



Australian Capital Territory Taxation (Administration) Amendment Act 1981

No. 127 of 1981

An Act to amend the *Australian Capital Territory Taxation (Administration) Act 1969*

[Assented to 30 September 1981]

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

Short title, &c.

1. (1) This Act may be cited as the *Australian Capital Territory Taxation (Administration) Amendment Act 1981*.

(2) The *Australian Capital Territory Taxation (Administration) Act 1969*¹ is in this Act referred to as the Principal Act.

Commencement

2. This Act shall come into operation on such date as is fixed by Proclamation.

Interpretation

3. Section 4 of the Principal Act is amended—

- (a) by inserting after the definition of “member of a diplomatic mission” in sub-section (1) the following definition:

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- “ ‘Motor Traffic Ordinance’ means the *Motor Traffic Ordinance* 1936 of the Australian Capital Territory, as amended and in force for the time being;”;
- (b) by inserting after the definition of “registered owner” in sub-section (1) the following definitions:
- “ ‘registered under a corresponding law’, in relation to a vehicle, means registered or licensed (whether originally or by way of renewal or transfer or otherwise) under a law of a State or Territory providing for the registration or licensing of vehicles, and ‘registration’, in connection with such a law, has a corresponding meaning;
- ‘Registrar’ means the Registrar of Motor Vehicles appointed in pursuance of the Motor Traffic Ordinance;
- ‘registration’, in relation to a vehicle, means registration under the Motor Traffic Ordinance, whether by way of original registration or renewal or transfer of registration or otherwise, and ‘register’ and ‘registered’ have corresponding meanings;”;
- (c) by inserting in the definition of “return” in sub-section (1) “, 44E” after “42”;
- (d) by inserting in the definition of “tax” in sub-section (1) “the *Australian Capital Territory Tax (Life Insurance Business) Act* 1981, the *Australian Capital Territory Tax (Vehicle Registration) Act* 1981,” after “the *Australian Capital Territory Tax (Insurance Business) Act* 1969,”;
- (e) by adding at the end of sub-section (1) the following definition:
- “ ‘vehicle’ means—
- (a) a motor vehicle within the meaning of the Motor Traffic Ordinance; or
- (b) a trailer within the meaning of that Ordinance.”; and
- (f) by adding at the end thereof the following sub-sections:
- “(6) For the purposes of this Act, an application for the registration of a vehicle shall be taken to be made at the time when the application, duly made in pursuance of the requirements of the Motor Traffic Ordinance, is received by the Registrar.
- “(7) For the purposes of this Act—
- (a) a vehicle registered in the name of a partnership (but not in the names of the several partners), or on behalf of a partnership, shall be deemed to be registered in the names of the persons who are members of the partnership at the time of the registration;
- (b) a vehicle registered (otherwise than as described in paragraph (a)) in the name of a business name registered under the *Business Names Ordinance* 1963 of the Australian Capital

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Territory, as amended and in force for the time being, shall be deemed to be registered in the name or names of the person or persons in relation to whom that business name is registered under that Ordinance at the time of the registration of the vehicle; and

- (c) a vehicle registered on behalf of a body corporate (otherwise than as described in paragraph (b)) shall be deemed to be registered in the name of that body corporate.

“(8) For the purposes of sub-section (7), ‘registered’, in relation to a vehicle, includes registered under a corresponding law, and ‘registration’ has a corresponding meaning.”.

4. After section 38 of the Principal Act the following section is inserted in Division 6 of Part III:

Interpretation

“38A. In this Division—

‘insurance’ does not include life insurance;

‘premium’ means a premium in respect of insurance.”.

5. After Division 6 of Part III of the Principal Act the following Division is inserted:

“Division 6A—Life insurance business

Interpretation

“44A. In this Division, ‘premium’ means a premium in respect of life insurance.

Insurer in the Territory to be registered

“44B. (1) An insurer shall not, after the expiration of 14 days from the date of commencement of this Act, carry on in the Territory the business of life insurance in respect of which tax is imposed unless he is registered under this Division.

Penalty: \$200.

“(2) Nothing in this section affects the liability (including a contingent liability) of an insurer under a policy of life insurance issued by the insurer in the course of carrying on the business of life insurance in the Territory in contravention of this section.

