a) an assessment, other than a compromise assessment or an assessment that gives effect to the determination of an objection made under section 84; or
- (b) a decision of the Commissioner under a taxation law, unless that law states that the decision is a non-reviewable decision.

(1A) A decision of the Commissioner referred to in subsection (1)(b) does not include a refusal by the Commissioner to refund tax paid or purportedly paid.

(1B) An amount by which tax is overpaid is taken to be tax for the purpose of subsection (1A).

(2) An objection is to –

- (a) be in writing; and
- (b) state in full the grounds for the objection; and
- (c) be lodged with the Commissioner within the period referred to in section 82 or 83.

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- (3) The grounds for objection to a reassessment are limited to the reassessment.
- (4) A court or administrative review body, including the Magistrates Court (Administrative Appeals Division), does not have jurisdiction or power to consider any question concerning an assessment or decision of the Commissioner except as provided by this Part.
- (5) Subsection (4) does not apply to a decision of the Commissioner under Part 7, 8, 9 or 11.

**81. Onus of proof**

A person making an objection has the onus of proving his or her case.

**82. Time for lodging objection**

- (1) An objection is to be lodged within 60 days after the date of service of the notice of the assessment or decision on the taxpayer.
- (2) An objection is taken to have been lodged when it is received by the Commissioner.

**83. 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 an objection out of time may apply in writing stating fully –

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- (a) the circumstances concerning failure to lodge the objection within the 60-day period; and
  - (b) the reasons for that failure.
- (3) The Commissioner may –
  - (a) grant permission unconditionally or subject to conditions; or
  - (b) refuse permission.
- (4) A decision by the Commissioner to refuse permission or to impose conditions on permission is a non-reviewable decision.

**84. Determination of objection**

- (1) The Commissioner is to consider an objection and may –
  - (a) allow the objection in whole or in part; or
  - (b) disallow the objection.
- (2) The Commissioner may determine an objection that is subject to a right of review or appeal at any time before the hearing of the review or appeal proceedings commences.
- (3) The Commissioner may only delegate the function to consider and the power to determine an objection to a person who –

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- (a) is not the person who made the assessment or decision to which the objection relates; and
- (b) is not the subordinate of the person referred to in paragraph (a).

**85. Suspension of determination**

- (1) The Commissioner, by written notice served on the objector, may suspend the determination of an objection for any period during which the objector, or another person having information relevant to the objection, fails to provide information relevant to the objection that the Commissioner has requested under a taxation law.
- (2) The suspension of a determination takes effect on service of the notice of suspension.
- (3) The Commissioner, by written notice served on the objector, may suspend the determination of an objection pending the outcome of legal proceedings relating to a tax liability of the same kind as the tax liability that is the subject of the objection.
- (4) The power of the Commissioner under subsection (3) may be exercised –
  - (a) on the Commissioner’s own motion; or
  - (b) at the request of the objector.
- (5) The power of the Commissioner to suspend the determination of an objection under

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subsection (1) or (3) includes a power, exercisable in a like manner, for the Commissioner to revoke the suspension at any time if he or she considers there are reasonable grounds to do so.

**86. Notice of determination**

- (1) The Commissioner is to give notice to the objector of the determination of the objection.
- (2) The notice of the determination is to state the grounds for disallowing an objection or for allowing an objection in part only.

**87. Recovery of tax pending objection, review or appeal**

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

**88. Payment of interest following unsuccessful objection**

Division 1 of Part 5 applies to an amount of tax required to be paid following the determination of an objection.



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*Division 2 – Reviews and appeals*

**89. Right of review or appeal**

- (1) A taxpayer may apply to the Magistrates Court (Administrative Appeals Division) for a review of, or appeal to the Supreme Court against –
  - (a) the Commissioner’s determination of the taxpayer’s objection; or
  - (b) the Commissioner’s failure to determine the taxpayer’s objection.
- (2) An application for review or an appeal –
  - (a) is to be made within 60 days after the date of service on the taxpayer of the notice of the Commissioner’s determination of the objection for a review or appeal under subsection (1)(a); or
  - (b) is not to be made before 90 days after the objection was lodged for a review or appeal under subsection (1)(b).
- (3) A taxpayer is not to apply for a review or make an appeal unless –
  - (a) the whole of the amount of the tax to which the review or appeal relates has been paid; or
  - (b) if that amount has not been paid, the Commissioner allows the taxpayer to apply for a review or make the appeal.

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- (4) A taxpayer must give written notice to the Commissioner of the intention to apply for a review or make an appeal under subsection (1)(b) at least 14 days before the application for a review or appeal is made.

**90. Grounds of review or appeal**

Unless the Magistrates Court (Administrative Appeals Division) or Supreme Court otherwise orders, on a review or an appeal –

- (a) the taxpayer's case is limited to the grounds of the objection; and
- (b) the Commissioner's case is limited to the grounds on which the objection was disallowed.

**91. Onus on review or appeal**

On a review or an appeal, the taxpayer has the onus of proving his or her case.

