

Crimes (Taxation Offences) Act 1980

No. 156 of 1980

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Crimes (Taxation Offences) Act 1980

No. 156 of 1980

An Act relating to certain offences in relation to taxation

[Assented to 4 December 1980]

BE IT ENACTED by the Queen, and the Senate and the House of Representatives of the Commonwealth of Australia, as follows:

PART I—PRELIMINARY

Short title

1. This Act may be cited as the *Crimes (Taxation Offences) Act* 1980.

Commencement

2. This Act shall come into operation on the day on which it receives the Royal Assent.

Interpretation

3. (1) In this Act, unless the contrary intention appears—
“Commissioner” means the Commissioner of Taxation;
“company” includes all bodies or associations corporate or unincorporate, but does not include partnerships;
“Deputy Commissioner” means a Deputy Commissioner of Taxation;
“income tax” means—
 - (a) income tax, imposed as such by any Act, as assessed under the Income Tax Assessment Act;
 - (b) additional income tax payable under section 207, 221AG, 221YDB or 226 of the Income Tax Assessment Act;
 - (c) an instalment of income tax payable under Division 1A of Part VI of the Income Tax Assessment Act;
 - (d) any amount payable to the Commissioner under sub-section 221F (5) or (10) of the Income Tax Assessment Act;
 - (e) any amount required, under sub-section 221G (1) of the Income Tax Assessment Act, to be expended in the purchase of tax stamps;
 - (f) any amount of provisional income tax payable under section 221YB of the Income Tax Assessment Act; and

- (g) any amount payable to the Commissioner under sub-section 221YN (1) or (4), sub-section 221YQ (1), sub-section 221ZC (1) or (4) or sub-section 221ZD (1) of the Income Tax Assessment Act;

“Income Tax Assessment Act” means the *Income Tax Assessment Act 1936*;

“sales tax” means any tax imposed under the name of sales tax by any Act;

“Sales Tax Assessment Acts” means the *Sales Tax Assessment Act (No. 1) 1930*, the *Sales Tax Assessment Act (No. 2) 1930*, the *Sales Tax Assessment Act (No. 3) 1930*, the *Sales Tax Assessment Act (No. 4) 1930*, the *Sales Tax Assessment Act (No. 5) 1930*, the *Sales Tax Assessment Act (No. 6) 1930*, the *Sales Tax Assessment Act (No. 7) 1930*, the *Sales Tax Assessment Act (No. 8) 1930*, the *Sales Tax Assessment Act (No. 9) 1930* and the *Sales Tax Procedure Act 1934*;

“Second Commissioner” means a Second Commissioner of Taxation;

“secure” includes achieve the result;

“trustee”, in addition to every person (including a company) appointed or constituted trustee by act of parties, by order or declaration of a court or by operation of law, includes—

- (a) an executor or administrator, guardian, committee, receiver or liquidator; and
- (b) every person (including a company) having or taking upon himself the administration or control of income or property affected by any express or implied trust, or acting in any fiduciary capacity, or having the possession, control or management of the income or property of a person under any legal or other disability.

(2) In this Act—

- (a) a reference to sales tax payable by a company or trustee, in relation to the purpose, or a purpose, of a person in entering into, or the knowledge or belief of a person concerning, an arrangement or transaction, shall be read as a reference to some or all of the sales tax due and payable by the company or trustee at the time when the arrangement or transaction is entered into;
- (b) a reference to future sales tax payable by a company or trustee, in relation to the purpose, or a purpose, of a person in entering into, or the knowledge or belief of a person concerning, an arrangement or transaction, shall be read as a reference to some or all of—
 - (i) the sales tax (if any) that will become payable by the company or trustee, after the arrangement or transaction is entered into, in relation to transactions entered into, operations carried out and acts done by the company or trustee before the arrangement or transaction is entered into; and

