

# **DEBITS TAX ACT 1990 No. 112**

NEW SOUTH WALES



## **TABLE OF PROVISIONS**

### **PART 1 - PRELIMINARY**

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

### **PART 2 - IMPOSITION AND AMOUNT OF TAX**

8. Imposition of tax
9. Amount of tax

### **PART 3 - LIABILITY TO TAX**

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

### **PART 4 - RETURNS AND ASSESSMENTS**

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

22. Validity of assessments

PART 5 - OBJECTIONS AND APPEALS

- 23. Definition of "tax"
- 24. Objections and appeals
- 25. Nature of appeal
- 26. Onus on objector
- 27. Payment of tax assessed and calculation of refund by Supreme Court
- 28. Liability not affected by objection etc.
- 29. Lodgment with Chief Commissioner
- 30. Chief Commissioner may state case
- 31. Evidence

PART 6 - RECOVERY OF TAX

- 32. Recovery of tax
- 33. Extension of time and payment by instalments
- 34. Penalty for unpaid tax
- 35. Evidence

PART 7 - OFFENCES

- 36. Offences - generally
- 37. Evading taxation
- 38. Time for commencing prosecutions
- 39. Penalty not to relieve from tax
- 40. Obstructing officers
- 41. Disclosure of information etc.
- 42. Institution of prosecutions
- 43. Proceedings for offences

PART 8 - MISCELLANEOUS

- 44. Return in relation to exempt accounts
- 45. Representative officers etc. of financial institutions
- 46. Access to books etc.
- 47. Chief Commissioner to obtain information and evidence
- 48. Service on partnerships and associations
- 49. Chief Commissioner may compromise a claim for tax
- 50. Collection of tax from persons owing money to taxpayers
- 51. Preservation of records
- 52. Official signature
- 53. Regulations
- 54. Consequential amendment of other Acts
- 55. Transitional provisions

SCHEDULE 1 - AMOUNT OF TAX

SCHEDULE 2 - CONSEQUENTIAL AMENDMENT OF OTHER ACTS

SCHEDULE 3 - TRANSITIONAL PROVISIONS

---

# DEBITS TAX ACT 1990 No. 112

NEW SOUTH WALES



**Act No. 112, 1990**

An Act for the imposition and collection of a tax in respect of certain debits made to accounts kept with financial institutions. [Assented to 18 December 1990]

**The Legislature of New South Wales enacts:**

**PART 1 - PRELIMINARY**

**Short title**

1. This Act may be cited as the Debits Tax Act 1990.

**Commencement**

2. (1) This Act commences or is taken to have commenced on a day or days to be appointed by proclamation.

(2) Any such proclamation may appoint 1 December 1990 or a later day.

**Definitions**

3. (1) In this Act:

"**account**" means:

- (a) an account kept with a bank, being an account to which payments by the bank in respect of cheques drawn on the bank by the account holder, or by any one or more of the account holders, may be debited; or
- (b) an account kept with a non-bank financial institution, being an account to which payments by the institution in respect of payment orders drawn on the institution by the account holder, or by 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**", in relation to an account, means:

- (a) the payment of a cheque;
- (b) the payment of a payment order; or
- (c) the doing of any other act or thing,

that will result in the making of a debit to that 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 20;
- "bank"** means a person carrying on banking business that includes the keeping of accounts that may be drawn on by cheque, but does not include a non-bank financial institution;
- "certificate of exemption"** means a certificate under section 13;
- "cheque"**, in relation to an account, means an order in writing, drawn on a bank by or on behalf of the account holder, or any one or more of the account holders, requiring the bank to pay on demand a sum certain in money to, or to the order of, a specified person or persons, or to bearer;
- "Chief Commissioner"** means the Chief Commissioner of Stamp Duties;
- "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; or
    - (ii) a government of a country other than Australia; or
    - (iii) a person who, but for section 10 (3) and (4), would be entitled to exemption from the tax by virtue of any other law of the State of New South Wales, 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; or
- (iv) an organisation 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 council within the meaning of the Local Government Act 1919,that, but for section 10 (3) and (4), would be entitled to exemption from the tax by virtue of any other law of the State of New South Wales, being a debit made in relation to a transaction or transactions carried out by or on behalf of the organisation wholly or exclusively in engaging in its official activities; or
  - (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 purposes of profit or gain to the individual members of that association or other body,being a debit made in relation to a transaction or transactions carried out by or on behalf of the institution, hospital, university, college or school, as the case may be, wholly and exclusively in furtherance of its objects; or
  - (vi) a society, institution or organisation 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

or school 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 organisation wholly and exclusively in furtherance of its objects; or

(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 council within the meaning of the Local Government Act 1919,

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; or

(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 New South Wales 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 New South Wales; and

- (ii) the debit is not in connection with a cheque or payment order drawn on the account keeping institution by the account holding institution where the cheque or payment order 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 or payment order; or
- (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 is prescribed for the purposes of this paragraph;

**"exempt account"** means an account kept in New South Wales 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; or
- (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; or
- (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 is prescribed for the purposes of this paragraph;

**"financial institution"** means:

- (a) a bank; or
- (b) a non-bank financial institution;

**"goods"** includes water, gas and electricity;

**"incomplete"**, in relation to a cheque or payment order, means wanting in a material particular necessary for the cheque or payment order to be, on its face, a complete cheque or payment order;



**"month"** means one of the 12 months of the year;

**"non-bank financial institution"** means a non-bank financial institution within the meaning of the Cheques and Payment Orders Act 1986 of the Commonwealth that carries on a business that includes the keeping of accounts that may be drawn on by payment order,

