



Taxation Administration Act 1953

No. 1, 1953 as amended

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This compilation has been split into 3 volumes

Volume 1: sections 1–18

Volume 2: Schedule

Volume 3: Endnotes

Each volume has its own contents

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About this compilation

This compilation

This is a compilation of the *Taxation Administration Act 1953* as in force on 30 May 2014. It includes any commenced amendment affecting the legislation to that date.

This compilation was prepared on 11 June 2014.

The notes at the end of this compilation (the *endnotes*) include information about amending laws and the amendment history of each amended provision.

Uncommenced amendments

The effect of uncommenced amendments is not reflected in the text of the compiled law but the text of the amendments is included in the endnotes.

Application, saving and transitional provisions for provisions and amendments

If the operation of a provision or amendment is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

Modifications

If a provision of the compiled law is affected by a modification that is in force, details are included in the endnotes.

Provisions ceasing to have effect

If a provision of the compiled law has expired or otherwise ceased to have effect in accordance with a provision of the law, details are included in the endnotes.

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**An Act to provide for the administration of certain
Acts relating to Taxation, and for purposes
connected therewith**

Part I—Preliminary

1 Short title

This Act may be cited as the *Taxation Administration Act 1953*.

2 Interpretation

- (1) In this Act (except Schedule 1), unless the contrary intention appears:

approved form has the meaning given by Schedule 1.

ASIO means the Australian Security Intelligence Organisation.

Commissioner means the Commissioner of Taxation.

Deputy Commissioner means any Deputy Commissioner of Taxation.

Director-General of Security means the Director-General of Security holding office under the *Australian Security Intelligence Organisation Act 1979*.

engage in conduct means:

- (a) do an act; or
- (b) omit to perform an act.

excess concessional contributions determination has the same meaning as in subsection 995-1(1) of the *Income Tax Assessment Act 1997*.

excise law has the meaning given by the *Income Tax Assessment Act 1997*.

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exempt Australian government agency has the meaning given by subsection 995-1(1) of the *Income Tax Assessment Act 1997*.

failure to notify penalty means the penalty worked out under Division 2 of Part IIA.

fuel tax law has the meaning given by the *Fuel Tax Act 2006*.

general interest charge means the charge worked out under Part IIA.

Immigration Department has the meaning given by the *Income Tax Assessment Act 1997*.

Immigration Minister has the meaning given by the *Income Tax Assessment Act 1997*.

Immigration Secretary has the meaning given by the *Income Tax Assessment Act 1997*.

indirect tax law has the meaning given by the *Income Tax Assessment Act 1997*.

ineligible income tax remission decision has the meaning given by section 14ZS.

late reconciliation statement penalty means the penalty worked out under Division 3 of Part IIA.

migration officer means:

- (a) the Immigration Secretary; or
- (b) an employee of the Immigration Department.

objection decision has the meaning given by subsection 14ZY(2).

officer means a person appointed or engaged under the *Public Service Act 1999*.

private indirect tax ruling means a private ruling, to the extent that it relates to an indirect tax law (other than the fuel tax law).

private ruling has the meaning given by section 359-5 in Schedule 1.

Section 2A

registered tax agent or BAS agent has the same meaning as in the *Tax Agent Services Act 2009*.

Second Commissioner means a Second Commissioner of Taxation.

Small Taxation Claims Tribunal means the Taxation Appeals Division of the Administrative Appeals Tribunal when that Division is required under Part IIIAA of the *Administrative Appeals Tribunal 1975* to be known as the Small Taxation Claims Tribunal.

taxation law has the meaning given by the *Income Tax Assessment Act 1997*.

Note: See also subsection (2).

tax liability means a liability to the Commonwealth arising under, or by virtue of, a taxation law.

Tribunal means the Administrative Appeals Tribunal or, in appropriate circumstances, the Small Taxation Claims Tribunal.

- (2) Despite the definition of **taxation law** in subsection (1), an Excise Act (as defined in subsection 4(1) of the *Excise Act 1901*) is not a taxation law for the purposes of Part III of this Act.

2A Application of the *Criminal Code*

Chapter 2 of the *Criminal Code* applies to all offences against this Act.

Note: Chapter 2 of the Criminal Code sets out the general principles of criminal responsibility.

3 Extension of Act to external Territories

This Act extends to every external Territory.

3AA Schedule 1

- (1) Schedule 1 has effect.

Section 3AA

Definitions in Schedule 1 do not apply to rest of Act

- (1A) So far as a provision in Schedule 1 gives an expression a particular meaning, the provision does *not* also have effect for the purposes of this Act (other than Schedule 1), except as provided in this Act (other than Schedule 1).

Application of interpretation provisions of Income Tax Assessment Act 1997

- (2) An expression has the same meaning in Schedule 1 as in the *Income Tax Assessment Act 1997*.
- (3) Division 950 of the *Income Tax Assessment Act 1997* (which contains rules for interpreting that Act) applies to Schedule 1 to this Act as if the provisions in that Schedule were provisions of that Act.

Part IA—Administration

3A General administration of Act

The Commissioner has the general administration of this Act.

Note: An effect of this provision is that people who acquire information under this Act are subject to the confidentiality obligations and exceptions in Division 355 in Schedule 1.

3B Annual report

- (1) The Commissioner shall, as soon as practicable after 30 June in each year, prepare and furnish to the Minister a report on the working of this Act.
- (1AA) A report under subsection (1) in relation to a year ending on 30 June shall:
 - (a) include information concerning any breaches, of which the Commissioner has notice, of undertakings given for the purposes of subsection 14C(2); and
 - (b) set out:
 - (i) the number of occasions (if any) during the year on which a request was made to disclose information under subsection 355-55(1) in Schedule 1 (about disclosures to Ministers); and
 - (ii) the number of occasions (if any) during the year on which information was disclosed under that subsection; and
 - (iii) the Ministers to whom the information was disclosed; and
 - (c) set out:
 - (i) the number of occasions (if any) during the year on which a request was made to disclose information under subsection 355-70(1) in Schedule 1 (about disclosures for law enforcement and related purposes); and

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- (ii) the number of occasions (if any) during the year on which information was disclosed under that subsection; and
 - (iii) the types of entities and the names of the courts and tribunals to which the information was disclosed; and
 - (iv) if the information was disclosed under table item 1 or 6 in subsection 355-70(1)—the general categories of offences in relation to which the information was disclosed; and
 - (d) set out the number (if any) of *taxation officers found guilty of the offence in section 355-25 in Schedule 1 (about disclosure of protected information).
- (1B) Subsection (1) does not apply in relation to Part III and sections 15 and 15A insofar as that Part and those sections apply in relation to the *Development Allowance Authority Act 1992*.
- (1C) Subsection (1) does not apply in relation to sections 3D and 3E, Part III and sections 15 and 15A insofar as that Part and those sections apply in relation to the *Tax Agent Services Act 2009*.
- (2) The Minister shall cause a copy of a report furnished under subsection (1) to be laid before each House of the Parliament within 15 sitting days of that House after the day on which the Minister receives the report.
- (3) For the purposes of section 34C of the *Acts Interpretation Act 1901*, a report that is required by subsection (1) to be furnished as soon as practicable after 30 June in a year shall be taken to be a periodic report relating to the working of this Act during the year ending on that 30 June.
- (4) In this section:
- this Act* does not include Part IVC.

3C Reporting of information about corporate tax entity with reported total income of \$100 million or more

- (1) This section applies to an entity if:
-

Section 3C

- (a) the entity is a corporate tax entity (within the meaning of the *Income Tax Assessment Act 1997*); and
 - (b) the entity has total income equal to or exceeding \$100 million for an income year, according to information reported to the Commissioner in the entity's income tax return (within the meaning of that Act) for the income year.
- (2) The Commissioner must, as soon as practicable after the end of the income year, make publicly available the information mentioned in subsection (3).
- (3) The information is as follows:
 - (a) the entity's ABN (within the meaning of the *Income Tax Assessment Act 1997*) and name;
 - (b) the entity's total income for the income year, according to information reported to the Commissioner in the entity's income tax return (within the meaning of that Act) for the income year;
 - (c) the entity's taxable income or net income (if any) for the income year, according to information reported to the Commissioner in that income tax return;
 - (d) the entity's income tax payable (if any) for the financial year corresponding to the income year, according to information reported to the Commissioner in that income tax return.
- (4) Subsection (5) applies if:
 - (a) the entity gives the Commissioner a notice in writing that the return mentioned in paragraph (3)(b) contains an error; and
 - (b) the notice contains information that corrects the error.
- (5) The Commissioner may at any time make the information mentioned in paragraph (4)(b) publicly available, in accordance with subsection (2), in order to correct the error.
- (6) To avoid doubt, if the Commissioner considers that information made publicly available under subsection (2) fails to reflect all of the information required to be made publicly available under that subsection, the Commissioner may at any time make publicly available other information in order to remedy the failure.

Section 3D

3D Reporting of information about entity with MRRT payable

- (1) This section applies to an entity if the entity has an amount of MRRT payable for an MRRT year, according to information reported to the Commissioner in the entity's MRRT return for the MRRT year.
- (2) The Commissioner must, as soon as practicable after the end of the MRRT year, make publicly available the information mentioned in subsection (3).
- (3) The information is as follows:
 - (a) the entity's ABN (within the meaning of the *Income Tax Assessment Act 1997*) and name;
 - (b) the entity's MRRT payable for the MRRT year, according to information reported to the Commissioner in the entity's MRRT return for the MRRT year.
- (4) Subsection (5) applies if:
 - (a) the entity gives the Commissioner a notice in writing that the return mentioned in paragraph (3)(b) contains an error; and
 - (b) the notice contains information that corrects the error.
- (5) The Commissioner may at any time make the information mentioned in paragraph (4)(b) publicly available, in accordance with subsection (2), in order to correct the error.
- (6) To avoid doubt, if the Commissioner considers that information made publicly available under subsection (2) fails to reflect all of the information required to be made publicly available under that subsection, the Commissioner may at any time make publicly available other information in order to remedy the failure.
- (7) In this section:

MRRT return has the meaning given by the *Income Tax Assessment Act 1997*.

MRRT year has the meaning given by section 300-1 of the *Minerals Resource Rent Tax Act 2012*.

3E Reporting of information about entity with PRRT payable

- (1) This section applies to an entity if the entity has an amount of PRRT payable for a year of tax, according to information reported to the Commissioner in the entity's PRRT return for the year of tax.
- (2) The Commissioner must, as soon as practicable after the end of the year of tax, make publicly available the information mentioned in subsection (3).
- (3) The information is as follows:
 - (a) the entity's ABN (within the meaning of the *Income Tax Assessment Act 1997*) and name;
 - (b) the PRRT payable by the entity in respect of the year of tax, according to information reported to the Commissioner in the entity's PRRT return for the year of tax.
- (4) Subsection (5) applies if:
 - (a) the entity gives the Commissioner a notice in writing that the return mentioned in paragraph (3)(b) contains an error; and
 - (b) the notice contains information that corrects the error.
- (5) The Commissioner may at any time make the information mentioned in paragraph (4)(b) publicly available, in accordance with subsection (2), in order to correct the error.
- (6) To avoid doubt, if the Commissioner considers that information made publicly available under subsection (2) fails to reflect all of the information required to be made publicly available under that subsection, the Commissioner may at any time make publicly available other information in order to remedy the failure.
- (7) In this section:

PRRT return means a return under section 59 or 60 of the *Petroleum Resource Rent Tax Assessment Act 1987*.

year of tax has the meaning given by the *Petroleum Resource Rent Tax Assessment Act 1987*.

Section 4

**Part II—Commissioner of Taxation, Second
Commissioner of Taxation and Deputy
Commissioner of Taxation**

4 Commissioner and Second Commissioners of Taxation

There shall be a Commissioner of Taxation and 3 Second Commissioners of Taxation, who shall be appointed by the Governor-General.

4A Statutory Agency etc. for purposes of Public Service Act

- (1) The staff necessary to assist the Commissioner are to be persons engaged under the *Public Service Act 1999*.
- (2) For the purposes of the *Public Service Act 1999*:
 - (a) the Commissioner and the APS employees assisting the Commissioner together constitute a Statutory Agency; and
 - (b) the Commissioner is the Head of that Statutory Agency.

5 Tenure of Commissioner and Second Commissioners

- (1) The Commissioner of Taxation and each Second Commissioner of Taxation shall be appointed for terms of 7 years respectively and shall be eligible for re-appointment.
- (3) The Commissioner of Taxation and the Second Commissioners of Taxation are not subject to the *Public Service Act 1999*.

5A Remuneration and allowances of Commissioner and Second Commissioners

- (1) The Commissioner of Taxation and the Second Commissioners of Taxation shall be paid such remuneration as is determined by the Remuneration Tribunal but, if no determination of that remuneration by the Tribunal is in operation, they shall be paid

Section 6

remuneration at the respective rates that were applicable immediately before the commencement of this section.

- (2) The Commissioner of Taxation and the Second Commissioners of Taxation shall be paid such allowances as are prescribed.
- (3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

6 Leave of absence

- (1) The Commissioner and a Second Commissioner have such recreation leave entitlements as are determined by the Remuneration Tribunal.
- (2) The Minister may grant the Commissioner and a Second Commissioner leave of absence, other than recreation leave, on such terms and conditions as to remuneration or otherwise as the Minister determines.

6A Resignation

The Commissioner or a Second Commissioner may resign his or her office by writing signed by the Commissioner or Second Commissioner, as the case may be, and delivered to the Governor-General.

6B Acting appointments

- (1) The Minister may appoint a person to act in the office of Commissioner of Taxation:
 - (a) during a vacancy in that office; or
 - (b) during any period, or during all periods, when the person holding that office is absent from duty or from Australia or is, for any other reason, unable to perform the functions of that office.

Note: For rules that apply to acting appointments, see section 33A of the *Acts Interpretation Act 1901*.

Section 6C

- (2) The Minister may appoint a person to act in an office of Second Commissioner of Taxation:
- (a) during a vacancy in that office; or
 - (b) during any period, or during all periods, when the person holding the office of Second Commissioner of Taxation is absent from duty or from Australia, is acting in the office of Commissioner of Taxation or is, for any other reason, unable to perform the functions of the office of Second Commissioner of Taxation.

Note: For rules that apply to acting appointments, see section 33A of the *Acts Interpretation Act 1901*.

- (6) While a person is acting in the office of Commissioner of Taxation, the person has and may exercise all the powers, and shall perform all the functions, of the Commissioner under this Act or any other law.
- (6A) For the purposes of subsection (6), the Commissioner's powers and functions include powers and functions given to the Commissioner in his or her capacity as Registrar of the Australian Business Register.
- (7) While a person is acting in an office of Second Commissioner of Taxation, the person has and may exercise all the powers, and shall perform all the functions, of the Second Commissioner under this Act or any other law.

6C Suspension and removal from office of Commissioner or Second Commissioner

- (1) The Governor-General may remove the Commissioner or a Second Commissioner from office on an address praying for the removal of the Commissioner or the Second Commissioner, as the case may be, on the ground of proved misbehaviour or physical or mental incapacity being presented to the Governor-General by each House of the Parliament in the same session of the Parliament.
- (2) The Governor-General may suspend the Commissioner or a Second Commissioner from office on the ground of misbehaviour or physical or mental incapacity.
-

Section 6C

- (3) Where the Governor-General suspends the Commissioner or a Second Commissioner, the Minister shall cause a statement of the grounds of the suspension to be laid before each House of the Parliament within 7 sitting days of that House after the suspension.
 - (4) If, at the expiration of 15 sitting days of a House of the Parliament after the day on which the statement was laid before that House, an address under subsection (1) has not been presented to the Governor-General by each House of the Parliament, the suspension terminates.
 - (5) The suspension of the Commissioner or a Second Commissioner from office under this section does not affect any entitlement of the Commissioner or Second Commissioner, as the case may be, to be paid remuneration and allowances.
 - (6) If:
 - (a) the Commissioner or a Second Commissioner becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit;
 - (b) the Commissioner or a Second Commissioner engages, except with the approval of the Minister, in paid employment outside the duties of the office of Commissioner or Second Commissioner, as the case may be; or
 - (c) the Commissioner or a Second Commissioner is absent from duty, except on leave of absence, for 14 consecutive days or 28 days in any 12 months;the Governor-General shall remove the Commissioner or Second Commissioner, as the case may be, from office.
 - (7) The Governor-General may, with the consent of the Commissioner or a Second Commissioner, retire the Commissioner or Second Commissioner, as the case may be, from office on the ground of physical or mental incapacity.
 - (8) The Commissioner or a Second Commissioner shall not be suspended, removed or retired from office except as provided by this section.
-

Section 6D

6D Powers of Second Commissioner

- (1) Subject to subsection (2) and to the regulations, a Second Commissioner has all the powers, and may perform all the functions, of the Commissioner under a taxation law.
- (2) Subsection (1) does not apply in relation to:
 - (a) section 8 of this Act; or
 - (b) a provision of a taxation law that:
 - (i) provides that the Commissioner has the general administration of the taxation law; or
 - (ii) requires the Commissioner to furnish to the Minister a report on the working of the taxation law during any period.
- (3) When a power or function of the Commissioner under a taxation law is exercised or performed by a Second Commissioner, the power or function shall, for the purposes of the taxation law, be deemed to have been exercised or performed by the Commissioner.
- (4) The exercise of a power, or the performance of a function, of the Commissioner under a taxation law by a Second Commissioner does not prevent the exercise of the power, or the performance of the function, by the Commissioner.

7 Deputy Commissioners of Taxation

There shall be such Deputy Commissioners of Taxation as are required.

8 Delegation

- (1) The Commissioner may, either generally or as otherwise provided by the instrument of delegation, by writing signed by the Commissioner, delegate to a Deputy Commissioner or any other person all or any of the Commissioner's powers or functions under a taxation law or any other law of the Commonwealth or a Territory, other than this power of delegation.

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- (1A) For the purposes of this section, the Commissioner's powers and functions include powers and functions given to the Commissioner in his or her capacity as Registrar of the Australian Business Register.
- (2) Subject to subsection (5), a power or function so delegated, when exercised or performed by the delegate, shall, for the purposes of the taxation law or the other law, as the case may be, be deemed to have been exercised or performed by the Commissioner.
- (4) A delegation under this section does not prevent the exercise of a power or the performance of a function by the Commissioner.
- (5) A delegation under this section may be made subject to a power of review and alteration by the Commissioner, within a period specified in the instrument of delegation, of acts done in pursuance of the delegation.
- (6) A delegation under this section continues in force notwithstanding a change in the occupancy of, or a vacancy in, the office of Commissioner, but, for the purposes of the application of subsection 33(3) of the *Acts Interpretation Act 1901* to a delegation under this section, nothing in any law shall be taken to preclude the revocation or variation of the delegation by the same or a subsequent holder of that office.

Part IIA—The general interest charge

8AAA Overview

This Part explains how to work out the general interest charge on an amount.

Usually, a person is liable to pay the charge if an amount that the person must pay to the Commissioner is not paid on time. But there are also other circumstances in which a person can be liable.

A person is only liable to pay the charge if a provision of an Act makes the person liable.

8AAB When the general interest charge applies

- (1) There are certain provisions of this Act and other Acts that make persons liable to pay the general interest charge. Subsection (4) lists the provisions.
- (2) A person is only liable to pay the charge on an amount if a provision specifies that the person is liable to pay the charge on the amount.
- (3) The charge does not apply to the Commonwealth or an authority of the Commonwealth.
- (4) The following table is an index of the laws that deal with liability to the charge.

