

Western Australia

## **Debits Tax Assessment Act 1990**

---

As at 20 Mar 2003

Version 01-b0-02

Extract from [www.slp.wa.gov.au](http://www.slp.wa.gov.au), see that website for further information



## Debits Tax Assessment Act 1990

---

### CONTENTS

---

#### Part 1 — Preliminary

1.	Short title	2
2.	Commencement	2
3.	Interpretation	2
4.	Deemed separate debits	11
5.	Debits to be expressed in Australian currency	12
6.	General administration of this Act	12
7.	Delegation of functions	12

#### Part 2 — Liability to tax

8.	Liability to tax	13
9.	When tax payable	13
10.	Recovery of tax by financial institutions	14
11.	Certificates of exemption from tax	15
12.	Offences relating to certificates of exemption	17

#### Part 3 — Returns and assessments

13.	Returns in respect of taxable debits	19
14.	Refund of amounts incorrectly paid	19
15.	Refunds for tax paid on excluded debits	21
16.	Special assessments	22
17.	Default assessments	23
18.	Penalty for failure to furnish return etc.	23
19.	Amendment of assessments	26
20.	Validity of assessments	28

**Part 4 — Objections and appeals**

21.	Definition of “tax”	29
22.	Objections	29
23.	Appeals	30
24.	Commissioner may state case	30
25.	Proceedings not to delay payment of tax	31

**Part 5 — Recovery of tax**

26.	Recovery of tax	32
27.	Extension of time and payment by instalments	32
28.	Penalty for unpaid tax	32
29.	Evidence	34

**Part 6 — Offences**

30.	Offences — generally	36
31.	Evading taxation	36
32.	Time for commencing prosecutions	37
33.	Penalty not to relieve from tax	37
34.	Obstructing officers	37
35.	Disclosure of information	37
36.	Institution of prosecutions	38
37.	Proceedings for offences	38

**Part 7 — Miscellaneous**

38.	Return in relation to exempt accounts	39
39.	Representative officers etc., of financial institutions	39
40.	Access to books etc.	41
41.	Commissioner to obtain information and evidence	42
42.	Service on partnerships and associations	43
43.	Commissioner may collect tax from person owing money to financial institution or account holder	43
44.	Preservation of records	44
45.	Regulations	45
46.	Transitional provisions	45

**Schedule 1**

Transitional provisions	46
-------------------------	----

	Part 1 — Preliminary	46
1.	Definitions	46
	Part 2 — Interim arrangements for the administration of this Act	46
2.	Interim arrangements for the administration of this Act	46
3.	Conferral of functions on Commissioner of Taxation etc.	47
4.	Public notification of arrangement	47
5.	Cessation of arrangement	47
6.	Exemption certificates	47
7.	Representative officers etc., of financial institutions	48
8.	Acceptance of things done in compliance with the Commonwealth Acts	48
9.	Information included in returns in respect of taxable debts or eligible debts	48

### **Notes**

	Compilation table	49
	Provisions that have not come into operation	49



Western Australia

## **Debits Tax Assessment Act 1990**

**An Act for the collection of a tax in respect of certain debits made to accounts kept with financial institutions, to amend the *Taxation (Reciprocal Powers) Act 1989*, and for related purposes.**

## Part 1 — Preliminary

### 1. Short title

This Act may be cited as the *Debits Tax Assessment Act 1990*<sup>1</sup>.

### 2. Commencement

- (1) In this section “**the relevant day**” means the day on which the *Debits Tax Termination Act 1990* of the Commonwealth comes into operation<sup>1</sup>.
- (2) If this Act receives the Royal Assent on or before the relevant day its provisions (other than Part 4) shall come into operation on the relevant day<sup>1</sup>.
- (3) If this Act receives the Royal Assent after the relevant day its provisions (other than Part 4) shall be deemed to have come into operation on the relevant day<sup>1</sup>.
- (4) Part 4 shall come into operation on such day as is fixed by proclamation<sup>1</sup>.

### 3. Interpretation

- (1) In this Act, unless the contrary intention appears —

“**account**” means an account, kept with a financial institution, to which payments by the institution in respect of cheques drawn on the institution by the account holder, or by any one or more of the account holders, may be debited;

“**account holder**” means the person in whose name, or either or any of the persons in whose names, the account is kept;

“**account transaction**” means the payment of a cheque, or the doing of any other thing, that will result in the making of a debit to an account;

“**assessment**” means —

- (a) the ascertainment of tax payable under this Act in respect of a taxable debit or taxable debits, or an eligible debit or eligible debits, as the case may be; or

(b) the ascertainment of additional tax payable under section 18;

**“certificate of exemption”** means a certificate under section 11;

**“cheque”**, in relation to an account, means an order in writing drawn on a financial institution by or on behalf of the account holder, or any one or more of the account holders, requiring the institution to pay on demand a sum certain in money to, or to the order of, a specified person or persons, or to bearer;

**“Commissioner”** means the person holding the office of Commissioner of State Taxation<sup>2</sup> under the *Public Sector Management Act 1994*<sup>3</sup>;

**“company”** means a body corporate, a partnership or any other unincorporated association or body of persons;

**“eligible debit”** means a debit (other than an excluded debit or an exempt debit) made to an account;

**“excepted goods”**, in relation to a department, authority, corporation or body, means goods, or goods included in a class of goods, that are declared by the regulations to be excepted goods;

**“excepted services”**, in relation to a department, authority, corporation or body, means services, or services included in a class of services, that are declared by the regulations to be excepted services;

**“excluded debit”** means a debit —

- (a) made to an account kept with a financial institution in the name of —
- (i) the Governor-General or the Governor of a State;
  - (ii) a government of a country other than Australia;
  - (iii) a person who, but for section 8(3) and (4), would be entitled to exemption from the tax by virtue of any other law of the State of

**s. 3**

---

Western Australia, being a debit made in relation to a transaction or transactions carried out by or on behalf of the person for purposes related wholly and exclusively to the person's private or domestic affairs, other than purposes related to activities that constitute the carrying on of a business by that person in Australia;

(iv) an organization other than —

(A) a department of the government of the Commonwealth or of a State or Territory; or

(B) an authority of the Commonwealth or of a State or Territory; or

(C) a local government,

that, but for section 8(3) and (4), would be entitled to exemption from the tax by virtue of any other law of the State of Western Australia, being a debit made in relation to a transaction or transactions carried out by or on behalf of the organization wholly or exclusively in engaging in its official activities;

(v) any of the following —

(A) a public benevolent or a religious institution;

(B) a public hospital or a hospital that is carried on by an association or other body of persons otherwise than for purposes of profit or gain to the individual members of that association or other body;

(C) a university, a government college or government school, or a college or

school that is carried on by an association or other body of persons otherwise than for the purposes of profit or gain to the individual members of that association or other body;

- (D) a trust the moneys of which may not be applied otherwise than for charitable purposes;
- (E) an institution established for charitable purposes, not being an institution referred to in Item (A), (B) or (C),

being a debit made in relation to a transaction or transactions carried out by or on behalf of the institution, hospital, university, college, school or trust, as the case may be, wholly and exclusively in furtherance of its objects;

- (vi) a society, institution or organization that has been established, and is carried on, wholly and exclusively for the purpose of raising money for, or otherwise promoting the interests of, a specified institution, hospital, university, college, school or trust referred to in subparagraph (v), being a debit made in relation to a transaction or transactions carried out by or on behalf of that society, institution or organization wholly and exclusively in furtherance of its objects;
- (vii) any of the following —
  - (A) a department of the government of the Commonwealth or of a State or Territory;
  - (B) an authority of the Commonwealth or of a State or Territory;

- (C) a local government,  
other than such a department, authority,  
corporation or body the sole or principal  
function of which is to carry on an activity in  
the nature of a business (whether or not for  
profit), not being a debit made in relation to a  
transaction or transactions entered into by or  
on behalf of the department, authority,  
corporation or body in connection with the  
carrying on of an activity (other than an  
activity that forms a minor or insignificant  
part of the functions of the department,  
authority, corporation or body) in the nature  
of a business (whether or not for profit); or
- (viii) an authority of the Commonwealth, or of a  
State or Territory, that is prescribed for the  
purposes of this subparagraph;
- (b) made to an account kept with a financial institution  
(in this paragraph called the “account keeping  
institution”) in the name of another financial  
institution (in this paragraph called the “account  
holding institution”) where —
  - (i) either of the following conditions is satisfied —
    - (A) the business carried on by the account  
holding institution in Western  
Australia consists wholly or  
principally of banking business;
    - (B) all debits made, or to be made, to the  
account are in connection with  
banking business carried on by the  
account holding institution in Western  
Australia;
  - and
  - (ii) the debit is not in connection with a cheque  
drawn on the account keeping institution by

the account holding institution where the cheque was, at a time when it was incomplete, delivered by the account holding institution to a customer under an agreement under which the customer was authorised to fill up the cheque;

- (c) the tax in respect of which cannot be recovered from the account holder or account holders by the financial institution with which the account is kept; or
- (d) that is included in a kind or class of debits that are prescribed for the purposes of this paragraph;

**“exempt account”** means an account kept in Western Australia in respect of which a certificate of exemption is in force;

**“exempt debit”**, in relation to an account, means a debit —

- (a) that is made solely for the purpose of reversing a credit previously made to the account;
- (b) that is made for the purpose of deducting an amount under section 221YHZC(1A) of the *Income Tax Assessment Act 1936* of the Commonwealth;
- (c) that is made for the purpose of recovering from the account holder an amount equal to an amount of tax that the financial institution has paid or is liable to pay; or
- (d) that is included in a kind or class of debits that are prescribed for the purposes of this paragraph;

**“financial institution”** means —

- (a) an institution that is a “financial institution” for the purposes of the *Cheques Act 1986* of the Commonwealth; or
- (b) any other person who is, or who is in a class of persons that is, prescribed for the purposes of this definition;