**"officer"** means an officer of the Public Service;

**"payment order"** has the same meaning as in the Cheques and Payment Orders Act 1986 of the Commonwealth;

**"person"** includes:

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

**"tax"** means tax imposed by this Act;

**"taxable account"** means an account (other than an exempt account) kept in New South Wales;

**"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 New South Wales at a particular time if:

- (a) in the case of a person other than a company
  - (i) that person resided in New South Wales at that time; or
  - (ii) except in the case where the Chief Commissioner is satisfied that that person's permanent place of residence at that time was outside New South Wales - that person was domiciled in New South Wales at that time;
- (b) in the case of a company being a body corporate:
  - (i) the company was incorporated in New South Wales at that time; or
  - (ii) if the company was incorporated outside New South Wales at that time, at that time the company carried on business in New South Wales and either.
    - (A) had its central management and control in New South Wales; or

- (B) had its voting power controlled by shareholders who were residents of New South Wales; or
- (c) in the case of a company being a partnership or other unincorporated association or body of persons - any member of the partnership or other association or body was a resident of New South Wales 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 20 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 20 or 34) 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 New South Wales is a reference to a liability of a person to the State of New South Wales arising under, or by virtue of, an Act of which the Chief Commissioner has the general administration.

(9) A reference in this Act to an account kept with a non-bank financial institution includes a reference to an account kept by way of withdrawable share capital in, or money deposited with, the institution.

(10) In this Act:

- (a) a reference to a function includes a reference to a power, authority and duty; and
- (b) a reference to the exercise of a function includes, where the function is a duty, a reference to the performance of the duty.

#### **Deemed separate debits**

4. 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.

#### **Debits to be expressed in Australian currency**

5. 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.

#### **General administration of this Act**

6. The Chief Commissioner has the general administration of this Act.

#### **Delegation of functions**

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

(2) A delegate may sub-delegate to any other person engaged in the administration of this Act any function delegated by the Chief Commissioner if the delegate is authorised in writing to do so by the Chief Commissioner.

**PART 2 - IMPOSITION AND AMOUNT OF TAX**

**Imposition of tax**

**8. (1)** Tax is imposed in respect of:

- (a) each taxable debit of not less than \$ 1 made to a taxable account; and
- (b) each eligible debit of not less than \$ 1 made to an exempt account; and
- (c) each eligible debit of not less than \$ 1 made to an account kept outside New South Wales where:
  - (i) at the time when the debit is made, the person in whose name, or either or any of the persons in whose names, the account is kept is a resident of New South Wales; and
  - (ii) it would be concluded that the account was used in connection with the transaction that resulted in the debit for the purpose, or for purposes that included the purpose, of enabling:
    - (A) the person in whose name, or either or any of the persons in whose names, the account is kept; or
    - (B) any other person,to avoid liability for payment of the tax that would have been imposed if the debit that resulted from that transaction had been made to an account kept in New South Wales.

**(2)** A reference in this section to a debit made to an account kept outside New South Wales includes a reference to a debit made to an account (in this subsection called a "**non-bank account**") kept outside New South Wales with a building society, credit union or similar body (including an account kept by way of withdrawable share capital in, or money deposited with, the body) where:

- (a) another account is kept with a bank in the name of the body; and
- (b) the non-bank account has characteristics such that a cheque may be drawn on the bank by the body and, at a time when it is incomplete, be delivered by the body to a customer under an agreement under which

- (i) the customer is authorised to fill up the cheque; and
- (ii) the body is authorised, for the purpose of making a payment to the bank to enable the bank to honour the cheque, to debit the non-bank account.

(3) The conclusion referred to in subsection (1) (c) (ii) may not be drawn if, under a law of the place where the account is kept, the person concerned would be liable, in relation to the use of the account, to pay tax of a similar kind to the tax imposed by this section.

#### **Amount of tax**

9. The amount of tax in respect of a taxable debit or eligible debit is the amount set out in Column 2 of Schedule 1 opposite to the reference in Column 1 of Schedule 1 to the range of amounts within which the amount of that debit is included.

### **PART 3 - LIABILITY TO TAX**

#### **Liability to tax**

10. (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 this Act 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 this Act on an eligible debit made to the account.

(3) A law, or a provision of a law, 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 this Act does not exempt that person from liability to pay that tax.

(4) A law, or a provision of a law, passed after the commencement of this section that purports to exempt a person from liability to pay taxes under the laws of the State of New South Wales or to pay certain taxes under those laws that include tax imposed by this Act, other than a law or a provision that expressly exempts a person from liability to pay that tax, is not to be construed as exempting the person from liability to pay that tax.

**When tax payable**

**11. (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 10 (1), that tax must be paid not later than 14 days after the end of that month; and
- (b) tax to which an assessment made under section 19 (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 20 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.

**Recovery of tax by financial institutions**

**12. (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 17.

(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.

#### **Certificates of exemption from tax**

**13. (1)** Where an account holder in respect of an account kept in New South Wales applies to the Chief Commissioner in accordance with this section for the issue of a certificate of exemption in relation to the account:

- (a) if the Chief 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 Chief Commissioner must issue a certificate of exemption in relation to the account; or
- (b) if the Chief Commissioner is not so satisfied - the Chief Commissioner must refuse the application and must 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.

(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 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 Chief 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 Chief 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, must, within 7 days, notify the Chief 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 Chief 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 Chief Commissioner under that subsection of the eligible debit.

**(6)** Where the Chief Commissioner has revoked a certificate of exemption in relation to an account, the Chief Commissioner must 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 must be in writing and the person making the application must furnish



such information as the Chief Commissioner requires in connection with the consideration of that application.