Liability to general interest charge			
Item	Column 1 Section	Column 2 Act	Column 3 Topic
1	162-100	<i>A New Tax System (Goods and Services Tax) Act 1999</i>	payment of GST instalments

Section 8AAB

Liability to general interest charge			
Item	Column 1 Section	Column 2 Act	Column 3 Topic
2	168-10	<i>A New Tax System (Goods and Services Tax) Act 1999</i>	supplies later found to be GST-free supplies
3	25-10	<i>A New Tax System (Wine Equalisation Tax) Act 1999</i>	purchases later found to be GST free supplies
3A	175-65	<i>Australian Charities and Not-for-profits Commission Act 2012</i>	payment of administrative penalty
4	52	<i>First Home Saver Accounts Act 2008</i>	repayment of FHSA contributions
5	93	<i>Fringe Benefits Tax Assessment Act 1986</i>	payment of fringe benefits tax or penalty tax
6	112B	<i>Fringe Benefits Tax Assessment Act 1986</i>	payment of fringe benefits tax instalments
7	102UP	<i>Income Tax Assessment Act 1936</i>	payment of trustee beneficiary non-disclosure tax
8	128C	<i>Income Tax Assessment Act 1936</i>	payment of withholding tax
9	163AA	<i>Income Tax Assessment Act 1936</i>	returns by instalment taxpayers
10	163B	<i>Income Tax Assessment Act 1936</i>	returns by persons other than instalment taxpayers
10A	172A	<i>Income Tax Assessment Act 1936</i>	repayments of excessive tax offset refunds
11	271-80 in Schedule 2 F	<i>Income Tax Assessment Act 1936</i>	payment of family trust distribution tax
12	5-15	<i>Income Tax Assessment Act 1997</i>	unpaid income tax or shortfall interest charge
13	197-75	<i>Income Tax Assessment Act 1997</i>	payment of untainting tax
14	214-155	<i>Income Tax Assessment Act 1997</i>	payment of franking tax by a corporate tax entity

Part IIA The general interest charge

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Liability to general interest charge			
Item	Column 1 Section	Column 2 Act	Column 3 Topic
15	292-390	<i>Income Tax Assessment Act 1997</i>	payment of excess non-concessional contributions tax or shortfall interest charge
15A	293-75	<i>Income Tax Assessment Act 1997</i>	payment of Division 293 tax or shortfall interest charge
16	345-115	<i>Income Tax Assessment Act 1997</i>	payment of FHSA misuse tax
17	721-30	<i>Income Tax Assessment Act 1997</i>	liability of members of consolidated groups
18	840-810	<i>Income Tax Assessment Act 1997</i>	payment of managed investment trust withholding tax
18A	840-910	<i>Income Tax Assessment Act 1997</i>	payment of Seasonal Labour Mobility Program withholding tax
19	214-105	<i>Income Tax (Transitional Provisions) Act 1997</i>	payment of franking deficit tax
19A	50-15	<i>Minerals Resource Rent Tax Act 2012</i>	payment of MRRT
20	85	<i>Petroleum Resource Rent Tax Assessment Act 1987</i>	payment of petroleum resource rent tax, shortfall interest charge or instalment transfer interest charge
20A	282-19	<i>Private Health Insurance Act 2007</i>	repayment of private health insurance premium reduction or refund
21	35	<i>Product Grants and Benefits Administration Act 2000</i>	payment of a designated scheme debt
22	21	<i>Superannuation Contributions Tax (Assessment and Collection) Act 1997</i>	increase in liability to pay superannuation contributions surcharge because of amendment of assessment

Section 8AAB

Liability to general interest charge			
Item	Column 1 Section	Column 2 Act	Column 3 Topic
23	22	<i>Superannuation Contributions Tax (Assessment and Collection) Act 1997</i>	liability to pay superannuation contributions surcharge because of new assessment
24	25	<i>Superannuation Contributions Tax (Assessment and Collection) Act 1997</i>	payment of superannuation contributions surcharge or advance instalment
25	18	<i>Superannuation Contributions Tax (Members of Constitutionally Protected Superannuation Funds) Assessment and Collection Act 1997</i>	increase in liability to pay superannuation contributions surcharge because of amendment of assessment
26	21	<i>Superannuation Contributions Tax (Members of Constitutionally Protected Superannuation Funds) Assessment and Collection Act 1997</i>	payment of superannuation contributions surcharge
27	25	<i>Superannuation (Government Co-contribution for Low Income Earners) Act 2003</i>	repayments or underpayments of Government co-contributions that cannot be credited to an account
28	49	<i>Superannuation Guarantee (Administration) Act 1992</i>	payment of superannuation guarantee charge
29	15DC	<i>Superannuation (Self Managed Superannuation Funds) Taxation Act 1987</i>	payment of superannuation (self managed superannuation funds) supervisory levy
30	17A	<i>Superannuation (Unclaimed Money and Lost Members) Act 1999</i>	payment of unclaimed money
31	18C	<i>Superannuation (Unclaimed Money and Lost Members) Act 1999</i>	repayment of Commissioner's payment that cannot be credited to an account

Section 8AAB

Liability to general interest charge			
Item	Column 1 Section	Column 2 Act	Column 3 Topic
32	20F	<i>Superannuation (Unclaimed Money and Lost Members) Act 1999</i>	payment of unclaimed superannuation of former temporary residents
33	20M	<i>Superannuation (Unclaimed Money and Lost Members) Act 1999</i>	repayment of Commissioner's payment for former temporary resident that cannot be credited to an account
34	24F	<i>Superannuation (Unclaimed Money and Lost Members) Act 1999</i>	payment in respect of lost member accounts
35	24L	<i>Superannuation (Unclaimed Money and Lost Members) Act 1999</i>	repayment of Commissioner's payment for former lost member that cannot be credited to an account
36	8AAZF	<i>Taxation Administration Act 1953</i>	RBA deficit debts
37	8AAZN	<i>Taxation Administration Act 1953</i>	overpayments made by the Commissioner
38	16-80 in Schedule 1	<i>Taxation Administration Act 1953</i>	payment of PAYG withholding amounts
38A	18-150 in Schedule 1	<i>Taxation Administration Act 1953</i>	PAYG withholding non-compliance tax
39	45-80 in Schedule 1	<i>Taxation Administration Act 1953</i>	payment of PAYG instalments
40	45-230 in Schedule 1	<i>Taxation Administration Act 1953</i>	shortfall in quarterly PAYG instalments worked out on the basis of a varied rate
41	45-232 in Schedule 1	<i>Taxation Administration Act 1953</i>	shortfall in quarterly PAYG instalments worked out on the basis of estimated benchmark tax
42	45-235 in Schedule 1	<i>Taxation Administration Act 1953</i>	shortfall in annual PAYG instalments

Section 8AAB

Liability to general interest charge			
Item	Column 1 Section	Column 2 Act	Column 3 Topic
43	45-600 and 45-620 in Schedule 1	<i>Taxation Administration Act 1953</i>	tax benefits relating to PAYG instalments
44	45-870 and 45-875 in Schedule 1	<i>Taxation Administration Act 1953</i>	head company's liability on shortfall in quarterly PAYG instalments
44Q	95-25 in Schedule 1	<i>Taxation Administration Act 1953</i>	payment of excess concessional contributions charge or shortfall interest charge
45	105-80 in Schedule 1	<i>Taxation Administration Act 1953</i>	payment of a net fuel amount or an amount of indirect tax
45A	115-30 in Schedule 1	<i>Taxation Administration Act 1953</i>	payment of MRRT instalments
45B	115-65 in Schedule 1	<i>Taxation Administration Act 1953</i>	shortfall in MRRT instalments worked out on the basis of a varied rate
45C	133-115 in Schedule 1	<i>Taxation Administration Act 1953</i>	payment of debt account discharge liability
46	263-30 in Schedule 1	<i>Taxation Administration Act 1953</i>	payment of a foreign revenue claim
47	268-75 in Schedule 1	<i>Taxation Administration Act 1953</i>	late payment of estimate
48	298-25 in Schedule 1	<i>Taxation Administration Act 1953</i>	payment of administrative penalty
50	13	<i>Termination Payments Tax (Assessment and Collection) Act 1997</i>	increase in liability to pay termination payments surcharge because of amendment of assessment
51	16	<i>Termination Payments Tax (Assessment and Collection) Act 1997</i>	payment of termination payments surcharge

Section 8AAC

8AAC Amount of the general interest charge

- (1) The general interest charge for a day is worked out in accordance with this section.
- (2) If the charge is payable under section 8AAZF on the RBA deficit at the end of that day, then the charge is worked out by multiplying the general interest charge rate for that day by the RBA deficit at the end of that day.
- (3) If the charge is not payable under section 8AAZF, but applies to an amount that remains unpaid (the **original unpaid amount**), then the charge is worked out by multiplying the general interest charge rate for that day by the sum of so much of the following amounts as remains unpaid:
 - (a) the charge from previous days;
 - (b) the original unpaid amount.
- (4) If the charge applies to an amount that is specified in the provision that imposes the charge, but neither subsection (2) nor (3) applies, then the charge is worked out by multiplying the general interest charge rate for that day by the sum of the following amounts:
 - (a) so much of the charge from previous days as remains unpaid;
 - (b) the specified amount.

8AAD What is the general interest charge rate?

- (1) The **general interest charge rate** for a day is the rate worked out by adding 7 percentage points to the base interest rate for that day, and dividing that total by the number of days in the calendar year.
- (2) The **base interest rate** for a day depends on which quarter of the year the day is in. For each day in a quarter in the second column of the table, it is the monthly average yield of 90-day Bank Accepted Bills published by the Reserve Bank of Australia for the month in the third column of the table.

Base interest rate		
Item	For days in this quarter...	the monthly average yield of 90-day Bank Accepted Bills for this month applies...

Section 8AAE**Base interest rate**

Item	For days in this quarter...	the monthly average yield of 90-day Bank Accepted Bills for this month applies...
1	1 January to 31 March	the preceding November
2	1 April to 30 June	the preceding February
3	1 July to 30 September	the preceding May
4	1 October to 31 December	the preceding August

- (3) If the monthly average yield of 90-day Bank Accepted Bills for a particular month in the third column of the table in subsection (2) is not published by the Reserve Bank of Australia before the beginning of the relevant quarter, assume that it is the same as the last monthly average yield of 90-day Bank Accepted Bills published by the Reserve Bank of Australia before that month.
- (4) The base interest rate must be rounded to the second decimal place (rounding .005 upwards).

8AAE When the charge is due and payable

The general interest charge for a day is due and payable to the Commissioner at the end of that day.

Note: For provisions about collection and recovery of the charge, see Part 4-15 in Schedule 1.

8AAF Notification by Commissioner

- (1) The Commissioner may give notice to a person liable to pay the charge of the amount of the charge for a particular day or days.
- (3) The notice may be included in any other notice issued by the Commissioner in respect of the person.
- (4) A notice given to a person by the Commissioner under this section is prima facie evidence of the matters stated in the notice.

Section 8AAG

8AAG Remission of the charge

- (1) The Commissioner may remit all or a part of the charge payable by a person.
- (2) However, if a person is liable to pay the charge because an amount remains unpaid after the time by which it is due to be paid, the Commissioner may only remit all or a part of the charge in the circumstances set out in subsection (3), (4) or (5).
- (3) The Commissioner may remit all or a part of the charge referred to in subsection (2) if the Commissioner is satisfied that:
 - (a) the circumstances that contributed to the delay in payment were not due to, or caused directly or indirectly by, an act or omission of the person; and
 - (b) the person has taken reasonable action to mitigate, or mitigate the effects of, those circumstances.
- (4) The Commissioner may remit all or a part of the charge referred to in subsection (2) if the Commissioner is satisfied that:
 - (a) the circumstances that contributed to the delay in payment were due to, or caused directly or indirectly by, an act or omission of the person; and
 - (b) the person has taken reasonable action to mitigate, or mitigate the effects of, those circumstances; and
 - (c) having regard to the nature of those circumstances, it would be fair and reasonable to remit all or a part of the charge.
- (5) The Commissioner may remit all or a part of the charge referred to in subsection (2) if the Commissioner is satisfied that:
 - (a) there are special circumstances because of which it would be fair and reasonable to remit all or a part of the charge; or
 - (b) it is otherwise appropriate to do so.

8AAGA Rounding of the charge

If the amount of the charge payable for any period is not a multiple of 5 cents, the Commissioner may round it down to the nearest multiple of 5 cents.

8AAH Judgment for payment of an unpaid amount

- (1) This section applies if judgment is given by, or entered in, a court for the payment of:
- (a) all or a part of an amount in respect of which a person is, or was, liable to pay the charge because the amount remains unpaid after the time by which it is due to be paid; or
 - (b) an amount that includes all or a part of the unpaid amount.
- (2) The consequences of judgment being given or entered are:
- (a) the unpaid amount is not taken, for the purposes of a provision that makes, or would make, the person liable to pay the charge on the unpaid amount, to have ceased to be due and payable by reason only of the giving or entering of the judgment; and
 - (b) if the judgment debt carries interest, the amount of the charge that the person would, if not for this paragraph, be liable to pay on the unpaid amount is reduced by:
 - (i) in a case to which paragraph (1)(a) applies—the amount of the interest; or
 - (ii) in a case to which paragraph (1)(b) applies—the amount worked out using the formula:

$$\frac{\text{Unpaid amount or part of unpaid amount}}{\text{Judgment debt}} \times \text{Interest}$$

Part IIB—Running balance accounts, application of payments and credits, and related matters

Division 1—Preliminary

8AAZA Definitions

In this Part, unless the contrary intention appears:

company includes any body or association (whether or not it is incorporated), but does not include a partnership or a non-entity joint venture.

compulsory repayment amount has the same meaning as in the *Higher Education Support Act 2003*.

credit includes:

- (a) an amount that the Commissioner must pay to a taxpayer under a taxation law (other than the *Product Grants and Benefits Administration Act 2000* or Division 18 (refunds) of the *A New Tax System (Luxury Car Tax) Act 1999*), whether or not described as a credit; and
- (b) an amount received by the Commissioner in respect of a taxpayer as a result of the Commissioner having made a claim that is similar in nature to a foreign revenue claim (as defined in section 263-10 in Schedule 1).

entity means any of the following:

- (a) a company;
- (b) a partnership;
- (c) a person in a particular capacity of trustee;
- (d) a body politic;
- (e) a corporation sole;
- (f) any other person.

Section 8AAZA

excess non-RBA credit means a credit that arises under section 8AAZLA or 8AAZLB.

FS assessment debt means an FS assessment debt under:

- (a) subsection 19AB(2) of the *Social Security Act 1991*; or
- (b) the *Student Assistance Act 1973* as in force at a time on or after 1 July 1998.

non-entity joint venture has the meaning given by subsection 995-1(1) of the *Income Tax Assessment Act 1997*.

non-RBA tax debt means a tax debt other than an RBA deficit debt.

primary tax debt means any amount due to the Commonwealth directly under a taxation law (other than, except in Division 4, the *Product Grants and Benefits Administration Act 2000*), including any such amount that is not yet payable.

RBA means a running balance account established under section 8AAZC.

RBA deficit debt, in relation to an RBA of an entity, means a balance in favour of the Commissioner, based on:

- (a) primary tax debts that have been allocated to the RBA and that are currently payable; and
- (b) payments made in respect of current or anticipated primary tax debts of the entity, and credits to which the entity is entitled under a taxation law, that have been allocated to the RBA.

RBA group means a GST group under Division 48 of the *A New Tax System (Goods and Services Tax) Act 1999*.

RBA statement means a statement prepared by the Commissioner under section 8AAZG.

RBA surplus, in relation to an RBA of an entity, means a balance in favour of the entity, based on:

- (a) primary tax debts that have been allocated to the RBA; and

Section 8AAZB

- (b) payments made in respect of current or anticipated primary tax debts of the entity, and credits to which the entity is entitled under a taxation law, that have been allocated to the RBA.

secondary tax debt means an amount that is not a primary tax debt, but is due to the Commonwealth in connection with a primary tax debt.

Note: An example of a secondary tax debt is an amount due to the Commonwealth under an order of a court made in a proceeding for recovery of a primary tax debt.

tax debt means a primary tax debt or a secondary tax debt.

tax debtor means:

- (a) in relation to a tax debt—the person or persons who are liable for the tax debt; and
- (b) in relation to an RBA—the person or persons who are liable for the tax debts that are allocated to the RBA.

8AAZB Trustee to be treated as separate entity for each capacity

For the purposes of this Part, a person who is a trustee in more than one capacity is to be treated as a separate entity in relation to each of those capacities.

Division 2—Running Balance Accounts (or RBAs)

8AAZC Establishment of RBAs

- (1) The Commissioner may establish one or more systems of accounts for primary tax debts.

Note: This section does not prevent the Commissioner from establishing other accounts that are not RBAs.

- (2) Each account is to be known as a Running Balance Account (or RBA).

- (3) An RBA may be established for any entity.

Note: The same *person* might be part of different *entities*. For example, a person might have a trustee capacity and also be a partner in a partnership. The person would then be a tax debtor in relation to each of the separate RBAs established for the trustee capacity and the partnership.

- (4) RBAs for entities may be established on any basis that the Commissioner determines.

- (4A) Without limiting subsection (4), separate RBAs may be established for different types of primary tax debts.

- (5) Without limiting subsection (4), separate RBAs may be established for:

- (a) different businesses or undertakings conducted by the same entity; or
- (b) different parts of the same business or undertaking; or
- (c) different periods.

8AAZD Allocation of tax debts to RBAs

- (1) The Commissioner may allocate a primary tax debt to an RBA that has been established for that type of tax debt.

Note: General interest charge on an RBA deficit debt is not allocated to the RBA: it accrues automatically under section 8AAZF.

Section 8AAZF

Separate RBAs for one entity

- (1A) If 2 or more RBAs for an entity have been established for that kind of tax debt, the Commissioner may allocate the debt to any one of those RBAs, or between any 2 or more of those RBAs, in the manner the Commissioner determines.

Note: Separate RBAs may be established for different businesses or undertakings conducted by the same entity, for different parts of the same business or undertaking or for different periods: see subsection 8AAZC(5).

Definition

- (2) In this section:

primary tax debt does not include:

- (a) general interest charge; or
- (b) an RBA deficit debt.

8AAZF General interest charge on RBA deficit debt

- (1) If there is an RBA deficit debt at the end of a day, then general interest charge is payable by the tax debtor on that RBA deficit debt for that day.
- (2) The balance of the RBA is altered in the Commissioner's favour by the amount of the general interest charge payable.

8AAZG RBA statements

The Commissioner may at any time prepare a statement for an RBA, containing such particulars as the Commissioner determines.

8AAZH Liability for RBA deficit debt

- (1) If there is an RBA deficit debt on an RBA at the end of a day, the tax debtor is liable to pay to the Commonwealth the amount of the debt. The amount is due and payable at the end of that day.

Note: For provisions about collection and recovery of the amount, see Part 4-15 in Schedule 1.

- (2) If there are several tax debtors, their liability for the debt is of the same kind as their liability for the tax debts that were allocated to the RBA.

Example: If the tax debtors are jointly and severally liable for the tax debts that were allocated to the RBA, they will also be jointly and severally liable for the RBA deficit debt.

8AAZI RBA statement to be evidence

- (1) The production of an RBA statement:
- (a) is prima facie evidence that the RBA was duly kept; and
 - (b) is prima facie evidence that the amounts and particulars in the statement are correct.

- (2) In this section:

RBA statement includes a document that purports to be a copy of an RBA statement and is signed by the Commissioner or a delegate of the Commissioner or by a Second Commissioner or Deputy Commissioner.

8AAZJ Evidentiary certificate about RBA transactions etc.

- (1) In proceedings for recovery of an RBA deficit debt, a Commissioner's certificate stating any of the following matters in respect of a specified RBA is prima facie evidence of those matters:
- (a) that no tax debts (other than general interest charge on the RBA deficit debt) were allocated to the RBA after the balance date shown on a specified RBA statement for the RBA;
 - (b) that general interest charge is payable on the RBA deficit debt, as specified in the certificate;
 - (c) that payments and credits were allocated to the RBA, as specified in the certificate;
 - (d) that a specified amount was the RBA deficit debt on the date of the certificate.

Part IIB Running balance accounts, application of payments and credits, and related matters

Division 2 Running Balance Accounts (or RBAs)

Section 8AAZJ

(2) In this section:

Commissioner's certificate means a certificate signed by the Commissioner or a delegate of the Commissioner, or by a Second Commissioner or Deputy Commissioner.

Division 3—Treatment of payments, credits and RBA surpluses

8AAZL Amounts covered by this Division

- (1) This Division sets out how the Commissioner must treat the following kinds of amount:
 - (a) a payment the Commissioner receives in respect of a current or anticipated tax debt or tax debts of an entity;
 - (b) a credit (including an excess non-RBA credit) that an entity is entitled to under a taxation law;
 - (c) an RBA surplus of an entity.

- (2) The Commissioner must treat each such amount using the method set out in section 8AAZLA or 8AAZLB (but not both).

Note: In either case, section 8AAZLC has some additional rules that apply to RBA surpluses and to certain excess non-RBA credits.

- (3) However, the Commissioner does not have to treat an amount using either of those methods if doing so would require the Commissioner to apply the amount against a tax debt:
 - (a) that is due but not yet payable; or
 - (b) in respect of which the taxpayer has complied with an arrangement under section 255-15 to pay the debt by instalments; or
 - (c) in respect of which the Commissioner has agreed to defer recovery under section 255-5.
- (4) Furthermore, the Commissioner does not have to treat an amount using either of those methods if:
 - (a) doing so would require the Commissioner to apply the amount against a tax debt; and
 - (b) the tax debt is a penalty that is due and payable under section 269-20 in Schedule 1 (penalties for directors of non-complying companies).

Section 8AAZLA

8AAZLA Method 1—allocating the amount first to an RBA

- (1) The Commissioner may, in the manner he or she determines, allocate the amount to an RBA of the entity or, if the entity is a member of an RBA group, to an RBA of another member of the group.
- (2) The Commissioner must then also apply the amount against the following kinds of debts (if there are any):
 - (a) tax debts that have been allocated to that RBA;
 - (b) general interest charge on such tax debts.
- (3) To the extent that the amount is not applied under subsection (2), it gives rise to an ***excess non-RBA credit*** in favour of the entity that:
 - (a) is equal to the part of the amount that is not applied; and
 - (b) relates to the RBA to which the amount was allocated.

8AAZLB Method 2—applying the amount first against a non-RBA tax debt

- (1) The Commissioner may, in the manner he or she determines, apply the amount against a non-RBA tax debt of the entity or, if the entity is a member of an RBA group, against a non-RBA tax debt of another member of the group.
- (2) If the non-RBA tax debt is:
 - (a) a tax debt that has been allocated to an RBA; or
 - (b) general interest charge on such a tax debt;the Commissioner must then also allocate the amount to that RBA.
- (3) To the extent that the amount is not applied under subsection (1), it gives rise to an ***excess non-RBA credit*** in favour of the entity that is equal to the part of the amount that is not applied.
- (4) The excess non-RBA credit relates to the RBA (if any) that the Commissioner determines and the balance of that RBA is adjusted in the entity's favour by the amount of that credit.

Section 8AAZLC

Separate RBAs for one entity

- (5) If the non-RBA tax debt mentioned in subsection (1) has been allocated to 2 or more RBAs, the Commissioner must allocate the amount applied between those RBAs in the proportions in which the tax debt was allocated.

Note: Separate RBAs may be established for different businesses or undertakings conducted by the same entity, for different parts of the same business or undertaking or for different periods: see subsection 8AAZC(5).

8AAZLC RBA surplus and related credits must remain equivalent if one or the other is applied

RBA surpluses

- (1) If an RBA surplus is allocated or applied under this Division, the Commissioner must reduce by the same amount excess non-RBA credits that relate to the RBA.

Excess non-RBA credits

- (2) If, under this Division, an excess non-RBA credit that relates to an RBA (the **related RBA**) is:
- (a) allocated to an RBA; or
 - (b) applied against a non-RBA tax debt;
- the related RBA is adjusted in the Commissioner's favour by the same amount.

8AAZLD Special priority credits: FS assessment debts and compulsory repayment amounts

If, under this Division, the Commissioner is to apply a credit that arises under Schedule 1 to this Act (the PAYG system), the Commissioner must apply it, whether under section 8AAZLA or 8AAZLB:

- (aa) first, against any compulsory repayment amount of the entity; and
- (b) then against any FS assessment debt of the entity;

Part IIB Running balance accounts, application of payments and credits, and related matters

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Section 8AAZLE

before applying it against other non-RBA tax debts of the entity.

8AAZLE Instructions to Commissioner not binding

In doing anything under this Division, the Commissioner is not required to take account of any instructions of any entity.

Division 3A—Refunds of RBA surpluses and credits

8AAZLF Commissioner must refund RBA surpluses and credits

- (1) The Commissioner must refund to an entity so much of:
 - (a) an RBA surplus of the entity; or
 - (b) a credit (including an excess non-RBA credit) in the entity's favour;as the Commissioner does not allocate or apply under Division 3.

Voluntary payments only to be refunded on request

- (2) However, the Commissioner is not required to refund an RBA surplus or excess non-RBA credit that arises because a payment is made in respect of an anticipated tax debt of an entity unless the entity later requests, in the approved manner, that the Commissioner do so.
- (3) On receiving such a request, the Commissioner must refund so much of the amount as the Commissioner does not allocate or apply under Division 3.

Effect of refunding RBA surplus

- (4) If the Commissioner refunds an RBA surplus under this section, the Commissioner must reduce by the same amount excess non-RBA credits that relate to the RBA.

Effect of refunding credit that relates to an RBA

- (5) If, under this section, the Commissioner refunds an excess non-RBA credit that relates to an RBA, the RBA is adjusted in the Commissioner's favour by the same amount.