**“goods”** includes water, gas and electricity;

**s. 3**

---

**“incomplete”**, in relation to a cheque, means wanting in a material particular necessary for the cheque to be, on its face, a complete cheque;

**“month”** means one of the 12 months of the year;

**“officer”** means an officer of the Public Service;

**“person”** includes —

- (a) a body politic;
- (b) a body corporate;
- (c) a partnership; and
- (d) any other unincorporated association or body of persons;

**“tax”** means tax imposed by the *Debits Tax Act 1990*;

**“taxable account”** means an account (other than an exempt account) kept in Western Australia;

**“taxable debit”** means a debit (other than an exempt debit) made to an account.

- (2) For the purposes of this Act, a person is to be taken to have been a resident of Western Australia at a particular time if —
- (a) in the case of a person other than a company —
    - (i) the person resided in Western Australia at that time; or
    - (ii) except in the case where the Commissioner is satisfied that the person’s permanent place of residence at that time was outside Western Australia — that person was domiciled in Western Australia at that time;
  - (b) in the case of a company that is a body corporate and a time that was before the commencement of the *Corporations Act 2001* of the Commonwealth —
    - (i) the company was incorporated in Western Australia at that time; or

- (ii) if the company was incorporated outside Western Australia at that time, at that time the company carried on business in Western Australia and either —
  - (A) had its central management and control in Western Australia; or
  - (B) had its voting power controlled by shareholders who were residents of Western Australia;
- (ba) in the case of a company that is a body corporate and that was registered under the *Corporations Act 2001* of the Commonwealth at that time —
  - (i) the company was taken to be incorporated in Western Australia at that time; or
  - (ii) if the company was taken to be incorporated outside Western Australia at that time, the company carried on business in Western Australia at that time and either —
    - (A) had its central management and control in Western Australia; or
    - (B) had its voting power controlled by shareholders who were residents of Western Australia;
- (bb) in the case of a company that is a body corporate and that was not registered under the *Corporations Act 2001* of the Commonwealth at that time (and that time was after the commencement of that Act) —
  - (i) the company was incorporated in Western Australia at that time; or
  - (ii) if the company was incorporated outside Western Australia at that time, the company carried on business in Western Australia at that time and either —
    - (A) had its central management and control in Western Australia; or

**s. 3**

---

(B) had its voting power controlled by shareholders who were residents of Western Australia;

or

- (c) in the case of a company that is a partnership or other unincorporated association or body of persons — any member of the partnership or other association or body was a resident of Western Australia at that time.
- (3) Where a debit made to an account is subsequently reversed, the debit is, for the purposes of this Act, to be taken to be, and to have always been, an exempt debit.
- (4) For the purposes of this Act, if a department, authority, corporation or body referred to in paragraph (a)(vii) of the definition of “excluded debit” in subsection (1) supplies goods (other than excepted goods) or provides services (other than excepted services) to the public for payment, the supply of those goods or the provision of those services by the department, authority, corporation or body is to be taken to constitute the carrying on of an activity in the nature of a business by the department, authority, corporation or body.
- (5) For the purposes of this Act, tax or additional tax under section 18 is due and payable at the expiration of the day by which the tax or additional tax is required by this Act to be paid.
- (6) Where —
- (a) this Act provides that an account holder or person is guilty of an offence; and
- (b) the account holder or person is a partnership or an unincorporated association or other body of persons,
- that reference to the account holder or person is —
- (c) in the case of a partnership — to be read as a reference to each member of the partnership; and

- (d) in the case of another unincorporated association or other body of persons — to be read as a reference to each member of the committee of management of the association or body.
- (7) Where this Act imposes a liability on a person being a partnership or other unincorporated association or body of persons to pay any tax (including additional tax under section 18 or 28) or other amount, that liability is to be taken to be imposed jointly and severally on the persons who are the members of the partnership or other association or body at the time when the liability arises.
- (8) A reference in this Act to a liability of a person to the State of Western Australia is a reference to a liability of a person to the State of Western Australia arising under an Act of which the Commissioner has the general administration.
- (9) A reference in this Act to an account kept with a financial institution includes, when the institution is not a bank, a reference to an account kept by way of withdrawable share capital in, or money deposited with, the institution.
- (10) A reference in this Act to the carrying on of banking business includes a reference to a business carried on by a financial institution in the course of which the institution keeps accounts for its customers.

*[Section 3 amended by No. 14 of 1996 s. 4; No. 20 of 1996 s. 4; No. 22 of 1998 s. 46; No. 10 of 2001 s. 58.]*

#### **4. Deemed separate debits**

- (1) Subject to subsection (2), for the purposes of this Act, a debit that, but for this section, would be a single debit made to an account in respect of 2 or more account transactions is to be treated as being separate debits in relation to each of those account transactions.

**s. 5**

---

- (2) Subsection (1) does not apply to a debit that is, or is within a kind or class of debits that is, prescribed for the purposes of this section.

*[Section 4 amended by No. 48 of 1996 s. 21.]*

**5. Debits to be expressed in Australian currency**

Where a debit is made in a currency other than Australian currency, a reference in this Act to the amount of the debit is a reference to the amount of the debit expressed in terms of Australian currency.

**6. General administration of this Act**

The Commissioner has the general administration of this Act.

**7. Delegation of functions**

The Commissioner may delegate to a person engaged in the administration of this Act any of the Commissioner's functions, other than this power of delegation.

## **Part 2 — Liability to tax**

### **8. Liability to tax**

- (1) A financial institution with which a taxable account is kept and the account holder (or, if there are 2 or more account holders, those account holders) are jointly and severally liable to pay the tax imposed by the *Debits Tax Act 1990* on a taxable debit made to the account.
- (2) The account holder of an account other than a taxable account is liable (or, if there are 2 or more account holders, those account holders are jointly and severally liable) to pay the tax imposed by the *Debits Tax Act 1990* on an eligible debit made to the account.
- (3) An enactment passed before the commencement of this section that purports to exempt a person from liability to pay a tax which could be taken to include tax imposed by the *Debits Tax Act 1990* (“debits tax”) does not exempt that person from liability to pay debits tax.
- (4) An enactment passed after the commencement of this section that purports to exempt a person from liability to pay taxes under the laws of Western Australia or to pay certain taxes under those laws that include tax imposed by the *Debits Tax Act 1990* (“debits tax”), other than a law or a provision that expressly exempts a person from liability to pay debits tax, is not to be construed as exempting the person from liability to pay debits tax.

### **9. When tax payable**

- (1) Subject to this Act —
  - (a) where tax in respect of a taxable debit made during a month (whether or not that tax is the subject of an assessment) is payable under section 8(1), that tax must be paid not later than 14 days after the end of that month; and

**s. 10**

---

- (b) tax to which an assessment made under section 17(2) relates must be paid not later than the day specified in a notice of that assessment as the day on which the tax is due for payment, being a day not less than 14 days after —
  - (i) in a case in which notice of that assessment was required to be served on one person — the day on which the notice was served on the person;
  - (ii) in a case in which notice of that assessment was required to be served on 2 or more persons and notice of that assessment was served on those persons on the same day — the day on which the notice was served on the persons; or
  - (iii) in a case in which notice of that assessment was required to be served on 2 or more persons and notice of that assessment was served on those persons on different days — the earliest of those days.
- (2) Additional tax under section 18 is due and payable on the date specified in the notice of assessment of the additional tax as the date on which the additional tax is due and payable.

**10. Recovery of tax by financial institutions**

- (1) Where a financial institution pays tax in respect of a taxable debit made to a taxable account kept with the financial institution, the account holder is liable (or, if there are 2 or more account holders, those account holders are jointly and severally liable) to pay to the financial institution an amount equal to that tax and the financial institution may recover that amount from that account holder (or from either or any of those account holders) as a debt due to the financial institution by action in a court of competent jurisdiction.
- (2) An account holder is not (or account holders are not) liable to pay to a financial institution under subsection (1) an amount in respect of an amount of tax —

- (a) that has been refunded to the financial institution in accordance with a provision of this Act; or
  - (b) in respect of which an amount has been paid to the financial institution under section 15.
- (3) A financial institution may debit an account with an amount that the account holder is (or the account holders are) liable to pay to the financial institution under subsection (1).
- (4) Where a financial institution would, but for this section, have power to enter into an agreement or arrangement with the account holder or account holders of a taxable account kept with the financial institution under which the financial institution would be entitled to recover from the account holder or account holders, whether by debiting the account or otherwise, amounts equal to amounts of tax that the financial institution is or becomes liable to pay in respect of taxable debits that have been or are made to that account, nothing in this section prevents the financial institution from entering into such an agreement or arrangement.

**11. Certificates of exemption from tax**

- (1) Where an account holder in respect of an account kept in Western Australia applies to the Commissioner in accordance with this section for the issue of a certificate of exemption in relation to the account —
- (a) if the Commissioner is satisfied that all debits made, or to be made, to the account are, or are likely to be, either excluded debits or exempt debits — the Commissioner shall issue a certificate of exemption in relation to the account; or
  - (b) if the Commissioner is not so satisfied — the Commissioner shall refuse the application and shall cause notice in writing of the decision in relation to the application to be served, by post or otherwise, on the person who made the application.

**s. 11**

---

(2) A certificate of exemption comes into force on a day specified in the certificate as the day of commencement of the certificate (which may, subject to subsection (8), be a day before the day on which the certificate is issued) and remains in force until the expiration of the day specified in the certificate as the day of expiry of the certificate or, if no day is specified as the day of expiry of the certificate, until the certificate ceases to be in force by virtue of subsection (6).

(3) Where the Commissioner —

- (a) is notified by the account holder, or either or any of the account holders, of an exempt account that an eligible debit has been, or is to be, made to the account; or
- (b) becomes satisfied that an eligible debit has been, or is to be, made to an exempt account,

the Commissioner has a discretionary power to revoke the certificate by notice in writing.