**92. Orders of Court**

- (1) On the hearing of an appeal, the Supreme Court may –
- (a) make any order it thinks fit; and
  - (b) by order, confirm, reduce, increase or vary the assessment or decision.
- (2) The costs of the appeal are in the discretion of the Supreme Court.

**93. Giving effect to decision on review or appeal**

- (1) Within 60 days after the decision on review or appeal becomes final, the Commissioner must take any action that is necessary to give effect to the decision.
- (2) If an appeal to a court from a decision of the Supreme Court on an appeal, or a decision of the Magistrates Court (Administrative Appeals Division) on a review, is not instituted within 30 days after the day on which the decision is made, the decision is taken to be final at the end of that period.

***Division 3 – Refunds following successful objection, review or appeal***

**94. Refund of amount**

- (1) If a taxpayer's objection to an assessment is allowed in whole or in part, the decision of the Commissioner is not affirmed on review or a taxpayer's review or appeal is upheld, the Commissioner must –
  - (a) refund any amount paid in excess of a requirement for payment; or
  - (b) apply the amount paid in excess of a requirement for payment against any liability of the person under a taxation law, or another Act of which the Commissioner has the general administration, and refund any part of the

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amount paid in excess that is not so applied.

- (2) If a taxpayer's objection to a decision other than an assessment is allowed in whole or in part, the decision of the Commissioner is not affirmed on review or a taxpayer's review or appeal is upheld, the Commissioner must –
- (a) refund any amount paid in the relevant period in excess of a requirement for payment; or
  - (b) apply the amount paid in the relevant period in excess of a requirement for payment against any liability of the person under a taxation law, or another Act of which the Commissioner has the general administration, and refund any part of the amount paid in excess that is not so applied.
- (3) A relevant period for the purpose of subsection (2) is a period of 5 years immediately preceding the earlier of the following:
- (a) the date of the decision;
  - (b) if the decision was made in response to a written request from the taxpayer that included a description of the facts and circumstances on which the request was based, the date of the request for the decision.

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**95. Payment of interest**

- (1) In addition to an amount refunded under this Division the Commissioner is required to pay interest on the amount calculated at the market rate referred to in section 35(1)(a) on a daily basis from whichever of the following is the later until the date of the refund:
  - (a) the date of payment of the amount overpaid;
  - (b) the date on which the Commissioner made the assessment to which the objection and appeal relates.
- (1A) Despite subsection (1), the Commissioner –
  - (a) may apply so much of any interest calculated in accordance with that subsection against any liability of the relevant person under a taxation law, or another Act of which the Commissioner has the general administration; and
  - (b) is not required to pay under that subsection so much of an amount of interest as is applied under paragraph (a).
- (2) The Commissioner is not required to pay interest under subsection (1) on an amount refunded unless the amount of interest exceeds \$20.00.

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***Division 4 – Other cases***

**95A. Refunds payable, &c., consequent on related objections affecting taxation liability**

- (1) This section applies where, as a result of an objection under section 28 of the *Valuation of Land Act 2001*, the valuation of any land in respect of which a land tax assessment has been made is lowered by the Valuer-General under section 30 of that Act.
- (2) If this section applies –
  - (a) the Commissioner is, as soon as practicable, to reassess the land tax payable in respect of the revalued land; and
  - (b) if the Commissioner determines from the reassessment that there has been an overpayment of land tax by the taxpayer, the Commissioner is to refund the amount of the overpayment, together with interest on that amount calculated at the market rate referred to in section 35(1)(a) on a daily basis from whichever of the following is the later date until the date of the refund:
    - (i) the date of payment of the amount overpaid;
    - (ii) the date on which the Commissioner made the land tax

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assessment referred to in  
subsection (1).

(3) In this section –

***land tax assessment*** means an assessment  
pursuant to section 12(1) of the *Land Tax*  
*Act 2000*;

***valuation*** means the valuation on a valuation  
roll within the meaning of the *Valuation*  
*of Land Act 2001*.

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**PART 11 – MISCELLANEOUS**

*Division 1 – Payment*

**96. Payment of tax**

- (1) Tax may be paid to the Commissioner –
  - (a) by a bank cheque or postal money order delivered to an office of the Commissioner; or
  - (b) by any other means approved by the Commissioner.
- (2) An approval of the Commissioner may be –
  - (a) general or limited to a particular tax, person or payment; and
  - (b) unconditional or subject to any condition.
- (3) If the Commissioner approves payment by a personal cheque, payment is taken to be effected when –
  - (a) the cheque is received by the Commissioner if that payment occurs when the Commissioner first presents the cheque to the bank for payment; or
  - (b) payment occurs under the cheque following presentation by the Commissioner.
- (4) An approval of a means of payment other than personal cheque may include a stipulation as to



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when payment by that means is taken to be effected.