- (ii) the sales tax that may reasonably be expected by that person to become payable by the company or trustee after the arrangement or transaction is entered into—
 - (A) in relation to likely transactions, operations and acts of the company or trustee; or
 - (B) by reason of the Commissioner altering the sale value of goods in pursuance of a power to do so conferred on him by some one or other of the Sales Tax Assessment Acts; and
- (c) a reference to sales tax moneys, in relation to a company or trustee, shall be read as a reference to—
 - (i) the sales tax payable by the company or trustee;
 - (ii) further sales tax payable by the company or trustee under any of the Sales Tax Assessment Acts;
 - (iii) additional tax payable by the company or trustee under any of the Sales Tax Assessment Acts;
 - (iv) costs awarded by a court against the company or trustee in a proceeding by the Crown for the recovery of a penalty under any of the Sales Tax Assessment Acts; and
 - (v) costs awarded by a court against the company or trustee in a proceeding for the recovery of sales tax, further sales tax referred to in sub-paragraph (ii) or additional tax referred to in sub-paragraph (iii) payable by the company or trustee.

(3) In this Act, a reference to securing the inability or likely inability of a company or trustee to pay sales tax payable by the company or trustee or future sales tax payable by the company or trustee shall be read as including a reference to securing the continuation of an inability or likely inability of a company or trustee to pay sales tax payable by the company or trustee or future sales tax payable by the company or trustee, as the case may be.

- (4)** In this Act—
 - (a) a reference to a person shall, unless the contrary intention appears, be read as not including a reference to a company;
 - (b) a reference to an arrangement or transaction shall be read as including a reference to both an arrangement and a transaction and to any series or combination of arrangements or transactions or arrangements and transactions;
 - (c) a reference to a person who aids, abets, counsels or procures another person to enter into an arrangement or transaction shall be read as including a reference to a person who, jointly with another person or other persons, aids, abets, counsels or procures some person to enter into an arrangement or transaction;
 - (d) a reference to an arrangement shall be read as a reference to an arrangement, agreement, understanding or scheme—
 - (i) whether formal or informal;

- (ii) whether express or implied; and
 - (iii) whether or not enforceable, or intended to be enforceable, by legal proceedings; and
- (e) a reference to sales tax, sales tax moneys or future sales tax payable by a trustee shall be read as a reference to sales tax, sales tax moneys or future sales tax payable by a person (including a company) in the capacity of a trustee, whether or not the person is personally liable for the sales tax or sales tax moneys or will be personally liable for the future sales tax, as the case may be.

(5) For the purposes of sub-section 10 (2), section 11 and section 12, the liability of a company or trustee to pay sales tax moneys in respect of a particular act or transaction shall not be taken not to be finally determined by reason only of the possibility of the Commissioner determining that further sales tax is payable in relation to that act or transaction.

Secrecy

4. (1) Section 16 of the *Income Tax Assessment Act* 1936 has effect as if this Act were part of that Act.

(2) Section 10 of the *Sales Tax Assessment Act (No. 1)* 1930 (including that section as having effect for the purposes of any of the other *Sales Tax Assessment Acts*) has effect as if this Act were part of Part II of the *Sales Tax Assessment Act (No. 1)* 1930.

PART II—OFFENCES RELATING TO SALES TAX

Arrangements to avoid payment of sales tax

5. (1) Where a person enters into an arrangement or transaction for the purpose, or for purposes which include the purpose, of securing, either generally or for a limited period, that a company or trustee (whether or not a party to the arrangement or transaction) will be unable, or will be likely to be unable, having regard to other debts of the company or trustee, to pay sales tax payable by the company or trustee, the person is guilty of an offence.

(2) Where—

- (a) a person enters into an arrangement or transaction for the purpose, or for purposes which include the purpose, of securing, either generally or for a limited period, that a company or trustee (whether or not a party to the arrangement or transaction) will be unable, or will be likely to be unable, having regard to other debts of the company or trustee, to pay future sales tax payable by the company or trustee; and
- (b) sales tax becomes due and payable by the company or trustee, the person is guilty of an offence.