(4) Subject to subsection (5), where —

- (a) an eligible debit has been made to an exempt account; or
- (b) the account holder (or one or more of the account holders) of an exempt account expects (or expect) that an eligible debit will be made to the exempt account within the ensuing period of 30 days,

the account holder (or each of the account holders) of the exempt account, shall, within 7 days, notify the Commissioner in writing accordingly.

(5) Where —

- (a) there are 2 or more account holders of an exempt account; and
- (b) one of those account holders notifies the Commissioner in accordance with subsection (4) of an eligible debit to, or expected to be made to, the exempt account,

the other account holder (or account holders) are not required to notify the Commissioner under that subsection of the eligible debit.

- (6) Where the Commissioner has revoked a certificate of exemption in relation to an account, the Commissioner shall serve, by post or otherwise, notice of that revocation —
- (a) on the account holder (or, if there are 2 or more account holders, on each of them); and
  - (b) on the financial institution with which the account is kept,

and, notwithstanding that any day of expiry shown on the certificate has not occurred, the certificate ceases to be in force in relation to the account when the notice is served on the financial institution.

- (7) An application made for the issue of a certificate of exemption shall be in writing and the person making the application must furnish such information as the Commissioner requires in connection with the consideration of that application.
- (8) Where —
- (a) a certificate of exemption in relation to an account is issued after the *Revenue Laws Amendment (Assessment) Act 1996* comes into operation; but
  - (b) a certificate could not have been issued in relation to the account before that Act came into operation,

the day of commencement of the certificate must not be before the day on which that Act came into operation.

*[Section 11 amended by No. 20 of 1996 s. 5.]*

## **12. Offences relating to certificates of exemption**

- (1) A person shall not —
- (a) forge a certificate or utter a certificate knowing it to be forged;

**s. 12**

---

- (b) without lawful authority, alter or sign a certificate;
- (c) deliver a document (not being a certificate) that purports to be a certificate; or
- (d) knowingly represent that a certificate is in respect of an account other than the account in respect of which the certificate was issued.

Penalty: \$10 000.

- (2) In subsection (1), “**certificate**” means a certificate of exemption.

### **Part 3 — Returns and assessments**

#### **13. Returns in respect of taxable debits**

- (1) If, in any month, a taxable debit is made to a taxable account kept with a financial institution, the financial institution shall, not later than 14 days after the end of that month or such later date as the Commissioner allows, furnish to the Commissioner a return, or, where subsection (2) applies, returns, relating to all taxable debits made during that month to taxable accounts kept with the financial institution.
- (2) A financial institution may, with the consent of the Commissioner, furnish separate returns under subsection (1) in relation to taxable debits made to taxable accounts kept with a particular branch or branches of the financial institution.
- (3) Where the Commissioner has reason to believe that an account holder is liable to pay tax by virtue of section 8(2) in respect of an eligible debit or eligible debits made to an account, the Commissioner may, by notice in writing, require that account holder to furnish to the Commissioner, within a time specified in the notice, not being a time earlier than 21 days after the day on which the notice is given, a return relating to all eligible debits in respect of which that account holder is liable to pay tax by virtue of section 8(2) during the period specified in the notice.
- (4) A return under this section shall be in a form approved by the Commissioner and contain such particulars as are required by the form.

#### **14. Refund of amounts incorrectly paid**

- (1) Subject to this section, where, on application made by a person in accordance with this section, the Commissioner is satisfied that an amount paid as tax by a financial institution under this Act (other than an amount paid under an assessment) was not payable, the Commissioner shall —
  - (a) refund the amount to the person; or

**s. 14**

---

- (b) apply the amount against any liability of the person to the State of Western Australia and refund any part of the amount not so applied.
- (2) An application under this section for a refund of an amount paid by a financial institution may be made —
  - (a) if the amount has been recovered by the financial institution from an account holder — by that account holder; or
  - (b) if the amount has not been so recovered — by the financial institution.
- (3) Application under this section for a refund of an amount shall be in writing in a form approved by the Commissioner and must be made —
  - (a) in a case to which subsection (2)(a) applies — not later than 3 years after the day on which the amount was recovered; or
  - (b) in a case to which subsection (2)(b) applies — not later than 3 years after the day on which the amount was paid.
- (4) A person making application for a refund under this section shall furnish such information as the Commissioner requires in connection with the consideration of the application.
- (5) Where an application for a refund of an amount has been duly made by a person under this section —
  - (a) if the Commissioner is satisfied that the amount was not payable, the Commissioner shall —
    - (i) refund the amount to the person; or
    - (ii) apply the amount against any liability of the person to the State of Western Australia and refund any part of the amount not so applied;
  - (b) if the Commissioner is satisfied that part only of the amount was not payable, the Commissioner shall —
    - (i) refund that part of the amount to the person;

- (ii) apply that part of the amount against any liability of the person to the State of Western Australia and refund any part of that part of the amount not so applied;
  - or
  - (c) if the Commissioner is not satisfied as mentioned in paragraph (a) or (b) the Commissioner shall refuse the application.
- (6) Where, in relation to an application under this section, the Commissioner makes a decision for the purposes of subsection (5)(b) or (c), the Commissioner shall cause notice in writing of the decision in relation to the application to be served, by post or otherwise, on the person by whom the application was made.

**15. Refunds for tax paid on excluded debits**

- (1) Subject to this section, where, on application made by a person in accordance with this section, the Commissioner is satisfied that tax has been paid by a financial institution under this Act in respect of an excluded debit made to a taxable account, the Commissioner shall —
- (a) pay an amount equal to the amount of that tax to the person; or
  - (b) apply an amount equal to the amount of that tax against any liability of the person to the State of Western Australia and refund any part of that amount not so applied.
- (2) An application may be made under this section —
- (a) if the tax has been recovered by the financial institution that paid the tax from an account holder — by that account holder; or
  - (b) if the tax has not been so recovered — by the financial institution that paid the tax.

**s. 16**

---

- (3) Application under this section for a payment in relation to an amount of tax paid shall be in writing in a form approved by the Commissioner and shall be made —
- (a) in a case to which subsection (2)(a) applies — not later than 3 years after the day on which that tax was recovered; or
  - (b) in a case to which subsection (2)(b) applies — not later than 3 years after the day on which the tax was paid.
- (4) A person making application for a payment under this section shall furnish such information as the Commissioner requires in connection with the consideration of that application.
- (5) Where —
- (a) an application has been made under this section for payment of an amount in respect of tax paid by a financial institution; and
  - (b) the Commissioner is not satisfied that the tax was paid in respect of an excluded debit made to a taxable account,
- the Commissioner shall refuse the application and cause notice in writing of the refusal to be served, by post or otherwise, on the person by whom the application was made.

**16. Special assessments**

- (1) A financial institution may, in relation to a return lodged by it under section 13, request the Commissioner, in accordance with this section, to make an assessment of the amount of tax that, in the opinion of the Commissioner, is payable in respect of taxable debits to which that return relates.
- (2) A request under subsection (1) shall be made in writing within 30 days after the day on which the return was furnished to the Commissioner.
- (3) Where a financial institution has made a request in accordance with subsection (1) in relation to a return, the Commissioner shall make an assessment of the amount of tax that, in the

opinion of the Commissioner, is payable in respect of taxable debits to which the return relates.

- (4) As soon as practicable after an assessment is made under this section, the Commissioner shall cause notice in writing of the assessment and of the amount of tax payable on taxable debits to which the assessment relates to be served, by post or otherwise, on the financial institution that made the request for the assessment.

**17. Default assessments**

- (1) Where the Commissioner is of the opinion that 2 or more persons are jointly and severally liable to pay tax on a taxable debit or taxable debits made to a taxable account (whether or not any return has been furnished), the Commissioner may make an assessment of the amount of the tax.
- (2) Where the Commissioner is of the opinion that a person is liable, or 2 or more persons are jointly and severally liable, to pay tax on an eligible debit or eligible debits made to an account other than a taxable account (whether or not any return has been furnished), the Commissioner may make an assessment of the amount of the tax.
- (3) As soon as practicable after an assessment is made under this section, the Commissioner shall cause notice in writing of the assessment and of the amount of tax payable in accordance with the assessment to be served, by post or otherwise, on —
- (a) in a case to which subsection (1) applies — the financial institution with which the account is kept; or
  - (b) in a case to which subsection (2) applies — the person liable, or the persons jointly and severally liable, to pay the tax.

**18. Penalty for failure to furnish return etc.**

- (1) Where a person refuses or fails, when and as required under this Act or the regulations to do so —

**s. 18**

---

- (a) to furnish a return, or any information, relating to a taxable debit or taxable debits made to a taxable account or an eligible debit or eligible debits made to an account other than a taxable account; or
- (b) to notify the Commissioner of an eligible debit made to an exempt account,

the person is liable to pay, by way of penalty, additional tax equal to double the amount of tax payable by the person in respect of the taxable debit or taxable debits or the eligible debit or eligible debits, as the case may be.

(2) Where —

(a) a person —

- (i) makes a statement to a taxation officer, or to a person other than a taxation officer for a purpose in connection with the operation of this Act or the regulations, that is false or misleading in a material particular; or
- (ii) omits from a statement made to a taxation officer, or to a person other than a taxation officer for a purpose in connection with the operation of this Act or the regulations, any matter or thing without which the statement is misleading in a material particular;

and

- (b) the tax properly payable by the person exceeds the tax that would have been payable by the person if it were assessed or determined on the basis that the statement were not false or misleading, as the case may be,

the person is liable to pay, by way of penalty, additional tax equal to double the amount of the excess.

(3) Where, but for this subsection, an amount of additional tax, being an amount less than \$20, is payable by a person under this

section in respect of an act or omission, then, by force of this subsection, the amount of the additional tax is \$20.