8AAZLG Retaining refunds until information or notification given

- (1) The Commissioner may retain an amount that he or she otherwise would have to refund to an entity under section 8AAZLF, if the entity has not given the Commissioner a notification:

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- (a) that affects or may affect the amount that the Commissioner refunds to the entity; and
 - (b) that the entity is required to give the Commissioner under:
 - (i) any of the BAS provisions (as defined in subsection 995-1(1) of the *Income Tax Assessment Act 1997*); or
 - (ii) any of the resource rent tax provisions (as defined in that subsection).
- (2) The Commissioner may retain the amount until the entity has given the Commissioner that notification or the Commissioner makes or amends an assessment of the amount, whichever happens first.

Note: Interest is payable under the *Taxation (Interest on Overpayments and Early Payments) Act 1983* if the Commissioner is late in making the payment under subsection (2).

8AAZLGA Retaining refunds while Commissioner verifies information

Commissioner may retain an amount

- (1) The Commissioner may retain an amount that he or she otherwise would have to refund to an entity under section 8AAZLF, if the entity has given the Commissioner a notification that affects or may affect the amount that the Commissioner refunds to the entity, and:
- (a) it would be reasonable to require verification of information (the ***notified information***) that:
 - (i) is contained in the notification; and
 - (ii) relates to the amount that the Commissioner would have to refund; or
 - (b) the entity has requested the Commissioner to retain the amount for verification of the notified information, and the request has not been withdrawn.
- (2) In deciding whether to retain the amount under this section, the Commissioner must, as far as the information available to the Commissioner at the time of making the decision reasonably allows, have regard to the following:
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- (a) the likely accuracy of the notified information;
- (b) the likelihood that the notified information was affected by:
 - (i) fraud or evasion; or
 - (ii) intentional disregard of a taxation law; or
 - (iii) recklessness as to the operation of a taxation law;
- (c) the impact of retaining the amount on the entity's financial position;
- (d) whether retaining the amount is necessary for the protection of the revenue, including the likelihood that the Commissioner could recover any of the amount if the notified information were found to be incorrect after the amount had been refunded;
- (e) any complexity that would be involved in verifying the notified information;
- (f) the time for which the Commissioner has already retained the amount;
- (g) what the Commissioner has already done to verify the notified information;
- (h) whether the Commissioner has enough information to make an assessment relating to the amount (including information obtained from making further requests for information);
- (i) the extent to which the notified information is consistent with information that the entity previously provided;
- (j) any other relevant matter.

Informing the entity of the retention of the amount

- (3) The Commissioner must inform the entity (by serving a document on the entity or by other means) that he or she has retained the amount under this section. He or she must do so by the end of:
 - (a) in a case to which paragraph 8AAZLF(1)(a) applies—the RBA interest day (within the meaning of section 12AF of the *Taxation (Interest on Overpayments and Early Payments) Act 1983*) for the RBA surplus of the entity; or
 - (b) in any other case—the 30th day after the entity gives to the Commissioner the notification mentioned in subsection (1) of this section.

Part IIB Running balance accounts, application of payments and credits, and related matters

Division 3A Refunds of RBA surpluses and credits

Section 8AAZLGA

Note: Under Part 2A of the regulations, documents may be served on a person using the person's preferred address for service.

- (4) In informing the entity that the amount is retained, the Commissioner may request information that he or she is aware will be required for the purposes of verifying the notified information.

How long the amount may be retained

- (5) The Commissioner may retain the amount under this section only until:
- (a) if paragraph (1)(a) applies—it would no longer be reasonable to require verification of the information; or
 - (b) if the Commissioner fails to inform the entity, in accordance with subsection (3), that he or she has retained the amount under this section—the end of the day after the time by which, under that subsection, the Commissioner is required to inform the entity; or
 - (c) in any case—there is a change to how much the Commissioner is required to refund, as a result of:
 - (i) the Commissioner amending an assessment relating to the amount; or
 - (ii) the Commissioner making or amending an assessment, under Division 105 in Schedule 1, relating to the amount;

whichever happens first.

Objecting to the decision to retain the amount

- (6) The entity may object to a decision of the Commissioner to retain the amount under this section in the manner set out in Part IVC, if the entity is dissatisfied with the decision.

Note: Interest on the amount may be payable under the *Taxation (Interest on Overpayments and Early Payments) Act 1983*.

- (7) Before the end of the 7 days after the start of the period during which, under section 14ZW, the entity may object to the decision, the Commissioner must notify the entity, in writing, that the entity may object to the decision.

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Note: For the start of the period for objecting to the decision, see paragraph 14ZW(1)(aac) and subsection 14ZW(4).

- (8) A failure to comply with subsection (7) does not affect the validity of the decision.

8AAZLH How refunds are made

- (1) This section applies to refunds payable to an entity of RBA surpluses, or excess non-RBA credits that relate to an RBA, if primary tax debts arising under:
- (a) any of the BAS provisions (as defined in subsection 995-1(1) of the *Income Tax Assessment Act 1997*); or
 - (b) any of the resource rent tax provisions (as defined in that subsection);
- have been allocated to that RBA.
- (2) The Commissioner must pay those refunds to the credit of a financial institution account nominated in the approved form by the entity. The account nominated must be maintained at a branch or office of the institution that is in Australia.
- (2A) The account must be one held by:
- (a) the entity, or the entity and some other entity; or
 - (b) the entity's registered tax agent or BAS agent; or
 - (c) a legal practitioner as trustee or executor for the entity.
- (3) However, the Commissioner may direct that any such refunds be paid to the entity in a different way.
- (4) If an entity has not nominated a financial institution account for the purposes of this section and the Commissioner has not directed that any such refunds be paid in a different way, the Commissioner is not obliged to refund any amount to the entity until the entity does so.
- (5) If the Commissioner pays a refund to the credit of an account nominated by an entity, the Commissioner is taken to have paid the refund to the entity.

Division 4—Miscellaneous provisions about tax debts

8AAZM When payments are treated as received

For the purposes of taxation laws, a payment in respect of a tax debt is taken not to have been made until it is received by:

- (a) the Commissioner; or
- (b) a person acting on behalf of the Commissioner.

8AAZMA Electronic payment of tax debts

- (1) An entity that, under subsection 33-10(2) of the *A New Tax System (Goods and Services Tax) Act 1999*, is required to pay an assessed net amount for a tax period electronically must also electronically pay the Commissioner all of its other tax debts that are due to be paid during that period.
- (2) A large withholder that, under subsection 16-85(1) in Schedule 1, is required to pay an amount electronically in a particular month must also electronically pay the Commissioner all of its other tax debts that are due to be paid during that month.

8AAZMB Saturdays, Sundays and public holidays

- (1) Where, apart from this section, an amount in respect of a tax debt is due and payable by, or on, a day (the *payment day*) that is not a business day, the payment is due and payable on the first business day after the payment day.
- (2) In this section:
 - business day* means a day other than:
 - (a) a Saturday or a Sunday; or
 - (b) a day which is a public holiday for the whole of:
 - (i) any State; or
 - (ii) the Australian Capital Territory; or
 - (iii) the Northern Territory.

tax debt does not include general interest charge.

8AAZN Overpayments made by the Commissioner under taxation laws

- (1) An administrative overpayment (the *overpaid amount*):
 - (a) is a debt due to the Commonwealth by the person to whom the overpayment was made (the *recipient*); and
 - (b) is payable to the Commissioner; and
 - (c) may be recovered in a court of competent jurisdiction by the Commissioner, or by a Deputy Commissioner, suing in his or her official name.
- (2) If:
 - (a) the Commissioner has given a notice to the recipient in respect of the overpaid amount, specifying a due date for payment that is at least 30 days after the notice is given; and
 - (b) any of the overpaid amount remains unpaid at the end of that due date;then the recipient is liable to pay the general interest charge on the unpaid amount for each day in the period that:
 - (c) started at the beginning of that due date; and
 - (d) finishes at the end of the last day on which, at the end of the day, any of the following remains unpaid:
 - (i) the overpaid amount;
 - (ii) general interest charge on any of the overpaid amount.
- (3) In this section:

administrative overpayment means an amount that the Commissioner has paid to a person by mistake, being an amount to which the person is not entitled.

Part III—Prosecutions and offences

Note: Subsection 2(2) specifies laws that are not taxation laws for the purposes of this Part.

Division 1—Preliminary

8A Interpretation

- (1) In this Part, unless the contrary intention appears:

corporation means any body corporate.

director, in relation to a corporation, includes:

- (a) any person occupying or acting in the position of director of the corporation, by whatever name called and whether or not validly appointed to occupy, or duly authorized to act in, the position; and
- (b) any person in accordance with whose directions or instructions the directors of the corporation are accustomed to act.

instrument includes any document.

prescribed offence means:

- (a) an offence against section 8C, subsection 8D(1) or (2) or section 8N or 8Q, or against Division 136 or 137 of the *Criminal Code* in relation to a taxation law; or
- (b) an offence against section 11.1 of the *Criminal Code* that relates to an offence of a kind referred to in paragraph (a).

prescribed taxation offence means:

- (a) a taxation offence (other than a prescribed offence) that is committed by a natural person and punishable by a fine and not by imprisonment;
- (b) a prescribed offence (other than a prescribed offence that the Commissioner has elected under subsection 8F(1) or 8S(1) to treat otherwise than as a prescribed taxation offence) that is committed by a natural person; or

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(c) a taxation offence that is committed by a corporation.

produce, in relation to a book, paper, record or other document, includes permit access to.

taxation offence means:

- (a) an offence against a taxation law; or
- (b) an offence against:
 - (i) section 6 of the *Crimes Act 1914*; or
 - (ii) section 11.1, 11.4 or 11.5 of the *Criminal Code*;
 being an offence that relates to an offence against a taxation law.

tax file number means a tax file number as defined in section 202A of the *Income Tax Assessment Act 1936*.

- (2) For the purposes of the definition of **director** in subsection (1), a person shall not be regarded as a person in accordance with whose directions or instructions the directors of a corporation are accustomed to act by reason only that the directors act on advice given by that person in the proper performance of the functions attaching to the person's professional capacity or to the person's business relationship with the directors.

8AB Application of Part to the *Development Allowance Authority Act 1992*

This Part applies in relation to the *Development Allowance Authority Act 1992* as if:

- (a) that Act were a taxation law; and
- (b) references in this Part to the Commissioner were references to the Development Allowance Authority.

8AC Application of Part to the *Tax Agent Services Act 2009*

This Part applies in relation to the *Tax Agent Services Act 2009* as if references in this Part (other than paragraph 8C(1)(b) and sections 8HA, 8W, 8WC, 8ZE, 8ZG and 8ZH) to the Commissioner, or an office of the Commissioner, were references

Part III Prosecutions and offences

Division 1 Preliminary

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to the Tax Practitioners Board established by the *Tax Agent Services Act 2009*.

Division 2—Offences**Subdivision A—Failure to comply with taxation requirements****8B Interpretation**

- (1) A reference in this Subdivision to a relevant offence is a reference to:
 - (a) an offence against section 8C, subsection 8D(1) or (2) or section 8H; or
 - (b) an offence against:
 - (i) section 6 of the *Crimes Act 1914*; or
 - (ii) section 11.1, 11.4 or 11.5 of the *Criminal Code*;
being an offence that relates to an offence of a kind referred to in paragraph (a) of this subsection.
- (2) For the purposes of this Subdivision, a person who is convicted of an offence against section 8C or subsection 8D(1) or (2) (in this subsection referred to as the ***subsequent offence***) shall be treated as having been previously convicted of a relevant offence (in this subsection referred to as the ***earlier offence***) if:
 - (a) the person was convicted of the earlier offence on an occasion earlier than, but not more than 5 years earlier than, the person's conviction of the subsequent offence; or
 - (b) the person is convicted of the earlier offence and the subsequent offence before the same court at the same sitting and the earlier offence was committed:
 - (i) at a time or on a day earlier than, but not more than 5 years earlier than, the subsequent offence; or
 - (ii) at the same time, or on the same day, as the subsequent offence.
- (3) A reference in subsection 8E(2) or (3) or 8F(1) or subsection (2) of this section to an offence against section 8C or subsection 8D(1) or (2) includes a reference to an offence against section 11.1 of the *Criminal Code* that relates to an offence against section 8C or subsection 8D(1) or (2), as the case may be.

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- (4) Unless the contrary intention appears, a reference in paragraph (2)(a) or (b) to a conviction of a person of an offence includes a reference to the making of an order under section 19B of the *Crimes Act 1914* in relation to the person in respect of the offence.

8C Failure to comply with requirements under taxation law

- (1) A person who refuses or fails, when and as required under or pursuant to a taxation law to do so:
- (a) to furnish an approved form or any information to the Commissioner or another person; or
 - (aa) to give information to the Commissioner in the manner in which it is required under a taxation law to be given; or
 - (b) to lodge an instrument with the Commissioner or another person for assessment; or
 - (d) to notify the Commissioner or another person of a matter or thing; or
 - (e) to produce a book, paper, record or other document to the Commissioner or another person; or
 - (f) to attend before the Commissioner or another person; or
 - (g) to apply for registration or cancellation of registration under the *A New Tax System (Goods and Services Tax) Act 1999*; or
 - (h) to comply with a requirement under subsection 45A(2) of the *Product Grants and Benefits Administration Act 2000*; or
 - (i) to comply with subsection 82-10F(4) of the *Income Tax (Transitional Provisions) Act 1997*;
- is guilty of an offence.

- (1A) An offence under subsection (1) is an offence of absolute liability.

Note: For **absolute liability**, see section 6.2 of the *Criminal Code*.

- (1B) Subsection (1) does not apply to the extent that the person is not capable of complying with the relevant paragraph.

Note: A defendant bears an evidential burden in relation to the matters in subsection (1B), see subsection 13.3(3) of the *Criminal Code*.

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- (2) For the purposes of paragraphs (1)(a) and (d), a person shall not be taken to have refused or failed to furnish information to the Commissioner or another person, or to notify the Commissioner or another person of a matter or thing, merely because the person has refused or failed to quote the person's tax file number to the Commissioner or other person.

8D Failure to answer questions when attending before the Commissioner etc.

- (1) A person who, when attending before the Commissioner or another person pursuant to a taxation law, refuses or fails, when and as required pursuant to a taxation law to do so:
- (a) to answer a question asked of the person; or
 - (b) to produce a book, paper, record or other document;
- is guilty of an offence.

- (1A) An offence under subsection (1) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

- (1B) Subsection (1) does not apply to the extent that the person is not capable of complying with the relevant paragraph.

Note: A defendant bears an evidential burden in relation to the matters in subsection (1B), see subsection 13.3(3) of the *Criminal Code*.

- (2) A person who, when attending before the Commissioner or another person pursuant to a taxation law, refuses or fails, when and as required pursuant to a taxation law to do so, either to take an oath or make an affirmation is guilty of an offence.

8E Penalties for failure to comply with requirements under taxation law

- (1) Subject to subsections (2) and (3), an offence against section 8C or subsection 8D(1) or (2) is punishable on conviction by a fine not exceeding 20 penalty units.
- (2) Subject to subsection (3), where:
- (a) a person is convicted of an offence against section 8C or subsection 8D(1) or (2); and

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- (b) the court before which the person is convicted is satisfied that the person has previously been convicted of a relevant offence;

the penalty that the court may impose in respect of the first-mentioned offence is a fine not exceeding 40 penalty units.

- (3) Where:

- (a) a person is convicted of an offence against section 8C or subsection 8D(1) or (2);
- (b) in a case where the person is a natural person—the Commissioner has elected under subsection 8F(1) to treat the offence otherwise than as a prescribed taxation offence; and
- (c) the court before which the person is convicted is satisfied that the person has previously been convicted of 2 or more relevant offences;

the penalty that the court may impose in respect of the first-mentioned offence is a fine not exceeding 50 penalty units or imprisonment for a period not exceeding 12 months, or both.

8F Election to treat offence otherwise than as prescribed taxation offence

- (1) The Commissioner may, before the institution of a prosecution of a natural person for an offence against section 8C or subsection 8D(1) or (2), elect, in writing, to treat the offence otherwise than as a prescribed taxation offence.
- (2) Where a prosecution is instituted for an offence in relation to which an election under subsection (1) has been made, the Commissioner shall cause a copy of the election to be filed in the court in which the prosecution is instituted.

8G Order to comply with requirement

- (1) Where:
 - (a) a person is convicted before a court of an offence against section 8C or subsection 8D(1) or (2); or

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- (b) a court makes an order under section 19B of the *Crimes Act 1914* in relation to a person in respect of an offence against section 8C or subsection 8D(1) or (2);
- in relation to the refusal or failure of the person to comply (whether in whole or in part) with a requirement made under or pursuant to a taxation law, the court may, in addition to imposing a penalty on the person or making such an order in relation to the person, as the case may be, and notwithstanding that the time for complying with the requirement or any other such requirement has passed, order the person to comply with:
- (c) the requirement; and
 - (d) such other requirements made, or that could be made, in relation to the person under or pursuant to the taxation law as the court considers necessary to ensure the effectiveness of the first-mentioned requirement;
- within a specified time or at a specified place and time.
- (2) Where an order under subsection (1) is not given orally by the court to the person to whom the order is addressed, the proper officer of the court shall cause a copy of the order to be served on the person in the prescribed manner.

8H Penalty for failure to comply with order to comply

- (1) A person who refuses or fails to comply with an order under subsection 8G(1) is guilty of an offence punishable on conviction by a fine not exceeding 50 penalty units or imprisonment for a period not exceeding 12 months, or both.
- (2) An offence under subsection (1) is an offence of strict liability.
- Note: For ***strict liability***, see section 6.1 of the *Criminal Code*.
- (3) Subsection (1) does not apply to the extent that the person is not capable of complying with the relevant paragraph.
- Note: A defendant bears an evidential burden in relation to the matters in subsection (3), see subsection 13.3(3) of the *Criminal Code*.

8HA Court may order payment of amount in addition to penalty

- (1) If:

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- (a) a person (the **convicted person**) is convicted before a court of an offence against section 8C, 8D or 8H in relation to a refusal or failure to do a particular thing; and
 - (b) the court is satisfied that the purpose of, or one of the purposes of, the refusal or failure was to facilitate the avoidance of an amount of a tax liability of the convicted person or another person;
- the court may, in addition to imposing a penalty on the convicted person, order the convicted person to pay to the Commissioner an amount not exceeding:
- (c) if the offence is an offence to which subsection 8E(2) or (3) applies—3 times that amount; or
 - (d) in any other case—2 times that amount.
- (2) A reference in this section to a conviction of a person for an offence includes a reference to the making of an order under section 19B of the *Crimes Act 1914* in relation to the person in respect of the offence.

Subdivision B—Offences relating to statements, records and certain other Acts

8J Interpretation

- (1) In this Subdivision:

accounting records includes invoices, receipts, orders for the payment of money, bills of exchange, cheques, promissory notes, vouchers and other documents of prime entry and also includes:

- (a) such working papers and other documents as are necessary to explain the methods and calculations by which accounts are made up; and
- (b) such other documents (if any) as are prescribed.

accounts means ledgers, journals, profit and loss accounts and balance-sheets, and includes statements, reports and notes attached to, or intended to be read with, any of the foregoing.

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data processing device means any article or material from which information is capable of being reproduced with or without the aid of any other article or device.

taxation officer means a person exercising powers or performing functions under, pursuant to or in relation to a taxation law.

- (2) A reference in this Subdivision to a statement made to a taxation officer is a reference to a statement made to a taxation officer orally, in writing, in a data processing device, by way of electronic transmission or in any other form and, without limiting the generality of the foregoing, includes a statement:

- (a) made in an application, certificate, declaration, notification, objection, return, claim or other document made, prepared, given or furnished, or purporting to be made, prepared, given or furnished, under or pursuant to a taxation law; or
- (b) made in an instrument lodged for assessment under or pursuant to a taxation law; or
- (c) made in answer to a question asked of a person under or pursuant to a taxation law; or
- (d) made in any information furnished, or purporting to be furnished, under or pursuant to a taxation law; or
- (e) made in a document furnished to a taxation officer otherwise than under or pursuant to a taxation law;

but does not include a statement made in a document produced pursuant to:

- (ga) paragraph 93ZC(1)(b) or (c) of the *Development Allowance Authority Act 1992*;
- (ha) paragraph 128(1)(c) of the *Fringe Benefits Tax Assessment Act 1986*; or
- (k) paragraph 264(1)(b) or 264A(1)(d) or (e) of the *Income Tax Assessment Act 1936* (including that paragraph as applied by subsection 4(1) of the *Trust Recoupment Tax Assessment Act 1985*); or
- (kaa) subparagraph 451(2)(c)(ii) or paragraph 453(1)(e) of the *Income Tax Assessment Act 1936*;
- (ma) paragraph 108(1)(c) of the *Petroleum Resource Rent Tax Assessment Act 1987*; or

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- (mb) paragraph 42(2)(b) or (c) of the *Product Grants and Benefits Administration Act 2000*; or
 - (nb) paragraph 76(1)(c) of the *Superannuation Guarantee (Administration) Act 1992*; or
 - (p) paragraph 13G(1)(c) of this Act; or
 - (pa) paragraph 353-10(1)(c) in Schedule 1 to this Act.
- (2A) If a document is given on a data processing device, or by way of electronic transmission, by a registered tax agent or BAS agent on behalf of a taxpayer, then, for the purposes of this Subdivision, each statement in the document is taken to have been made by the taxpayer unless the taxpayer can show that the taxpayer did not authorise the statement.
- (3) A reference in this Subdivision to a relevant offence is a reference to:
- (a) an offence against:
 - (i) subsection 8K(1) or (1B) or 8L(1) or (1A) or section 8N, 8Q, 8T or 8U; or
 - (ii) the *Crimes (Taxation Offences) Act 1980*;
 - (b) an offence against:
 - (i) section 6 of the *Crimes Act 1914*; or
 - (ii) section 11.1, 11.4 or 11.5 of the *Criminal Code*;
being an offence that relates to an offence of a kind referred to in paragraph (a) of this subsection; or
 - (c) an offence against section 134.1, 134.2, 135.1, 135.2 or 135.4 of the *Criminal Code*, being an offence that relates to a tax liability.
- (4) For the purposes of this Subdivision, a person who is convicted of an offence against subsection 8K(1) or (1B) or 8L(1) or (1A) or section 8N, 8Q, 8T or 8U (in this subsection referred to as the **subsequent offence**) shall be treated as having been previously convicted of a relevant offence (in this subsection referred to as the **earlier offence**) if:
- (a) the person was convicted of the earlier offence on an occasion earlier than, but not more than 10 years earlier than, the person's conviction of the subsequent offence; or