Aiding and abetting

6. (1) Where a person—

- (a) directly or indirectly, aids, abets, counsels or procures another person (including a company) to enter into an arrangement or transaction; or
- (b) is, in any way, by act or omission, directly or indirectly concerned in, or party to, the entry by another person (including a company) into an arrangement or transaction,

knowing or believing that the arrangement or transaction is being entered into by the other person for the purpose, or for purposes which include the purpose, of securing, either generally or for a limited period, that a company or trustee (whether or not a party to the arrangement or transaction) will be unable, or will be likely to be unable, having regard to other debts of the company or trustee, to pay sales tax payable by the company or trustee, the first-mentioned person is guilty of an offence.

(2) Where—

(a) a person—

- (i) directly or indirectly, aids, abets, counsels or procures another person (including a company) to enter into an arrangement or transaction; or
- (ii) is, in any way, by act or omission, directly or indirectly concerned in, or party to, the entry by another person (including a company) into an arrangement or transaction,

knowing or believing that the arrangement or transaction is being entered into by the other person for the purpose, or for purposes which include the purpose of securing, either generally or for a limited period, that a company or trustee (whether or not a party to the arrangement or transaction) will be unable, or will be likely to be unable, having regard to other debts of the company or trustee, to pay future sales tax payable by the company or trustee; and

- (b) sales tax becomes due and payable by the company or trustee, the first-mentioned person is guilty of an offence.

Arrangements to secure inability to pay sales tax

7. (1) Where a person—

- (a) enters into an arrangement or transaction;
- (b) directly or indirectly, aids, abets, counsels or procures another person (including a company) to enter into an arrangement or transaction; or
- (c) is, in any way, by act or omission, directly or indirectly concerned in, or party to, the entry by another person (including a company) into an arrangement or transaction,

knowing or believing that the arrangement or transaction will secure, or will be likely to secure, either generally or for a limited period, that a company or trustee (whether or not a party to the arrangement or transaction) will be unable, or will be likely to be unable, having regard to other debts of the company or trustee, to pay sales tax payable by the company or trustee, the first-mentioned person is guilty of an offence.

(2) Where—

(a) a person—

- (i) enters into an arrangement or transaction;
- (ii) directly or indirectly, aids, abets, counsels or procures another person (including a company) to enter into an arrangement or transaction; or
- (iii) is, in any way, by act or omission, directly or indirectly concerned in, or party to, the entry by another person (including a company) into an arrangement or transaction,

knowing or believing that the arrangement or transaction will secure, or will be likely to secure, either generally or for a limited period, that a company or trustee (whether or not a party to the arrangement or transaction) will be unable, or will be likely to be unable, having regard to other debts of the company or trustee, to pay future sales tax payable by the company or trustee; and

(b) sales tax becomes due and payable by the company or trustee, the first-mentioned person is guilty of an offence.

(3) Where—

(a) a company or trustee—

- (i) enters into an arrangement with a creditor for payments to be made, during a limited period, to the creditor by the company or trustee or by a person (including a company) at the direction of the company or trustee; or
- (ii) enters into a transaction that involves the company or trustee making a payment to, or directing a person (including a company) to make a payment to, a creditor of the company or trustee; and

(b) the company or trustee enters into the arrangement or transaction for the purpose, or for purposes which include the purpose—

- (i) of securing, or attempting to secure, that the company or trustee will be able to continue to carry on business; or
- (ii) of obtaining a financial benefit for the company or trustee,

neither sub-section (1) nor sub-section (2) applies to or in relation to that arrangement or transaction.

(4) In sub-section (3), a reference to a creditor of a company or trustee, in relation to an arrangement or transaction entered into by the company or trustee, shall be read as including a reference to a person (including a company) to whom money is payable by the company or trustee under, or by virtue of, the arrangement or transaction.