- (4) The Commissioner shall make an assessment of the additional tax payable by a person under this section and shall, as soon as practicable after the assessment is made, cause notice in writing of the assessment to be served, by post or otherwise, on the person.
- (5) Nothing in this Act is to be taken to preclude notice of an assessment made in respect of a person under subsection (4) from being incorporated in notice of any other assessment made in respect of the person under this Act.
- (6) The Commissioner has a discretionary power to remit the whole or any part of the additional tax payable by a person under this section and may do so before or after an assessment is made under subsection (4) of the additional tax.
- (7) A reference in subsection (2) 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 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 or other document made, given or furnished, or purporting to be made, given or furnished under this Act or the regulations;
  - (b) made in answer to a question asked of a person under this Act or the regulations;
  - (c) made in any information furnished, or purporting to be furnished, under this Act or the regulations; or
  - (d) made in a document furnished to a taxation officer otherwise than under this Act or the regulations,

but does not include a statement made in a document produced under section 41(1)(b)(ii).

**s. 19**

---

- (8) A reference in subsection (2) to a statement made to a person other than a taxation officer for a purpose in connection with the operation of this Act or the regulations 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 —
- (a) made in an application, certificate, declaration, notification or other document made, given or furnished to the person;
  - (b) made in answer to a question asked by the person; or
  - (c) made in any information furnished to the person.
- (9) In this section —
- “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 functions under or in relation to this Act or the regulations.

**19. Amendment of assessments**

- (1) Subject to this section, the Commissioner may, at any time within a period of 3 years after an assessment is made by the Commissioner, amend the assessment by making such alterations or additions to it as the Commissioner thinks necessary to correct an error in calculation or a mistake of fact or to prevent avoidance of tax.
- (2) Subsection (1) does not prevent the amendment of an assessment after the expiration of the period referred to in that subsection —
- (a) pending any objection or appeal under this Act;
  - (b) in order to give effect to the decision on any objection or appeal under this Act;
  - (c) by way of reduction resulting from an objection made under this Act; or

- (d) where the person in respect of whom the assessment is made has not made to the Commissioner a full and true disclosure of all the material facts necessary for the assessment to be made and there has been an avoidance of tax.
- (3) Where, by reason of an amendment of an assessment, a person's liability to tax is reduced —
- (a) the amount by which the tax is so reduced is to be taken, for the purposes of section 28, never to have been payable; and
  - (b) subject to subsection (4), the Commissioner shall —
    - (i) refund the amount of any tax overpaid; or
    - (ii) apply the amount of any tax overpaid against any liability of the person to the State of Western Australia and refund any part of the amount that is not so applied.
- (4) Where by reason of an amendment under this section of an assessment made under section 17(1) a financial institution has overpaid tax, the amount of the tax overpaid shall not be refunded to the financial institution or applied against a liability of the financial institution to the State of Western Australia unless —
- (a) the amount of tax overpaid has not been recovered by the financial institution from an account holder; or
  - (b) if the amount of tax overpaid has been recovered from an account holder and the Commissioner is satisfied that that amount has been or will be refunded to that account holder by the financial institution.
- (5) As soon as practicable after the amendment under this section of an assessment, the Commissioner shall cause notice in writing of the amended assessment and of the amount of tax payable in accordance with the amended assessment to be served, by post or otherwise, on the person in respect of whom the amended assessment is made.

**s. 20**

---

- (6) An amended assessment is an assessment for all the purposes of this Act.
- (7) In this section, “**tax**” includes additional tax under section 18 or 28.

**20. Validity of assessments**

The validity of an assessment is not affected by reason that a provision of this Act has not been complied with.

## **Part 4 — Objections and appeals**

**21. Definition of “tax”**

In this Part, “**tax**” includes additional tax under section 18 or 28.

**22. Objections**

- (1) A person who is dissatisfied with any decision made by the Commissioner under this Act by which the person’s liability to pay tax is affected, or with any assessment made by the Commissioner under this Act, may, within 60 days, or such longer period as the Commissioner may in writing allow, after service of notice of the decision or assessment, as the case may be, post to or lodge with, the Commissioner an objection in writing stating fully and in detail the grounds on which the person relies.
- (2) Notwithstanding subsection (1), in the case of an objection to an amended assessment the person objecting shall have no further right of objection than the person would have had if the amended assessment had not been made except to the extent to which, by reason of the amended assessment, a fresh liability in respect of any particular is imposed on the person or an existing liability in respect of any particular is increased.
- (3) The Commissioner shall consider the objection, and may either disallow it or allow it, either wholly or in part.
- (4) If the person’s liability or assessment has been reduced by the Commissioner after considering the objection, the Commissioner shall refund to the person any amounts paid by the person in excess.
- (5) The Commissioner shall serve on the objector written notice of the Commissioner’s decision on the objection.

**s. 23**

---

**23. Appeals**

- (1) When a person, who has objected under section 22 to a decision made by the Commissioner under this Act by which the person's liability to pay tax is affected or to any assessment made by the Commissioner under this Act is dissatisfied with the decision of the Commissioner on that objection, the person may, within 60 days after being served with notice of that decision or such longer period after that service as the Supreme Court may allow, appeal to the Supreme Court against that decision.
- (2) The Supreme Court shall hear and determine an appeal under subsection (1), and for the purposes of this section —
  - (a) the jurisdiction of the Supreme Court may be exercised by a Judge sitting in chambers; and
  - (b) Rules of Court may be made for regulating the procedure and practice to be followed on an appeal to the Supreme Court under subsection (1).
- (3) The appellant shall be limited, on the hearing of the appeal, to the grounds stated in the objection.
- (4) If the appellant's liability or assessment has been reduced on objection, the reduced liability or assessment shall be the liability or assessment appealed against.
- (5) On the hearing of an appeal by the Supreme Court under this section, the Supreme Court may make such order as it thinks fit and may by its order confirm, reduce, increase or vary the decision or assessment.

**24. Commissioner may state case**

- (1) The Commissioner may state a case on any question of law arising with regard to any decision or assessment made by the Commissioner under this Act and forward that case to the Supreme Court for its opinion.

- (2) The Supreme Court shall give its opinion on any case forwarded to it under subsection (1) and cause the Commissioner to be notified of that opinion.

**25. Proceedings not to delay payment of tax**

- (1) The fact that an objection, appeal or case stated is pending with respect to any liability or assessment shall not in the meantime interfere with or affect the liability or assessment the subject of that objection, appeal or case stated and the tax may be recovered as if no objection, appeal or case stated were pending.
- (2) If the liability or assessment is altered on appeal or in consequence of a case stated, a due adjustment shall be made, for which purpose amounts paid in excess shall be refunded together with interest paid at the rate prescribed for the purposes of this subsection, and amounts short paid shall be recoverable.

## **Part 5 — Recovery of tax**

### **26. Recovery of tax**

- (1) Tax is, on becoming due and payable under this Act, a debt due to the State of Western Australia and payable to the Commissioner.
- (2) Any tax that is unpaid may be sued for and recovered in any court of competent jurisdiction by the Commissioner.
- (3) In this section, “**tax**” includes additional tax under section 18 or 28.

### **27. Extension of time and payment by instalments**

- (1) The Commissioner may in any case grant such extension of time for payment of tax, or permit payment of tax to be made by such instalments and within such time, as the Commissioner considers the circumstances warrant, and in any such case the tax is due and payable accordingly.
- (2) In this section, “**tax**” includes additional tax under section 18.

### **28. Penalty for unpaid tax**

- (1) If any tax remains unpaid after the time when it became due and payable, or would (but for section 27) have become due and payable, additional tax is due and payable by way of penalty by the person liable, or the persons jointly and severally liable, to pay the tax at the rate of 20% per annum on the amount unpaid, computed from that time or, where, under section 27, the Commissioner has granted an extension of time for payment of the tax or has permitted payment of the tax to be made by instalments, from such day as the Commissioner determines, not being a day prior to the day on which the tax was originally due and payable.
- (2) Where additional tax is payable by a person under this section and —
  - (a) the Commissioner is satisfied that —
    - (i) the circumstances that contributed to the delay in payment of the tax were not due to, or caused

directly or indirectly by, an act or omission of the person; and

- (ii) the person has taken reasonable action to mitigate, or mitigate the effects of, those circumstances;

or

- (b) the Commissioner is satisfied that —

- (i) the circumstances that contributed to the delay in payment of the tax were due to, or caused directly or indirectly by, an act or omission of the person;
- (ii) the person has taken reasonable action to mitigate, or mitigate the effects of, those circumstances; and
- (iii) having regard to the nature of those circumstances, it would be fair and reasonable to remit the additional tax or part of the additional tax;

or

- (c) the Commissioner is satisfied that there are special circumstances by reason of which it would be fair and reasonable to remit the additional tax or part of the additional tax,

the Commissioner may remit the additional tax or part of the additional tax.

- (3) Where judgment is given by, or entered in, a court for the payment of —

- (a) an amount of tax; or
- (b) an amount that includes an amount of tax,

then —

- (c) the tax does not, for the purposes of subsection (1), cease to be due and payable by reason only of the giving or entering of the judgment; and

**s. 29**

---

- (d) if the judgment debt carries interest, the additional tax that would, but for this paragraph, be payable under this section in relation to the tax is, by force of this paragraph, to be reduced by —
  - (i) in a case to which paragraph (a) applies — the amount of the interest; or
  - (ii) in a case to which paragraph (b) applies — an amount that bears the same proportion to the amount of the interest as the amount of the tax bears to the amount of the judgment debt.
- (4) Notwithstanding anything contained in this section, the Commissioner may sue for recovery of any tax unpaid immediately after the expiry of the time when it becomes due and payable.
- (5) In this section, “**tax**” includes additional tax under section 18.