Register of life insurers

“44C. For the purpose of this Division, the Commissioner of Taxation shall keep a register to be called ‘Register of Life Insurers’.

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Registration

“44D. (1) An insurer carrying on or intending to carry on in the Territory the business of life insurance in respect of which tax is imposed may apply to the Commissioner of Taxation in writing in accordance with an approved form for registration in the Register kept under this Division.

“(2) The Commissioner of Taxation shall, upon receiving an application from an insurer under sub-section (1), register the insurer by entering the name of the insurer in the Register.

“(3) The Commissioner of Taxation shall give notice of the registration by instrument served on the insurer.

“(4) The Commissioner of Taxation shall revoke the registration of an insurer under this Division by removing his name from the Register upon receiving notification of the winding-up of the insurer, or upon receiving a request from the insurer to revoke the registration.

Returns in respect of life insurance business

“44E. (1) An insurer registered under this Division shall, within 21 days after the end of each month of each year—

- (a) furnish to the Commissioner of Taxation a return relating to all premiums received by him in the Territory in that month in respect of life insurance on which tax is imposed but unpaid; and
- (b) pay the tax payable in respect of that insurance.

Penalty: \$50.

“(2) A return under this section shall be in accordance with an approved form and shall contain such particulars as are required by the form.

Insurer may recover tax from person paying premiums

“44F. An insurer registered under this Division may, by an instrument served on the person by whom premiums are payable under a policy of life insurance in respect of which tax is imposed, require that person to pay to the insurer as a separate debt an amount designated as the tax and equal to the amount of the tax, and the insurer may recover the amount designated as the tax from that person.”.

6. After Division 9 of Part III of the Principal Act the following Division is inserted:

“Division 10—Vehicle registration

Interpretation

“58A. In this Division, ‘Taxing Act’ means the *Australian Capital Territory Tax (Vehicle Registration) Act 1981*.

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Payment of tax

“58B. Tax in respect of the registration of a vehicle is payable by the person in whose name the vehicle is registered, and is due and payable at the time of registration.

Registration of vehicles

“58C. (1) Notwithstanding anything in the Motor Traffic Ordinance, the Registrar shall not register a vehicle unless—

- (a) he is satisfied that the registration is exempt from tax by virtue of sub-section 6 (1) of the Taxing Act;
- (b) the application for the registration is accompanied by a certificate or certificates issued under section 58D in respect of the vehicle to the person or persons in whose name or names the registration is made, and the registration is not made in the name of any other person;
- (c) the registration is solely in the name of a person who certifies, in accordance with an approved form, that—
 - (i) he is carrying on a business in respect of which he is a licensed dealer under the *Sale of Motor Vehicles Ordinance* 1977 of the Australian Capital Territory, or that Ordinance as amended and in force for the time being; and
 - (ii) the vehicle is held by him as trading stock for resale in the course of carrying on that business; or
- (d) the applicant for the registration tenders the amount of tax payable in respect of the registration, and the application for the registration is accompanied by a statement by the applicant, in accordance with an approved form, of—
 - (i) the amount that, to the best of his knowledge and belief, is or will be the market value of the vehicle as at the time when the application is made; and
 - (ii) such other information as is required by the form.

“(2) For the purposes of the application of sub-section (1) in relation to the registration of a vehicle, but for no other purpose, the market value of the vehicle shall be taken to be the amount stated under paragraph (1) (d) in relation to that registration.

“(3) A person claiming exemption of the registration of a vehicle from tax by virtue of sub-section 6 (1) of the Taxing Act shall furnish to the Registrar such information as the Registrar requires.

Certificates of exemption from tax

“58D. (1) If, upon application, the Commissioner of Taxation is satisfied that the registration of a vehicle in the name of a person will be exempt from tax by virtue of a provision of sub-section 6 (2) (other than paragraph (e)) of the Taxing Act, he may issue a certificate to that effect.

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“(2) A person making application under sub-section (1) shall furnish such information as the Commissioner of Taxation requires.

Information to be supplied to Commissioner of Taxation

“58E. As soon as practicable after the end of each month of each year, the Registrar shall furnish to the Commissioner of Taxation particulars of all certificates given, statements made and information furnished for the purposes of section 58C during that month.