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- (b) the person is convicted of the earlier offence and the subsequent offence before the same court at the same sitting and the earlier offence was committed:
 - (i) at a time or on a day earlier than, but not more than 10 years earlier than, the subsequent offence; or
 - (ii) at the same time, or on the same day, as the subsequent offence.
 - (5) Unless the contrary intention appears, a reference in paragraph (4)(a) or (b) to a conviction of a person for an offence includes a reference to the making of an order under section 19B of the *Crimes Act 1914* in relation to the person in respect of the offence.
 - (6) A reference in subsection (4) of this section or subsection 8M(2) to an offence against subsection 8K(1) or (1B) or 8L(1) or (1A) includes a reference to an offence against section 11.1 of the *Criminal Code* that relates to an offence against subsection 8K(1) or (1B) or 8L(1) or (1A), as the case may be.
 - (7) A reference in subsection 8R(2) or 8S(1) or subsection (4) of this section to an offence against section 8N or 8Q includes a reference to an offence against section 11.1 of the *Criminal Code* that relates to an offence against section 8N or 8Q, as the case may be.
 - (8) A reference in subsection 8V(2) or subsection (4) of this section to an offence against section 8T or 8U includes a reference to an offence against section 11.1 of the *Criminal Code* that relates to an offence against section 8T or 8U, as the case may be.
 - (9) A reference in this Subdivision to a statement made to a taxation officer includes a reference to a statement made to a person other than a taxation officer for a purpose in connection with the operation of a taxation law.
 - (10) A reference in subsection (9) to a statement made to a person other than a taxation officer for a purpose in connection with the operation of a taxation law is a reference to such a statement made orally, in writing, in a data processing device or in any other form and, without limiting the generality of the foregoing, includes such a statement:
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- (a) made in an application, certificate, declaration, notification or other document, made, given or furnished to the person; or
 - (aa) made in:
 - (i) a tax invoice (within the meaning of the *A New Tax System (Goods and Services Tax) Act 1999*); or
 - (ii) an adjustment note (within the meaning of that Act); or
 - (iii) a third party adjustment note (within the meaning of that Act);given to the person; or
 - (b) made in answer to a question asked by the person; or
 - (c) made in any information furnished to the person.
- (11) Where a person omits from a return furnished under or pursuant to the *Income Tax Assessment Act 1936* or the regulations under that Act, being a return of income derived by the person, a partnership or a trust estate during a period, any assessable income derived by the person, partnership or the trust estate, as the case may be, during the period, the person shall, for the purposes of this Subdivision, be taken to have made a statement in the return to the effect that the person, the partnership or the trust estate, as the case requires, did not derive the assessable income during the period.
- (12) Where:
 - (a) a person issues a notice to another person under section 265B of the *Income Tax Assessment Act 1936*;
 - (b) a person to whom a notice is issued under that section gives the notice to another person in connection with the transfer of a qualifying security to the other person; or
 - (c) a person gives advice in writing to another person, in connection with the transfer of a qualifying security, of a variation or partial redemption of the qualifying security;any statement in the notice when so issued or given, or in the advice when so given, to the other person shall, for the purposes of this Division, be taken to have been made by the issuer or person giving the notice or advice, as the case may be, to the other person for a purpose in connection with the operation of a taxation law.
- (13) Where:

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- (a) the holder of a qualifying security transfers the security to another person;
- (b) by virtue of the application of section 128AA of the *Income Tax Assessment Act 1936*, the holder is liable to pay withholding tax in relation to the transfer of the qualifying security;
- (c) before the security was transferred, the holder gave to the transferee, in connection with the transfer, a notice issued to the holder under section 265B of that Act identifying the security;
- (d) after the notice was issued to the holder, the security was varied or partially redeemed; and
- (e) the holder did not advise the transferee in writing of the variation or partial redemption;

the holder shall, for the purposes of this Division, be taken to have made for a purpose in connection with the operation of a taxation law a statement that the qualifying security was not so varied or partially redeemed.

(14) Where:

- (a) the holder of a qualifying security who acquired the security on transfer (in this subsection referred to as the ***current acquisition transfer***) transfers the security to another person;
- (b) by virtue of the application of section 128AA of the *Income Tax Assessment Act 1936*, the holder is liable to pay withholding tax in relation to the transfer of the security;
- (c) before the security was transferred, the holder gave to the transferee, in connection with the transfer, a certificate issued to the holder under section 128AB of that Act identifying the security; and
- (d) the holder had acquired the security on transfer on any occasion before the current acquisition transfer;

the holder shall, for the purposes of this Division, be taken to have made for a purpose in connection with the operation of a taxation law a statement that the certificate relates to the current acquisition transfer.

(15) Where:

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- (a) a qualifying security is redeemed or partially redeemed from the holder;
 - (b) the holder acquired the security on transfer (in this subsection referred to as the ***current acquisition transfer***);
 - (c) the holder is liable to pay withholding tax in relation to the redemption or partial redemption of the security;
 - (d) before the security was redeemed or partially redeemed, the holder gave to the issuer, in connection with the redemption or partial redemption, a certificate issued to the holder under section 128AB of the *Income Tax Assessment Act 1936* identifying the security; and
 - (e) the holder had acquired the security on transfer on any occasion before the current acquisition transfer;
- the holder shall, for the purposes of this Division, be taken to have made for a purpose in connection with the operation of a taxation law a statement that the certificate relates to the current acquisition transfer.
- (16) Subject to subsection (17), for the purposes of subsections (12) to (15) (inclusive):
- (a) expressions used in those subsections that are also used in Division 16E of Part III of the *Income Tax Assessment Act 1936* have the same respective meanings as in that Division; and
 - (b) sections 159GV (other than subsection 159GV(2)) and 159GZ of the *Income Tax Assessment Act 1936* apply as if references in those sections to “this Division” were references to “section 8J of the *Taxation Administration Act 1953*”.
- (17) Subsection (16) applies as if paragraph (c) of the definition of ***qualifying security*** in subsection 159GP(1) of the *Income Tax Assessment Act 1936* were omitted.

8K False or misleading statements

- (1) A person is guilty of an offence if:
- (a) the person makes a statement to a taxation officer; and
 - (b) the statement is false or misleading in a material particular.

- (1A) In subsection (1), absolute liability applies to the circumstance, that the statement is false or misleading in a material particular.

Note: For **absolute liability**, see section 6.2 of the *Criminal Code*.

- (1B) A person is guilty of an offence if:
- (a) the person makes a statement to a taxation officer; and
 - (b) the person omits any matter or thing from the statement; and
 - (c) the statement is misleading in a material particular because of the omission.

- (1C) In subsection (1B), absolute liability applies to:
- (a) the conduct, that the person omits a matter or thing; and
 - (b) the circumstance, that the statement is misleading in a material particular.

Note: For **absolute liability**, see section 6.2 of the *Criminal Code*.

- (2) In a prosecution of a person for an offence against subsection (1) or (1B), it is a defence if the person proves that the person:
- (a) did not know; and
 - (b) could not reasonably be expected to have known;
- that the statement to which the prosecution relates was false or misleading.

Note: The defendant bears a legal burden in relation to the matter in subsection (2), see section 13.4 of the *Criminal Code*.

- (3) For the purposes of subsection (1B), a person shall not be taken to have omitted a matter or thing from a statement made to a taxation officer merely because the person has, in making the statement, failed to quote the person's tax file number.

8L Incorrectly keeping records etc.

- (1) A person is guilty of an offence if:
-

Section 8L

- (a) the person is required under, or pursuant to, a taxation law to keep any accounts, accounting records or other records; and
- (b) the person keeps the accounts or records; and
- (c) the accounts or records do not correctly record and explain the matters, transactions, acts or operations to which they relate.

(1A) A person is guilty of an offence if:

- (a) the person is required under, or pursuant to, a taxation law to make a record of any matter, transaction, act or operation; and
- (b) the person makes the record; and
- (c) the record does not correctly record the matter, transaction, act or operation.

(1B) An offence under subsection (1) or (1A) is an offence of absolute liability.

Note: For **absolute liability**, see section 6.2 of the *Criminal Code*.

(2) In a prosecution of a person for an offence against subsection (1) or (1A), it is a defence if the person proves that the person:

- (a) did not know; and
- (b) could not reasonably be expected to have known;

that:

- (c) in the case of a prosecution for an offence against subsection (1)—the accounts, accounting records or other records to which the prosecution relates did not correctly record and explain the matters, transactions, acts or operations to which they relate; or
- (d) in the case of a prosecution for an offence against subsection (1A)—the record to which the prosecution relates did not correctly record the matter, transaction, act or operation to which the record relates.

Note: The defendant bears a legal burden in relation to the matter in subsection (2), see section 13.4 of the *Criminal Code*.

8M Penalties for offences against subsections 8K(1) and (1B) and 8L(1) and (1A)

- (1) Subject to subsection (2), an offence against subsection 8K(1) or (1B) or 8L(1) or (1A) is punishable on conviction by a fine not exceeding 20 penalty units.
- (2) Where:
 - (a) a person is convicted of an offence against subsection 8K(1) or (1B) or 8L(1) or (1A); and
 - (b) the court before which the person is convicted is satisfied that the person has previously been convicted of a relevant offence;the penalty that the court may impose in respect of the first-mentioned offence is a fine not exceeding 40 penalty units.

8N Recklessly making false or misleading statements

A person is guilty of an offence if:

- (a) the person makes a statement (whether orally, in a document or in any other way) to a taxation officer; and
- (b) the statement:
 - (i) is false or misleading in a material particular; or
 - (ii) omits any matter or thing without which the statement is misleading in a material particular; and
- (c) the person is reckless as to whether the statement:
 - (i) is false or misleading in a material particular; or
 - (ii) omits any matter or thing without which the statement is misleading in a material particular.

8Q Recklessly incorrectly keeping records etc.

- (1) A person is guilty of an offence if:
 - (a) the person is required under, or pursuant to, a taxation law to keep any accounts, accounting records or other records; and
 - (b) the person keeps the accounts or records; and

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- (ba) the accounts or records do not correctly record and explain the matters, transactions, acts or operations to which they relate; and
 - (c) the person is reckless as to whether the accounts or records correctly record and explain the matters, transactions, acts or operations to which they relate.
- (2) A person is guilty of an offence if:
 - (a) the person is required under, or pursuant to, a taxation law to make a record of any matter, transaction, act or operation; and
 - (b) the person makes the record; and
 - (ba) the record does not correctly record the matter, transaction, act or operation; and
 - (c) the person is reckless as to whether the record correctly records the matter, transaction, act or operation.
- (3) In subsections (1) and (2), strict liability applies to the circumstance, that the person is required under, or pursuant to, a taxation law to keep the accounts, accounting records or other records.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

8R Penalties for offences against sections 8N and 8Q

- (1) Subject to subsection (2), an offence against section 8N or 8Q is punishable on conviction by a fine not exceeding 30 penalty units.
- (2) Where:
 - (a) a person is convicted of an offence against section 8N or 8Q;
 - (b) in a case where the person is a natural person—the Commissioner has elected under subsection 8S(1) to treat the offence otherwise than as a prescribed taxation offence; and
 - (c) the court before which the person is convicted is satisfied that the person has previously been convicted of a relevant offence;the penalty that the court may impose in respect of the first-mentioned offence is a fine not exceeding 50 penalty units or imprisonment for a period not exceeding 12 months, or both.

8S Election to treat offence otherwise than as prescribed taxation offence

- (1) The Commissioner may, before the institution of a prosecution of a natural person for an offence against section 8N, or 8Q, or against Division 136 or 137 of the *Criminal Code* in relation to a taxation law, elect, in writing, to treat the offence otherwise than as a prescribed taxation offence.
- (2) Where a prosecution is instituted for an offence in relation to which an election under subsection (1) has been made, the Commissioner shall cause a copy of the election to be filed in the court in which the prosecution is instituted.

8T Incorrectly keeping records with intention of deceiving or misleading etc.

A person who:

- (a) keeps any accounts, accounting records or other records in such a way that they:
 - (i) do not correctly record and explain the matters, transactions, acts or operations to which they relate; or
 - (ii) are (whether in whole or in part) illegible, indecipherable, incapable of identification or, if they are kept in the form of a data processing device, incapable of being used to reproduce information;
 - (b) makes a record of any matter, transaction, act or operation in such a way that it does not correctly record the matter, transaction, act or operation;
 - (c) engages in conduct that results in the alteration, defacing, mutilation, falsification, damage, removal, concealing or destruction of any accounts, accounting records or other records (whether in whole or in part); or
 - (d) does or omits to do any other act or thing to any accounts, accounting records or other records;
- with any of the following intentions, namely:
- (e) deceiving or misleading the Commissioner or a particular taxation officer;

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- (f) hindering or obstructing the Commissioner or a particular taxation officer (otherwise than in the investigation of a taxation offence);
 - (g) hindering or obstructing the investigation of a taxation offence;
 - (h) hindering, obstructing or defeating the administration, execution or enforcement of a taxation law; or
 - (j) defeating the purposes of a taxation law;
- (whether or not the person had any other intention) is guilty of an offence.

8U Falsifying or concealing identity with intention of deceiving or misleading etc.

A person who:

- (a) engages in conduct that results in the falsification or concealing of the identity of, or the address or location of a place of residence or business of, the person or another person; or
- (b) does or omits to do any act or thing the doing or omission of which facilitates the falsification or concealment of the identity of, or the address or location of a place of residence or business of, the person or another person;

with any of the following intentions, namely:

- (c) deceiving or misleading the Commissioner or a particular taxation officer;
 - (d) hindering or obstructing the Commissioner or a particular taxation officer (otherwise than in the investigation of a taxation offence);
 - (e) hindering or obstructing the investigation of a taxation offence;
 - (f) hindering, obstructing or defeating the administration, execution or enforcement of a taxation law; or
 - (g) defeating the purposes of a taxation law;
- (whether or not the person had any other intention) is guilty of an offence.

8V Penalties for offences against sections 8T and 8U

- (1) Subject to subsection (2), an offence against section 8T or 8U is punishable on conviction by a fine not exceeding 50 penalty units or imprisonment for a period not exceeding 12 months, or both.
- (2) Where:
 - (a) a person is convicted of an offence against section 8T or 8U; and
 - (b) the court before which the person is convicted is satisfied that the person has previously been convicted of a relevant offence;the penalty that the court may impose in respect of the first-mentioned offence is a fine not exceeding 100 penalty units or imprisonment for a period not exceeding 2 years, or both.

8W Court may order payment of amount in addition to penalty

- (1) Where:
 - (a) a person (in this subsection referred to as the ***convicted person***) is convicted before a court of:
 - (i) an offence against subsection 8K(1) or (1B) or section 8N, or against Division 136 or 137 of the *Criminal Code* in relation to a taxation law, in relation to a statement made to a taxation officer; or
 - (ii) an offence against subsection 8L(1) or (1A) or section 8Q in relation to the keeping of any accounts, accounting records or other records (in paragraph (b) referred to as the ***relevant accounts***) or the making of a record; and
 - (b) the court is satisfied that the proper amount of a tax liability of the convicted person or another person exceeds the amount that would have been the amount of the tax liability if it were assessed or determined, as the case requires, on the basis that the statement were not false or misleading, on the basis of the relevant accounts as they were kept or on the basis that the record were correct, as the case may be;

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the court may, in addition to imposing a penalty on the convicted person, order the convicted person to pay to the Commissioner an amount not exceeding:

- (c) in a case where the offence is an offence to which subsection 8R(2) applies or that is against Division 136 or 137 of the *Criminal Code* in relation to a taxation law—3 times the amount of the excess; or
 - (d) in any other case—double the amount of the excess.
- (1B) For the purposes of paragraph (1)(b), a decision made by the Development Allowance Authority under Division 1 of Part 3 of Chapter 3 of the *Development Allowance Authority Act 1992* is taken to form part of the process of making assessments of income tax.
- (1C) If the conditions in section 705-315 of the *Income Tax Assessment Act 1997* are satisfied, then for the purposes of any application of subsection (1) of this section in relation to the errors mentioned in that section that were made in a statement that was made before the Commissioner became aware of the errors, the references in paragraphs (1)(c) and (d) of this section to the excess are taken instead to be references to the amount worked out using the formula:

$$\text{Tax on capital gain} \times \left[1 - \frac{\text{Adjusted reset cost base asset setting amount}}{\text{Original reset cost base asset setting amount}} \right]$$

where:

adjusted reset cost base asset setting amount means:

- (a) the *tax cost setting amount, worked out under Division 705 of the *Income Tax Assessment Act 1997*, for all assets of a kind referred to in section 705-35 of that Act as reset cost base assets that the *head company of the relevant group held continuously from the time when the *subsidiary member referred to in subsection 705-315(2) of that Act joined the group until the start of the head company's income year in which the Commissioner became aware of the errors mentioned in section 705-315 of that Act;

less:

- (b) the head company's deductions under Division 40 (except under Subdivision 40-F, 40-G, 40-H or 40-I) or Subdivision 328-D of the *Income Tax Assessment Act 1997* for those assets for all income years before the earliest income year for which the Commissioner could amend the head company's assessment to correct any of the errors.

original reset cost base asset setting amount means the *tax cost setting amount, worked out under Division 705 of the *Income Tax Assessment Act 1997*, for all reset cost base assets that the *subsidiary member held at the time it joined the group, other than assets that the *head company no longer held at the start of the earliest income year for which the Commissioner could amend the head company's assessment to correct any of the errors.

tax on capital gain means the product of:

- (a) the *capital gain that the *head company makes as a result of *CGT event L6 happening as mentioned in section 104-525 of the *Income Tax Assessment Act 1997*; and
- (b) the *corporate tax rate in respect of taxable income for the income year in which that CGT event happens.

(2) Where:

- (a) a person (in this subsection referred to as the ***convicted person***) is convicted before a court of an offence against section 8T or 8U in relation to an act or omission; and
- (b) the court is satisfied that the purpose of, or one of the purposes of, the act or omission was to facilitate the avoidance of an amount of a tax liability of the convicted person or another person;

the court may, in addition to imposing a penalty on the convicted person, order the convicted person to pay to the Commissioner an amount not exceeding:

- (c) in a case where the offence is an offence to which subsection 8V(2) applies—3 times that amount; or
- (d) in any other case—double that amount.

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(2A) If:

(a) a person (the **convicted person**) is convicted before a court of:

(i) an offence against subsection 8K(1) or (1B) or section 8N, or against Division 136 or 137 of the *Criminal Code* in relation to a taxation law, in relation to a statement made to a taxation officer; or

(ii) an offence against subsection 8L(1) or (1A) or section 8Q in relation to the keeping of any records; and

(b) the offence relates to the *Product Grants and Benefits Administration Act 2000*; and

(c) the court is satisfied that the amount that would have been the amount of a product grant or benefit payable to the convicted person or another person, determined on the basis that:

(i) the statement were not false or misleading; or

(ii) on the basis of those records as they were kept; as the case may be, exceeds the proper amount of the product grant or benefit payable to the convicted person or the other person;

the court may, in addition to imposing a penalty on the convicted person, order the convicted person to pay to the Commissioner an amount not exceeding:

(d) in a case where the offence is an offence to which subsection 8R(2) applies, or that is against Division 136 or 137 of the *Criminal Code* in relation to a taxation law—3 times the amount of the excess; or

(e) in any other case—double the amount of the excess.

(3) A reference in this section to a conviction of a person for an offence includes a reference to the making of an order under section 19B of the *Crimes Act 1914* in relation to the person in respect of the offence.

(4) In this section:

product grant or benefit means a grant or benefit payable under the *Product Grants and Benefits Administration Act 2000*.

Subdivision BA—Offences relating to tax file numbers

8WA Unauthorised requirement etc. that tax file number be quoted

- (1) A person must not require or request another person to quote the other person's tax file number.

Penalty: 100 penalty units or imprisonment for 2 years, or both.

- (1AA) Subsection (1) does not apply if:

- (a) provision is made by or under a taxation law or legislation described in paragraph 202(e) of the *Income Tax Assessment Act 1936* for the person to quote the number; or
- (b) the first-mentioned person requires or requests the number to be quoted in connection with that person exercising powers or performing functions under, or in relation to, or complying with an obligation imposed by, a taxation law or a law of the Commonwealth of the kind referred to in paragraph 202(c), (d), (g), (ga), (h), (haa), (ha), (hb), (hc), (i), (ia), (j), (kb), (la) or (m) of the *Income Tax Assessment Act 1936*; or
- (c) the first-mentioned person requires or requests the number to be quoted in connection with the first-mentioned person acting on the other person's behalf in the conduct of the other person's affairs.

Note: A defendant bears an evidential burden in relation to the matters in subsection (1AA), see subsection 13.3(3) of the *Criminal Code*.

- (1A) A person does not contravene subsection (1) by asking another person to quote the other person's tax file number if the request is made so that the number can be included in an application for the registration of an entity under the *A New Tax System (Australian Business Number) Act 1999*.

Note: A defendant bears an evidential burden in relation to the matters in subsection (1A), see subsection 13.3(3) of the *Criminal Code*.

- (2) Nothing in subsection (1) shall be read as prohibiting a person from requesting the production of a document, or a copy of a document, on which another person's tax file number is recorded if the other person is not prevented from removing the tax file number from the document.

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Note: A defendant bears an evidential burden in relation to the matters in subsection (2), see subsection 13.3(3) of the *Criminal Code*.

- (3) For the purposes of this section, a person who makes to another person a statement that the other person could reasonably understand to mean that the other person is required or requested to quote the other person's tax file number shall be taken to require or request the other person to quote the number.
- (4) Nothing in this section shall be read as imposing on a person an obligation to require another person to quote a tax file number.

8WB Unauthorised recording etc. of tax file number

- (1) A person must not:
 - (a) record another person's tax file number or maintain such a record; or
 - (b) use another person's tax file number in a manner connecting it with the other person's identity; or
 - (c) divulge or communicate another person's tax file number to a third person.

Penalty: 100 penalty units or imprisonment for 2 years, or both.

- (1A) Subsection (1) does not apply:
 - (a) to the extent required or permitted by, or reasonably necessary in order to comply with an obligation imposed by, a taxation law or a law of the Commonwealth of a kind referred to in paragraph 202(c), (d), (e), (g), (ga), (h), (haa), (ha), (hb), (hc), (i), (ia), (j), (ka), (kb), (la), (m), (o) or (q) of the *Income Tax Assessment Act 1936*; or
 - (b) in connection with the first-mentioned person exercising powers or performing functions under, or in relation to, a taxation law or a law of the Commonwealth of a kind referred to in paragraph 202(c), (d), (e), (g), (ga), (h), (haa), (ha), (hb), (hc), (i), (ia), (j), (ka), (kb), (la), (m), (o) or (q) of the *Income Tax Assessment Act 1936*; or
 - (c) in connection with the first-mentioned person acting on the other person's behalf in the conduct of the other person's affairs.

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Note: A defendant bears an evidential burden in relation to the matters in subsection (1A), see subsection 13.3(3) of the *Criminal Code*.