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

**97. Adjustments**

- (1) If a single amount of tax payable is not a multiple of a dollar, the Commissioner may decrease the amount to an amount not lower than the nearest dollar.
- (2) If the Commissioner aggregates 2 or more amounts of tax payable and the aggregated amount is not a multiple of a dollar, the Commissioner may decrease the aggregated amount to an amount not lower than the nearest dollar.

**98. Valuation of foreign currency**

- (1) If a single amount involved in the calculation of tax is not in Australian currency, the amount is to be converted to Australian currency at the buy rate of exchange reported by the Reserve Bank and applicable at the date on which the liability to pay the tax arose.
- (2) This section is subject to a provision of another taxation law governing the calculation of tax where an amount involved in the calculation is not in Australian currency.

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**99. Appropriation**

Any amount authorised or required to be paid by the Commissioner under this Act is to be paid from the Public Account which is appropriated by this section to the necessary extent.

*Division 2 – Evidentiary matters*

**100. Issue of documents**

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 is, in the absence of evidence to the contrary, taken to have been lawfully issued by the Commissioner.

**101. Evidence of assessment**

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 any proceedings relating to objections or appeal in which it is proof in the absence of evidence to the contrary.

**102. Certificate evidence**

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

- (a) that the person named in the certificate is liable to pay tax;
- (b) that an assessment of tax has been made in relation to circumstances specified in the certificate;
- (c) that the amount of tax, a penalty 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;
- (d) that 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;
- (e) that a person named in the certificate is, or is not, registered or licensed as required by the relevant taxation law;
- (f) that a return or statement required by a taxation 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;

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- (g) that a person named in the certificate is, or was, an authorised officer on the date specified in the certificate.

**103. Copies and extracts of certain documents**

A document signed by the Commissioner purporting to be a copy of, or an extract from, a return lodged with the Commissioner or a document issued by the Commissioner is admissible in proceedings under a taxation law without production of the original.

*Division 3 – General offences*

**104. False or misleading information and statements**

- (1) A person must not –
  - (a) make a record required under a taxation law knowing it to contain any matter that is false or misleading; or
  - (b) include in a record required under a taxation law any matter knowing it to be false or misleading.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 500 penalty units; or
- (b) in any other case, a fine not exceeding 100 penalty units.

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- (2) A person, for the purposes of a taxation law, must not –
- (a) make a statement, orally or in writing, to a tax officer knowing it to be false or misleading; or
  - (b) omit any matter from a statement knowing that without that matter the statement is false or misleading; or
  - (c) give information, orally or in writing, to a tax officer knowing it to be false or misleading.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 500 penalty units; or
- (b) in any other case, a fine not exceeding 100 penalty units.

**105. Failure to lodge documents**

A person must not fail to lodge a record or return that is required to be lodged by a taxation law.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 200 penalty units; or
- (b) in any other case, a fine not exceeding 40 penalty units.

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**106. Defence relating to records**

A person is not guilty of an offence in relation to a requirement under Part 8 if the person proves that –

- (a) the person took reasonable care to comply with the requirement; or
- (b) non-compliance with the requirement was caused solely because of circumstances beyond the person's control.

**107. Falsifying or concealing identity**

A taxpayer must not –

- (a) falsify or conceal the identity, or the address or location of a place of residence or business, of the taxpayer or of another person; or
- (b) by act or omission, do anything that facilitates the falsification or concealment of the identity, or the address or location of a place of residence or business, of the taxpayer or of another person.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 500 penalty units; or
- (b) in any other case, a fine not exceeding 100 penalty units.

**108. Tax evasion**

A person must not, by a deliberate act or omission, evade or attempt to evade tax.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 1 000 penalty units; or
- (b) in any other case, a fine not exceeding 200 penalty units or a term of imprisonment not exceeding 2 years, or both.

**109. Offences by bodies corporate**

- (1) If a body corporate contravenes a provision of a taxation law, a person who is concerned in, or takes part in, the management of the body corporate is taken to have contravened that provision.
- (2) It is a defence in proceedings under subsection (1) for a person to prove that –
  - (a) the body corporate contravened the provision without the person's knowledge; or
  - (b) the person was not in a position to influence the conduct of the body corporate in relation to its contravention of the provision; or

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- (c) the person, if in that position, used all due diligence to prevent the contravention by the body corporate.
- (3) A person may be convicted of a contravention of a provision of a taxation law whether or not the body corporate has been convicted of its contravention.
- (4) This section does not affect a liability imposed on a body corporate for an offence committed by it against a taxation law.
- (5) For the purpose of this section, the following persons are persons who are concerned in, or take part in, the management of a body corporate:
  - (a) a director of the body corporate;
  - (b) a secretary of the body corporate;
  - (c) a receiver and manager of property of the body corporate;
  - (d) an administrator of a deed of arrangement executed by the body corporate;
  - (e) a liquidator of the body corporate appointed in a voluntary winding-up of the body corporate;
  - (f) a trustee or other person administering a compromise or arrangement made between the body corporate and another person or other persons.



