



Taxation Administration Amendment (Recovery of Tax Debts) Act 1986

No. 144 of 1986

An Act relating to the recovery of tax debts

[Assented to 9 December 1986]

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 *Taxation Administration Amendment (Recovery of Tax Debts) Act 1986*.

(2) The *Taxation Administration Act 1953*¹ is in this Act referred to as the Principal Act.

Commencement

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

3. After section 14ZK of the Principal Act the following section is inserted in Part V:

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Modification of limitation laws applying to the recovery of tax debts

“14ZKA. (1) In this section—

‘limitation law’ means a law in force in a State or Territory that provides, or has the effect of providing—

(a) that an action or proceeding in a court of the State or Territory shall not be brought on; or

(b) for the extinction of, or of a right or title in relation to, a cause of action of a particular kind specified, or ascertained in accordance with, that law after the end of a period (in this section referred to as the ‘limitation period’) specified in, or ascertained in accordance with, that law;

‘objection’ has the same meaning as in the *Taxation (Interest on Overpayments) Act 1983*;

‘tax debt’ means an amount due and payable as a tax liability.

“(2) If a limitation law applies, or applied, by virtue of section 64 of the *Judiciary Act 1903*, in relation to a cause of action to recover a tax debt, that law, in that application at a particular time (in this sub-section referred to as the ‘application time’), is modified, and shall be deemed always to have been modified, as follows:

(a) where—

(i) a person lodges, or lodged, an objection against an assessment, or a decision of the Commissioner, relating to the tax debt; and

(ii) if the limitation period had commenced on the day the objection procedure in relation to the objection last ceased to be pending before the application time, the limitation period would have ended on a later day than the day on which the limitation period would have ended but for the modification made by this paragraph,

the limitation period shall be taken to end, or to have ended, on that later day;

(b) a tax debt payable under any of the following provisions shall not be taken to be, or to have been, a penalty or a sum by way of penalty:

(i) section 70 of the *Australian Capital Territory Taxation (Administration) Act 1969*;

(ii) section 17 of the *Bank Account Debts Tax Administration Act 1982*;

(iii) section 46 of the *Estate Duty Assessment Act 1914*;

(iv) Part VIII of the *Fringe Benefits Tax Assessment Act 1986*;

(v) Part VII of the *Income Tax Assessment Act 1936* or that Part as applied for the purposes of any other taxation law;

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- (vi) Part VII of the *Pay-roll Tax (Territories) Assessment Act 1971*;
- (vii) Part VIII of the *Sales Tax Assessment Act (No. 1) 1930* or that Part as applied for the purposes of any other Act providing for the assessment of sales tax;
- (viii) Part VI of the *Tobacco Charges Assessment Act 1955*;
- (ix) Part X of the *Wool Tax (Administration) Act 1964*;
- (x) a repealed provision of a taxation law, being a provision—
 - (A) that was repealed by the *Taxation Laws Amendment Act 1984*; and
 - (B) under which a person was liable to pay additional charge, additional duty, additional tax or an amount in addition to an amount of tax or duty, otherwise than by reason of the late payment, or the non-payment, of an amount of a tax liability.

“(3) Subject to sub-section (4), sub-section (2) applies in relation to a cause of action that accrued before, or that accrues after, the commencement of this section.

“(4) Where—

- (a) before 25 September 1986, a court had given a decision on a demurrer to so much of a defence as alleged that a limitation law applied in relation to a cause of action to recover a tax debt; or
- (b) both of the following sub-paragraphs apply:
 - (i) before 25 September 1986, a court had given a judgment, or made an order, determining a cause of action to recover a tax debt;
 - (ii) the application of a limitation law was raised as an issue in the action or proceeding on that cause of action,

sub-section (2) does not apply in relation to that cause of action.

“(5) For the purposes of paragraph (2) (a), the objection procedure in relation to an objection shall be taken to be pending at a particular time if—

- (a) the Commissioner had not given written notice of the Commissioner’s decision on the objection before that time;
- (b) both of the following sub-paragraphs apply:
 - (i) before that time, a person made an application for an extension of time in connection with a proceeding under a taxation law or the *Administrative Appeals Tribunal Act 1975* in relation to the objection;
 - (ii) no decision had been made in relation to that application before that time;

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- (c) the time for instituting proceedings under a taxation law or the *Administrative Appeals Tribunal Act 1975* in relation to the objection had not ended at that time; or
- (d) at that time, there is a proceeding that—
 - (i) had been instituted under a taxation law or the *Administrative Appeals Tribunal Act 1975* in relation to the objection; and
 - (ii) has not been determined.

“(6) For the purposes of sub-section (5)—

- (a) a proceeding in relation to an objection that has lapsed or otherwise been terminated shall be taken to have been determined; and
- (b) the time for instituting a proceeding in relation to an objection shall not be taken not to have ended by reason only of the possibility that an extension of that time may be granted.

“(7) In determining whether a limitation law applies, or applied, by virtue of section 64 of the *Judiciary Act 1903*, in relation to a cause of action to recover a tax debt, the preceding provisions of this section shall be disregarded.”

NOTE

- 1. No. 1, 1953, as amended. For previous amendments, see Nos. 28, 39, 40 and 52, 1953; No. 18, 1955; No. 39, 1957; No. 95, 1959; No. 17, 1960; No. 75, 1964; No. 155, 1965; No. 93, 1966; No. 120, 1968; No. 216, 1973; No. 133, 1974; No. 37, 1976; Nos. 19 and 59, 1979; Nos. 39 and 117, 1983; No. 123, 1984; No. 65, 1985 (as amended by No. 193, 1985); Nos. 4, 47, 104, 123 and 168, 1985; and Nos. 41, 46, 48 and 49, 1986.

[*Minister's second reading speech made in—
House of Representatives on 24 September 1986
Senate on 10 October 1986*]