- (2) Without affecting any obligation imposed by or under a law of the Commonwealth other than this section, nothing in subsection (1A) shall be read as imposing on a person an obligation to do an act referred to in paragraph (1)(a), (b) or (c).

8WC Conducting affairs so as to avoid tax file number requirements

- (1) Where:

(a) a person is an investor in relation to 2 or more investments of a similar kind; and

(b) having regard to:

(i) the manner in which the person became an investor in relation to the investments; and

(ii) any explanation made by the person as to becoming such an investor in that manner;

it would be reasonable to conclude that the person became such an investor in that manner for the sole or dominant purpose of ensuring, or attempting to ensure that:

(iii) although the person has not, under Part VA of the *Income Tax Assessment Act 1936*, quoted the person's tax file number in connection with those investments (in this subparagraph called the **non-TFN investments**):

(A) amounts would not be deducted under Division 3B of that Act, or withheld under section 12-140 or 12-145 in Schedule 1 to this Act, from income in respect of one or more of the non-TFN investments; and

(B) amounts would not be paid to the Commissioner under section 14-5 in Schedule 1 to this Act, in relation to income in respect of one or more of the non-TFN investments; and

(C) TFN withholding tax would not be payable under section 14-55 in Schedule 1 to this Act in respect of one or more of the non-TFN investments; or

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(iv) the investments are not referred to in a report under the regulations made under that Act;
the person is guilty of an offence.

Penalty: 100 penalty units or imprisonment for 2 years, or both.

(2) In this section:

investment means an investment of a kind mentioned in section 202D of the *Income Tax Assessment Act 1936*.

investor means an investor within the meaning of that section.

Subdivision C—Miscellaneous

8XA Unauthorised access to taxation records

A person must not take action with the intention of obtaining information about another person's affairs that:

- (a) is contained in records in the possession of the Commissioner; and
- (b) is held or was obtained by the Commissioner under or for the purposes of a taxation law;

unless the person takes the action:

- (c) under the *Freedom of Information Act 1982*; or
- (d) in accordance with the processes of a court or the Tribunal;
or
- (e) in the course of exercising powers or performing functions under or in relation to a taxation law.

Penalty: 100 penalty units or imprisonment for 2 years, or both.

8Y Liability of officers etc. of corporations

- (1) Where a corporation does or omits to do an act or thing the doing or omission of which constitutes a taxation offence, a person (by whatever name called and whether or not the person is an officer of the corporation) who is concerned in, or takes part in, the management of the corporation shall be deemed to have committed the taxation offence and is punishable accordingly.

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- (2) In a prosecution of a person for a taxation offence by virtue of subsection (1), it is a defence if the person proves that the person:
- (a) did not aid, abet, counsel or procure the act or omission of the corporation concerned; and
 - (b) was not in any way, by act or omission, directly or indirectly, knowingly concerned in, or party to, the act or omission of the corporation.

Note 1: A defendant bears a legal burden in relation to the matters in subsection (2), see section 13.4 of the *Criminal Code*.

Note 2: Subsection (2) does not apply in relation to a prosecution under Part 2.4 of the *Criminal Code*.

- (3) For the purposes of subsection (1), an officer of a corporation shall be presumed, unless the contrary is proved, to be concerned in, and to take part in, the management of the corporation.
- (4) In this section, **officer**, in relation to a corporation, means:
- (a) a director or secretary of the corporation;
 - (b) a receiver and manager of property of the corporation;
 - (ba) an administrator, within the meaning of the *Corporations Act 2001*, of the corporation;
 - (bb) an administrator of a deed of company arrangement executed by the corporation under Part 5.3A of that Act;
 - (d) a liquidator of the corporation appointed in a voluntary winding up of the corporation; or
 - (e) a trustee or other person administering a compromise or arrangement made between the corporation and another person or other persons.

8Z Evidentiary certificate relating to previous convictions

- (1) The Commissioner may, for the purposes of subsection 8E(2) or (3), 8M(2), 8R(2) or 8V(2), issue a certificate setting out such facts as the Commissioner considers relevant with respect to:
- (a) the conviction of a person of an offence against a provision of Subdivision A or B or against Division 136 or 137 of the *Criminal Code* in relation to a taxation law; or

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- (b) the conviction of a person of an offence against the *Crimes (Taxation Offences) Act 1980*; or
 - (c) the conviction of a person of an offence against:
 - (i) section 6 of the *Crimes Act 1914*; or
 - (ii) section 11.1, 11.4 or 11.5 of the *Criminal Code*;
being an offence that relates to an offence of a kind referred to in paragraph (a) or (b) of this subsection; or
 - (d) the conviction of a person of an offence against section 134.1, 134.2, 135.1, 135.2 or 135.4 of the *Criminal Code*, being an offence that relates to a tax liability; or
 - (e) the making of an order under section 19B of the *Crimes Act 1914* in relation to a person in respect of an offence of a kind referred to in paragraph (a), (b), (c) or (d) of this subsection; or
 - (f) the conviction of a person of an offence against Division 136 or 137 of the *Criminal Code*, being an offence that relates to a taxation law.
- (2) A document purporting to be a certificate issued under subsection (1) shall be received in evidence in a court without further proof and is, for those purposes, *prima facie* evidence of the facts stated in it.
- (3) The provisions of this section are in addition to, and not in derogation of, any other law of the Commonwealth or any law of a State or Territory.

Division 3—Prosecution of taxation offences

8ZA Prosecution of taxation offences

- (1) A taxation offence that is punishable by imprisonment for a period exceeding 12 months is, when committed by a natural person, an indictable offence.
- (2) A taxation offence that is punishable by imprisonment for a period not exceeding 12 months is, when committed by a natural person, punishable on summary conviction.
- (3) A prescribed taxation offence, when committed by a natural person, is punishable on summary conviction.
- (4) A taxation offence, when committed by a corporation, is punishable on summary conviction.
- (5) In spite of anything in the preceding provisions of this section, if:
 - (a) a person is convicted of 2 or more offences against section 8T or 8U, or both, before the same court at the same sitting; and
 - (b) assuming that the person had only been convicted of one of those offences, that offence would have been punishable on summary conviction;all those offences are punishable on summary conviction.
- (6) A reference in subsection (5) to a conviction of a person for an offence includes a reference to the making of an order under section 19B of the *Crimes Act 1914* in relation to the person in respect of the offence.
- (7) A reference in subsection (5) to an offence against section 8T or 8U includes a reference to an offence against section 11.1 of the *Criminal Code* that relates to an offence against section 8T or 8U, as the case may be.

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8ZB Prosecution may be commenced at any time

- (1) A prosecution for a taxation offence may be commenced at any time.
- (2) Subsection (1) has effect notwithstanding anything contained in section 15B of the *Crimes Act 1914*.

8ZC Place where offence committed

- (1) Where a person commits a taxation offence by doing an act, the taxation offence may be taken to have been committed at:
 - (a) the place where the act was done;
 - (b) if the person is a natural person—the usual place of residence or business of the person or the place of residence or business of the person last known to the Commissioner; or
 - (c) if the person is a corporation—the head office, a registered office or a principal office of the corporation;and the person may be charged with, and convicted of, the taxation offence as if it had been committed at any of those places.
- (2) Where a person commits a taxation offence by omitting to do an act, the taxation offence may be taken to have been committed at:
 - (a) the place where the act should have been done;
 - (b) if the person is a natural person—the usual place of residence or business of the person or the place of residence or business of the person last known to the Commissioner; or
 - (c) if the person is a corporation—the head office, a registered office or a principal office of the corporation;and the person may be charged with, and convicted of, the taxation offence as if it had been committed at any of those places.
- (3) This section has effect subject to section 80 of the Constitution.

Note: This section does not apply as an averment. For averments, see section 8ZL of this Act and section 13.6 of the *Criminal Code*.

8ZD Conduct by servants or agents of corporations

- (1) Where, in a prosecution for a taxation offence constituted by an act done, or omitted to be done, by a corporation, it is necessary to establish the intention of the corporation, it is sufficient to show that a servant or agent of the corporation by whom the act was done or omitted to be done, as the case may be, had the intention.
- (2) In a prosecution for a taxation offence, any act done, or omitted to be done, on behalf of a corporation by:
 - (a) a director, servant or agent of the corporation; or
 - (b) any other person:
 - (i) at the direction; or
 - (ii) with the consent or agreement (whether express or implied);of a director, servant or agent of the corporation;shall be deemed to have been done, or omitted to have been done, as the case may be, also by the corporation.
- (3) Part 2.5 of the *Criminal Code* does not apply to taxation offences.

8ZE Civil penalty not payable if prosecution instituted

If:

- (a) a person is liable to pay by way of penalty (other than for an offence) an amount under a taxation law because of an act or omission of the person; and
 - (b) a prosecution is instituted against the person for a taxation offence constituted by the act or omission;
- then (whether or not the prosecution is withdrawn):
- (c) the person is not liable to pay the amount; and
 - (d) any amount paid, or applied by the Commissioner, in total or partial discharge of that liability is to be refunded to the person, or applied by the Commissioner in total or partial discharge of another tax liability of the person.

Note: An example of a penalty referred to in paragraph (a) is a penalty payable under section 284-75 in Schedule 1.

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8ZF Penalties for corporations

Where a corporation is convicted of:

- (a) a taxation offence (other than a prescribed offence) that, if committed by a natural person, is punishable by imprisonment; or
- (b) a prescribed offence to which subsection 8E(3) or 8R(2) applies;

the penalty that the court before which the corporation is convicted may impose is a fine not exceeding 5 times the maximum fine that, but for this section, the court could impose as a penalty for the taxation offence.

8ZG Enforcement of orders for payment

(1) Where:

- (a) upon the conviction of a person for a taxation offence, the court before which the person is convicted, in addition to imposing a penalty on the person, orders the person to pay an amount to the Commissioner; and
 - (b) the court has civil jurisdiction to the extent of the amount;
- the order is enforceable in all respects as a final judgment of the court in favour of the Commissioner.

(2) Where:

- (a) upon conviction of a person for a taxation offence, the court before which the person is convicted, in addition to imposing a penalty on the person, orders the person to pay an amount to the Commissioner; and
- (b) the court:
 - (i) does not have civil jurisdiction; or
 - (ii) has civil jurisdiction, but does not have civil jurisdiction to the extent of the amount;

the proper officer of the court shall issue to the Commissioner a certificate in the prescribed form containing the prescribed particulars.

(3) The certificate may, in the prescribed manner and subject to the prescribed conditions (if any), be registered in a court having civil

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jurisdiction to the extent of the amount ordered to be paid to the Commissioner.

- (4) Upon registration under subsection (3), the certificate is enforceable in all respects as a final judgment of the court in favour of the Commissioner.
- (5) The costs of registration of the certificate and other proceedings under this section shall, subject to the prescribed conditions (if any), be deemed to be payable under the certificate.

8ZH Penalties not to relieve from tax

The adjudgment or payment of:

- (a) a penalty in respect of a taxation offence; or
- (b) an amount ordered by a court, upon the conviction of a person for a taxation offence, to be paid by the person to the Commissioner;

does not relieve any person from liability to assessment or payment of any amount (whether by way of tax, duty, charge or otherwise) for which the person would otherwise be liable.

Division 4—Prescribed taxation offences

8ZJ Prosecution of prescribed taxation offences

- (1) A prosecution for a prescribed taxation offence shall take the form of a proceeding by the Commonwealth for the recovery of a pecuniary penalty.
- (2) A prosecution for a prescribed taxation offence may be instituted by a person authorized under subsection (8) on behalf of, and in the official name of, the Commissioner by information or complaint in a court of summary jurisdiction.
- (3) A prosecution of a person for a prescribed taxation offence that is punishable by a fine exceeding the prescribed amount in relation to the person may be instituted by a person authorized under subsection (8) on behalf of, and in the official name of, the Commissioner by action in the Supreme Court of a State or Territory.
- (4) Where a court of summary jurisdiction convicts a person of a prescribed taxation offence, the penalty that the court may impose is a fine not exceeding the prescribed amount in relation to the person.
- (5) Where:
 - (a) a prosecution of a person for a prescribed taxation offence that is punishable by a fine exceeding the prescribed amount in relation to the person is instituted in accordance with subsection (2); and
 - (b) before the expiration of the period of 14 days after service of process on the person in respect of the prescribed taxation offence, the person elects, in the prescribed manner, to have the case tried in the Supreme Court of the State or Territory in which the prosecution was instituted;the prosecution shall, by force of this subsection and without any order of the Supreme Court, be removed to the Supreme Court.

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- (6) Where a prosecution for a prescribed taxation offence is instituted in the Supreme Court of a State or Territory in accordance with subsection (3) or is removed to the Supreme Court of a State or Territory by force of subsection (5), the prosecution may be conducted in accordance with:
 - (a) the usual practice and procedure of the Supreme Court in civil cases; or
 - (b) the directions of the Supreme Court or a Justice or Judge of the Supreme Court.
- (7) The jurisdiction of the Supreme Court of a State or Territory under this section shall be exercised by a single Justice or Judge of the Supreme Court.
- (8) The Commissioner may, by writing, authorize a person to institute a prosecution for:
 - (a) a specified prescribed taxation offence;
 - (b) a prescribed taxation offence included in a specified class of prescribed taxation offences; or
 - (c) any prescribed taxation offence.
- (9) A reference in this section to the prescribed amount in relation to a person is a reference to:
 - (a) if the person is a natural person—\$5,000; or
 - (b) if the person is a corporation—\$25,000.

8ZK Protection of witnesses

A witness called on behalf of the Commissioner in any prosecution for a prescribed taxation offence shall not be compelled:

- (a) to disclose:
 - (i) the fact that the witness received any information;
 - (ii) the nature of any information received by the witness; or
 - (iii) the name of any person from whom the witness received any information; or

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- (b) if the witness is an officer, to produce any reports:
 - (i) made or received by the witness confidentially in the witness' official capacity; or
 - (ii) containing confidential information.

8ZL Averment

- (1) In a prosecution for a prescribed taxation offence, a statement or averment contained in the information, claim or complaint is *prima facie* evidence of the matter so stated or averred.
- (2) This section applies in relation to any matter so stated or averred although:
 - (a) evidence in support or rebuttal of the matter stated or averred, or of any other matter, is given; or
 - (b) the matter averred is a mixed question of law and fact, but, in that case, the statement or averment is *prima facie* evidence of the fact only.
- (3) Any evidence given in support or rebuttal of a matter so stated or averred shall be considered on its merits, and the credibility and probative value of such evidence shall be neither increased nor diminished by reason of this section.
- (4) This section:
 - (a) does not apply to any fault element of an offence; and
 - (aa) does not apply in relation to any offence for which imprisonment is a penalty; and
 - (b) does not lessen or affect any onus of proof otherwise falling on a defendant.

8ZM Evidence of authority to institute proceedings

- (1) Where a prosecution for a prescribed taxation offence is instituted by a person in the official name of the Commissioner, the prosecution shall be presumed, unless the contrary is proved, to have been instituted with the authority of the Commissioner.
 - (2) In a prosecution for a prescribed taxation offence, the mere production of an instrument, telegram or copy of a telex message
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purporting to have been issued or sent by the Commissioner, a Second Commissioner or a Deputy Commissioner and purporting to notify a person that the person is authorized by the Commissioner to institute the prosecution, to institute prosecutions for a class of prescribed taxation offences in which the prescribed taxation offence is included or to institute prosecutions for any prescribed taxation offence is conclusive evidence of the authority of the person to institute the prosecution on behalf of, and in the official name of, the Commissioner.

8ZN Costs

In a prosecution for a prescribed taxation offence, the court may award costs against any party.

Division 5—Service of summons for prescribed taxation offences

9 Interpretation

In this Division, unless the contrary intention appears:

defendant, in relation to a prescribed taxation offence, means a person to whom a summons has been sent in the manner permitted by subsection 10(1) in relation to the prescribed taxation offence (whether or not the summons has been delivered to, or received by, the person).

summons, in relation to a person, means a writ or process notifying or directing the person to appear on a designated day before a specified court.

10 Service of summons by post

- (1) A summons for the appearance before a court of summary jurisdiction of a person charged with having committed a prescribed taxation offence may be served upon the person to whom it is directed by sending a copy of the summons, not less than 21 days before the day on which the person is required by the summons to appear before the court, by ordinary prepaid post addressed to the person at the person's last known place of residence or last known place of business.
- (1A) Subsection (1) has effect without prejudice to any other method of service provided for under any other law of the Commonwealth or under a law of a State or Territory.
- (2) Where a summons is served in the manner permitted by subsection (1), the court may require the summons to be re-served if the court has reasonable cause to believe that the summons has not come to the notice of the person to whom it is directed.

11 Notice of conviction *in absentia*

- (1) Where a defendant who has not entered a plea in relation to a prescribed taxation offence is, in the defendant's absence, convicted of the prescribed taxation offence, the proper officer of the court concerned shall cause to be served on the defendant notice in writing of:
 - (a) the conviction;
 - (b) the order of the court;
 - (c) where the order of the court includes the imposition of a fine—the time allowed by the court for payment of the fine; and
 - (d) the right of the defendant to make an application under section 13A for an order setting aside the conviction.
- (2) Without prejudice to any other method of service provided for under any other law of the Commonwealth or under a law of a State or Territory, a notice under subsection (1) may be served on the defendant by sending the notice to the defendant by ordinary prepaid post addressed to the defendant at the defendant's last known place of residence or last known place of business.

12 Notice of intention to issue warrant in default of payment

Where:

- (a) a defendant, not being a body corporate, has been served with a notice under subsection 11(1), being a notice that includes notice of a fine imposed on him or her in consequence of a conviction;
- (b) the fine is not paid in full within the time allowed by the court for payment of the fine; and
- (c) a period of not less than 21 days has elapsed after the date of service of the notice;

the proper officer of the court concerned may cause to be served personally on the defendant a notice (in this section referred to as the ***personal notice***) informing the defendant that unless:

- (d) the fine is paid in full before the expiration of 21 days after the date of service of the personal notice; or

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- (e) an application in accordance with section 13A for the setting aside of the conviction is made before the expiration of 14 days after the date of service of the personal notice; a warrant for his or her commitment to prison may be issued.

13 Limitation of action to enforce payment of fine

Notwithstanding anything contained in any other law of the Commonwealth or in a law of a State or Territory, where a defendant who has not entered a plea in relation to a prescribed taxation offence is, in the defendant's absence, convicted of the prescribed taxation offence and the order of the court includes the imposition of a fine:

- (a) a warrant for commitment of the defendant to prison for failure to pay the fine shall not be issued unless:
 - (i) a notice has been served on the defendant under section 12 in relation to the fine; and
 - (ii) a period of not less than 21 days has elapsed after the date of service of the notice; and
- (b) no other action for enforcement of payment of the fine shall be taken unless:
 - (i) a notice has been served on the defendant in relation to the conviction under subsection 11(1); and
 - (ii) a period of not less than 21 days has elapsed after the date of service of the notice.

13A Setting aside of conviction or order

- (1) Where a defendant has been served with a notice under section 11 in relation to a conviction or order of a court, the defendant may:
 - (a) where a fine was imposed by the court—before the expiration of:
 - (i) the period allowed by the court for payment of the fine; or
 - (ii) a period of 21 days after the date of service of the notice;whichever is the longer; or

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- (b) where no fine was imposed by the court—within 21 days after the date of service of the notice;
make an application in writing to the court, or to another court of summary jurisdiction that would have had jurisdiction to make the conviction or order, for an order setting aside the conviction or order.
- (2) Where a defendant has been served with a notice under section 12 in relation to a conviction or order of a court, the defendant may, within 14 days after the date of service of the notice, make an application in writing to the court, or to another court of summary jurisdiction that would have had jurisdiction to make the conviction or order, for an order setting aside the conviction or order.
- (3) Any person who was a party to the proceedings in which the conviction or order to which an application under subsection (1) or (2) relates was made shall be a party to proceedings in respect of the application.
- (4) Where a court is satisfied, on an application made by a defendant in accordance with subsection (1) or (2) in relation to a conviction or order, that:
- (a) in the case of an application under subsection (1):
 - (i) the defendant did not receive notice of the proceedings in which the conviction or order was made, or did not receive such notice in sufficient time to enable the defendant to attend the proceedings; or
 - (ii) the defendant failed to attend the proceedings in which the conviction or order was made for reasons that, in the opinion of the court, render it desirable, in the interests of justice, that the conviction or order be set aside and the matter re-heard; or
 - (b) in the case of an application under subsection (2):
 - (i) the defendant:
 - (A) did not receive notice of the proceedings in which the conviction or order was made, or did not receive such notice in sufficient time to

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enable the defendant to attend the proceedings;
and

- (B) did not receive notice of the conviction or order, or did not receive such notice in sufficient time to enable the defendant to apply, within the time specified in paragraph (1)(a), for an order setting aside the conviction or order; or
 - (ii) the defendant failed to attend the proceedings in which the conviction or order was made, and failed to make an application in accordance with subsection (1) in relation to the notice served on the defendant under section 11 in relation to the conviction or order, for reasons that, in the opinion of the court, render it desirable, in the interests of justice, that the conviction or order be set aside and the matter re-heard;
- the court shall set aside the conviction or order and shall:
- (c) proceed forthwith to re-hear and determine the matter; or
 - (d) adjourn the proceedings for re-hearing the matter to such time and place as the court thinks fit.
- (5) Where an application is made to a court (in this subsection referred to as the **relevant court**) under this section for the setting aside of a conviction or order of a court, the proper officer of the relevant court shall forthwith:
- (a) cause notice of the making of the application to be given to each party to the application other than the defendant; and
 - (b) where the conviction or order was made by a court other than the relevant court—cause notice of the making of the application to be given to that other court.
- (6) Where, under subsection (4), a court sets aside a conviction or order of another court, the proper officer of the first-mentioned court shall forthwith cause notice of the setting aside of that conviction or order to be given to the other court.

13B Proof of service of summons or notice

Service of a summons in accordance with section 10 or of a notice in accordance with section 11 or 12 may be proved by the oath of the person who served it or by affidavit or otherwise.

13C Application of other laws

- (1) The provisions of this Division have effect in addition to, and not in derogation of, any other law of the Commonwealth or a State or Territory that makes provision for, or in relation to, the service of summonses.
- (2) Without limiting the generality of section 79 of the *Judiciary Act 1903*, the laws (if any) of a State or Territory relating to any procedure whereby a person may, without appearing in court in obedience to a summons, enter a plea in relation to a charge of having committed an offence apply in like manner, *mutatis mutandis*, to a defendant charged with having committed a prescribed taxation offence.