**29. Evidence**

- (1) In any proceedings for the recovery of tax payable under this Act —
  - (a) the production of a document under the hand of the Commissioner purporting to be a copy of a notice of assessment is conclusive evidence of the due making of the assessment and that the amount and all the particulars of the assessment are correct;
  - (b) the production of a document under the hand of the Commissioner purporting to be a copy of a document issued or given by the Commissioner under this Act is conclusive evidence that the last-mentioned document was so issued or given;
  - (c) a document under the hand of the Commissioner purporting to be a copy of, or extract from, a return or notice of assessment is *prima facie* evidence of the matter set out in the document to the same extent as the original return or notice would be if it were produced; and

- (d) a certificate in writing signed by the Commissioner certifying that a sum specified in the certificate was, at the date of the certificate, due by a person to the State of Western Australia in respect of amounts payable to the Commissioner under this Act is *prima facie* evidence of the matters stated in the certificate.
- (2) In this section, “**tax**” includes additional tax under section 18 or 28.

## **Part 6 — Offences**

### **30. Offences — generally**

- (1) A person shall not —
- (a) fail or neglect to furnish any return or information or to comply with any requirement of the Commissioner or any officer employed in the administration of this Act and duly authorised by the Commissioner as and when required by this Act or the regulations, or by the Commissioner or officer; or
  - (b) without just cause, refuse or neglect to attend and give evidence when required by the Commissioner or any officer employed in the administration of this Act and duly authorised by the Commissioner, or to answer truly and fully any questions put to the person, or to produce any records required of the person by the Commissioner or any such officer; or
  - (c) make or deliver a return which is false in any particular or make any false answer whether orally or in writing.

Penalty: \$2 000.

- (2) A person who after conviction for an offence against this section continues to fail to comply with the requirement in respect of which the person was convicted, is guilty of an offence and punishable as provided in section 31.
- (3) Where an offence against this section arises under subsection (1)(a) by reason of the neglect or failure of a person to do any thing within a particular period, the offence is, for the purposes of subsection (2), taken to continue for as long as the thing remains undone, notwithstanding that that period has elapsed.

### **31. Evading taxation**

A person shall not, by any wilful act, default or neglect, or by any fraud, art or contrivance whatever, evade or attempt to evade tax payable under this Act.

Penalty: \$2 000 and treble the amount of tax evaded or attempted to be evaded.

**32. Time for commencing prosecutions**

- (1) A prosecution in respect of an offence against section 31 may be commenced at any time within 3 years after the commission of the offence.
- (2) A prosecution in respect of any offence arising under section 30(1)(a) or (c) may be commenced at any time.

**33. Penalty not to relieve from tax**

Payment of a penalty under this Act does not relieve a person from liability to any tax to which the person would otherwise be liable.

**34. Obstructing officers**

A person shall not obstruct or hinder a person who is acting in the administration of this Act or the regulations.

Penalty: \$2 000.

**35. Disclosure of information**

- (1) Except as provided by the *Taxation (Reciprocal Powers) Act 1989*, a person shall not —
  - (a) make a record of, divulge, communicate to any person or publish any information that is or was acquired by that person by reason of being, or having been, employed for the purposes of or in connection with the administration or execution of this Act; or
  - (b) be required to produce in court any book, document or other record connected with the administration or execution of this Act in that person's custody in the course of that person's employment or to divulge or communicate to any court any matter or thing coming under that person's notice in the course of that person's employment,

**s. 36**

---

unless the recording, divulgence, communication, publication or production is made —

- (c) with the consent of the person from whom the information, book, document or record was obtained;
- (d) in connection with the administration or execution of this Act; or
- (e) for the purpose of any legal proceedings arising out of this Act or any report of any such proceedings.

Penalty: \$1 000.

- (2) The Commissioner may use for the purposes of this Act any information concerning the affairs of a person acquired by the Commissioner under or for the purposes of any other Act administered by the Commissioner.

**36. Institution of prosecutions**

- (1) A complaint for an offence against this Act or the regulations may be laid in the name of the Commissioner by any officer employed in the administration of this Act and authorised to lay complaints on behalf of the Commissioner.
- (2) A prosecution instituted in the name of the Commissioner is, in the absence of evidence to the contrary, taken to have been instituted by authority of the Commissioner.
- (3) An officer referred to in subsection (1) may appear on behalf of the Commissioner in any proceedings for an offence against this Act or the regulations.

**37. Proceedings for offences**

Proceedings for an offence against this Act or the regulations are to be dealt with summarily before a court of petty sessions constituted by a magistrate sitting alone.

---

## Part 7 — Miscellaneous

### 38. Return in relation to exempt accounts

- (1) A financial institution shall, within 2 months, or such further time as the Commissioner allows, after the end of the year ending on 31 December 1991, and within 2 months, or such further time as the Commissioner allows, after the end of each subsequent year, furnish to the Commissioner a return relating to all exempt accounts kept with the financial institution during the year concerned.
- (2) A return required to be furnished by a financial institution under subsection (1) shall be —
  - (a) if the Commissioner agrees to the return being in the form of a disc, tape or other device from which information required by the Commissioner to be contained in the return is capable of being reproduced — in that form; or
  - (b) in any other case — in writing in accordance with a form approved by the Commissioner and containing such particulars as are required by that form.

### 39. Representative officers etc., of financial institutions

- (1) A financial institution —
  - (a) may appoint one of its officers as its representative officer for the purposes of this Act; and
  - (b) shall, unless exempted by the Commissioner, ensure that it has at least one representative officer at all times after the expiration of one month from the day on which it commences to carry on banking business in Western Australia.
- (2) A financial institution that contravenes subsection (1) is, in respect of each day on which it contravenes that subsection (including the day of a conviction of an offence against this subsection or any subsequent day), guilty of an offence.  
Penalty: \$100.

**s. 39**

---

*[(3) and (4) repealed]*

- (5) Where a financial institution appoints, or terminates the appointment of, an officer of the financial institution as a representative officer of the financial institution for the purposes of this Act, the financial institution shall, not later than 7 days after the day of the appointment or termination, notify the Commissioner in writing —
- (a) in the case of an appointment — of the name of the officer appointed and an address at which documents may be served on that officer; and
  - (b) in the case of a termination of appointment — of that fact,
- and, if the financial institution refuses or fails so to notify the Commissioner within those 7 days, the financial institution is, in respect of each subsequent day until it so notifies the Commissioner (including the day of a conviction of an offence against this subsection or any subsequent day), guilty of an offence.
- Penalty: \$100.
- (6) A financial institution may at any time notify the Commissioner in writing of a new address at which documents may be served on a representative officer of the financial institution in substitution for the address previously notified under this section.
- (7) A document purporting to be a return furnished by a financial institution under this Act is to be taken not to be such a return unless —
- (a) the document is signed either by a representative officer of the financial institution or —
    - (i) in a case to which subparagraph (ii) does not apply — by a senior officer of the financial institution; or
    - (ii) if the document relates to a branch or branches of the financial institution — by a senior officer of the financial institution or a senior officer of the

branch or one of the branches to which the document relates;

and

- (b) the document specifies an address at which documents relating to the document may be served on the financial institution.
- (8) Without prejudice to any other method of service of a document on a financial institution, a document is to be taken for the purposes of this Act or the regulations to have been served on a financial institution if the document was —
- (a) delivered, or sent by post, to a representative officer of the financial institution at the address, or the latest address, as the case may be, notified to the Commissioner in relation to that officer under this section; or
  - (b) in the case of a document relating to a return — delivered, or sent by post, to the financial institution at the address for service specified in the return.

*[Section 39 amended by No. 22 of 1998 s. 47.]*

**40. Access to books etc.**

- (1) For the purposes of this Act, an officer authorised by the Commissioner to exercise functions under this section —
  - (a) may, at all reasonable times, enter on any land or premises;
  - (b) is entitled to full and free access at all reasonable times to all books, documents and other records; and
  - (c) may make copies of, or take extracts from, any books, documents and other records.
- (2) An officer who enters on land or premises under this section is not authorised to remain on the land or premises if, on request by the occupier of the land or premises, the officer does not produce a certificate in writing under the hand of the

**s. 41**

---

Commissioner certifying that the officer is an officer authorised to exercise functions under this section.

- (3) The occupier of land or premises entered or proposed to be entered by an officer under subsection (1) shall provide the officer with all reasonable facilities and assistance for the effective exercise of powers under this section.

Penalty: \$1 000.

**41. Commissioner to obtain information and evidence**

- (1) The Commissioner may, for the purposes of this Act, by notice in writing, require any person, whether or not a person liable to pay tax under this Act, including any officer employed in or in connection with any department of the government of the Commonwealth, of a State or of a Territory or by any public authority —
- (a) to furnish the Commissioner with such information as the Commissioner may require; and
  - (b) to attend before the Commissioner or before any officer authorised by the Commissioner in that behalf and —
    - (i) answer questions put to the person concerning the business or other affairs of that person or of any other person; and
    - (ii) produce all books, documents and other records in the person's custody or under the person's control relating to that business or those affairs.
- (2) The Commissioner may require the information or answers to be verified or given, 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 an 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 regulations may prescribe scales of expenses to be allowed to persons required under this section to attend.

**42. Service on partnerships and associations**

Service, whether by post or otherwise, of a notice or document on a member of a partnership or on a member of the committee of management of an unincorporated association or other body of persons is to be taken, for the purposes of this Act, to constitute service of the notice or other document on each member of the partnership or each member of the association or other body of persons, as the case may be.

**43. Commissioner may collect tax from person owing money to financial institution or account holder**

- (1) The Commissioner may, by notice in writing (a copy of which shall be served on the financial institution or account holder), require —
- (a) any person by whom any money is due or accruing or may become due to a financial institution or account holder;
  - (b) any person who holds or may subsequently hold money for or on account of a financial institution or account holder;
  - (c) any person who holds or may subsequently hold money on account of some other person for payment to a financial institution or account holder; or
  - (d) any person having authority from some other person to pay money to a financial institution or account holder,

to pay to the Commissioner forthwith upon the money becoming due or being held, or within such further time as the Commissioner allows, the money or so much of it as is sufficient to pay the tax due by the financial institution or account holder.