**Offences relating to certificates of exemption**

**14. (1)** A person must not:

- (a) forge a certificate or utter a certificate knowing it to be forged; or
- (b) without lawful authority, alter or sign a certificate; or
- (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.

Maximum penalty 100 penalty units or imprisonment for 2 years, or both.

(2) In subsection (1), "**certificate**" means a certificate of exemption.

**PART 4 - RETURNS AND ASSESSMENTS**

**Returns in respect of taxable debits**

**15. (1)** If, in any month, a taxable debit is made to a taxable account kept with a financial institution, the financial institution must, not later than 14 days after the end of that month or such later date as the Chief Commissioner allows, furnish to the Chief 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 Chief 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 Chief Commissioner has reason to believe that an account holder is liable to pay tax by virtue of section 10 (2) in respect of an eligible debit or eligible debits made to an account, the Chief Commissioner may, by notice in writing, require that account holder to furnish to the Chief 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 10 (2) during the period specified in the notice.

(4) A return under this section must be in a form approved by the Chief Commissioner and must contain such particulars as are required by the form.

### **Refund of amounts incorrectly paid**

16. (1) Subject to this section, where, on application made by a person in accordance with this section, the Chief commissioner is satisfied that an amount paid as tax by a financial institution under this Act (other than an amount paid pursuant to an assessment) was not payable, the Chief Commissioner must:

- (a) refund the amount to the person; or
- (b) apply the amount against any liability of the person to the State of New South Wales 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 must be in writing in a form approved by the Chief 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 must furnish such information as the Chief Commissioner requires in connection with the consideration of that application.

(5) Where an application for a refund of an amount has been duly made by a person under this section:

- (a) if the Chief Commissioner is satisfied that the amount was not payable, the Chief Commissioner must:

- (i) refund the amount to the person; or
  - (ii) apply the amount against any liability of the person to the State of New South Wales and refund any part of the amount not so applied;
- (b) if the Chief Commissioner is satisfied that part only of the amount was not payable, the Chief Commissioner must:
- (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 New South Wales and refund any part of that part of the amount not so applied; or
- (c) if the Chief Commissioner is not satisfied as mentioned in paragraph (a) or (b) - the Chief Commissioner must refuse the application.

(6) Where, in relation to an application under this section, the Chief Commissioner makes a decision for the purposes of subsection (5) (b) or (c), the Chief Commissioner must 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.

### **Refunds for tax paid on excluded debits**

**17. (1)** Subject to this section, where, on application made by a person in accordance with this section, the Chief 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 Chief Commissioner must:

- (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 New South Wales 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.

(3) Application under this section for a payment in relation to an amount of tax paid must be in writing in a form approved by the Chief 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 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 must furnish such information as the Chief 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 Chief Commissioner is not satisfied that the tax was paid in respect of an excluded debit made to a taxable account,

the Chief Commissioner must 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.

### **Special assessments**

**18. (1)** A financial institution may, in relation to a return lodged by it under section 15, request the Chief Commissioner, in accordance with this section, to make an assessment of the amount of tax that, in the opinion of the Chief Commissioner, is payable in respect of taxable debits to which that return relates.

(2) A request under subsection (1) must be made in writing within 30 days after the day on which the return was furnished to the Chief Commissioner.

(3) Where a financial institution has made a request in accordance with subsection (1) in relation to a return, the Chief Commissioner must make an assessment of the amount of tax that, in the opinion of the Chief Commissioner, is payable in respect of taxable debits to which the return relates.

(4) As soon as practicable after an assessment is made in pursuance of this section, the Chief Commissioner must 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

**Default assessments**

**19. (1)** Where the Chief 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 Chief Commissioner may make an assessment of the amount of the tax.

**(2)** Where the Chief 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 Chief Commissioner may make an assessment of the amount of the tax.

**(3)** As soon as practicable after an assessment is made in pursuance of this section, the Chief Commissioner must 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.

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

**20. (1)** Where a person refuses or fails, when and as required under or pursuant to this Act or the regulations to do so:

- (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 Chief 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 Chief Commissioner must make an assessment of the additional tax payable by a person under this section and must, 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 Chief 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 or pursuant to this Act or the regulations; or
- (b) made in answer to a question asked of a person under or pursuant to this Act or the regulations; or
- (c) made in any information furnished, or purporting to be furnished, under or pursuant to this Act or the regulations; or
- (d) made in a document furnished to a taxation officer otherwise than under or pursuant to this Act or the regulations,

but does not include a statement made in a document produced pursuant to section 47 (1) (b) (ii).

(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, pursuant to or in relation to this Act or the regulations.

### **Amendment of assessments**

**21. (1)** Subject to this section, the Chief Commissioner may, at any time within a period of 3 years after an assessment is made by the Chief Commissioner, amend the assessment by making such alterations or additions to it as the Chief 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 Part 5; or
- (b) in order to give effect to the decision on any objection or appeal under that Part; or
- (c) by way of reduction in pursuance of an objection made under that Part; or
- (d) where the person in respect of whom the assessment is made has not made to the Chief 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 34, never to have been payable; and
- (b) subject to subsection (4), the Chief Commissioner must
  - (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 New South Wales 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 in pursuance of section 19 (1) a financial institution has overpaid tax, the amount of the tax overpaid must not be refunded to the financial institution or applied against a liability of the financial institution to the State of New South Wales unless:

- (a) the amount of tax overpaid has not been recovered by the financial institution from an account holder; or
- (b) it the amount of tax overpaid has been recovered from an account holder and the Chief 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 Chief Commissioner must 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.

(6) An amended assessment is an assessment for all the purposes of this Act.

(7) In this section, "tax" includes additional tax under section 20 or 34.