Division 6—Setting aside etc. of conviction or order on application of Commissioner

13CA Setting aside etc. of conviction or order on application of Commissioner

- (1) Where a person has been convicted in his or her absence of a prescribed taxation offence (whether before or after the commencement of this section), the Commissioner may apply to a court (in this section called the *quashing court*) for:
 - (a) an order setting aside the conviction or setting aside the order of the convicting court in respect of the conviction; or
 - (b) an order varying the order of the convicting court in respect of the conviction so as to reduce its severity.
- (2) The application shall be made in writing:
 - (a) to the convicting court; or
 - (b) to any other court of summary jurisdiction that would have had jurisdiction to make the conviction or order.
- (3) The proper officer of the quashing court shall, without delay, cause notice of the making of the application to be given to each party to the application (other than the Commissioner).
- (4) Any person who was a party to the proceedings in which the defendant was convicted shall be made a party to the proceedings in respect of the application.
- (5) If the quashing court is satisfied that:
 - (a) the conviction or order was made in circumstances that, in the opinion of the court, make it desirable, in the interests of justice, that:
 - (i) the conviction or order be set aside; or
 - (ii) the order be varied by reducing its severity; or
 - (b) because of other special circumstances (whether or not existing at the time the conviction or order was made) it is desirable, in the interests of justice, or in order to avoid undue hardship, that:

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- (i) the order be set aside; or
 - (ii) the order be varied so as to reduce its severity;
- the court may set aside the conviction, or set aside or vary the order, as the case may be, on such terms as to costs or otherwise as the court thinks just.
- (6) If the court sets aside the conviction, or sets aside or varies the order in respect of the conviction, the court shall also set aside any warrant issued in consequence of the conviction.
- (7) If the quashing court:
 - (a) is not the convicting court; and
 - (b) sets aside the conviction, or sets aside or varies the order, of the convicting court;the proper officer of the quashing court shall without delay cause notice of the setting aside or variation to be given to the convicting court.
- (8) A reference in this section to a conviction includes a reference to the making of an order under section 19B of the *Crimes Act 1914*.
- (9) The setting aside of a conviction or order under this section is a bar to any further legal proceeding against the defendant for the same matter in any court (other than on appeal).
- (10) This section is in addition to, and not in derogation of, any other law of the Commonwealth or any law of a State or Territory.

Section 13D

Part IIIA—Co-operation between Commonwealth and State taxation authorities

Division 1—Interpretation

13D Interpretation

- (1) In this Part, unless the contrary intention appears:

Australian Capital Territory includes the Jervis Bay Territory.

officer means:

- (a) a person appointed or engaged under the *Public Service Act 1999*; or
- (b) a State taxation officer.

State includes the Northern Territory.

State Minister means:

- (a) in relation to a State other than the Northern Territory—a Minister of the Crown of the State; or
- (b) in relation to the Northern Territory—a Minister of the Northern Territory.

State tax law means a law of a State relating to taxation.

State taxation officer means:

- (a) a person or authority, not being a State Minister, who or which is for the time being authorised under a law of a State to perform the functions of a State taxation officer under this Part; or
- (b) a person, not being a State Minister, authorised by writing signed by a person or authority referred to in paragraph (a) to act under this Part.

Territory means the Australian Capital Territory.

Territory tax law means a law of the Territory relating to taxation.

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Territory taxation officer means:

- (a) a person or authority, not being a Minister of State of the Commonwealth, who or which is for the time being authorised under a law of the Territory to perform the functions of a Territory taxation officer under this Part; or
 - (b) a person, not being a Minister of State of the Commonwealth, authorised by writing signed by a person or authority referred to in paragraph (a) to act under this Part.
- (2) A reference in Division 3 or 4 to a State tax law includes a reference to a Territory tax law.
- (3) A reference in Division 3 or 4 to a State taxation officer includes a reference to a Territory taxation officer.

Division 2—Trans-border investigations

13E State taxation officers may refer matters to Commissioner for investigation

A State taxation officer may, by writing signed by the officer, refer a matter arising under a State tax law to the Commissioner for investigation in the Territory.

13F Access to documents etc.

- (1) Where, under section 13E, a matter is referred to the Commissioner for investigation, the Commissioner may, by writing signed by the Commissioner, authorise an officer to conduct an investigation into that matter.
- (2) For the purposes of conducting an investigation into a matter referred to the Commissioner under section 13E, an officer authorised under subsection (1) of this section to conduct the investigation:
 - (a) may, at all reasonable times, enter upon any land in the Territory;
 - (b) shall have full and free access at all reasonable times to all documents in the Territory; and
 - (c) may take extracts from, and make copies of, any documents in the Territory.
- (3) An officer who enters upon land pursuant to subsection (2) is not authorised to remain on the land if, on request by the occupier of the land, the officer does not produce a certificate issued by the Commissioner stating that he or she is an officer authorised under subsection (1) to conduct an investigation into a matter specified in the certificate.
- (4) The occupier of land entered or proposed to be entered by an officer under subsection (2) shall provide the officer with all reasonable facilities and assistance for the effective exercise of powers under this section.

Penalty for a contravention of this subsection: 10 penalty units.

13G Commissioner may obtain information and evidence

- (1) Where, under section 13E, a matter is referred to the Commissioner for investigation, the Commissioner may, for the purposes of conducting the investigation in the Territory, by notice in writing, require any person, including any officer employed in or in connection with any department of a government or by any public authority:
 - (a) to furnish the Commissioner with such information as the Commissioner requires;
 - (b) to attend before the Commissioner, or before an officer authorised by the Commissioner for the purpose, at a time and place specified in the notice and there answer questions; and
 - (c) to produce to the Commissioner, or to an officer authorised by the Commissioner for the purpose, any documents in the custody or under the control of the person.
- (2) The Commissioner may require the information or answers to be verified or furnished, as the case may be, on oath or affirmation and either orally or in writing, and for that purpose the Commissioner or an officer authorised by the Commissioner may administer an oath or affirmation.
- (3) The oath or affirmation to be taken or made by a person for the purposes of this section is an oath or affirmation that the information is or the answers will be true.
- (4) The Commissioner may cause copies to be made of, or extracts to be taken from, any documents that are produced pursuant to paragraph (1)(c).
- (5) A person required pursuant to paragraph (1)(b) to attend before the Commissioner or an officer authorised by the Commissioner is entitled to payment of an allowance in respect of his or her expenses of an amount determined by the Commissioner in accordance with the regulations.

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Division 4—Certification by State taxation officer of copies of, and extracts from, documents

13K Certification by State taxation officer of copies of, and extracts from, documents

- (1) Where a document is obtained pursuant to a State tax law, a State taxation officer may certify a copy of the document to be a true copy.
- (2) Where, pursuant to a State tax law, a copy is made of a document, a State taxation officer may certify the copy to be a true copy.
- (3) Where a document is obtained pursuant to a State tax law, a State taxation officer may certify an extract taken from the document to be a true extract.
- (4) Where, pursuant to a State tax law, an extract is taken from a document, a State taxation officer may certify the extract to be a true extract.
- (5) Subject to subsection (6), a document purporting to be a copy or extract certified under subsection (1), (2), (3) or (4) shall be received in all courts and tribunals in proceedings arising out of a taxation law as evidence as if it were the original.
- (6) Subsection (5) does not apply in relation to a document if:
 - (a) in the case of proceedings for an offence—evidence is adduced that the document is not a true copy or a true extract; or
 - (b) in any other case—it is proved that the document is not a true copy or a true extract.
- (7) Where:
 - (a) pursuant to a State tax law, a copy (in this section referred to as the **primary copy**) is made of, or an extract (in this section referred to as the **primary extract**) is taken from, a document (in this section referred to as the **original document**); and

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- (b) pursuant to subsection (2) or (4), a State taxation officer has certified the primary copy to be a true copy of, or the primary extract to be a true extract taken from, the original document;

a State taxation officer may:

 - (c) certify a copy of the primary copy or primary extract to be a true copy; or
 - (d) certify an extract taken from the primary copy or primary extract to be a true extract.
- (8) Subject to subsection (9), a document purporting to be:
 - (a) a copy, certified under subsection (7), of a primary copy of, or a primary extract taken from, an original document; or
 - (b) an extract, certified under subsection (7), taken from a primary copy of, or a primary extract taken from, an original document;

shall be received in all courts and tribunals in proceedings arising out of a taxation law as evidence as if it were the original document.
- (9) Subsection (8) does not apply in relation to a document if:
 - (a) in the case of proceedings for an offence, evidence is adduced that:
 - (i) the document is not a true copy of, or a true extract taken from, the primary copy or primary extract; or
 - (ii) the primary copy is not a true copy of, or the primary extract is not a true extract taken from, the original document; or
 - (b) in any other case, it is proved that:
 - (i) the document is not a true copy of, or a true extract taken from, the primary copy or primary extract; or
 - (ii) the primary copy is not a true copy of, or the primary extract is not a true extract taken from, the original document.
- (11) This section applies in relation to the *Development Allowance Authority Act 1992* as if that Act were a taxation law.

Section 13L

Division 5—Australian Taxation Office may perform functions under State/Territory debits tax laws

13L Australian Taxation Office may perform functions under State/Territory debits tax laws

- (1) In this section:

accounts, in relation to a financial institution, includes accounts kept by way of withdrawable share capital in, or money deposited with, the financial institution.

co-operative housing society means a society registered or incorporated as a co-operative housing society or similar society under a law of a State or Territory.

financial institution includes:

- (a) a body corporate that is an ADI (authorised deposit-taking institution) for the purposes of the *Banking Act 1959*; and
- (b) a co-operative housing society; and
- (c) a registered entity under the *Financial Sector (Collection of Data) Act 2001*.

State/Territory debits tax law means:

- (a) a State tax law; or
- (b) a Territory tax law;

relating to the taxation of debits made to accounts kept with financial institutions.

- (2) The Commissioner may make an arrangement with an appropriate officer or authority of a State or the Territory about any matter in connection with the administration of a State/Territory debits tax law.
- (3) In particular, an arrangement may provide:
- (a) for the Commissioner or the Second Commissioners to perform functions, or exercise powers, conferred on them by a State/Territory debits tax law; or

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- (b) for the services of officers or employees under the control of the Commissioner to be made available to the State or the Territory or to an authority of the State or of the Territory for the purposes of matters relating to the administration of a State/Territory debits tax law.

Part IVA—Departure from Australia of certain tax debtors

Division 1—Interpretation

14Q Interpretation

- (1) In this Part, unless the contrary intention appears:

Australia, when used in a geographical sense, includes the external Territories.

authorized officer means a person who is:

- (a) an officer for the purposes of the *Customs Act 1901*; or
- (b) a member of the Australian Federal Police.

departure authorization certificate means a certificate under subsection 14U(1).

departure prohibition order means an order under subsection 14S(1).

- (2) A reference in this Part to the departure of a person from Australia for a foreign country is a reference to the departure of the person from Australia for a foreign country, whether or not the person intends to return to Australia.

Division 2—Prohibition and authorisation of departure of certain tax debtors

14R Departure from Australia of certain tax debtors prohibited

- (1) A person in respect of whom a departure prohibition order is in force, and who knows that such an order is in force in respect of him or her, shall not depart from Australia for a foreign country.

Penalty: 50 penalty units or imprisonment for 12 months, or both.

- (2) Subsection (1) does not apply if the departure is authorised by a departure authorization certificate.

Note: A defendant bears an evidential burden in relation to the matters in subsection (2), see subsection 13.3(3) of the *Criminal Code*.

14S Departure prohibition orders

- (1) Where:
- (a) a person is subject to a tax liability; and
 - (b) the Commissioner believes on reasonable grounds that it is desirable to do so for the purpose of ensuring that the person does not depart from Australia for a foreign country without:
 - (i) wholly discharging the tax liability; or
 - (ii) making arrangements satisfactory to the Commissioner for the tax liability to be wholly discharged;
- the Commissioner may, by order in accordance with the prescribed form, prohibit the departure of the person from Australia for a foreign country.
- (2) Subject to subsection (3), a departure prohibition order remains in force unless and until revoked under section 14T or set aside by a court.
- (3) A departure prohibition order made in respect of a person shall be taken, by virtue of this subsection, not to be in force in respect of the person during any period during which an order is in force under the *Migration Act 1958* for the deportation of the person.

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- (4) Where a departure prohibition order is made in respect of a person, the Commissioner shall forthwith:
 - (a) cause the person to be informed, as prescribed, of the making of the order; and
 - (b) subject to subsection (5), cause a copy of the order, and such information as the Commissioner considers is likely to facilitate the identification of the person, to be given to:
 - (i) the Immigration Secretary; and
 - (ii) such other persons as the Commissioner considers appropriate, being persons prescribed, or included in a class of persons prescribed, for the purposes of this paragraph.
- (5) Where a departure prohibition order is made in respect of a person whom the Commissioner is satisfied is an Australian citizen, the Commissioner shall not cause a copy of the order, or any information likely to facilitate the identification of the person, to be given to the Immigration Secretary unless the Commissioner is of the opinion that it is desirable to do so.

14T Revocation and variation of departure prohibition orders

- (1) Where a departure prohibition order is in force in respect of a person and:
 - (a) the tax liabilities to which the person is subject have been wholly discharged and the Commissioner is satisfied that it is likely that the tax liabilities to which the person may become subject in respect of, or arising out of, matters that have occurred will be:
 - (i) wholly discharged; or
 - (ii) completely irrecoverable; or
 - (b) the Commissioner is satisfied that the tax liabilities to which the person is subject are completely irrecoverable;the Commissioner shall, on application being made to the Commissioner by the person to do so or on the Commissioner's own motion, revoke the departure prohibition order.
 - (2) Where a departure prohibition order is in force in respect of a person, the Commissioner may, in the Commissioner's discretion
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and on application being made to the Commissioner to do so or on the Commissioner's own motion, revoke or vary the departure prohibition order.

- (3) A reference in paragraph (1)(a) to tax liabilities having been wholly discharged includes a reference to arrangements satisfactory to the Commissioner having been made for those tax liabilities to be wholly discharged and a reference in that paragraph to the Commissioner being satisfied that it is likely that tax liabilities to which a person may become subject will be wholly discharged includes a reference to the Commissioner being satisfied that it is likely that arrangements satisfactory to the Commissioner will be made for those tax liabilities to be wholly discharged.
- (4) As soon as practicable after a departure prohibition order made in respect of a person is revoked or varied under this section, the Commissioner shall:
 - (a) cause to be served, as prescribed, on the person; and
 - (b) cause to be given to each person to whom a copy of the departure prohibition order was given;notification of the revocation or variation of the departure prohibition order.
- (5) As soon as practicable after a decision is made under subsection (1) or (2) refusing to revoke a departure prohibition order made in respect of a person, the Commissioner shall cause to be served, as prescribed, on the person notification of the decision.

14U Departure authorisation certificates

- (1) Where, on application made by a person in respect of whom a departure prohibition order is in force:
 - (a) the Commissioner is satisfied:
 - (i) that, if a departure authorization certificate is issued in respect of the person, it is likely that:
 - (A) the person will depart from Australia and will return to Australia within such period as the Commissioner considers to be appropriate in relation to the person; and

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- (B) circumstances of the kind referred to in paragraph 14T(1)(a) will come into existence within such period as the Commissioner considers to be appropriate in relation to the person; and
 - (ii) that it is not necessary or desirable for the person to give security under subsection (2) for the person's return to Australia; or
 - (b) in a case where the Commissioner is not satisfied with respect to the matters referred to in paragraph (a):
 - (i) the person has given security under subsection (2) to the satisfaction of the Commissioner for the person's return to Australia; or
 - (ii) if the person is unable to give such security, the Commissioner is satisfied that:
 - (A) a departure authorization certificate should be issued in respect of the person on humanitarian grounds; or
 - (B) a refusal to issue a departure authorization certificate in respect of the person would be detrimental to the interests of Australia;
- the Commissioner shall issue a certificate authorizing the person to depart from Australia for a foreign country on or before the seventh day after a day (being a day later than, but not more than 7 days later than, the day on which the certificate is issued) specified in the certificate.
- (2) For the purposes of this section:
- (a) a person may give security, by bond, deposit or any other means, for the person's return to Australia by such day as is agreed between the person and the Commissioner;
 - (b) the Commissioner may, in the Commissioner's discretion and on application by the person or on the Commissioner's own motion, substitute a later day for the day so agreed (including a day substituted by virtue of a previous application of this paragraph); and

- (c) the Commissioner may refuse to substitute such a later day unless the person:
 - (i) increases, to the satisfaction of the Commissioner, the value of the security given by the person under this subsection; or
 - (ii) gives a further security, to the satisfaction of the Commissioner, by bond, deposit or any other means, for the person's return to Australia by that later day.
- (3) As soon as practicable after a departure authorization certificate is issued in respect of a person, the Commissioner shall:
 - (a) cause a copy of the departure authorization certificate to be served, as prescribed, on the person; and
 - (b) cause a copy of the departure authorization certificate to be given to each person to whom a copy of the departure prohibition order made in respect of the person was given.
- (4) As soon as practicable after a decision is made under subsection (1) refusing to issue a departure authorization certificate in respect of a person or a decision is made under subsection (2) refusing to substitute a later day in relation to the return of a person to Australia, the Commissioner shall cause to be served, as prescribed, on the person notification of the decision.

Division 3—Appeals from, and review of, decisions of the Commissioner

14V Appeals to courts against making of departure prohibition orders

- (1) A person aggrieved by the making of a departure prohibition order may appeal to the Federal Court of Australia or the Supreme Court of a State or Territory against the making of the departure prohibition order.
- (2) This section has effect:
 - (a) subject to chapter III of the Constitution; and
 - (b) notwithstanding anything contained in section 9 of the *Administrative Decisions (Judicial Review) Act 1977*.

14W Jurisdiction of courts

- (1) The jurisdiction of a court under section 14V shall be exercised by a single Judge or Justice.
- (2) An appeal lies to the Federal Court of Australia from a judgment or order of the Supreme Court of a State or Territory exercising jurisdiction under section 14V.
- (3) An appeal lies to the High Court, with special leave of the High Court, from a judgment or order referred to in subsection (2).
- (4) Except as provided in subsection (2) or (3), no appeal lies from a judgment or order referred to in subsection (2).

14X Orders of court on appeal

A court hearing an appeal under section 14V against the making of a departure prohibition order may, in its discretion:

- (a) make an order setting aside the departure prohibition order;
or
- (b) dismiss the appeal.

14Y Applications for review of certain decisions

- (1) Applications may be made to the Tribunal for review of decisions of the Commissioner under section 14T or 14U.
- (2) In subsection (1), **decision** has the same meaning as in the *Administrative Appeals Tribunal Act 1975*.

Division 4—Enforcement

14Z Powers of authorised officers

(1) Where an authorized officer believes on reasonable grounds that:

- (a) a person is about to depart from Australia for a foreign country;
- (b) a departure prohibition order is in force in respect of the person; and
- (c) the departure is not authorized by a departure authorization certificate;

the authorized officer may:

- (d) take such steps as are reasonably necessary to prevent the departure of the person, including, but without limiting the generality of the foregoing, steps to prevent the person going on board, or steps to remove the person from, a vessel or aircraft in which the authorized officer believes on reasonable grounds the departure will take place; and
 - (e) require the person to answer questions or produce documents to the authorized officer, or both, for the purposes of ascertaining whether:
 - (i) a departure prohibition order is in force in respect of the person; and
 - (ii) if a departure prohibition order is in force in respect of the person—the departure of the person from Australia for a foreign country is authorized by a departure authorization certificate.
- (2) A person who refuses or fails, when and as required to do so pursuant to subsection (1), to answer a question or produce a document, is guilty of an offence punishable on conviction by a fine not exceeding \$1,000.

(2A) Subsection (2) does not apply to the extent that the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matters in subsection (2A), see subsection 13.3(3) of the *Criminal Code*.

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- (4) Section 8C does not apply in relation to a requirement made pursuant to subsection (1) of this section.
- (5) Subsection 8K(1) and (1B) and section 8N do not apply in relation to an answer given to a question asked, or a document produced, pursuant to subsection (1).

14ZA Certain tax debtors to produce authority to depart etc.

- (1) Where:
 - (a) a person in respect of whom a departure prohibition order is in force is about to depart from Australia for a foreign country; and
 - (b) the departure is authorized by a departure authorization certificate;the person shall, if required to do so pursuant to this subsection by an authorized officer, produce a copy of the departure authorization certificate for inspection by the authorized officer.

Penalty: 5 penalty units.

- (1A) An offence under subsection (1) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

- (2) Section 8C does not apply in relation to a requirement made pursuant to subsection (1) of this section.

Part IVC—Taxation objections, reviews and appeals

Division 1—Introduction

14ZL Part applies to taxation objections

- (1) This Part applies if a provision of an Act or of regulations (including the provision as applied by another Act) provides that a person who is dissatisfied with an assessment, determination, notice or decision, or with a failure to make a private ruling, may object against it in the manner set out in this Part.
- (2) Such an objection is in this Part called a *taxation objection*.

14ZM Division 2—Interpretive

Division 2 contains interpretive provisions necessary for this Part.

14ZN Division 3—Taxation objections

Division 3 describes how taxation objections are to be made and how they are to be dealt with by the Commissioner.

14ZO Division 4—Tribunal review

Division 4 contains provisions about applications to the Tribunal for review of decisions by the Commissioner in relation to certain taxation objections and requests for extension of time.

14ZP Division 5—Federal Court appeals

Division 5 contains provisions about appeals to the Federal Court against decisions by the Commissioner in relation to certain taxation objections.

Division 2—Interpretive provisions

14ZQ General interpretation provisions

In this Part:

AAT means the Administrative Appeals Tribunal.

AAT Act means the *Administrative Appeals Tribunal Act 1975*.

AAT extension application means an application under subsection 29(7) of the AAT Act that relates to a review of a reviewable objection decision or an extension of time refusal decision.

delayed administration (beneficiary) objection means a taxation objection made under:

- (b) subsection 220(3) of the *Income Tax Assessment Act 1936* (including that subsection as applied by any other Act); or
- (g) subsection 260-145(5) in Schedule 1 (because of paragraph (a) of that subsection).

delayed administration (trustee) objection means a taxation objection made under:

- (a) subsection 220(7) of the *Income Tax Assessment Act 1936* (including that subsection as applied by any other Act); or
- (b) subsection 260-145(5) in Schedule 1 (because of paragraph (b) of that subsection).

extension of time refusal decision means a decision of the Commissioner under subsection 14ZX(1) to refuse a request by a person.

Family Court means the Family Court of Australia.

Family Court Judge means a Judge of the Family Court (including the Chief Judge, the Deputy Chief Judge, a Judge Administrator or a Senior Judge).

Federal Court means the Federal Court of Australia.