**s. 44**

---

- (2) A person who fails to comply with a notice under subsection (1) is guilty of an offence.  
Penalty: \$2 000.
- (3) Where any amount referred to in subsection (1) is less than the amount of the tax due by the financial institution or account holder, the person served with the notice under that subsection shall pay to the Commissioner, in reduction of the amount of the tax due, the amount payable by that person to the financial institution or account holder.
- (4) Any person making any payment under this section shall be deemed to have been acting under the authority of the financial institution or account holder and of all other persons concerned, and is indemnified in respect of the payment by virtue of this subsection.
- (5) If the tax due by the financial institution or account holder is paid before any payment is made under a notice given under subsection (1), the Commissioner shall forthwith give notice of the payment to the person served with the notice under that subsection.
- (6) In this section “**tax**” includes any judgment debt and costs in respect of tax.

**44.      Preservation of records**

A financial institution is required, for the purposes of this Act, to keep sufficient records to enable its liability for tax to be assessed by the Commissioner, including such records as may be prescribed, and to preserve those records for a period of not less than 5 years after the completion of the transactions to which they relate.

Penalty: \$1 000.

- (2) This section does not apply so as to require the preservation of records —
  - (a) in respect of which the Commissioner has notified the financial institution that preservation is not required; or

- (b) of a company which has gone into liquidation and which has been finally dissolved.

**45. Regulations**

- (1) The Governor may make regulations for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) A regulation may create an offence punishable by a penalty not exceeding \$500.

**46. Transitional provisions**

Schedule 1 has effect.

[47. *Omitted under the Reprints Act 1984 s. 7(4)(e).*]

## Schedule 1

(Section 46)

### Transitional provisions

#### Part 1 — Preliminary

##### 1. Definitions

In this Schedule —

“**Commissioner of Taxation**” means the person holding office for the time being as Commissioner of Taxation under the *Taxation Administration Act 1953* of the Commonwealth;

“**the Commonwealth Act**” means the *Debits Tax Administration Act 1982* of the Commonwealth.

#### Part 2 — Interim arrangements for the administration of this Act

##### 2. Interim arrangements for the administration of this Act

- (1) The Commissioner may make an arrangement with the Commissioner of Taxation about any matter in connection with the administration of this Act.
- (2) In particular, an arrangement may provide —
  - (a) for the exercise by the Commissioner of Taxation or a Second Commissioner of Taxation of functions conferred by clause 3; and
  - (b) for the services of officers or employees under the control of the Commissioner of Taxation to be used for the purposes of matters relating to the administration of this Act.
- (3) The Commissioner is empowered to do all such things as may be necessary or convenient to give effect to an arrangement made under this clause.
- (4) In relation to functions exercised in accordance with an arrangement made under this clause —

- (a) a reference in this Act to the Commissioner is a reference to the Commissioner of Taxation or a Second Commissioner of Taxation;
- (b) a reference in this Act to an officer is a reference to an officer or employee under the control of the Commissioner of Taxation whose services are used in accordance with the arrangement.

**3. Conferral of functions on Commissioner of Taxation etc.**

- (1) The Commissioner of Taxation and the Second Commissioner of Taxation have the functions under this Act of the Commissioner, subject to this clause.
- (2) The Commissioner of Taxation may exercise the functions of a State taxation officer for the purposes of Part IIIA of the *Taxation Administration Act 1953* of the Commonwealth, subject to this clause.
- (3) The Commissioner of Taxation or a Second Commissioner of Taxation shall not exercise a function conferred by this clause except in accordance with an arrangement made under clause 2.

**4. Public notification of arrangement**

- (1) The Commissioner may give notice, by publication in the *Gazette*, of an arrangement made under clause 2.
- (2) Subclause (1) does not limit the manner in which the Commissioner may give notice of an arrangement made under clause 2 to a person who may be affected by it.

**5. Cessation of arrangement**

- (1) An arrangement made under clause 2 and in force immediately before 31 December 1992, in so far as it authorises the assessment, receipt or collection of tax paid or payable under this Act ceases to have effect on that day, except as provided by this clause.
- (2) If, before 31 December 1992, a proclamation is made and published in the *Gazette* appointing a later day for the purposes of this clause, the arrangement ceases to have effect as referred to in subclause (1) on the day specified in the proclamation.

**6. Exemption certificates**

**Schedule 1**

---

- (1) A certificate under section 11 of the Commonwealth Act in force immediately before the commencement of section 11 of this Act is taken to have been issued under section 11 of this Act.
- (2) An application under section 11 of the Commonwealth Act (being an application by a financial institution which is a resident of Western Australia) which had not been dealt with before the commencement of section 11 of this Act is taken to be an application under section 11 of this Act.

**7. Representative officers etc., of financial institutions**

An appointment of an officer as a representative officer of a financial institution in force under section 57 of the Commonwealth Act immediately before the commencement of section 39 of this Act is to be taken to have been made for the purposes of section 39 of this Act.

**8. Acceptance of things done in compliance with the Commonwealth Acts**

- (1) The Commissioner (or a person authorised by any arrangements made under clause 2) may accept anything done in compliance with a provision of the Commonwealth Act as having been done in compliance with a corresponding provision of this Act and may notify a person affected by the corresponding provision accordingly.
- (2) If the Commissioner (or a person so authorised) so notifies a person, the person is to be taken to have complied with the corresponding provision concerned.

**9. Information included in returns in respect of taxable debits or eligible debits**

Nothing in this Act prevents a financial institution or an account holder from including in a return required to be furnished under this Act to the Commissioner information relating to debits which are taxable debits or eligible debits in accordance with a law of another State or a Territory, being a law that corresponds to this Act.

*[Part 3 expired when Part 4 of Act No. 57 of 1990 came into operation i.e. 11 Jan 1995 (see s. 2(4) and Gazette 10 Jan 1995 p. 43)]*

## Notes

- <sup>1</sup> This is a compilation of the *Debits Tax Assessment Act 1990* and includes the amendments made by the other written laws referred to in the following table. For amendments that had not come into operation on the date on which this compilation was prepared see endnote <sup>1a, 4, 5</sup>.

### Compilation table

Short title	Number and year	Assent	Commencement
<i>Debits Tax Assessment Act 1990</i>	57 of 1990	17 Dec 1990	Act other than Pt. 4: 1 Jan 1991 (see s. 2(1)-(3)); Pt. 4: 11 Jan 1995 (see s. 2(4) and <i>Gazette</i> 10 Jan 1995 p. 43)
<i>Local Government (Consequential Amendments) Act 1996 s. 4</i>	14 of 1996	28 Jun 1996	1 Jul 1996 (see s. 2)
<i>Revenue Laws Amendment (Assessment) Act 1996 Pt. 2</i>	20 of 1996	28 Jun 1996	28 Jun 1996 (see s. 2(1))
<i>Revenue Laws Amendment (Assessment) Act (No. 2) 1996 Pt. 3</i>	48 of 1996	25 Oct 1996	25 Oct 1996 (see s. 2(1))
<i>Revenue Laws Amendment (Assessment) Act 1998 Pt. 6 Div. 2</i>	22 of 1998	30 Jun 1998	2 Jul 1998 (see s. 2(1))
<i>Corporations (Consequential Amendments) Act 2001 Pt. 19</i>	10 of 2001	28 Jun 2001	15 Jul 2001 (see s. 2 and <i>Gazette</i> 29 Jun 2001 p. 3257 and <i>Cwlth Gazette</i> 13 Jul 2001 No. S285)
<b>Reprint 1 of the <i>Debits Tax Assessment Act 1990</i> as at 3 Jan 2003</b> (includes amendments listed above)			

- <sup>1a</sup> On the date as at which this compilation was prepared, provisions referred to in the following table had not come into operation and were therefore not included in this compilation. For the text of the provisions see the endnotes referred to in the table.

### Provisions that have not come into operation

Short title	Number and Year	Assent	Commencement
<i>Taxation Administration (Consequential Provisions) Act 2002 s. 5(b) and Pt. 4</i>	45 of 2002	20 Mar 2003	Operative on commencement of <i>Taxation Administration Act 2003</i> (see s. 2(1))

---

<b>Short title</b>	<b>Number and Year</b>	<b>Assent</b>	<b>Commencement</b>
Div 1, 2 and 3 <sup>6</sup>			

---

<sup>2</sup> Under the *Alteration of Statutory Designations Order (No. 2) 1996* a reference in any law to the Commissioner of State Taxation is read and construed as a reference to the Commissioner of State Revenue.

<sup>3</sup> Under the *Public Sector Management Act 1994* s. 112(1), a reference to the *Public Service Act 1978* is to be read as a reference to the *Public Sector Management Act 1994*. The reference was changed under the *Reprints Acts 1984* s. 7(3)(g).

<sup>4</sup> Under the *Commonwealth Places (Mirror Taxes Administration) Act 1999* s. 7 this Act is to be read and construed with any modifications referred to in subsection (1) of that section and, in particular, with the modifications set out in the *Commonwealth Places (Mirror Taxes Administration) Regulations 2002*. Pt. 1 and Pt. 2 Div. 2 of those regulations read as follows:

“

### **Part 1 — Preliminary**

#### **1. Citation**

These regulations may be cited as the *Commonwealth Places (Mirror Taxes Administration) Regulations 2002*.