**110. Offences by partnerships and associations**

A reference in a taxation law to an offence by a partnership or an unincorporated association is –

- (a) in the case of a partnership, a reference to each member of the partnership; and
- (b) in the case of an unincorporated association, a reference to each member of the committee of management of the association.

**111. Continuing offences**

- (1) A person may be convicted of a second or subsequent offence for a failure to do an act if the failure continues beyond the period or date in respect of which the person is convicted for the failure.
- (2) The maximum penalty for the offence is the same whether it is a second or subsequent offence.

**112. Tax liability unaffected by payment of penalty**

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 taxation law.

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**113. Time for commencing prosecutions**

A prosecution for an offence against a taxation law may be commenced at any time within 3 years after the alleged commission of the offence.

*Division 3A – Tax avoidance*

**113A. Purpose and operation of Division 3A**

- (1) The purpose of this Division is to deter artificial, blatant or contrived schemes to reduce liability to pay tax.
- (2) No provision of this Act or a taxation law limits the operation of this Division unless that provision expressly provides otherwise.

**113B. Application of Division 3A**

- (1) This Division applies if –
  - (a) a person has obtained, or would apart from this Division obtain, a tax benefit –
    - (i) from a scheme which was entered into after the commencement of this Division; or
    - (ii) from a scheme the carrying out of which was started after the commencement of this Division; and
  - (b) . . . . .

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- (c) taking into account the matters set out in section 113C, it is reasonable to conclude that a person, whether alone or with other persons, who entered into or carried out the scheme, or part of the scheme, did so for the sole or dominant purpose of enabling that person to obtain such a, or another, tax benefit from the scheme.
- (2) For the purposes of subsection (1), it does not matter –
- (a) whether the scheme, or any part of the scheme, is entered into or carried out in Tasmania or elsewhere; or
  - (b) whether or not the tax benefit that the person obtained, or would have obtained, is the same kind of tax benefit referred to in subsection (1)(a).

**113C. Matters to be considered when determining purpose of scheme**

For the purposes of section 113B(1)(c), the following matters are to be taken into account in determining whether it is reasonable to conclude that the sole or dominant purpose of a person entering into or carrying out a scheme of a kind referred to in section 113B(1), or a part of such a scheme, is to enable that person to obtain a tax benefit from the scheme:

- (a) the manner in which the scheme, or part of the scheme, was entered into or carried out by the person;

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- (b) the form and substance of the scheme or part of the scheme, including –
  - (i) the legal rights and obligations of the person under the scheme or part; and
  - (ii) the economic and commercial substance of the scheme or part;
- (c) the time when the person entered into or carried out the scheme or part of the scheme and the length of the period during which the person was involved in carrying out the scheme or part of the scheme;
- (d) the purpose of –
  - (i) this Act; and
  - (ii) any taxation law that is relevant to the scheme or part of the scheme; and
  - (iii) a provision of this Act or such a taxation law –  
  
whether or not that purpose is expressly stated in this Act, the taxation law or the provision;
- (e) the effect that this Act, other than this Division, or a taxation law would have in relation to the scheme or part of the scheme;

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- (f) any change in the person's financial position that has resulted, will result or may reasonably be expected to result from the person entering into or carrying out the scheme or part of the scheme;
- (g) any change in the financial position of any other person who is or has been connected with the person, through business or family or in any other manner, that has resulted, will result or may reasonably be expected to result from the person's connection with the scheme or part of the scheme;
- (h) any other consequence for the person, or another person referred to in paragraph (g), that results, will result or may reasonably be expected to result from entering into or carrying out the scheme or part of the scheme or from the person's or other person's connection with the scheme or part of the scheme;
- (i) the nature of the connection between another person referred to in paragraph (g) and the person;
- (j) the circumstances surrounding the scheme or part of the scheme;
- (k) the circumstances surrounding the entry of the person into the scheme or part of the scheme or the carrying out by the person of the scheme or part of the scheme.

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**113D. When tax benefit obtained**

A person obtains a tax benefit if an amount of tax payable by the person under a taxation law is, or could reasonably be expected to be, less than it would have been if the person had not entered into or carried out a scheme of a kind referred to in section 113B(1) or part of such a scheme.

**113E. Amount of tax benefit**

The amount of the tax benefit obtained by a person who entered into or carried out a scheme of a kind referred to in section 113B(1), or part of such a scheme, is the difference between the amount of tax payable and the amount of tax that would have been payable had that person not entered into or carried out that scheme or that part of such a scheme.

**113F. Assessments and reassessments if tax benefit obtained from scheme**

- (1) If a person has obtained, or would but for this Division obtain, a tax benefit from entering into or carrying out a scheme of a kind referred to in section 113B(1), or part of such a scheme, the Commissioner may –
  - (a) in making an assessment of tax liability under section 18, include as part of the person's tax liability the amount of the tax benefit obtained or that would be obtained; or

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- (b) reassess the person's tax liability under section 19 so that the person's tax liability includes the amount of the tax benefit obtained.
- (2) If the Commissioner takes action under subsection (1), the Commissioner must notify the person, in writing, that he or she has done so and his or her reasons for doing so.