### **Validity of assessments**

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

## **PART 5 - OBJECTIONS AND APPEALS**

### **Definition of "tax"**

23. In this Part, "tax" includes additional tax under section 20 or 34.

### **Objections and appeals**

24. (1) A person:

- (a) who is liable to pay tax and who is dissatisfied with an assessment of the tax made by the Chief Commissioner; or
- (b) who is dissatisfied with a prescribed decision within the meaning of section 31 (2),

may, within 60 days after the issue of the assessment or the making of the decision, object to the assessment or decision by lodging with the Chief Commissioner a statement in writing of the grounds of the objection.

(2) A person entitled to make an objection may, whether before or after the expiration of the time for making the objection, apply for an extension of time and the Chief Commissioner may, for reasonable cause shown, extend the time for making the objection for such period as the Chief Commissioner considers to be reasonable.

(3) The Chief Commissioner must consider any objection and may:

- (a) allow the objection wholly or in part and modify the assessment or alter the decision to which it relates; or
- (b) disallow the objection and confirm the assessment or decision to which it relates.

(4) On making a decision on an objection, the Chief Commissioner must inform the objector in writing of the decision and the reasons for the decision.

(5) An objector dissatisfied with the decision of the Chief Commissioner on an objection may request the Chief Commissioner to approve in writing of an appeal by the objector to the Supreme Court against the decision.

(6) Such a request must be in writing and be lodged with the Chief Commissioner within 30 days (or such longer period as the Chief Commissioner may allow for reasonable cause shown) after the objector is informed of the Chief Commissioner's decision on the objection.

(7) If the Chief Commissioner does not comply with a request under subsection (5) within 60 days after it is made and the objector:

- (a) has provided the Chief Commissioner with any information required by the Chief Commissioner in relation to the assessment or decision; and
- (b) lodges with the Chief Commissioner a notice in writing requiring the Chief Commissioner to comply with the request,

the Chief Commissioner must comply with the request not later than 30 days after the notice is lodged.

(8) The objector may appeal to the Supreme Court against the decision within 14 days after the Chief Commissioner grants approval under this section to the appeal.

### **Nature of appeal**

**25. (1)** An appeal to the Supreme Court under this Part is by way of rehearing of the original objection to the Chief Commissioner and is limited to the grounds of the original objection.

(2) On giving its decision, the Court may determine the amount of any tax payable as a result of the decision.

(3) This Act applies to the Court's assessment of tax or decision with respect to the refunding of tax in the same way as it applies to the assessment of tax, or calculation of the amount of tax to be refunded, by the Chief Commissioner.

**Onus on objector**

**26.** On an objection or appeal under this Part, the objector bears the onus of establishing on the balance of probabilities that the tax in question was incorrectly assessed.

**Payment of tax assessed and calculation of refund by Supreme Court**

**27. (1)** If the tax assessed by the Supreme Court under this Part:

- (a) is greater than the amount paid by the objector, the objector is liable to pay the difference; or
- (b) is less than the amount paid by the objector, the Chief Commissioner is to refund the difference to the objector, together with interest on the difference at the rate prescribed for the purposes of section 34 (1) less 5%.

**(2)** If the refund calculated by the Supreme Court under this Part:

- (a) is greater than the amount calculated by the Chief Commissioner, the Chief Commissioner is to refund the difference to the objector, together with interest on the difference at the rate prescribed for the purposes of section 34 (1) less 5%; or
- (b) is less than the amount calculated by the Chief Commissioner, the objector is liable to pay the difference.

**(3)** Interest payable under subsection (1) (b) or (2) (a) is payable from the date on which the amount concerned was paid by the objector until the date it is refunded.

**Liability not affected by objection etc**

**28. (1)** Except to the extent otherwise permitted by the Chief Commissioner, the lodging of an objection or an appeal to the Supreme Court does not affect any liability of an objector to pay tax in accordance with this Act.

**(2)** A permission under this section must be in writing.

**Lodgment with Chief Commissioner**

**29.** For the purposes of this Part, something is lodged with the Chief Commissioner by being addressed to the Chief Commissioner and lodged at or sent by post to any office of the Chief Commissioner.

**Chief Commissioner may state case**

**30. (1)** The Chief Commissioner may, if the Chief Commissioner thinks fit, state a case on any question of law arising with regard to the assessment or refund of tax and forward that case to the Supreme Court for its opinion.

**(2)** The Supreme Court is to give its opinion on any case forwarded to it and cause the Chief Commissioner to be notified of that opinion.

**Evidence**

**31. (1)** In proceedings under this Part:

- (a) the production of a document under the hand of the Chief Commissioner purporting to be a copy of a notice of the making of a prescribed decision or a copy of a notice of assessment is conclusive evidence of the due making of the prescribed decision or of the assessment, as the case may be; and
- (b) a document certified under the hand of the Chief Commissioner to be a copy of, or extract from, a return, a notice of the making of a prescribed decision or a 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.

**(2)** In this section, "prescribed decision" means a decision by the Chief Commissioner:

- (a) to refuse to issue a certificate of exemption; or
- (b) to revoke a certificate of exemption; or
- (c) specifying a day in a certificate of exemption as the day of commencement or expiry of the certificate; or
- (d) in relation to an application made in accordance with section 16 for a refund of an amount of tax; or
- (e) in relation to an application made in accordance with section 17 for a payment under that section.

**PART 6 - RECOVERY OF TAX**

**Recovery of tax**

**32. (1)** Tax is, on becoming due and payable under this Act, a debt due to the State of New South Wales and payable to the Chief Commissioner.

(2) Any tax that is unpaid may be sued for and recovered in any court of competent jurisdiction by the Chief Commissioner.