#### **2. Commencement**

- (1) These regulations do not have effect unless an arrangement is in operation under section 5 of the Act.
- (2) When such an arrangement is in operation, these regulations and the modifications they prescribe are deemed to have taken effect on 6 October 1997.
- (3) If a State taxing law was repealed before these regulations take effect then, despite the repeal, when these regulations are deemed under subsection (2) to have taken effect, the repealed law is deemed to have been modified, in accordance with these regulations, on 6 October 1997.

#### **3. Modification of State taxing laws**

- (1) In its operation as an applied WA law, the Act is modified by omitting section 7.
- (2) For the purposes of section 7(2) of the Act, each State taxing law is taken to be modified to the extent necessary to give effect to subregulation (3).
- (3) If —
  - (a) a State taxing law applies, or could apply, to any extent, to or in relation to an event, state of affairs or transaction, and the corresponding applied law also applies, or could

apply, to any extent, to or in relation to the same event, state of affairs or transaction;

- (b) a person is required or permitted, or could be required or permitted, to take an action under both the State taxing law and the corresponding applied law in relation to the event, state of affairs or transaction;
- (c) the person has taken the action in accordance with the corresponding applied law; and
- (d) the Commissioner has enough information about the event, state of affairs or transaction to carry out his or her functions in relation to it under the State taxing law or the corresponding applied law or both, as the case requires,

then —

- (e) the person is not required to take the action under the State taxing law; and
  - (f) the Commissioner may carry out his or her functions in relation to the event, state of affairs or transaction as if the person had taken whatever action is required or permitted under the State taxing law in relation to the event, state of affairs or transaction.
- (4) The particular modifications set out in these regulations of certain State taxing laws have effect for the purposes of section 7(2) of the Act.

## **Part 2 — Debits tax**

### **Division 2 — The *Debits Tax Assessment Act 1990***

#### **6. Modification of the *Debits Tax Assessment Act 1990***

This Division sets out modifications of the *Debits Tax Assessment Act 1990*\*.

[\* *Act No. 57 of 1990.*

*For subsequent amendments see 2001 Index to Legislation of Western Australia, Table 1, p. 95.]*

#### **7. Section 2A inserted**

After section 2 the following section is inserted —

“

#### **2A. Application of Act in non-Commonwealth places**

- (1) In this Act, unless the contrary intention appears —
  - (a) a reference to this Act is to be read as a reference to this Act in its application as a law of Western Australia;

- (b) a reference to the *Debits Tax Act 1990* is to be read as a reference to that Act in its application as a law of Western Australia;
  - (c) a reference to the *Taxation (Reciprocal Powers) Act 1989* is to be read as a reference to that Act in its application as a law of Western Australia; and
  - (d) a reference (however expressed) to an Act administered by the Commissioner is to be read as including a reference to an Act of which the Commissioner has the general administration under an arrangement under section 5 of the *Commonwealth Places (Mirror Taxes Administration) Act 1999*.
- (2) This Act is to be read with the applied Debits Tax Assessment Act as a single body of law.

”.

**8. Section 3 modified**

- (1) Section 3(1) is modified by inserting the following definitions in their appropriate alphabetical positions —

“

“**applied Debits Tax Act**” means the *Debits Tax Act 1990* of Western Australia in its application as a law of the Commonwealth in or in relation to Commonwealth places in Western Australia in accordance with the Commonwealth Mirror Taxes Act;

“**applied Debits Tax Assessment Act**” means the *Debits Tax Assessment Act 1990* of Western Australia in its application as a law of the Commonwealth in or in relation to Commonwealth places in Western Australia in accordance with the Commonwealth Mirror Taxes Act;

“**Commonwealth Mirror Taxes Act**” means the *Commonwealth Places (Mirror Taxes) Act 1998* of the Commonwealth;

“**Commonwealth place**” means a Commonwealth place in or in relation to which the applied Debits Tax Assessment Act applies, or is taken to have applied, under the Commonwealth Mirror Taxes Act;

”.

- (2) Section 3(1) is modified in the definition of “exempt debit” by inserting in paragraph (c) after “liable to pay” —

“  
under this Act or the applied Debits Tax Assessment Act  
”

**9. Section 35 modified**

- (1) Section 35(1) is modified as follows:
- (a) in paragraph (d) by inserting after “this Act” —  
“ or the applied Debits Tax Assessment Act ”;
  - (b) in paragraph (e) by inserting after “this Act” —  
“ or the applied Debits Tax Assessment Act ”.
- (2) After section 35(2) the following subsection is inserted —
- “
- (3) The Commissioner may use for the purposes of any other Act administered by the Commissioner any information concerning the affairs of a person acquired by the Commissioner under or for the purposes of this Act.
- ”

<sup>5</sup> Under the *Commonwealth Places (Mirror Taxes Administration) Act 1999* s. 8(2) of the Commonwealth, this Act is to be read and construed with any modifications referred to in subsection (1) of that section and, in particular, with the modifications set out in the *Commonwealth Places (Mirror Taxes) (Modification of Applied Laws (WA)) Notice 2002*. Pt. 1 and Pt. 2 Div. 2 of that notice read as follows:

“

**Part 1 — Preliminary**

**1. Citation**

This notice may be cited as the *Commonwealth Places (Mirror Taxes) (Modification of Applied Laws (WA)) Notice 2002*.

**2. Commencement**

- (1) This notice does not have effect unless an arrangement is in operation under section 9 of the Commonwealth Places Mirror Taxes Act in relation to Western Australia.
- (2) When such an arrangement is in operation, this notice and the modifications it prescribes are deemed to have taken effect on 6 October 1997.
- (3) If an applied WA law was repealed before this notice takes effect then, despite the repeal, when this notice is deemed under

subsection (2) to have taken effect, the repealed law is deemed to have been modified on 6 October 1997 as set out in this notice.

**3. Definitions**

In this notice —

**“applied WA law”** means the provisions of a State taxing law of Western Australia that apply or are taken to have applied in relation to Commonwealth places in Western Australia in accordance with the Commonwealth Mirror Taxes Act;

**“Commonwealth Mirror Taxes Act”** means the *Commonwealth Places (Mirror Taxes) Act 1998* of the Commonwealth;

**“WA taxing law”** means a State taxing law of Western Australia.

**4. Modification of applied WA laws**

(1) For the purposes of section 8 of the Commonwealth Mirror Taxes Act, each applied WA law is taken to be modified to the extent necessary to give effect to subregulation (2).

(2) If —

- (a) an applied WA law applies, or could apply, to any extent, to or in relation to an event, state of affairs or transaction, and the corresponding State taxing law also applies, or could apply, to any extent, to or in relation to the same event, state of affairs or transaction;
- (b) a person is required or permitted, or could be required or permitted, to take an action under both the applied WA law and the corresponding State taxing law in relation to the event, state of affairs or transaction;
- (c) the person has taken the action in accordance with the corresponding State taxing law; and
- (d) the Commissioner has enough information about the event, state of affairs or transaction to carry out his or her functions in relation to it under the applied WA law or the corresponding State taxing law or both, as the case requires,

then —

- (e) the person is not required to take the action under the applied WA law; and
- (f) the Commissioner may carry out his or her functions in relation to the event, state of affairs or transaction as if the person had taken whatever action is required or permitted under the applied WA law in relation to the event, state of affairs or transaction.

- (3) The particular modifications set out in this notice of certain applied WA laws have effect for the purposes of section 8 of the Commonwealth Mirror Taxes Act.

## **Part 2 — Debits tax**

### **Division 2 — The applied *Debits Tax Assessment Act 1990***

**7. Modification of the applied Act**

This Division sets out modifications of the *Debits Tax Assessment Act 1990*\* of Western Australia.

[\* *Act No. 57 of 1990.*

*For subsequent amendments see 2001 Index to Legislation of Western Australia, Table 1, p. 95.]*

**8. Section 2A inserted**

After section 2 the following section is inserted —

“

**2A. Application of Act in Commonwealth places**

- (1) In this Act, unless the contrary intention appears —
- (a) a reference to this Act is to be read as a reference to this Act in its application as a law of the Commonwealth in or in relation to Commonwealth places in Western Australia in accordance with the Commonwealth Mirror Taxes Act;
  - (b) a reference to the regulations is to be read as a reference to the regulations in their application as a law of the Commonwealth in or in relation to Commonwealth places in Western Australia in accordance with the Commonwealth Mirror Taxes Act;
  - (c) a reference (however expressed) to an Act administered by the Commissioner is to be read as a reference to —
    - (i) an Act of which the Commissioner has the general administration under an arrangement under section 9 of the Commonwealth Mirror Taxes Act; or
    - (ii) an Act administered by the Commissioner as a law of Western Australia;

- (d) a reference to the *Debits Tax Act 1990* is to be read as a reference to the applied Debits Tax Act;
  - (e) a reference to the *Taxation (Reciprocal Powers) Act 1989* is to be read as a reference to the applied Taxation (Reciprocal Powers) Act; and
  - (f) a reference to the *Gazette* is to be read as a reference to the *Government Gazette* of Western Australia.
- (2) This Act is to be read with the corresponding Debits Tax Assessment Act as a single body of law.
- (3) In addition to being modified as prescribed by the *Commonwealth Places (Mirror Taxes) (Modification of Applied Laws (WA)) Notice 2002*, this Act is deemed to be further modified to any extent that is necessary or convenient —
- (a) to enable this Act to operate effectively as a law of the Commonwealth; and
  - (b) to ensure that the combined liability of a taxpayer under this Act and the corresponding Debits Tax Assessment Act is as nearly as possible the same as the taxpayer's liability would be under the corresponding Debits Tax Assessment Act alone if the Commonwealth places in Western Australia were not Commonwealth places.

”.