***Division 4 – Miscellaneous matters***

**114. Public officer of body corporate**

- (1) The Commissioner, by written notice served on a body corporate, may require the body corporate to appoint, within a period specified in the notice, a natural person whose principal place of residence is in Tasmania as a public officer of the body corporate for the purposes of the taxation laws, and to keep the office of public officer constantly filled by such a person.
- (2) 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.
- (3) The Commissioner, by notice served on the person and the body corporate, may appoint a director, a secretary or an executive officer, within the meaning of the Corporations Act, of a body corporate as the public officer of the body corporate if the body corporate –

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- (a) does not make an appointment as required; or
- (b) does not keep the office of public officer constantly filled as required.

**115. Liability of public officer**

- (1) The public officer of a body corporate is answerable for the discharge of all obligations imposed on the body corporate under a taxation law and, in case of default, is liable to the same penalties.
- (2) Anything that the public officer of a body corporate is required to do and does in his or her representative capacity is taken to have been done by the body corporate.
- (3) The absence or non-appointment of a public officer does not excuse the body corporate from the necessity of complying, or from a penalty for failure to comply, with a provision of a taxation law.
- (4) Any proceedings brought under a taxation law against the public officer of a body corporate are taken to have been brought against the body corporate, and the body corporate 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.



**116. Day of service of document or payment of money**

If a document is served on or lodged with 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 payment is taken to have been served on, lodged with or tendered to the Commissioner on the following business day.

**117. Service on agents and members**

- (1) If a person has actual or apparent authority to accept service of a document on behalf of another person, the Commissioner, for the purposes of a taxation law, may serve a document on that person.
- (2) 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 constitutes, for the purposes of a taxation law, service of the document on each member of the partnership or on each member of the association or other body of persons.

**118. Service on body corporate**

- (1) Service of a document on the public officer of a body corporate is sufficient service on the body corporate for the purposes of a taxation law.

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- (2) If a body corporate does not have a public officer, service on a person acting or appearing to act in the business of the body corporate is sufficient service on the body corporate for the purpose of a taxation law.
- (3) A document served on, or requirement made of, the public officer of a body corporate is taken to have been served on, or made of, the body corporate.

**118A. Administrative fee**

- (1) The Commissioner may charge a prescribed fee in respect of the lodging of an instrument for assessment or the lodging of a return.
- (1A) The Commissioner, in his or her absolute discretion, may waive or, if applicable, refund all or any part of the prescribed fee.
- (2) For the purposes of this section –

*instrument* has the meaning given to that term in the *Duties Act 2001*.

**119. Regulations**

- (1) The Governor may make regulations for the purpose of this Act.
- (2) Regulations may be made so as to apply differently according to any matter, condition, limitation, restriction, exception or circumstance specified in the regulations.

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- (3) The regulations may –
- (a) provide that a contravention of, or a failure to comply with, any of the regulations is an offence; and
  - (b) in respect of such an offence, provide for the imposition of a fine not exceeding 50 penalty units and, in the case of a continuing offence, a further fine not exceeding 10 penalty units for each day during which the offence continues.
- (4) The regulations may authorise any matter to be determined, applied or regulated by any person or body.
- (5) The regulations may confer a power and impose a duty on a specified person or a specified class of persons.
- (6) Regulations may contain provisions of a savings and transitional nature consequent on the enactment of this Act.
- (7) A provision referred to in subsection (6) may take effect from the day on which this Act commences or a later day.

**120. Savings and transitional**

The savings and transitional provisions set out in Schedule 1 have effect.

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**120A. Savings and transitional provisions consequent on repeal of *Revenue Measures Act 2005***

- (1) Notwithstanding the repeal of the *Debits Duties Act 2001* by the *Revenue Measures Act 2005*, the Commissioner may recover from an account holder, financial institution, credit card holder or credit card provider, each within the meaning of the *Debits Duties Act 2001* as in force immediately before the repeal, any duty that relates to a transaction made before 1 July 2005 and that was unpaid at that day.
- (2) For the purposes of subsection (1), this Act is to be read as if the *Debits Duties Act 2001* had not been repealed.

**121. Administration of Act**

Until provision is made in relation to this Act by order under section 4 of the *Administrative Arrangements Act 1990* –

- (a) the administration of this Act is assigned to the Treasurer; and
- (b) the Department responsible to the Treasurer in relation to the administration of this Act is the Department of Treasury and Finance.

**SCHEDULE 1 – SAVINGS AND TRANSITIONAL**

Section 120

**1. Tax officers**

The person holding office as Commissioner of Pay-roll Tax immediately before the commencement day continues, on that day, as Commissioner of State Revenue under this Act.

**2. Assessments**

- (1) Part 3 applies to the assessment of a tax liability whether the liability arises before, on or after the commencement day.
- (2) An assessment made under a taxation law before the commencement day is taken, on that day, to have been made under this Act.