(3) In this section, "tax" includes additional tax under section 20 or 34.

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

**33. (1)** The Chief 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 Chief 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 20.

### **Penalty for unpaid tax**

**34. (1)** If any tax remains unpaid after the time when it became due and payable, or would (but for section 33) 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 prescribed rate on the amount unpaid, computed from that time or, where, under section 33, the Chief 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 Chief 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 Chief 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 Chief 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; and
- (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 Chief 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 Chief 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
- (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 Chief 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 20.

### **Evidence**

**35. (1)** In any proceedings for the recovery of tax payable under this Act:

- (a) the production of a document under the hand of the Chief 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; and
  - (b) the production of a document under the hand of the Chief Commissioner purporting to be a copy of a document issued or given by the Chief Commissioner under this Act is conclusive evidence that the lastmentioned document was so issued or given; and
  - (c) a document under the hand of the Chief 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 Chief Commissioner certifying that a sum specified in the certificate was, at the date of the certificate, due by a person to the State of New South Wales in respect of amounts payable to the Chief 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 20 or 34.

## **PART 7 - OFFENCES**

### **Offences - generally**

- 36. (1)** A person must not:
- (a) fail or neglect to furnish any return or information or to comply with any requirement of the Chief Commissioner or any officer employed in the administration or execution of this Act as and when required by this Act or the regulations, or by the Chief Commissioner or officer; or
  - (b) without just cause, refuse or neglect to attend and give evidence when required by the Chief Commissioner or any officer employed in the administration of this Act and duly authorised by the Chief Commissioner, or to answer truly and fully any questions put to the person, or to produce any records required of the person by the Chief 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.

Maximum penalty: 100 penalty units.

(2) A person who:

- (a) after conviction for an offence against this section; or
- (b) after the making of an order under section 75B of the Justices Act 1902 imposing a penalty on the person for an offence against this section,

continues to fail to comply with the requirement in respect of which the person was convicted or the order was made, is guilty of an offence and punishable as provided in section 37.

(3) Where an offence against this section arises under subsection (1) (a) or (c) by reason of the neglect or failure of a person to do anything 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.

### **Evading taxation**

37. A person must 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.

Maximum penalty 10 penalty units and treble the amount of tax evaded or attempted to be evaded.

### **Time for commencing prosecutions**

38. (1) A prosecution in respect of an offence against section 37 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 36 (1) (a) or (c) may be commenced at any time.

### **Penalty not to relieve from tax**

39. 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.



**Obstructing officers**

40. A person must not obstruct or hinder an officer acting in the administration of this Act or the regulations.

Maximum penalty 10 penalty units.

**Disclosure of information etc.**

41. (1) Except as provided by subsections (2), (4) and (5), a person must not disclose information, or publish a record, obtained by that or another person in connection with the administration or execution of this Act or the regulations, unless the disclosure or publication is made:

- (a) with the consent of the person from whom the information or record was so obtained; or
- (b) in connection with the administration or execution of this Act, the regulations, a New South Wales revenue law or the Revenue Laws (Reciprocal Powers) Act 1987; or
- (c) for the purposes of any legal proceedings arising out of this Act, the regulations, a New South Wales revenue law or the Revenue Laws (Reciprocal Powers) Act 1987 or of any report of any such proceedings; or
- (d) in accordance with a requirement imposed under the Ombudsman Act 1974.

Maximum penalty 100 penalty units.

(2) The Chief Commissioner may, if of the opinion that it is necessary to do so for the purpose of enforcing a law that creates an offence or provides for the imposition of a penalty, or for the purpose of protecting the public revenue, disclose information, or publish a record, referred to in subsection (1) to:

- (a) the Solicitor General; or
- (b) the Secretary of the Attorney General's Department; or
- (c) the Director of Public Prosecutions; or
- (d) the Crown Advocate; or
- (e) a Crown Prosecutor, or
- (f) a police officer of or above the rank of Inspector,

so as to enable that person to exercise a function conferred or imposed on the person by law.

(3) A person must not disclose information, or publish a record, communicated in accordance with subsection (2) unless the disclosure or publication is made:

- (a) with the consent of the Chief Commissioner; or
- (b) so as to enable a person to exercise, for a purpose referred to in that subsection, a function conferred or imposed on the person by law.

Maximum penalty: 100 penalty units.

(4) If a record referred to in subsection (1) has been transferred to the Archives Authority in accordance with the Archives Act 1960, the Chief Commissioner may, when the record has been in existence for 30 years or more, give that Authority approval to disclose, divulge or otherwise publish the record.

(5) Subsection (1) does not:

- (a) prevent the disclosure of information, or the publication of a record, in accordance with a lawful requirement of the Commonwealth Statistician; or
- (b) prevent a record from being made available to, or disposed of or otherwise dealt with by, the Archives Authority in accordance with the Archives Act 1960; or
- (c) apply to information, or a record, obtained for the purposes of this Act under a corresponding law within the meaning of section 3 (1) of the Revenue Laws (Reciprocal Powers) Act 1987.

(6) In this section, a reference to a record includes a reference to a part of a record and to a copy of a record.

(7) In this section, "**New South Wales revenue law**" means any of the following:

- (a) the Stamp Duties Act 1920;
- (b) the Gaming and Betting (Poker Machines) Taxation Act 1956;
- (c) the Land Tax Act 1956;
- (d) the Land Tax Management Act 1956;
- (e) the Pay-roll Tax Act 1971;
- (f) the Registered Clubs Act 1976;
- (g) the Liquor Act 1982;

- (h) the Health Insurance Levies Act 1982;
- (i) the Business Franchise Licences (Petroleum Products) Act 1987;
- (j) the Business Franchise Licences (Tobacco) Act 1987;
- (k) any other prescribed Act, being an Act by which a tax, fee, duty or other impost is levied and collected by the State.