**9. Section 3 modified**

- (1) Section 3(1) is modified by inserting the following definitions in their appropriate alphabetical positions —

“

**“applied Debits Tax Act”** means the *Debits Tax Act 1990* of Western Australia in its application as a law of the Commonwealth in or in relation to Commonwealth places in Western Australia in accordance with the Commonwealth Mirror Taxes Act;

**“applied Taxation (Reciprocal Powers) Act”** means the *Taxation (Reciprocal Powers) Act 1989* of Western Australia in its application as a law of the Commonwealth in or in relation to Commonwealth places in accordance with the Commonwealth Mirror Taxes Act;

“**applied WA law**” has the same meaning as in the *Commonwealth Places (Mirror Taxes) (Modification of Applied Laws (WA)) Notice 2002*;

“**Commonwealth Mirror Taxes Act**” means the *Commonwealth Places (Mirror Taxes) Act 1998* of the Commonwealth;

“**Commonwealth place**” means a Commonwealth place in or in relation to which this Act applies or is taken to have applied under section 6 of the Commonwealth Mirror Taxes Act;

“**corresponding Debits Tax Act**” means the *Debits Tax Act 1990* of Western Australia in its application as a law of Western Australia;

“**corresponding Debits Tax Assessment Act**” means the *Debits Tax Assessment Act 1990* of Western Australia in its application as a law of Western Australia;

”.

(2) Section 3(1) is further modified as follows:

(a) by deleting the definition of “Commissioner” and inserting the following definition instead —

“

“**Commissioner**” means the Commissioner of State Revenue of Western Australia;

”;

(b) in paragraph (a)(iii) of the definition of “excluded debit” by inserting after “any other” —

“ applied WA law or any ”;

(c) in paragraph (a)(iv) of the definition of “excluded debit” by inserting after “any other” —

“ applied WA law or any ”;

(d) in the definition of “exempt debit” by inserting in paragraph (c) after “liable to pay” —

“

under this Act or the corresponding Debits Tax Assessment Act

”.

(3) Section 3(8) is modified by deleting “State of Western Australia” from both places where it occurs and inserting instead —

“ Commonwealth ”.

**10. Section 7 modified**

- (1) Section 7 is modified by inserting before “The” the subsection designation “(1)”.
- (2) At the end of section 7 the following subsections are inserted —  
“
  - (2) If, under section 7 of the corresponding Debits Tax Assessment Act, the Commissioner has delegated a function under that Act to a person, the corresponding function under this Act is taken to have been delegated to the person under this section.
  - (3) A person who is authorised to perform a function under the corresponding Debits Tax Assessment Act is taken to be authorised to perform the corresponding function under this Act.”.

**11. Section 8 modified**

Section 8(4) is repealed and the following subsection is inserted instead —

- “
- (4) If—
    - (a) an enactment passed after the commencement of section 8 of the corresponding Debits Tax Assessment Act applies in or in relation to Commonwealth places in Western Australia as a law of the Commonwealth in accordance with the Commonwealth Mirror Taxes Act; and
    - (b) the enactment purports to exempt a person from liability to pay taxes under the laws of Western Australia or to pay certain taxes under those laws that include debits tax imposed by the corresponding Debits Tax Act,then the enactment is not to be construed as exempting the person from liability to pay debits tax imposed by the applied Debits Tax Act unless it expressly exempts the person from that liability.
- ”.

**12. Section 14 modified**

- (1) Section 14(1)(b) is modified by deleting “State of Western Australia” and inserting instead —  
“ Commonwealth ”.
- (2) Section 14(5) is modified as follows:
  - (a) by deleting from paragraph (a)(ii) “State of Western Australia” and inserting instead —  
“ Commonwealth ”;
  - (b) by deleting from paragraph (b)(ii) “State of Western Australia” and inserting instead —  
“ Commonwealth ”.

**13. Section 15 modified**

Section 15(1)(b) is modified by deleting “State of Western Australia” and inserting instead —  
“ Commonwealth ”.

**14. Section 19 modified**

- (1) Section 19(3)(b)(ii) is modified by deleting “State of Western Australia” and inserting instead —  
“ Commonwealth ”.
- (2) Section 19(4) is modified by deleting “State of Western Australia” and inserting instead —  
“ Commonwealth ”.

**15. Section 26 modified**

Section 26(1) is modified by deleting “State of Western Australia” and inserting instead —  
“ Commonwealth ”.

**16. Section 29 modified**

Section 29(1)(d) is modified by deleting “State of Western Australia” and inserting instead —  
“ Commonwealth ”.

**17. Section 35 modified**

- (1) Section 35(1) is modified as follows:
  - (a) in paragraph (d) by inserting after “this Act” —  
“ or the corresponding Debits Tax Assessment Act ”;
  - (b) in paragraph (e) by inserting after “this Act” —

“ or the corresponding Debits Tax Assessment Act ”.

(2) After section 35(2) the following subsection is inserted —

“

(3) The Commissioner may use for the purposes of any other Act administered by the Commissioner any information concerning the affairs of a person acquired by the Commissioner under or for the purposes of this Act.

”.

”.

<sup>6</sup> On the date as at which this compilation was prepared, the *Taxation Administration (Consequential Provisions) Act 2002* s. 5(b) and Pt. 4 Div 1, 2 and 3 had not come into operation. They read as follows:

“

## **Part 2 — Repeals**

### **5. Acts repealed**

The following Acts are repealed —

(b) *Debits Tax Assessment Act 1990*;

## **Part 4 — Transitional provisions**

### **Division 1 — Interpretation**

### **33. Definitions**

In this Part —

“**commencement day**” means the day on which the *Taxation Administration Act 2003* comes into operation;

“**old Act**” means —

- (a) an Act repealed by section 5;
- (b) the old Stamp Act; or
- (c) section 41 of the *Metropolitan Region Town Planning Scheme Act 1959* as in force immediately before the commencement day;

“**old Stamp Act**” means the *Stamp Act 1921* as in force immediately before the commencement day;

“**substantive provisions**”, in relation to an old Act, means the provisions of the old Act other than those dealing with matters dealt with in the *Taxation Administration Act 2003*.

**Division 2 — General transitional provisions**

**34. General transitional arrangements**

- (1) Section 37(1) of the *Interpretation Act 1984*, except paragraphs (a) and (b), does not apply in relation to the repeal of an old Act.
- (2) The repeal of an old Act does not, unless the contrary intention appears —
  - (a) affect any right, interest, title, power or privilege created, acquired, accrued, established or exercisable or any status or capacity existing prior to the repeal;
  - (b) affect any duty, obligation, liability, or burden of proof imposed, created, or incurred prior to the repeal;
  - (c) subject to section 11 of *The Criminal Code* and section 10 of the *Sentencing Act 1995*, affect any penalty or forfeiture incurred or liable to be incurred in respect of an offence committed against the old Act; or
  - (d) affect any investigation, legal proceeding or remedy in respect of any such right, interest, title, power, privilege, status, capacity, duty, obligation, liability, burden of proof, penalty or forfeiture.
- (3) Subject to subsections (4) and (5) —
  - (a) a right, interest, title, power, privilege, duty, obligation, liability or burden of proof referred to in subsection (2)(a) or (b) may be exercised or enforced;
  - (b) a penalty or forfeiture referred to in subsection (2)(c) may be imposed and enforced; and
  - (c) an investigation, legal proceeding or remedy referred to in subsection (2)(d) may be instituted, continued, or enforced,as if the substantive provisions of the relevant old Act —
  - (d) had not been repealed;
  - (e) were a taxation Act for the purposes of the *Taxation Administration Act 2003*; and
  - (f) had been amended to make any modifications necessary for this section to have effect.
- (4) If an objection, appeal or other legal proceeding (the “**action**”) was instituted under an old Act and was not finally determined before the commencement day —
  - (a) the action may be continued;

- (b) any requirement to pay interest on an amount of tax determined in the action to have been overpaid applies and may be enforced;
- (c) any penalty may be imposed and enforced; and
- (d) any decision, order or determination made in the action has effect, and may be enforced,

as if this Act and the taxation Acts had not commenced.

- (5) If the time limited by an old Act for doing anything is longer than the time limited by a taxation Act for doing the equivalent thing under that Act, then in relation to a matter to which subsection (3) applies, the time limited under the old Act applies in relation to the doing of the thing under the taxation Act.
- (6) If the time limited by an old Act for commencing proceedings in relation to an offence under that Act is shorter than the 5 year period limited by section 111 of the *Taxation Administration Act 2003*, then despite section 111, proceedings in relation to an offence under the old Act (including an offence under a provision of the old Act that is continued in force under this Part) cannot be commenced after the expiry of the shorter period provided for by the old Act.
- (7) In this section a reference, in relation to the *Stamp Act 1921*, to the repeal of the old Act is a reference to the amendment of the Act by the *Stamp Amendment Act 2003*.

**35. Commissioner not to increase tax liability**

Despite Part 3 Division 1 of the *Taxation Administration Act 2003*, the Commissioner must not make a reassessment that increases the amount of tax a person is liable to pay in relation to anything that happened before the commencement day if the reassessment could not have been made under the relevant old Act.

**36. Delegations**

A delegation made under an old Act and in force immediately before the commencement day continues in force on and after that day as a delegation made under section 10 of the *Taxation Administration Act 2003*.

**Division 3 — Debits tax**

**37. Certificates of exemption from tax (*Debits Tax Assessment Act 1990*, s. 11)**

- (1) A certificate issued under section 11 of the *Debits Tax Assessment Act 1990* and in force immediately before the commencement day

continues in force on and after that day as a certificate issued under section 10 of the *Debits Tax Assessment Act 2002*.

- (2) Where section 13(1) of the *Debits Tax Assessment Act 2002* applies in relation to a certificate issued under section 11 of the *Debits Tax Assessment Act 1990* the Commissioner cannot make a reassessment of the amount of debits tax payable on a debit for the purpose of giving effect to that section more than 3 years after —
- (a) if the financial institution has recovered the amount of the debits tax paid on the debit from the customer — the date on which that amount was recovered; or
  - (b) otherwise — the date on which the debits tax on the debits was paid.

”.