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franking assessment has the same meaning as in the *Income Tax Assessment Act 1997*.

reviewable objection decision means an objection decision that is not an ineligible income tax remission decision.

starting base assessment means:

- (a) a starting base assessment within the meaning of clause 23 of Schedule 2 to the *Petroleum Resource Rent Tax Assessment Act 1987*; or
- (b) a starting base assessment within the meaning of subitem 15(3) of Schedule 4 to the *Minerals Resource Rent Tax (Consequential Amendments and Transitional Provisions) Act 2012*.

taxation decision means the assessment, determination, notice or decision against which a taxation objection may be, or has been, made.

taxation objection has the meaning given by section 14ZL.

14ZR Taxation decisions covered by single notice to be treated as single decision

(1) If:

- (a) a provision of an Act (including a provision as applied by another Act) provides that a person who is dissatisfied with a taxation decision may object against it in the manner set out in this Part; and
- (b) a notice incorporates notice of 2 or more such taxation decisions;

then, for the purposes of the provision and of this Part, the taxation decisions are taken to be one taxation decision.

(2) If:

- (a) under subsection (1), 2 or more taxation decisions are taken to be a single taxation decision (in this subsection called the **deemed single taxation decision**); and
- (b) the Commissioner makes an objection decision in relation to the deemed single taxation decision; and

- (c) the objection decision is to any extent an ineligible income tax remission decision;
- then, this Part has effect, in relation to any review or appeal, as if so much of the objection decision as consists of one or more ineligible income tax remission decisions were taken to be a separate objection decision.

14ZS Ineligible income tax remission decisions

- (1) An objection decision is an *ineligible income tax remission decision* if it relates to the remission of additional tax payable by a taxpayer under the *Income Tax Assessment Act 1936* (other than Division 11 of former Part IIIAA), except where the additional tax is payable under former section 163B, 224, 225, 226, 226G, 226H, 226J, 226K, 226L or 226M of that Act, whatever its amount, or is payable under a provision of former Part VII of that Act other than any of the preceding sections and its amount, after the decision is made, exceeds:
- (a) in the case of additional tax payable under former section 222 of that Act because of the refusal or failure to furnish a return, or any information, relating to a year of income—the amount calculated, in respect of the period commencing on the last day allowed for furnishing the return or information and ending on:
- (i) the day on which the return or information is furnished; or
- (ii) the day on which the assessment of the additional tax is made;
- whichever first happens, at the rate of 20% per year of the tax properly payable by the taxpayer in respect of the year of income; or
- (d) if the amount calculated in accordance with paragraph (a) is less than \$20—\$20.
- (2) A reference in this section to a provision of the *Income Tax Assessment Act 1936* includes a reference to that provision as applied by any other Act.

Division 3—Taxation objections

14ZU How taxation objections are to be made

A person making a taxation objection must:

- (a) make it in the approved form; and
- (b) lodge it with the Commissioner within the period set out in section 14ZW; and
- (c) state in it, fully and in detail, the grounds that the person relies on.

Note: A person who objects against the Commissioner's failure to make a private ruling must lodge a draft private ruling with the objection: see subsection 359-50(4).

14ZV Limited objection rights in the case of certain amended taxation decisions

If the taxation objection is made against a taxation decision, being an assessment or determination that has been amended in any particular, then a person's right to object against the amended assessment or amended determination is limited to a right to object against alterations or additions in respect of, or matters relating to, that particular.

14ZVA Limited objection rights because of objection against private ruling

If there has been a taxation objection against a private ruling, then the right of objection under this Part against an assessment, or against a decision made under an indirect tax law or an excise law, relating to the matter ruled is limited to a right to object on grounds that neither were, nor could have been, grounds for the taxation objection against the ruling.

14ZVB Objections relating to excess concessional contributions*Taxation decisions to which section applies*

- (1) This section applies to the following taxation decisions:
- (a) an assessment against which a taxation objection may be made under section 175A of the *Income Tax Assessment Act 1936*;
 - (b) an excess concessional contributions determination;
 - (c) a determination under section 291-465 of the *Income Tax Assessment Act 1997*;
 - (d) a decision not to make a determination under that section;
 - (e) 2 or more taxation decisions that are taken to be a single taxation decision under subsection (2).

Decisions treated as single decision for common objection ground

- (2) If:
- (a) a person makes a taxation objection at a particular time, on a particular ground, against a taxation decision to which this section applies; and
 - (b) at that time, the person also objects, or could also object, on that ground, against another taxation decision to which this section applies;

then, for the purposes of this Part, those taxation decisions are taken to be one taxation decision.

Limited objection rights because of earlier objection

- (3) A person cannot object under this Part against a taxation decision to which this section applies on a particular ground if:
- (a) the ground was a ground for an objection the person has made against another decision to which this section applies; or
 - (b) the ground could have been a ground for an objection the person has made against another decision to which this section applies.

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14ZW When taxation objections are to be made

- (1) Subject to this section, the person must lodge the taxation objection with the Commissioner within:
 - (aa) if the taxation objection is made under section 175A of the *Income Tax Assessment Act 1936*:
 - (i) if item 1, 2 or 3 of the table in subsection 170(1) of that Act applies to the assessment concerned—2 years after notice of the assessment is given to the person; or
 - (ii) otherwise—4 years after notice of the assessment concerned is given to the person; or
 - (aaa) if the taxation objection is made under section 78A of the *Fringe Benefits Tax Assessment Act 1986* or former section 160AL of the *Income Tax Assessment Act 1936*—4 years after notice of the taxation decision to which it relates has been given to the person; or
 - (aab) if the taxation objection is made under section 292-245 of the *Income Tax Assessment Act 1997*—4 years after notice of the assessment concerned is given to the person; or
 - (aac) if the taxation objection is made under section 97-10 in Schedule 1 on a particular ground—within the same period that the person:
 - (i) must lodge a taxation objection on that ground under section 175A of the *Income Tax Assessment Act 1936*; or
 - (ii) would be required to lodge such a taxation objection, if, disregarding subsection 175A(2) of that Act, one could be made; or
 - (aad) if the taxation objection is made under subsection 8AAZLGA(6) of this Act (retaining refunds while Commissioner verifies information)—the period:
 - (i) starting at the end of the 60 day period after the end of the day before which, under subsection 8AAZLGA(3), the Commissioner is required to inform the entity mentioned in section 8AAZLGA that the Commissioner has retained an amount under that section; and
 - (ii) ending on the day (if any) on which there is a change, of a kind mentioned in paragraph 8AAZLGA(5)(c), to how

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much the Commissioner is required to refund in relation to the amount; or

- (ab) if the taxation objection is a delayed administration (beneficiary) objection made under subsection 260-145(5) in Schedule 1 (because of paragraph (a) of that subsection) or subsection 220(3) of the *Income Tax Assessment Act 1936* (not including that subsection as applied by any other Act)—4 years after notice of the taxation decision to which it relates has been first published; or
- (ac) if the taxation objection is a delayed administration (trustee) objection made under subsection 260-145(5) in Schedule 1 (because of paragraph (b) of that subsection) or subsection 220(7) of the *Income Tax Assessment Act 1936* (not including that subsection as applied by any other Act)—4 years after probate of the will, or letters of administration of the estate, of the deceased person concerned has been granted; or
- (a) if the taxation objection is a delayed administration (beneficiary) objection to which paragraph (ab) does not apply—60 days after notice of the taxation decision to which it relates has been first published; or
- (b) if the taxation objection is a delayed administration (trustee) objection to which paragraph (ac) does not apply—60 days after probate of the will, or letters of administration of the estate, of the deceased person concerned has been granted; or
- (ba) if the taxation objection is an objection under subsection 359-50(3) in Schedule 1 against the Commissioner's failure to make a private ruling—60 days after the end of the period of 30 days referred to in that subsection; or
- (bb) if the taxation objection is made under section 66 of the *Petroleum Resource Rent Tax Assessment Act 1987* to an assessment under that Act—4 years after notice of the assessment is given to the person; or
- (bd) if the taxation objection is made under section 20P of the *Superannuation (Unclaimed Money and Lost Members) Act 1999* against a notice given to a superannuation provider under section 20C of that Act and the person is not the

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superannuation provider—2 years after the notice was given to the superannuation provider; or

- (be) if the taxation objection is made under section 20P of the *Superannuation (Unclaimed Money and Lost Members) Act 1999* against a decision under Division 4 or 5 of Part 3A of that Act and the person is not a superannuation provider (as defined in that Act)—2 years after the person was given notice of the decision; or
- (bf) if the taxation objection is made under subsection 155-30(2) in Schedule 1 to this Act—60 days after the end of the period of 30 days mentioned in that subsection; or
- (bg) if the taxation objection is made under Subdivision 155-C in Schedule 1 to this Act—the period mentioned in paragraph 155-35(2)(a) in that Schedule in relation to the assessment concerned; or
- (bh) if the taxation objection is made under section 105-65 in Schedule 1 to this Act (about GST refunds)—at least one of the following periods:
 - (i) 60 days after notice of the taxation decision to which it relates has been served on the person;
 - (ii) 4 years after the end of the tax period to which that decision relates; or
- (c) in any other case—60 days after notice of the taxation decision to which it relates has been served on the person.

Note: Paragraph (bh) will be repealed on 1 July 2018: see Part 3 of Schedule 2 to the *Tax Laws Amendment (2014 Measures No. 1) Act 2014*.

(1AAA)The person must lodge the taxation objection against a reviewable indirect tax decision (within the meaning of section 105-40 in Schedule 1) before the end of whichever of the following ends last:

- (a) the 60 days after notice of the decision was served on the person;
- (b) the 4 years after the end of the tax period, or after the importation of goods, to which the decision relates.

Note 1: Section 105-40 in Schedule 1 to the *Taxation Administration Act 1953* only applies in relation to tax periods and fuel tax return periods starting before 1 July 2012.

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Note 2: This subsection will be repealed on 1 January 2017: see Part 2 of Schedule 1 to the *Indirect Tax Laws Amendment (Assessment) Act 2012*.

(1AAB) The person cannot lodge a taxation objection against a private indirect tax ruling after the end of whichever of the following ends last:

- (a) 60 days after the ruling was made;
- (b) 4 years after the end of the tax period, or after the importation of goods, to which the ruling relates.

(1AABA) Subsection (1AAB) applies in relation to:

- (a) a tax period starting before 1 July 2012; or
- (b) a payments or refund that:
 - (i) does not relate to any tax period; and
 - (ii) relates to a liability or entitlement that arose before 1 July 2012.

Note: Subsection (1AAB) and this subsection will be repealed on 1 January 2017: see Part 2 of Schedule 1 to the *Indirect Tax Laws Amendment (Assessment) Act 2012*.

(1AAC) The person cannot lodge a taxation objection against a private indirect tax ruling (to which subsection (1AAB) does not apply) after the end of whichever of the following ends last:

- (a) 60 days after the ruling was made;
- (b) the period mentioned in paragraph 155-35(2)(a) in Schedule 1 in relation to the assessment of the assessable amount to which the ruling relates.

(1A) The person cannot lodge a taxation objection against a private ruling (other than a private indirect tax ruling, or a ruling that relates to an excise law) that relates to a year of income after the end of whichever of the following ends last:

- (a) 60 days after the ruling was made;
- (b) whichever of the following is applicable:
 - (i) if item 1, 2 or 3 of the table in subsection 170(1) of the *Income Tax Assessment Act 1936* applies to the person's assessment for that income year—2 years after the last day allowed to the person for lodging a return in relation to the person's income for that year of income;

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(ii) otherwise—4 years after that day.

(1AB) The person cannot lodge a taxation objection against a private tax ruling that relates to an MRRT year and to a mining project interest or pre-mining project interest after the end of whichever of the following ends last:

- (a) 60 days after the ruling was made;
- (b) 4 years after the last day allowed to the person for lodging an MRRT return in relation to the MRRT year and the interest.

(1AC) Expressions used in subsection (1AB) have the same meaning as in the *Income Tax Assessment Act 1997*.

(1AA) The person cannot lodge a taxation objection against a private ruling that relates to a year of tax and a petroleum project under the *Petroleum Resource Rent Tax Assessment Act 1987* after the end of whichever of the following ends last:

- (a) the 60 days after the ruling was made;
- (b) the 4 years after the last day allowed to the person for lodging a return in relation to the year of tax and the project.

(1B) If:

- (a) section 14ZV applies to a taxation objection; and
- (b) apart from this subsection, subparagraph (1)(aa)(ii) or paragraph (1)(aaa), (aab), (ab), (ac), (bb), (bf) or (bg) would apply to the taxation objection;

the person must lodge the taxation objection before the end of whichever of the following ends last:

- (c) the 4 years after notice of the assessment or determination that has been amended by the amended assessment or amended determination to which the taxation objection relates has been served on the person;
- (d) the 60 days after the notice of the amended assessment or amended determination to which the taxation objection relates has been served on the person.

(1BA) If:

- (a) section 14ZV applies to a taxation objection; and

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- (b) apart from this subsection, subparagraph (1)(aa)(i) would apply to the taxation objection;
the person must lodge the taxation objection before the end of whichever of the following ends last:
 - (c) 2 years after notice of the assessment or determination that has been amended by the amended assessment or amended determination to which the taxation objection relates has been served on the person;
 - (d) 60 days after the notice of the amended assessment to which the taxation objection relates has been served on the person.
- (1BB) If:
- (a) the taxation objection is against an assessment by the Commissioner of the amount of an administrative penalty under Division 284; and
 - (b) that penalty relates to an assessment of the person; and
 - (c) the person has longer than 60 days to lodge a taxation objection against the assessment referred to in paragraph (b);
- the person must lodge the taxation objection within that longer period.
- (1C) For the purposes of paragraph (1B)(c), if an assessment or determination has been amended more than once, the notice is the notice of the first assessment or determination in relation to the year of income, franking year or year of tax, as the case requires.
- (2) If the period within which an objection by a person is required to be lodged has passed, the person may nevertheless lodge the objection with the Commissioner together with a written request asking the Commissioner to deal with the objection as if it had been lodged within that period.
 - (3) The request must state fully and in detail the circumstances concerning, and the reasons for, the person's failure to lodge the objection with the Commissioner within the required period.
 - (4) The 60 day period mentioned in subparagraph (1)(aad)(i) (including the period as extended by a previous application of this subsection) is extended by the number of days during that period in relation to which the following paragraphs apply:
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- (a) on or before the day, but during the period, the Commissioner requests information from the entity for the purposes of verifying the notified information mentioned in section 8AAZLGA;
- (b) the Commissioner does not receive the requested information before the day.

14ZX Commissioner to consider applications for extension of time

- (1) After considering the request, the Commissioner must decide whether to agree to it or refuse it.
- (2) The Commissioner must give the person written notice of the Commissioner's decision.
- (3) If the Commissioner decides to agree to the request, then, for the purposes of this Part, the objection is taken to have been lodged with the Commissioner within the required period.
- (4) If the Commissioner decides to refuse the request, the person may apply to the Tribunal for review of the decision.

14ZY Commissioner to decide taxation objections

- (1) Subject to subsection (1A), if the taxation objection has been lodged with the Commissioner within the required period, the Commissioner must decide whether to:
 - (a) allow it, wholly or in part; or
 - (b) disallow it.
- (1A) If the taxation objection is an objection under subsection 359-50(3) in Schedule 1 against the Commissioner's failure to make a private ruling, the Commissioner must:
 - (a) make a private ruling in the same terms as the draft ruling lodged with the objection; or
 - (b) make a different private ruling.
- (1B) If the taxation objection is an objection under subsection 155-30(2) in Schedule 1 against the Commissioner's failure to make an

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assessment of an assessable amount, the Commissioner must decide to make an assessment of the assessable amount.

- (2) A decision of the Commissioner mentioned in subsection (1), (1A) or (1B) is an ***objection decision***.
- (3) The Commissioner must cause to be served on the person written notice of the Commissioner's objection decision.

14ZYA Person may require Commissioner to make an objection decision

- (1) This section applies if the taxation objection (other than one under subsection 155-30(2) or 359-50(3) in Schedule 1) has been lodged with the Commissioner within the required period and the Commissioner has not made an objection decision by whichever is the later of the following times:
 - (a) the end of the period (in this section called the ***original 60-day period***) of 60 days after whichever is the later of the following days:
 - (i) the day on which the taxation objection is lodged with the Commissioner;
 - (ii) if the Commissioner decides under section 14ZX to agree to a request in relation to the taxation objection—the day on which the decision is made;
 - (b) if the Commissioner, by written notice served on the person within the original 60-day period, requires the person to give information relating to the taxation objection—the end of the period of 60 days after the Commissioner receives that information.
- (2) The person may give the Commissioner a written notice requiring the Commissioner to make an objection decision.
- (3) If the Commissioner has not made an objection decision by the end of the period of 60 days after being given the notice, then, at the end of that period, the Commissioner is taken to have made a decision under subsection 14ZY(1) to disallow the taxation objection.

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14ZYB Requiring Commissioner to make a private ruling

- (1) This section applies if the taxation objection is an objection under subsection 155-30(2) or 359-50(3) in Schedule 1 and the Commissioner has not made an objection decision by the end of 60 days after the later of these days:
- (a) the day on which the taxation objection was lodged with the Commissioner;
 - (b) if the Commissioner decides under section 14ZX to agree to a request in relation to the taxation objection—the day on which the decision was made.

Note 1: Subsection 155-30(2) provides for objections against the Commissioner's failure to make an assessment of an assessable amount.

Note 2: Subsection 359-50(3) provides for objections against the Commissioner's failure to make a private ruling.

- (2) The Commissioner is taken, at the end of that 60 day period, to have disallowed the objection.

14ZZ Person may seek review of, or appeal against, Commissioner's decision

- (1) If the person is dissatisfied with the Commissioner's objection decision (including a decision under paragraph 14ZY(1A)(b) to make a different private ruling), the person may:
- (a) if the decision is a reviewable objection decision—either:
 - (i) apply to the Tribunal for review of the decision; or
 - (ii) appeal to the Federal Court against the decision; or
 - (b) otherwise—appeal to the Federal Court against the decision.
- (2) Treat a reference in subsection (1) to appealing to the Federal Court as being a reference to appealing to a designated court (within the meaning of the *Australian Charities and Not-for-profits Commission Act 2012*) if:
- (a) the person may appeal to the designated court against an objection decision under that Act (the **ACNC objection decision**); and

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- (b) the objection decision mentioned in subsection (1) (the ***taxation objection decision***) and the ACNC objection decision are related, or it would be efficient for the designated court to consider the decisions together.

Note: In the *Australian Charities and Not-for-profits Commission Act 2012*, ***designated court*** means the Federal Court of Australia or a Supreme Court of a State or Territory that has jurisdiction in relation to matters arising under that Act.

- (3) An appeal to the designated court against the taxation objection decision must be made together with the appeal against the ACNC objection decision as mentioned in section 170-30 of the *Australian Charities and Not-for-profits Commission Act 2012*, if the designated court is not the Federal Court.

Division 4—AAT review of objection decisions and extension of time refusal decisions

14ZZA Modified AAT Act to apply

The AAT Act applies in relation to:

- (a) the review of reviewable objection decisions; and
 - (b) the review of extension of time refusal decisions; and
 - (c) AAT extension applications;
- subject to the modifications set out in this Division.

14ZZB Sections 27, 28, 41 and 44A of the AAT Act not to apply to certain decisions

- (1) Sections 27 and 41 of the AAT Act do not apply in relation to:
 - (a) a reviewable objection decision; or
 - (b) an extension of time refusal decision.
- (2) Sections 28 and 44A of the AAT Act do not apply in relation to a reviewable objection decision.

14ZZC Modification of section 29 of the AAT Act

Section 29 of the AAT Act applies in relation to a reviewable objection decision as if subsections (1) to (6) (inclusive) of that section were omitted and the following subsection were substituted:

- “(1) An application to the Tribunal for a review of a decision:
- (a) must be in writing; and
 - (b) may be made in accordance with the prescribed form; and
 - (c) must set out a statement of the reasons for the application; and
 - (d) must be lodged with the Tribunal within 60 days after the person making the application is served with notice of the decision.”.

14ZZD Modification of section 30 of the AAT Act

Section 30 of the AAT Act applies in relation to a reviewable objection decision or an extension of time refusal decision as if subsection (1A) of that section were omitted and the following subsection were substituted:

- “(1A) If an application has been made by a person to the Tribunal for the review of a reviewable objection decision or an extension of time refusal decision:
- (a) any other person whose interests are affected by the decision may apply, in writing, to the Tribunal to be made a party to the proceeding; and
 - (b) the Tribunal may, in its discretion, by order, if it is satisfied that the person making the application consents to the order, make that person a party to the proceeding.”.

14ZZE Hearings before Tribunal other than Small Taxation Claims Tribunal to be held in private if applicant so requests

Despite section 35 of the AAT Act, the hearing of a proceeding before the Tribunal, other than the Small Taxation Claims Tribunal, for:

- (a) a review of a reviewable objection decision; or
- (b) a review of an extension of time refusal decision; or
- (c) an AAT extension application;

is to be in private if the party who made the application requests that it be in private.

14ZZF Modification of section 37 of the AAT Act

- (1) Section 37 of the AAT Act applies in relation to an application for review of a reviewable objection decision as if:
 - (a) the requirement in subsection (1) of that section to lodge with the Tribunal such numbers of copies as is prescribed of statements or other documents were instead a requirement to lodge with the Tribunal such numbers of copies as is prescribed of:
 - (i) a statement giving the reasons for the decision; and

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- (ii) the notice of the taxation decision concerned; and
 - (iii) the taxation objection concerned; and
 - (iv) the notice of the objection decision; and
 - (v) every other document that is in the Commissioner's possession or under the Commissioner's control and is considered by the Commissioner to be necessary to the review of the objection decision concerned; and
 - (vi) a list of the documents (if any) being lodged under subparagraph (v); and
- (b) the power of the Tribunal under subsection (2) of that section to cause a notice to be served containing a statement and imposing a requirement on a person were instead:
 - (i) a power to make such a statement and impose such a requirement orally at a conference held in accordance with subsection 34(1) of the AAT Act; and
 - (ii) a power, by such a notice, to make such a statement and impose a requirement that the person lodge with the Tribunal, within the time specified in the notice, the prescribed number of copies of each of those other documents that is in the person's possession or under the person's control; and
 - (iii) a power, by such a notice, to make such a statement and impose a requirement that the person lodge with the Tribunal, within the time specified in the notice, the prescribed number of copies of a list of the documents in the person's possession or under the person's control considered by the person to be relevant to the review of the objection decision concerned.
- (2) Paragraph (1)(b) does not affect any powers that the Tribunal has apart from that paragraph.
- (3) The imposition of a requirement covered by subparagraph (1)(b)(iii) does not prevent the subsequent imposition of a requirement covered by subparagraph (1)(b)(ii).

14ZZG Modification of section 38 of the AAT Act

Section 38 of the AAT Act applies in relation to an application for a review of a reviewable objection decision as if the reference to paragraph 37(1)(a) of that Act were instead a reference to subparagraph 14ZZF(1)(a)(i) of this Act.