Offences in relation to particular transactions

8. Where—

- (a) a company or trustee enters into a transaction by way of selling or leasing goods to a person (including another company) in such circumstances that sales tax will become payable by the company or trustee in relation to the transaction;
- (b) a person is, in any way, by act or omission, directly or indirectly, concerned in, or party to, the entry by the company or trustee into that transaction knowing, or having reasonable grounds for believing—
 - (i) that, or that it is likely that—
 - (A) the sale value of the goods, for the purposes of some one or other of the Sales Tax Assessment Acts, will be altered by the Commissioner in pursuance of a power to do so conferred on him by some one or other of those Acts; or
 - (B) in a case to which clause (A) does not apply—the whole, or a substantial part, of the price payable for selling or leasing the goods has been, or is to be, paid to a person (including a company) other than the first-mentioned company or trustee otherwise than on account of the first-mentioned company or trustee, whether or not as agent for the first-mentioned company or trustee;
 - (ii) that sales tax will become payable in relation to the transaction; and
 - (iii) that, if sales tax becomes due and payable in relation to the transaction, the company or trustee will be unable, or will be likely to be unable, at the time when the sales tax becomes due and payable, to pay some or all of the aggregate of—
 - (A) the sales tax that will then be payable by the company or trustee in relation to the transaction;
 - (B) the sales tax (if any) that will then be payable by the company or trustee in relation to the previous transactions, operations and acts of the company or trustee (if any); and
 - (C) the sales tax that may reasonably be expected by the person first mentioned in this paragraph to be then payable by the company or trustee by reason of the Commissioner altering the sale value of any goods in pursuance of a power to do so conferred on him by some one or other of the Sales Tax Assessment Acts; and
- (c) sales tax becomes due and payable by the company or trustee in relation to the transaction,

the person first mentioned in paragraph (b) is guilty of an offence.

Penalties

9. (1) The penalty applicable to an offence against this Act is imprisonment for a period not exceeding 5 years or a fine not exceeding \$50,000, or both.

(2) A prosecution for an offence against this Act may be commenced at any time.

(3) A person is not liable to be convicted of two or more offences against this Act in relation to the same arrangement or transaction.

(4) Proceedings for the commitment of a person for trial on indictment for an offence against this Act shall not be instituted except with the consent in writing of the Attorney-General or a person authorized by the Attorney-General, by writing under his hand, to give such consents.

Evidence

10. (1) In proceedings under this Act (including proceedings for the purpose of obtaining an order under section 12), a certificate purporting to be signed by the Commissioner, a Second Commissioner or a Deputy Commissioner and stating that an amount of sales tax moneys is or was, or became, due and payable by a company, or by a trustee, on a date specified in the certificate is, subject to sub-section (2), conclusive evidence of the matters stated in the certificate.

(2) Where—

- (a) a certificate is given by the Commissioner, a Second Commissioner or a Deputy Commissioner under sub-section (1) stating that an amount of sales tax moneys is or was, or became, due and payable by a company or by a trustee; and
- (b) before the certificate was given, it was finally determined, or after the certificate was given it is finally determined, for the purposes of some one or other of the Sales Tax Assessment Acts, that the sales tax moneys, or part of the sales tax moneys, to which the certificate relates did not become payable by the company or trustee,

the certificate is of no effect, or ceases to have effect, as the case requires, in so far as it would, apart from this sub-section, be conclusive evidence that the sales tax moneys or the part of the sales tax moneys, as the case may be, referred to in paragraph (b) were or was, or became, due and payable by the company or trustee on the date specified in the certificate.

(3) A reference in sub-sections (1) and (2), in relation to a company or trustee, to sales tax moneys shall be read as a reference to sales tax moneys in respect of which a notification (however described) has been given to the company or trustee under some one or other of the Sales Tax Assessment Acts.