**3. Refunds**

- (1) Part 4 applies to the refund or recovery of tax paid before the commencement day.
- (2) Part 4 does not apply to an application for a refund made but not determined before the commencement day.

**4. Interest**

- (1) Interest in respect of a tax default that occurred before the commencement day accrues from that day in accordance with Division 1 of Part 5.

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- (2) The Commissioner may remit interest in respect of any interest that accrued under a taxation law before the commencement day.

**5. Penalty tax**

- (1) Division 2 of Part 5 does not apply to a tax default that occurred before the commencement day.
- (2) The Commissioner may remit penalty tax in respect of any penalty tax imposed on a taxpayer by a taxation law before the commencement day.
- (3) If a tax default occurred under a taxation law before the commencement day –
  - (a) the Commissioner may make an assessment under this Act of any additional tax that would have been payable or assessable under that taxation law in relation to the default; and
  - (b) this Act applies as if the additional tax were penalty tax.
- (4) In this clause,  
  
*additional tax* means an additional amount payable by way of tax, penalty tax, fine or duty under a taxation law as in force immediately before the commencement day.

**6. Approval of special tax return arrangements**

Division 2 of Part 6 applies to an approval under a taxation law and in force immediately before the commencement day.

**7. Collection of unpaid tax**

- (1) Part 7 applies to tax that is payable but unpaid immediately before the commencement day.
- (2) Any proceedings under a taxation law in relation to the recovery of unpaid tax not completed before the commencement day may, on or after that day, be completed under that law.

**8. Records**

Sections 61, 62, 63 and 64 apply to records kept under a taxation law before the commencement day.

**9. Secrecy**

Division 2 of Part 9 applies to information obtained by a tax officer or other person before the commencement day.

**10. Objections and appeals**

- (1) The provisions of Part 10 apply on and after the commencement day in relation to –

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- (a) any assessment made under a taxation law before that day as if it were an assessment under this Act; and
  - (b) any decision of the Commissioner that may be the subject of objection under a taxation law in force immediately before the commencement day as if it were a decision that may be the subject of objection under that Part.
- (2) Subclause (1) does not apply to any assessment or decision if an objection has been lodged against it under a taxation law before the commencement day.
- (3) Appeal proceedings in relation to a decision on an objection lodged under a taxation law before the commencement day may be commenced or continued under that law.
- (4) Section 80(1A) applies to –
  - (a) any refusal by the Commissioner to refund tax paid or purportedly paid that was made before the commencement of the *Taxation Law (Miscellaneous Amendments) Act 2002*; and
  - (b) a failure by the Commissioner to refund the tax within 3 months after the application for the refund is lodged that is taken to be a refusal to refund the tax.
- (5) Section 94 applies to any assessment or decision made, any objection allowed or any review or appeal upheld before the commencement of the



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**11. Evidence**

Sections 102 and 103 apply on and after the commencement day in relation to proceedings relating to a taxation law commenced on or after that commencement, whether the proceedings relate to matters or things occurring before, on or after that day.

**12. Refunds where period altered by *Taxation and Related Legislation (Miscellaneous Amendments) Act 2016***

The amendments to sections 28 and 29 made by the *Taxation and Related Legislation (Miscellaneous Amendments) Act 2016* do not apply in relation to a payment, or purported payment, under a taxation law if an application for a refund was, before the day on which those provisions were so amended, made under section 29 in relation to the payment or purported payment.

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**NOTES**

The foregoing text of the *Taxation Administration Act 1997* comprises those instruments as indicated in the following table. Any reprint changes made under any Act, in force before the commencement of the *Legislation Publication Act 1996*, authorising the reprint of Acts and statutory rules or permitted under the *Legislation Publication Act 1996* and made before 1 July 2021 are not specifically referred to in the following table of amendments.

| Act  | Number and year | Date of commencement          |
|--|-----------------|-------------------------------|
| <i>Taxation Administration Act 1997</i>  | No. 74 of 1997  | 1.7.1998                      |
| <i>Statutory Holidays (Consequential Amendments) Act 2000</i>                                  | No. 82 of 2000  | 13.12.2000                    |
| <i>Taxation Administration Amendment Act 2000</i>  | No. 77 of 2000  | 1.1.2001                      |
| <i>State Service (Consequential and Miscellaneous Amendments) Act 2000</i>                     | No. 86 of 2000  | 1.5.2001                      |
| <i>Taxation Administration (Consequential) Amendment Act 2001</i>                              | No. 17 of 2001  | 1.7.2001                      |
| <i>Corporations (Consequential Amendments) Act 2001</i>  | No. 42 of 2001  | 15.7.2001                     |
| <i>Taxation Law (Miscellaneous Amendments) Act 2002</i>  | No. 6 of 2002   | 30.5.2002                     |
| <i>Magistrates Court (Administrative Appeals Division) (Consequential Amendments) Act 2001</i> | No. 73 of 2001  | 1.7.2002                      |
| <i>Taxation Legislation (Miscellaneous Amendments and Repeal) Act 2002</i>                     | No. 60 of 2002  | 19.12.2002                    |
| <i>Australian Crime Commission (Tasmania) Act 2004</i>   | No. 26 of 2004  | 1.11.2004                     |
| <i>Taxation and Related Legislation (Miscellaneous Amendments) Act 2004</i>                    | No. 36 of 2004  | 1.12.2004                     |
| <i>Taxation and Related Legislation (Miscellaneous Amendments) Act 2006</i>                    | No. 3 of 2006   | 26.6.2006                     |
| <i>Taxation Legislation (Miscellaneous Amendments) Act 2006</i>                                | No. 40 of 2006  | 18.12.2006 (Part 6)           |
| <i>Taxation and Related Legislation</i>  | No. 8 of 2008   | 1.1.2007 (Part 7)<br>2.5.2008 |