Refund of tax incorrectly paid

“58F. (1) Where, on application made within 3 years after the registration of a vehicle in respect of which tax has been paid, the Commissioner of Taxation is satisfied that the whole or part of that amount should not have been paid, that amount, or that part of that amount, as the case may be, shall be refunded.

“(2) Sub-section (1) does not apply—

- (a) in relation to tax paid in accordance with an assessment; or
- (b) in circumstances to which paragraph 68 (1) (c) applies.

“(3) A person making application under sub-section (1) shall furnish such information as the Commissioner of Taxation requires.”.

Information for the purpose of making assessment

7. Section 61 of the Principal Act is amended by omitting sub-section (1) and substituting the following sub-section:

“(1) The Commissioner of Taxation may, at any time, by instrument served on a person who has—

- (a) furnished a return or lodged an instrument for assessment;
- (b) given a certificate, made a statement or furnished information for the purposes of section 58C; or
- (c) furnished information for the purposes of section 58D or 58F,

require that person to furnish, within a specified period, further information by statutory declaration or otherwise in connection with the return, instrument, certificate, statement or information.

False or misleading returns, &c.

8. Section 63 of the Principal Act is amended—

- (a) by omitting sub-section (1) and substituting the following sub-section:

“(1) A person shall not—

- (a) furnish a return to the Commissioner of Taxation;
- (b) give a certificate, make a statement or furnish information for the purposes of section 58C; or
- (c) furnish information for the purposes of section 58D or 58F,

that is false or misleading in a material particular.

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Penalty: \$1,000.”;

- (b) by omitting from sub-section (2) “was furnished” and substituting “or information was furnished, certificate was given or statement was made, as the case may be,”; and
- (c) by inserting in sub-section (3) “, certificate, statement or information” after “return”.

9. Sections 68 and 69 of the Principal Act are repealed and the following sections are substituted:

Default assessments

“68. (1) Where—

- (a) a person liable to furnish a return has failed to furnish a return, has furnished a return that is false or misleading in a material particular or has failed to include in a return particulars required by this Act to be included;
- (b) a person has—
 - (i) given a certificate or furnished information for the purposes of section 58C; or
 - (ii) furnished information for the purposes of section 58D or 58F, that is false or misleading in a material particular;
- (c) a person has made a statement for the purposes of paragraph 58C (1) (d) in which the amount stated as the market value of the vehicle concerned is more or less than the amount that, in the opinion of the Commissioner of Taxation, was the market value of the vehicle as at the time when the application for registration of the vehicle was made;
- (d) a person has not complied with a requirement under section 61; or
- (e) an instrument has been seized under section 67,

the Commissioner of Taxation may make an assessment of the amount of duty or tax that, in his opinion, is payable and, in a case to which paragraph (c) applies, he may for that purpose determine the market value of the vehicle concerned as at the time when the application for registration of the vehicle was made.

“(2) An assessment shall not be made in pursuance of paragraph (1) (c) in relation to the registration of a vehicle after the expiration of 3 years after the registration unless the statement referred to in that paragraph was false or misleading in a material particular.

“(3) Where, by reason of an assessment made in pursuance of paragraph (1) (c), a person has overpaid tax, the amount of tax overpaid shall be refunded.

Notice of default assessment

“69. As soon as practicable after an assessment is made in pursuance of section 68 under which duty or tax is assessed to be payable, the Commissioner

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of Taxation shall cause notice in writing of the assessment and the amount of duty or tax payable in accordance with the assessment, together with the amount, if any, of duty or tax underpaid or overpaid, to be given to the person who is adjudged by him to be the person liable to pay the duty or tax.”.

Penalty additional to duty or tax on default assessments

10. Section 70 of the Principal Act is amended by omitting sub-section (1) and substituting the following sub-section:

- “(1) Where a person is liable to pay—
- (a) tax by virtue of an assessment made in pursuance of paragraph 68 (1) (c), where the statement referred to in that paragraph was false or misleading in a material particular; or
 - (b) tax or duty by virtue of any other assessment made under section 68,
- that person is liable to pay, by way of penalty, in addition to the amount of tax or duty, an amount equal to double the amount of that tax or duty.”.

11. After section 73 of the Principal Act the following section is inserted in Part V:

Interpretation

“73A. In this Part, ‘prescribed decision’ means—

- (a) a decision by the Commissioner of Taxation to refuse to issue a certificate under section 58D to a person; or
- (b) a decision by the Registrar that the registration of a vehicle is not exempt from tax.”.