### **Institution of prosecutions**

**42. (1)** An information for an offence against a provision of this Act or the regulations may be laid in the name of the Chief Commissioner by any officer employed in the administration or execution of this Act and authorised to lay informations on behalf of the Chief Commissioner.

**(2)** A prosecution instituted in the name of the Chief Commissioner is, in the absence of evidence to the contrary, taken to have been instituted by authority of the Chief Commissioner.

**(3)** An officer referred to in subsection (1) may appear on behalf of the Chief Commissioner in any proceedings for an offence against a provision of this Act or the regulations.

### **Proceedings for offences**

**43.** Proceedings for an offence against this Act or the regulations are to be dealt with summarily before a Local Court constituted by a Magistrate sitting alone.

## **PART 8 - MISCELLANEOUS**

### **Return in relation to exempt accounts**

**44. (1)** A financial institution must, within 2 months, or such further time as the Chief Commissioner allows, after the end of the year ending on 31 December 1990, and within 2 months, or such further time as the Chief Commissioner allows, after the end of each subsequent year, furnish to the Chief 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) must be:

- (a) if the Chief Commissioner agrees to the return being in the form of a disc, tape or other device from which information required by the Chief 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 Chief Commissioner and containing such particulars as are required by that form.

**Representative officers etc. of financial institutions**

**45. (1)** A bank that carries on banking business in New South Wales may appoint an officer or officers of the bank to be a representative officer or representative officers of the bank for the purposes of this Act and, unless exempted by the Chief Commissioner, must ensure that, at all times after the expiration of one month after the commencement of section 8, or after the day on which the bank commences to carry on banking business in New South Wales, whichever is the later, there is at least one officer who holds an appointment as such a representative officer.

**(2)** A bank 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.

Maximum penalty: 1 penalty unit.

**(3)** A non-bank financial institution that carries on a business in New South Wales that includes the keeping of accounts that may be drawn on by payment order:

- (a) may appoint an officer or officers of the institution to be a representative officer or representative officers of the institution for the purposes of this Act; and
- (b) unless exempted by the Chief Commissioner, must ensure that, at all times after the end of one month after the commencement of section 8, or after the day on which the institution commences to carry on that business in New South Wales, whichever is the later, there is at least one officer who holds an appointment as such a representative officer.

**(4)** A non-bank financial institution that contravenes subsection (3) 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.

Maximum penalty: 1 penalty unit.

(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 must, not later than 7 days after the day of the appointment or termination, notify the Chief 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 Chief Commissioner within those 7 days, the financial institution is, in respect of each subsequent day until it so notifies the Chief Commissioner (including the day of a conviction of an offence against this subsection or any subsequent day), guilty of an offence.

Maximum penalty: 1 penalty unit.

(6) A financial institution may at any time notify the Chief 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 Chief 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.

**Access to books etc.**

**46. (1)** For the purposes of this Act, an officer authorised by the Chief Commissioner to exercise functions under this section:

- (a) may, at all reasonable times, enter on any land or premises; and
- (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 in pursuance of 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 Chief 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) must provide the officer with all reasonable facilities and assistance for the effective exercise of powers under this section.

Maximum penalty (subsection (3)): 10 penalty units.

**Chief Commissioner to obtain information and evidence**

**47. (1)** The Chief 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 Chief Commissioner with such information as the Chief Commissioner may require; and
- (b) to attend before the Chief Commissioner or before any officer authorised by the Chief 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 Chief 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 Chief Commissioner or an officer authorised by the Chief 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) A person required to attend under this section, other than the person liable to pay tax under this Act, is entitled to an allowance of the same amount as that which would be payable to the person if the person were a witness in proceedings before the District Court.

### **Service on partnerships and associations**

48. 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 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.

### **Chief Commissioner may compromise a claim for tax**

49. (1) Where by reason of the complexity or uncertainty of the facts or from any other cause it is difficult or impracticable to ascertain exactly the amount of tax or to ascertain the amount of tax without undue delay or expense, the Chief Commissioner may assess as the tax payable such sum as the Chief Commissioner thinks proper under the circumstances and may accept payment of the sum so assessed in full discharge of all claims for the tax.

(2) Such an assessment does not constitute a good discharge from tax if it is procured by fraud or by a wilful failure to disclose material facts.

**Collection of tax from persons owing money to taxpayers**

**50. (1)** The Chief Commissioner may, by notice in writing (a copy of which is to be served on the taxpayer), require:

- (a) any person by whom any money is due or accruing or may become due to a taxpayer; or
- (b) any person who holds or may subsequently hold money for or on account of a taxpayer; or
- (c) any person who holds or may subsequently hold money on account of some other person for payment to a taxpayer; or
- (d) any person having authority from some other person to pay money to a taxpayer,

to pay the money (or so much of it as is sufficient to pay the tax due by the taxpayer) to the Chief Commissioner on the money's becoming or being held, or within such further time as the Chief Commissioner allows.

(2) A person given a notice under this section must comply with it. Maximum penalty: 10 penalty units.

(3) When a payment is made pursuant to such a notice:

- (a) it is to be regarded as having been made under the authority of the taxpayer and of all other persons concerned, and the person making the payment is indemnified in respect of it; and
- (b) the payment is in reduction of the amount of tax due by the taxpayer.

(4) If tax due by the taxpayer is paid before any payment is made by a person in accordance with this section, the Chief Commissioner must promptly give notice to the person of the payment and that notice relieves the person of the requirement to make a payment pursuant to this section.