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| Act  | Number and year | Date of commencement |
|--|-----------------|----------------------|
| <i>(Miscellaneous Amendments) Act 2008</i>   |                 |                      |
| <i>Payroll Tax Act 2008</i>  | No. 16 of 2008  | 1.7.2008             |
| <i>Taxation and Related Legislation (Miscellaneous Amendments) Act (No. 2) 2011</i>    | No. 47 of 2011  | 25.10.2008 (Part 7)  |
| <i>Taxation and Related Legislation (Miscellaneous Amendments) Act (No. 2) 2008</i>    | No. 46 of 2008  | 18.11.2008           |
| <i>Audit (Consequential Amendments) Act 2008</i>                                       | No. 50 of 2008  | 1.3.2009             |
| <i>Right to Information (Consequential and Transitional) Act 2009</i>                  | No. 54 of 2009  | 1.7.2010             |
| <i>Taxation and Related Legislation (Miscellaneous Amendments) Act 2010</i>            | No. 6 of 2010   | 9.7.2010             |
| <i>Taxation and Related Legislation (Miscellaneous Amendments) Act (No. 2) 2011</i>    | No. 47 of 2011  | 7.12.2011 (Part 6)   |
| <i>Taxation Legislation (Miscellaneous Amendments) Act 2012</i>                        | No. 40 of 2012  | 22.11.2012           |
| <i>Taxation and Related Legislation (Miscellaneous Amendments) Act 2013</i>            | No. 41 of 2013  | 21.10.2013           |
| <i>Taxation Legislation (Miscellaneous Amendments) Act 2014</i>                        | No. 21 of 2014  | 9.12.2014            |
| <i>Taxation and Related Legislation (Miscellaneous Amendments) Act 2016</i>            | No. 43 of 2016  | 31.10.2016           |
| <i>Taxation and Related Legislation (Miscellaneous Amendments) Act 2017</i>            | No. 10 of 2017  | 1.7.2017             |
| <i>Financial Management (Consequential and Transitional Provisions) Act 2017</i>       | No. 4 of 2017   | 1.7.2019             |
| <i>Treasury Miscellaneous (Cost of Living and Affordable Housing Support) Act 2021</i> | No. 8 of 2021   | 1.7.2021             |

**TABLE OF AMENDMENTS**

| Provision affected | How affected   |
|--------------------|--|
| Section 3          | Amended by No. 82 of 2000, Sched. 1, No. 60 of 2002, s. 33 and No. 10 of 2017, s. 24 |
| Section 4          | Amended by No. 77 of 2000, s. 4, No. 17 of 2001, s. 4, No.                           |