Stay of proceedings

11. (1) Where, in any proceedings under this Act (including proceedings for the purpose of obtaining an order under section 12), it appears to the court or magistrate that—

- (a) the liability of a company or trustee in respect of some sales tax moneys has not been finally determined for the purposes of some one or other of the Sales Tax Assessment Acts; and

- (b) the final determination of the liability of the company or trustee in respect of those sales tax moneys is relevant to the determination of the question whether a person is guilty of an offence against this Act,

the court or magistrate shall stay the proceedings under this Act until—

- (c) the liability of the company or trustee in respect of those sales tax moneys is finally determined; or
- (d) it is finally determined that the company or trustee became liable to pay some of those sales tax moneys,

whichever first occurs.

(2) Nothing in this section limits the power of a court or magistrate under any other law to order a stay of proceedings.

Additional penalty

12. (1) Where a person is convicted of an offence against this Act in relation to a company or trustee, the court may, in addition to imposing a penalty in respect of the offence, order the person to pay to the Commonwealth such amount as the court thinks fit but not exceeding the amount of the sales tax moneys due and payable by the company or trustee on the date of the conviction, other than sales tax moneys the liability of the company or trustee to pay which is not finally determined for the purposes of some one or other of the Sales Tax Assessment Acts.

(2) Upon payment of an amount in satisfaction or part satisfaction of an order made under sub-section (1) in relation to the sales tax moneys payable by a company or trustee—

- (a) if the sales tax moneys payable by the company or trustee at the time the payment is made exceeds the amount of the payment—the sales tax moneys so payable shall be deemed to be reduced, in such manner as the Commissioner determines, by an amount equal to the amount of the payment; or
- (b) in any other case—the liability of the company or trustee in respect of the sales tax moneys at the time the payment is made shall be deemed to be discharged.

PART III—OFFENCES RELATING TO INCOME TAX

Application of Part I and Part II in relation to income tax

13. (1) Without prejudice to their effect apart from this section, sub-section 3 (3), paragraph 3 (4) (e) and the provisions of Part II (other than section 8 and sub-section 10 (3)) also have the effect they would have if—

- (a) a reference in any of those provisions to sales tax were a reference to income tax;
- (b) a reference in any of those provisions to future sales tax were a reference to future income tax;

- (c) a reference in any of those provisions to some one or other of the Sales Tax Assessment Acts were a reference to the Income Tax Assessment Act; and
 - (d) a reference in any of those provisions, in relation to a company or trustee, to sales tax moneys were a reference to income tax moneys.
- (2) For the purposes of the application of the provisions of Part II (other than section 8 and sub-section 10 (3)) in accordance with sub-section (1) of this section—
- (a) a reference in any of those provisions to the income tax payable by a company or trustee, in relation to the purpose, or a purpose, of a person entering into, or the knowledge or belief of a person concerning, an arrangement or transaction shall be read as a reference to some or all of the income tax due and payable by the company or the trustee at the time when the arrangement or transaction was entered into;
 - (b) a reference in any of those provisions to future income tax payable by a company or trustee, in relation to the purpose, or a purpose, of a person entering into, or the knowledge or belief of a person concerning, an arrangement or transaction shall be read as a reference to some or all of the income tax that may reasonably be expected by that person to become payable by the company or trustee after the arrangement or transaction is entered into;
 - (c) a reference in any of those provisions, other than sub-sections 10 (1) and (2), in relation to a company or trustee, to income tax moneys shall be read as a reference to—
 - (i) income tax payable by the company or trustee; and
 - (ii) costs ordered by a court against a company or trustee in a proceeding for the recovery of income tax; and
 - (d) a reference in sub-sections 10 (1) and (2) to income tax moneys shall be read as a reference to income tax that has been assessed under the Income Tax Assessment Act.
- (3) For the purposes of the application of sub-section 10 (2), section 11 and section 12 in accordance with the preceding provisions of this section, the liability of a company or trustee in respect of income tax moneys that have been assessed shall not be taken not to be finally determined by reason only of the possibility of the Commissioner amending the assessment (otherwise than as a result of an objection being allowed or at the direction of a Board of Review or court).