14ZZJ Modification of section 43 of the AAT Act

Section 43 of the AAT Act applies in relation to:

- (a) a review of a reviewable objection decision; and
- (b) a review of an extension of time refusal decision; and
- (c) an AAT extension application;

as if the following subsections were inserted after subsection (2B):

“(2C) If a hearing of a proceeding for the review of a decision or an AAT extension application is not conducted in public, that fact does not prevent the Tribunal from publishing its reasons for the decision.

“(2D) If:

- (a) a hearing of a proceeding for the review of a decision or an AAT extension application is not conducted in public; and
- (b) a notice of appeal has not been lodged with the Federal Court;

the Tribunal must ensure, as far as practicable, that its reasons for the decision are framed so as not to be likely to enable the identification of the person who applied for the review.

“(2E) In subsections (2C) and (2D):

reasons for decision includes findings on material questions of fact and references to the evidence or other material on which those findings were based.”.

14ZZK Grounds of objection and burden of proof

On an application for review of a reviewable objection decision:

- (a) the applicant is, unless the Tribunal orders otherwise, limited to the grounds stated in the taxation objection to which the decision relates; and

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- (b) the applicant has the burden of proving:
 - (i) if the taxation decision concerned is an assessment—that the assessment is excessive or otherwise incorrect and what the assessment should have been; or
 - (ii) in any other case—that the taxation decision concerned should not have been made or should have been made differently.

14ZZL Implementation of Tribunal decisions

- (1) When the decision of the Tribunal on the review of a reviewable objection decision or an extension of time refusal decision becomes final, the Commissioner must, within 60 days, take such action, including amending any assessment or determination concerned, as is necessary to give effect to the decision.
- (2) For the purposes of subsection (1), if no appeal is lodged against the Tribunal's decision within the period for lodging an appeal, the decision becomes final at the end of the period.

14ZZM Pending review not to affect implementation of taxation decisions

The fact that a review is pending in relation to a taxation decision does not in the meantime interfere with, or affect, the decision and any tax, additional tax or other amount may be recovered as if no review were pending.

Division 5—Court appeals against objection decisions

14ZZN Time limit for appeals

An appeal to the Federal Court against an objection decision must be lodged with the Court within 60 days after the person appealing is served with notice of the decision.

14ZZO Grounds of objection and burden of proof

In proceedings on an appeal under section 14ZZ to a court against an objection decision:

- (a) the appellant is, unless the court orders otherwise, limited to the grounds stated in the taxation objection to which the decision relates; and
- (b) the appellant has the burden of proving:
 - (i) if the taxation decision concerned is an assessment—that the assessment is excessive or otherwise incorrect and what the assessment should have been; or
 - (ii) in any other case—that the taxation decision should not have been made or should have been made differently.

14ZZP Order of court on objection decision

Where a court hears an appeal against an objection decision under section 14ZZ, the court may make such order in relation to the decision as it thinks fit, including an order confirming or varying the decision.

14ZZQ Implementation of court order in respect of objection decision

- (1) When the order of the court in relation to the decision becomes final, the Commissioner must, within 60 days, take such action, including amending any assessment or determination concerned, as is necessary to give effect to the decision.

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- (2) For the purposes of subsection (1):
- (a) if the order is made by the court constituted by a single Judge and no appeal is lodged against the order within the period for lodging an appeal—the order becomes final at the end of the period; and
 - (b) if the order is made by the court constituted other than as mentioned in paragraph (a) and no application for special leave to appeal to the High Court against the order is made within the period of 30 days after the order is made—the order becomes final at the end of the period.

14ZZR Pending appeal not to affect implementation of taxation decisions

The fact that an appeal is pending in relation to a taxation decision does not in the meantime interfere with, or affect, the decision and any tax, additional tax or other amount may be recovered as if no appeal were pending.

14ZZS Transfer of certain proceedings to Family Court

- (1) If:
- (a) a proceeding is pending in the Federal Court on an appeal under section 14ZZ in relation to an objection decision; and
 - (b) the taxation decision to which the objection decision relates was made under the *Income Tax Assessment Act 1936*;
- the Federal Court may, on the application of a party to the proceeding or on its own initiative, transfer the proceeding to the Family Court.
- (2) Subject to subsection (3), if the proceeding is transferred to the Family Court:
- (a) the Family Court has jurisdiction to hear and determine the proceeding; and
 - (b) the Family Court also has jurisdiction to hear and determine matters not otherwise within its jurisdiction (whether because of paragraph (a) or otherwise):
 - (i) that are associated with matters arising in the proceeding; or
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- (ii) that, apart from subsection 32(1) of the *Federal Court of Australia Act 1976*, the Federal Court would have had jurisdiction to hear and determine in the proceeding; and
- (c) the Family Court may, in and in relation to the proceeding:
 - (i) grant such remedies; and
 - (ii) make orders of such kinds; and
 - (iii) issue, and direct the issue of, writs of such kinds; as the Federal Court could have granted, made, issued or directed the issue of, as the case may be, in and in relation to the proceeding; and
- (d) remedies, orders and writs granted, made or issued by the Family Court in and in relation to the proceeding have effect, and may be enforced by the Family Court, as if they had been granted, made or issued by the Federal Court; and
- (e) appeals lie from judgments of the Family Court given in and in relation to the proceeding as if the judgments were judgments of the Federal Court constituted by a single Judge of that Court, and do not otherwise lie; and
- (f) subject to paragraphs (a) to (e) (inclusive), this Act, the regulations, the *Federal Court of Australia Act 1976*, the Rules of the Court made under that Act, and other laws of the Commonwealth, apply in and in relation to the proceeding as if:
 - (i) a reference to the Federal Court (other than in the expression “the Court or a Judge”) included a reference to the Family Court; and
 - (ii) a reference to a Judge of the Federal Court (other than in the expression “the Court or a Judge”) included a reference to a Family Court Judge; and
 - (iii) a reference to the expression “the Court or a Judge” when used in relation to the Federal Court included a reference to a Family Court Judge sitting in Chambers; and
 - (iv) a reference to a Registrar of the Federal Court included a reference to a Registrar of the Family Court; and
 - (v) any other necessary changes were made.

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- (3) If any difficulty arises in the application of paragraphs (2)(c), (d) and (f) in or in relation to a particular proceeding, the Family Court may, on the application of a party to the proceeding or on its own initiative, give such directions, and make such orders, as it considers appropriate to resolve the difficulty.
- (4) An appeal does not lie from a decision of the Federal Court in relation to the transfer of a proceeding under this Part to the Family Court.

Part V—Miscellaneous**15 Appearance by Commissioner etc.**

- (1) In any action, prosecution or other proceeding under, or arising out of, a taxation law instituted by or on behalf of the Commissioner, a Second Commissioner or a Deputy Commissioner, to which the Commissioner, a Second Commissioner or a Deputy Commissioner is a party or in which the Commissioner, a Second Commissioner or a Deputy Commissioner intervenes or seeks to intervene, the Commissioner, Second Commissioner or Deputy Commissioner, as the case may be, may appear personally or may be represented by:
 - (a) a person enrolled as a barrister, solicitor, barrister and solicitor or legal practitioner of a federal court or of the Supreme Court of a State or Territory; or
 - (b) a person authorized by the Commissioner, a Second Commissioner or a Deputy Commissioner, by instrument in writing, to appear.
- (2) The appearance of a person, and the statement of the person that the person appears by authority of the Commissioner, a Second Commissioner or a Deputy Commissioner, is *prima facie* evidence of that authority.
- (3) This section applies in relation to the *Tax Agent Services Act 2009* as if:
 - (a) references in this section to the Commissioner were references to the Tax Practitioners Board (within the meaning of that Act); and
 - (b) references in this section to a Second Commissioner or to a Deputy Commissioner were omitted.
- (4) This section applies in relation to the *Development Allowance Authority Act 1992* as if:
 - (a) that Act were a taxation law; and

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- (b) references in this section to the Commissioner were references to the Development Allowance Authority; and
- (c) references in this section to a Second Commissioner or to a Deputy Commissioner were omitted.

15A Certification by Commissioner of copies of, and extracts from, documents

- (1) Where a document is obtained pursuant to a taxation law, the Commissioner may certify a copy of the document to be a true copy.
- (2) Where, pursuant to a taxation law, a copy is made of a document, the Commissioner may certify the copy to be a true copy.
- (3) Where a document is obtained pursuant to a taxation law, the Commissioner may certify an extract taken from the document to be a true extract.
- (4) Where, pursuant to a taxation law, an extract is taken from a document, the Commissioner may certify the extract to be a true extract.
- (5) Subject to subsection (6), a document purporting to be a copy or extract certified under subsection (1), (2), (3) or (4) shall be received in all courts and tribunals in proceedings arising out of a taxation law as evidence as if it were the original.
- (6) Subsection (5) does not apply in relation to a document if:
 - (a) in the case of proceedings for an offence—evidence is adduced that the document is not a true copy or a true extract; or
 - (b) in any other case—it is proved that the document is not a true copy or a true extract.
- (7) Where:
 - (a) pursuant to a taxation law, a copy (in this section referred to as the **primary copy**) is made of, or an extract (in this section referred to as the **primary extract**) is taken from, a document (in this section referred to as the **original document**); and

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- (b) pursuant to subsection (2) or (4), the Commissioner has certified the primary copy to be a true copy of, or the primary extract to be a true extract taken from, the original document; the Commissioner may:
 - (c) certify a copy of the primary copy or primary extract to be a true copy; or
 - (d) certify an extract taken from the primary copy or primary extract to be a true extract.
- (8) Subject to subsection (9), a document purporting to be:
 - (a) a copy, certified under subsection (7), of a primary copy of, or a primary extract taken from, an original document; or
 - (b) an extract, certified under subsection (7), taken from a primary copy of, or a primary extract taken from, an original document;shall be received in all courts and tribunals in proceedings arising out of a taxation law as evidence as if it were the original document.
- (9) Subsection (8) does not apply in relation to a document if:
 - (a) in the case of proceedings for an offence, evidence is adduced that:
 - (i) the document is not a true copy of, or a true extract taken from, the primary copy or primary extract; or
 - (ii) the primary copy is not a true copy of, or the primary extract is not a true extract taken from, the original document; or
 - (b) in any other case, it is proved that:
 - (i) the document is not a true copy of, or a true extract taken from, the primary copy or primary extract; or
 - (ii) the primary copy is not a true copy of, or the primary extract is not a true extract taken from, the original document.
- (11) This section applies in relation to the *Development Allowance Authority Act 1992* as if:
 - (a) that Act were a taxation law; and

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- (b) references in this section to the Commissioner were references to the Development Allowance Authority.
- (12) This section applies in relation to the *Tax Agent Services Act 2009* as if references in this section to the Commissioner were references to the Chair of the Tax Practitioners Board (within the meaning of that Act).

15B Recoverable advances

- (1) The Commissioner may make an advance to a person (the **recipient**) on account of an amount to which the recipient may become entitled under a taxation law.
- (2) The Commissioner must not make an advance under subsection (1) unless:
 - (a) if the advance is made in conjunction with other advances under that subsection—the Commissioner is satisfied that the total of the costs that would be likely to be incurred by:
 - (i) the Commonwealth; and
 - (ii) the recipients; and
 - (iii) persons other than the Commonwealth or the recipients; if the advance and the other advances were not made is likely to exceed the total of the advance and the other advances; or
 - (b) otherwise—the Commissioner is satisfied that the total of the costs that would be likely to be incurred by:
 - (i) the Commonwealth; and
 - (ii) the recipient; and
 - (iii) persons other than the Commonwealth or the recipient; if the advance were not made is likely to exceed the amount of the advance.
- (3) An advance under subsection (1) may:
 - (a) be recovered under subsection (4); or
 - (b) be the subject of a determination under subsection (5).
- (4) If an advance is made under subsection (1) to a person (the **recipient**), the advance:
 - (a) is a debt due to the Commonwealth by the recipient; and

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- (b) is payable to the Commissioner; and
- (c) may be recovered in a court of competent jurisdiction by the Commissioner, or by a Deputy Commissioner, suing in his or her official name;

whether or not the recipient has become entitled to an amount under a taxation law.

Note: See also section 47 of the *Financial Management and Accountability Act 1997* (duty to pursue recovery of a debt).

Advance may discharge Commonwealth liability

- (5) If:
 - (a) an advance is made to a person (the **recipient**) under subsection (1); and
 - (b) the advance has not been fully recovered under subsection (4); and
 - (c) an amount is payable to the recipient by the Commonwealth under a taxation law (the **Commonwealth liability**);
 the Commissioner may, by written notice given to the recipient, determine that the making of the advance is taken to have discharged so much of the Commonwealth liability as equals the whole, or a specified part, of the amount of the advance.
- (6) A part of an advance must not be specified in a determination under subsection (5) if it has already been specified in a previous determination under subsection (5).
- (7) If the whole, or a part, of an advance is the subject of a determination under subsection (5), the whole, or the part, as the case may be, of the advance is not recoverable under subsection (4).
- (8) Subsection (5) does not limit Part IIB.
- (9) For the purposes of section 47 of the *Financial Management and Accountability Act 1997*, a determination under subsection (5) of this section is taken to be a method of debt recovery.

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15C Recoverable payments

- (1) If, apart from this subsection, the Commissioner does not have power under a taxation law to pay an amount (the **relevant amount**) to a person (the **recipient**) purportedly as an amount to which the recipient is entitled to under a taxation law, then the Commissioner may pay the relevant amount to the recipient.

Recovery

- (2) If a payment is made under subsection (1) to the recipient, the relevant amount:
- (a) is a debt due to the Commonwealth by the recipient; and
 - (b) is payable to the Commissioner; and
 - (c) may be recovered in a court of competent jurisdiction by the Commissioner, or by a Deputy Commissioner, suing in his or her official name.

Note: See also section 47 of the *Financial Management and Accountability Act 1997* (duty to pursue recovery of a debt).

- (3) If:
- (a) a payment is made under subsection (1) to the recipient; and
 - (b) an amount is payable to the recipient by the Commonwealth under a taxation law (the **Commonwealth liability**);

then:

- (c) the relevant amount; or
- (d) such part of the relevant amount as the Commissioner determines;

may, if the Commissioner so directs, be recovered by deduction from the Commonwealth liability.

Note: See also section 47 of the *Financial Management and Accountability Act 1997* (duty to pursue recovery of a debt).

- (4) For the purposes of a designated recovery provision, in determining whether an amount is payable, disregard subsection (1) of this section.

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- (5) If the relevant amount is recovered under a designated recovery provision, the relevant amount cannot be recovered under subsection (2) or (3) of this section.
- (6) If the relevant amount is recovered under subsection (2) or (3) of this section, the relevant amount cannot be recovered under a designated recovery provision.
- (7) Except as provided by subsection (6), subsection (3) does not limit Part IIB.

Designated recovery provisions

- (8) For the purposes of this section, each of the following provisions is a **designated recovery provision**:
 - (a) section 8AAZN of this Act;
 - (b) section 70 of the *Superannuation Guarantee (Administration) Act 1992*;
 - (c) section 50 of the *First Home Saver Accounts Act 2008*;
 - (d) section 24 of the *Superannuation (Government Co-contribution for Low Income Earners) Act 2003*;
 - (e) a similar provision of a taxation law.
- (9) For the purposes of a designated recovery provision, in determining:
 - (a) whether a person is entitled to an amount; or
 - (b) whether an amount is payable;disregard subsection (1).

15D Reports about recoverable advances and recoverable payments

- (1) During the applicable publication period for a reporting period, the Commissioner must publish, in such manner as the Commissioner thinks fit, a report that sets out:
 - (a) both:
 - (i) the number of advances made under subsection 15B(1) during the reporting period; and
 - (ii) the total amount of those advances; and
 - (b) both:

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- (i) the number of payments made under subsection 15C(1) during the reporting period; and
 - (ii) the total amount of those payments.
- (2) However, a report is not required if:
 - (a) the number mentioned in subparagraph (1)(a)(i) is zero; and
 - (b) the number mentioned in subparagraph (1)(b)(i) is zero.

Deferred reporting

- (3) Paragraph (1)(b) of this section does not require a report to deal with a payment unless, before the preparation of the report, an Australian Taxation Office official was aware the payment was made under subsection 15C(1).
- (4) For the purposes of this section, if:
 - (a) a payment was made under subsection 15C(1) in a reporting period; and
 - (b) because of subsection (3) of this section, paragraph (1)(b) of this section did not require a report to deal with the payment; and
 - (c) during a later reporting period, an Australian Taxation Office official becomes aware that the payment was made under subsection 15C(1);the payment is subject to a ***deferred reporting obligation*** in relation to the later reporting period.
- (5) If one or more payments made under subsection 15C(1) during a reporting period are subject to a deferred reporting obligation in relation to a later reporting period, the Commissioner must, during the applicable publication period for the later reporting period:
 - (a) prepare a report that sets out:
 - (i) the number of those payments; and
 - (ii) the total amount of those payments; and
 - (iii) the reporting period during which the payments were made; and
 - (b) if a report is required under subsection (1) in relation to the later reporting period—include the paragraph (a) report in the subsection (1) report; and

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- (c) if paragraph (b) does not apply—publish, in such manner as the Commissioner thinks fit, the paragraph (a) report.

Reporting period

- (6) For the purposes of this section, a **reporting period** is:
 - (a) a financial year; or
 - (b) if a shorter recurring period is specified in a legislative instrument made by the Minister—that period.

Applicable publication period

- (7) For the purposes of this section, the **applicable publication period** for a reporting period is the period of:
 - (a) 4 months; or
 - (b) if a lesser number of months is specified, in relation to the reporting period, in a legislative instrument made by the Minister—that number of months;beginning immediately after the end of the reporting period.

Australian Taxation Office official

- (8) For the purposes of this section, **Australian Taxation Office official** means an official (within the meaning of the *Financial Management and Accountability Act 1997*) who is in the Australian Taxation Office or is part of the Australian Taxation Office.

16 Payments out of Consolidated Revenue Fund

- (1) Where the Commissioner is required or permitted to pay an amount to a person by or under a provision of a taxation law other than:
 - (a) a general administration provision; or
 - (b) a provision prescribed for the purposes of this paragraph;the amount is payable out of the Consolidated Revenue Fund, which is appropriated accordingly.
- (2) Where:
 - (a) an amount is required or permitted to be paid to a person:
 - (i) by or under a provision of a taxation law other than:

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- (A) a general administration provision; or
 - (B) a provision prescribed for the purposes of this sub-subparagraph; or
 - (ii) by way of the repayment, whether in whole or in part, to the person of an amount paid to the Commonwealth;
 - (b) except as mentioned in paragraph (c), there is no provision of a taxation law by or under which the Commissioner is required or permitted to pay the amount; and
 - (c) the Commissioner is required or permitted to pay the amount by or under a general administration provision;
- the amount shall be taken, for the purposes of subsection (1), to be an amount that the Commissioner is required or permitted to pay to the person by or under a provision of a taxation law of the kind referred to in that subsection.
- (3) In this section, ***general administration provision*** means a provision of a taxation law that provides that the Commissioner has the general administration of the taxation law.

16A Regulations may provide for methods of payment of tax liabilities etc.

- (1) This section applies to a liability to or of the Commonwealth arising under, or by virtue of, any of the following laws:
 - (a) this Act;
 - (b) any other Act of which the Commissioner has the general administration;
 - (c) regulations under an Act covered by paragraph (a) or (b).
- (2) The regulations may make provision for and in relation to the methods by which the amount of the liability may be paid.
- (3) Without limiting subsection (2), the regulations may make provision for and in relation to the making of payments using:
 - (a) collection agents; or
 - (b) electronic funds transfer systems; or
 - (c) credit cards; or
 - (d) debit cards.

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16B Certain liabilities to be reduced to nearest multiple of 5 cents

If the amount of a tax-related liability that arises by way of penalty or because it is assessed by the Commissioner (other than an RBA deficit or a liability to pay the general interest charge) is not a multiple of 5 cents, the amount is decreased to the nearest multiple of 5 cents.

17 Powers of taxation officers in relation to references to currency etc.

- (1) In this section:

decimal currency means the currency provided for by the *Currency Act 1965*.

law of the Commonwealth has the same meaning as in section 10 of the *Currency Act 1965*.

officer includes the Commissioner and a Second Commissioner.

taxation law means any law of the Commonwealth of which the Commissioner has the general administration.

the previous currency means the currency provided for by the *Coinage Act 1909*.

- (2) An officer may, in the exercise of, or for the purpose of exercising, any power under a taxation law or in the performance of, or for the purpose of performing, any function under a taxation law:
- (a) treat:
- (i) a reference in a law of the Commonwealth;
 - (ii) a reference in a bill of exchange, promissory note, security for money, contract or agreement (whether the contract or agreement is in writing or not), deed or other instrument; or
 - (iii) a reference in any other manner;
- to an amount of money in the previous currency as a reference to a corresponding amount of money in decimal currency and treat such a reference to an amount of money in

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- decimal currency as a reference to a corresponding amount of money in the previous currency;
- (b) treat an amount of money in the previous currency as a corresponding amount of money in decimal currency and treat an amount of money in decimal currency as a corresponding amount of money in the previous currency; and
 - (c) express an amount of money in either decimal currency or the previous currency.
- (3) For the purposes of paragraphs (2)(a), (b) and (c):
- (a) the amount of money in decimal currency that corresponds with an amount of money in the previous currency; and
 - (b) the amount of money in the previous currency that corresponds with an amount of money in decimal currency;
- shall be calculated on the basis of the equivalents specified in subsection 8(4) of the *Currency Act 1965*.

17A Powers of Federal Court and Federal Circuit Court in respect of taxation matters

- (1) The Federal Court of Australia shall not, in relation to a review by the Court of a decision of the Tribunal in connection with proceedings under a taxation law, exercise a power conferred on it by section 15, or paragraph 16(1)(d), (2)(b) or (3)(c) or subsection 16(4), of the *Administrative Decisions (Judicial Review) Act 1977* so as to prevent or restrain the recovery, under that law, of tax or duty, further tax or further duty or additional tax or additional duty.
- (2) The Federal Circuit Court of Australia must not, in relation to a review by the Court of a decision of the Tribunal in connection with proceedings under a taxation law, exercise a power conferred on it by section 15A, or paragraph 16(1)(d), (2)(b) or (3)(c) or subsection 16(4), of the *Administrative Decisions (Judicial Review) Act 1977* so as to prevent or restrain the recovery, under that law, of:
 - (a) tax or duty; or
 - (b) further tax or further duty; or

(c) additional tax or additional duty.

18 Regulations

The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters which by this Act are required or permitted to be prescribed, or which are necessary or convenient to be prescribed for giving effect to this Act, and, in particular, prescribing penalties not exceeding a fine of 5 penalty units for offences against the regulations.