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| Provision affected | How affected   |
|--------------------|--|
|                    | 36 of 2004, s. 42, No. 3 of 2006, s. 23 and No. 16 of 2008, Sched. 4   |
| Section 5          | Amended by No. 73 of 2001, Sched. 1  |
| Section 7          | Amended by No. 86 of 2000, Sched. 1  |
| Section 11         | Amended by No. 86 of 2000, Sched. 1  |
| Section 12         | Amended by No. 86 of 2000, Sched. 1  |
| Section 19         | Amended by No. 73 of 2001, Sched. 1, No. 36 of 2004, s. 43 and No. 43 of 2016, s. 23                                     |
| Section 19A        | Inserted by No. 47 of 2011, s. 29  |
| Section 20A        | Inserted by No. 21 of 2014, s. 25<br>Amended by No. 10 of 2017, s. 25  |
| Section 27         | Amended by No. 6 of 2002, Sched. 2   |
| Section 28         | Amended by No. 47 of 2011, s. 24 and No. 43 of 2016, s. 24   |
| Section 29         | Substituted by No. 47 of 2011, s. 25<br>Amended by No. 43 of 2016, s. 25   |
| Section 29AA       | Inserted by No. 47 of 2011, s. 30  |
| Section 29A        | Inserted by No. 46 of 2008, s. 37<br>Amended by No. 6 of 2010, s. 18 and No. 43 of 2016, s. 26                           |
| Section 34A        | Inserted by No. 3 of 2006, s. 24   |
| Section 35         | Substituted by No. 6 of 2002, Sched. 2<br>Amended by No. 8 of 2021, s. 19  |
| Section 38         | Substituted by No. 41 of 2013, s. 42   |
| Section 41         | Amended by No. 8 of 2008, s. 40  |
| Section 45         | Substituted by No. 41 of 2013, s. 43   |
| Section 50         | Amended by No. 40 of 2006, s. 36   |
| Section 51         | Amended by No. 6 of 2002, Sched. 2 and No. 8 of 2008, s. 41  |
| Section 52         | Amended by No. 40 of 2006, s. 37   |
| Section 53         | Amended by No. 17 of 2001, s. 5  |
| Section 54A        | Inserted by No. 77 of 2000, s. 5   |
| Section 55         | Substituted by No. 36 of 2004, s. 44 and No. 8 of 2008, s. 42  |
| Section 56         | Amended by No. 6 of 2002, Sched. 2   |
| Section 59         | Amended by No. 6 of 2002, Sched. 2   |
| Section 59A        | Inserted by No. 43 of 2016, s. 27  |
| Section 67         | Amended by No. 6 of 2002, Sched. 2   |
| Section 76A        | Inserted by No. 54 of 2009, Sched. 1   |
| Section 77         | Amended by No. 36 of 2004, s. 45, No. 50 of 2008, Sched. 1, No. 54 of 2009, Sched. 1 and No. 10 of 2017, s. 26           |
| Section 78         | Amended by No. 60 of 2002, s. 34   |
| Section 79A        | Inserted by No. 60 of 2002, s. 35  |
| Section 79B        | Inserted by No. 60 of 2002, s. 35  |
| Section 79C        | Inserted by No. 60 of 2002, s. 35  |
| Section 79D        | Inserted by No. 60 of 2002, s. 35  |
| Section 79E        | Inserted by No. 60 of 2002, s. 35<br>Amended by No. 26 of 2004, Sched. 2, No. 36 of 2004, s. 46 and No. 8 of 2008, s. 43 |

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| Provision affected         | How affected   |
|----------------------------|--|
| Section 79F                | Inserted by No. 60 of 2002, s. 35<br>Amended by No. 54 of 2009, Sched. 1   |
| Section 79G                | Inserted by No. 60 of 2002, s. 35  |
| Section 79H                | Inserted by No. 60 of 2002, s. 35  |
| Section 80                 | Amended by No. 73 of 2001, Sched. 1, No. 6 of 2002,<br>Sched. 2 and No. 47 of 2011, s. 26  |
| Section 84                 | Amended by No. 73 of 2001, Sched. 1  |
| Section 85                 | Amended by No. 40 of 2012, s. 18   |
| Section 87                 | Amended by No. 73 of 2001, Sched. 1  |
| Section 89                 | Amended by No. 73 of 2001, Sched. 1  |
| Section 90                 | Amended by No. 73 of 2001, Sched. 1  |
| Section 91                 | Amended by No. 73 of 2001, Sched. 1  |
| Section 93                 | Amended by No. 73 of 2001, Sched. 1  |
| Section 94                 | Amended by No. 73 of 2001, Sched. 1<br>Substituted by No. 6 of 2002, Sched. 2<br>Amended by No. 60 of 2002, s. 36 and No. 43 of 2016, s.<br>28 |
| Section 95                 | Amended by No. 60 of 2002, s. 37<br>Substituted by No. 8 of 2008, s. 44<br>Amended by No. 43 of 2016, s. 29                                    |
| Section 95A of<br>Part 10  | Inserted by No. 36 of 2004, s. 47  |
| Section 96                 | Amended by No. 60 of 2002, s. 38   |
| Section 99                 | Amended by No. 4 of 2017, Sched. 1   |
| Section 113A of<br>Part 11 | Inserted by No. 40 of 2006, s. 34  |
| Section 113B of<br>Part 11 | Inserted by No. 40 of 2006, s. 34  |
| Section 113B               | Amended by No. 6 of 2010, s. 19  |
| Section 113C of<br>Part 11 | Inserted by No. 40 of 2006, s. 34  |
| Section 113D of<br>Part 11 | Inserted by No. 40 of 2006, s. 34  |
| Section 113E of<br>Part 11 | Inserted by No. 40 of 2006, s. 34  |
| Section 113F of<br>Part 11 | Inserted by No. 40 of 2006, s. 34  |
| Section 114                | Amended by No. 42 of 2001, Sched. 1  |
| Section 118A               | Inserted by No. 3 of 2006, s. 25<br>Amended by No. 40 of 2006, s. 38 and No. 40 of 2012, s.<br>19  |
| Section 120A               | Inserted by No. 47 of 2011, s. 27  |
| Schedule 1                 | Amended by No. 6 of 2002, Sched. 2 and No. 43 of 2016,<br>s. 30  |

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