(5) In this section, "**tax**" includes any judgment debt and costs in respect of any tax.

(6) This section binds the Crown in right of New South Wales and, in so far as the legislative power of Parliament permits, the Crown in all of its other capacities.



**Preservation of records**

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

Maximum penalty: 10 penalty units.

**(2)** This section does not apply so as to require the preservation of records:

- (a) in respect of which the Chief 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.

**Official signature**

**52.** A certificate, notice or other document issued for the purposes of this Act or the regulations is taken to be duly authenticated if it bears the signature or the printed or stamped name (whether or not that name is in the form of a facsimile of the signature) of the Chief Commissioner, unless it is proved that the document was issued without the authority of the Chief Commissioner.

**Regulations**

**53. (1)** The Governor may make regulations, not inconsistent with this Act, 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 5 penalty units.

**Consequential amendment of other Acts**

**54.** Each Act specified in Schedule 2 is amended as set out in that Schedule.

**Transitional provisions**

**55.** Schedule 3 has effect.

---

**SCHEDULE 1 - AMOUNT OF TAX**

(Sec. 9)

---

Column 1	Column 2
Range of amounts of taxable debits or eligible debits	Amount of tax
Not less than \$ 1 but less than \$100	1 5 cents
Not less than \$100 but less than \$500	35 cents
Not less than \$500 but less than \$5,000	75 cents
Not less than \$5,000 but less than \$10,000	\$1.50
\$10,000 or more	\$2.00

---

**SCHEDULE 2 - CONSEQUENTIAL AMENDMENT  
OF OTHER ACTS**

(Sec. 54)

**Business Franchise Licences (Petroleum Products) Act 1987 No. 94:**

After paragraph (ix) of the definition of "New South Wales revenue law" in section 62 (6) (a), insert:

(ixa) the Debits Tax Act 1990;

**Business Franchise Licences (Tobacco) Act 1987 No. 93:**

After paragraph (ix) of the definition of "New South Wales revenue law" in section 69 (6) (a), insert

(ixa) the Debits Tax Act 1990;

**Health Insurance Levies Act 1982 No. 159:**

After paragraph (i) of the definition of "New South Wales revenue law" in section 4 (1), insert

(i1) the Debits Tax Act 1990;

**Land Tax Management Act 1956 No. 26:**

After paragraph (i) of the definition of "New South Wales revenue law" in section 3 (1), insert:

(ia) the Debits Tax Act 1990;

SCHEDULE 2 - CONSEQUENTIAL AMENDMENT  
OF OTHER ACTS - *continued*

**Pay-roll Tax Act 1971 No. 22:**

After paragraph (i) of the definition of "New South Wales revenue law" in section 3 (1), insert:

(i1) the Debits Tax Act 1990;

**Revenue Laws (Reciprocal Powers) Act 1987 No. 86:**

After paragraph (j) of the definition of "New South Wales revenue law" in section 3 (1), insert:

(j1) the Debits Tax Act 1990;

**Stamp Duties Act 1920 No. 47:**

After paragraph (i) of the definition of "New South Wales revenue law" in section 3 (1), insert:

(i1) the Debits Tax Act 1990;

**SCHEDULE 3 - TRANSITIONAL PROVISIONS**

(Sec. 55)

**PART 1 - PRELIMINARY**

**Definitions**

1. 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**

**Interim arrangements for the administration of this Act**

2. (1) The Chief Commissioner may make an arrangement with the Commissioner of Taxation about any matter in connection with the administration of this Act or the regulations.

SCHEDULE 3 - TRANSITIONAL PROVISIONS - *continued*

- (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 Chief 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 Chief commissioner is a reference to the Commissioner of Taxation or a Second Commissioner of Taxation; and
  - (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.

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

3. (1) The Commissioner of Taxation and the Second Commissioners of Taxation have the functions under this Act of the Chief 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 must not exercise a function conferred by this clause except in accordance with an arrangement made under clause 2.

**Public notification of arrangement**

4. (1) The Chief Commissioner may give notice, by publication in the Gazette, of an arrangement made under clause 2.

SCHEDULE 3 - TRANSITIONAL PROVISIONS - *continued*

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

**Cessation of arrangement**

5. (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.

**Exemption certificates**

6. (1) A certificate under section 11 of the Commonwealth Act in force immediately before the commencement of section 13 of this Act is taken to have been issued under section 13 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 New South Wales) which had not been dealt with before the commencement of section 13 of this Act is taken to be an application under section 13 of this Act.

**Representative officers etc. of financial institutions**

7. 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 45 of this Act is to be taken to have been made for the purposes of section 45 of this Act.

**Acceptance of things done in compliance with the Commonwealth Act**

8. (1) The Chief Commissioner (or a person authorised by any arrangement made under clause 2) may accept anything done in compliance with a provision of the Commonwealth Act as having been

SCHEDULE 3 - TRANSITIONAL PROVISIONS - *continued*

done in compliance with a corresponding provision of this Act and may notify a person affected by the corresponding provision accordingly.

(2) If the Chief Commissioner (or a person so authorised) so notifies a person, the person is to be taken to have complied with the Corresponding provision concerned.

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

9. 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 Chief 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 - OBJECTIONS, REVIEWS AND APPEALS**

**Definitions**

10. In this Part:

"**objector**" means a person who has duly lodged, or is to be treated as having duly lodged, under clause 11 an objection against a prescribed decision or an assessment;

"**prescribed decision**" means a decision by the Chief Commissioner:

- (a) to refuse to issue a certificate of exemption; or
- (b) to revoke a certificate of exemption; or
- (c) specifying a day in a certificate of exemption as the day of commencement or expiry of the certificate; or
- (d) in relation to an application made in accordance with section 16 for a refund of an amount of tax; or
- (e) in relation to an application made in accordance with section 17 for a payment under that section.