Objections to assessments and decisions

12. Section 74 of the Principal Act is amended—

- (a) by inserting after sub-section (1) the following sub-section:

“(1A) A person who is aggrieved by a prescribed decision made in relation to the registration of a vehicle in his name may, within 60 days after the decision is made, post to, or lodge with, the Commissioner of Taxation an objection in writing to the decision.”;
- (b) by inserting in sub-section (2) “or decision” after “assessment”;
- (c) by omitting from sub-section (6) “his assessment is amended” and substituting “the assessment is amended or the prescribed decision is set aside”.

Review by Board of Review

13. Section 75 of the Principal Act is amended—

- (a) by omitting sub-section (1) and substituting the following sub-section:

“(1) A Board of Review has power to review assessments and prescribed decisions referred to it under this Act and, for that purpose, the Board has all the powers and functions of the Commissioner of

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Taxation in making assessments, determinations and decisions under this Act or of the Commissioner of Taxation or the Registrar in making prescribed decisions, and assessments, determinations and decisions of the Board shall, for the purposes of this Act (other than the purposes of sub-section 74 (5) and section 76), be deemed to be assessments, determinations and decisions of the Commissioner of Taxation or of the Registrar, as the case may be.”;

- (b) by omitting from sub-section (3) “the assessment” (first occurring) and substituting “an assessment”;
- (c) by inserting in sub-section (4) “or prescribed decision is incorrect” after “excessive”; and
- (d) by adding at the end of sub-section (5) “or confirm or set aside the prescribed decision”.

Pending appeal or reference not to affect payment of tax or duty

14. Section 77 of the Principal Act is amended—

- (a) by inserting “or prescribed decision” after “assessment” (first occurring); and
- (b) by omitting “on the assessment”.

Adjustments of duty or tax after appeal

15. Section 78 of the Principal Act is amended by adding at the end thereof the following sub-section:

“(3) If a prescribed decision is set aside on a reference or appeal

- (a) the Commissioner of Taxation shall cause notice in writing of that fact to be given to the person who requested the review of the decision; and
- (b) an amount of tax overpaid shall be refunded.”.

16. After section 80 of the Principal Act the following section is inserted:

Vehicle registration tax may be recovered by Registrar

“80A. Except as otherwise directed by the Commissioner of Taxation, the recovery of unpaid tax in respect of the registration of a vehicle or an amount referred to in section 82 relating to such tax is the responsibility of the Registrar.”.

Additional penalty for failure to pay duty or tax on time

17. Section 81 of the Principal Act is amended by adding at the end thereof the following sub-sections:

“(3) The Commissioner of Taxation may, either generally or as otherwise provided by the instrument of delegation, by writing signed by him, delegate to the Registrar all or any of his powers under sub-section (2) in relation to amounts payable by way of penalty under this section in connection with tax in respect of the registration of vehicles.

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“(4) A delegation under sub-section (3) does not prevent the exercise of a power by the Commissioner of Taxation.”.

Recovery of duty or tax from trustees of deceased persons

18. Section 83 of the Principal Act is amended by inserting in sub-section (1) “or the Registrar” after “Taxation”.

Evidence

19. Section 86 of the Principal Act is amended by adding at the end thereof the following sub-section:

“(2) In proceedings for the recovery of tax in respect of the registration of a vehicle, the production of an instrument under the hand of the Registrar purporting to contain particulars of the registration of that vehicle on a particular date is evidence of the registration of that vehicle on that date.”.

Judicial notice

20. Section 95 of the Principal Act is amended by omitting “or Deputy Commissioner of Taxation” and substituting “, Deputy Commissioner of Taxation or Registrar”.

21. Section 98 of the Principal Act is repealed and the following section is substituted:

Appearances by Commissioner of Taxation and Registrar

“98. (1) In any proceedings under this Act in a court or Board of Review, the Commissioner of Taxation or the Registrar may appear either personally or by a barrister or solicitor, or by an officer appointed by him.

“(2) The appearance of such an officer, and the statement that he appears by authority of the Commissioner of Taxation or the Registrar, as the case may be, are sufficient evidence of that authority.”.

NOTE

1. No. 42, 1969. For previous amendments, see No. 216, 1973; and No. 61, 1981.