**Objections**

11. (1) A person dissatisfied with a prescribed decision or an assessment under this Act may, within 60 days after service on the person of notice of that prescribed decision or assessment, lodge with the Chief Commissioner an objection in writing against the prescribed

SCHEDULE 3 - TRANSITIONAL PROVISIONS - *continued*

decision or assessment stating fully and in detail the grounds on which the person relies.

(2) The Chief Commissioner must consider the objection, and may either disallow it or allow it wholly or in part.

(3) The Chief Commissioner must cause notice in writing of the decision on the objection to be served, by post or otherwise, on the objector.

(4) Where an assessment has been amended in any particular, the right of a person to object against the amended assessment is limited to a right to object against alterations or additions in respect of, or matters relating to, that particular.

(5) Where a notice of assessment of tax incorporates a notice of one or more assessments of additional tax, the assessments are, for the purposes of this Part, to be regarded as one assessment.

**Request for reference**

12. An objector who is dissatisfied with a decision under clause 11 on an objection by the objector may, within 60 days after service on the objector of notice of the decision, lodge with the Chief Commissioner, in writing, a request to refer the decision to the Supreme Court.

**Applications for extension of time**

13. (1) Where the period for the lodgment by a person of an objection against a prescribed decision or assessment has ended, the person may, notwithstanding that the period has ended, send the objection to the Chief Commissioner together with an application in writing requesting the Chief Commissioner to treat the objection as having been duly lodged.

(2) Where the period for the lodgment by an objector of a request under clause 12 has ended, the objector may, notwithstanding that the period has ended, send the request to the Chief Commissioner together with an application in writing asking that the request be treated as having been duly lodged.

(3) An application by a person under subclause (1) or (2) must state fully and in detail the circumstances concerning, and the reasons for,

SCHEDULE 3 - TRANSITIONAL PROVISIONS - *continued*

the failure by the person to lodge the objection or request as required by this Act.

**Consideration of applications for extension of time for lodging objections**

14. (1) The Chief Commissioner must consider each application made under clause 13 (1) and may grant or refuse the application.

(2) The Chief Commissioner must give to the person who made the application notice in writing of the decision on the application.

(3) A person who is dissatisfied with a decision under subclause (1) in respect of an application made by the person may apply to the Supreme Court for review of the decision.

(4) Where an application under clause 13 (1) has been granted, the person who made the application is, for the purposes of this Part, to be treated as having duly lodged the objection to which the application relates.

**Consideration of applications for extension of time for lodging requests for reference**

15. (1) Where the Chief Commissioner receives an application under clause 13 (2), the Chief Commissioner must, as soon as practicable, send the application to the Supreme Court.

(2) The sending of an application to the Supreme Court under subclause (1) constitutes the making by the person concerned of an application to the Court to extend the time within which the request concerned may be lodged with the Chief commissioner.

(3) The Supreme Court may grant or refuse the application.

(4) Where an application under clause 13 (2) has been granted, the person is, for the purposes of this Part, to be treated as having duly lodged the request to which the application relates.



SCHEDULE 3 - TRANSITIONAL PROVISIONS - *continued*

**Reference to the Supreme Court**

16. (1) Where an objector duly lodges, or is to be treated as having duly lodged, a request under clause 12, the Chief Commissioner must comply with the request.

(2) The referral of a decision on an objection to the Supreme Court constitutes the instituting by the objector concerned of an appeal against the decision.

**Notice to refer**

17. (1) Subject to subclauses (2) and (3), if, within 60 days after receiving a request under clause 12 in relation to a decision on an objection, the Chief Commissioner does not comply with the request, the objector may give notice in writing to the Chief Commissioner requiring the Chief Commissioner to do so and the Chief Commissioner must, within 60 days after receiving the notice, comply with the request.

(2) Where an application under clause 13 in relation to a request has been granted, the objector who made the request is not entitled to give notice under subclause (1) in relation to the request before the expiration of 60 days after the day on which the application was granted.

(3) If, within 60 days after receiving a request under clause 12 in relation to a decision on an objection or, in a case to which subclause (2) applies, within 60 days after an application under clause 13 in relation to a request has been granted, the Chief Commissioner, by notice in writing served on the objector who made the request, requires the objector to give information relating to the objection, the Chief Commissioner is not required to comply with the request until the expiration of 60 days after the receipt by the Chief Commissioner of that information.

**Procedure on appeal**

18. In proceedings under this Part on an appeal to the Supreme Court:

- (a) the objector is, unless the Court otherwise orders, limited to the grounds stated in the objection; and

SCHEDULE 3 - TRANSITIONAL PROVISIONS - *continued*

- (b) the burden of proving that a prescribed decision is incorrect, or that an assessment is excessive, lies on the objector.

**Decision of the Supreme Court**

19. Where the Supreme Court hears an appeal under this Part, the Court may make such order in relation to the decision to which the appeal relates as it thinks fit, including an order confirming or varying the decision.

**Implementation of decisions**

20. (1) When a decision of the Supreme Court under this Part becomes final, the Chief Commissioner must, not later than 60 days after that decision becomes final, take such action, including amending the assessment, if any, concerned, as may be necessary to give effect to that decision.

(2) For the purposes of determining when a decision of the Supreme Court becomes final:

- (a) if that decision is a decision of the Supreme Court constituted by a single Judge, and no appeal is lodged within the period for lodging an appeal - that decision becomes final at the end of that period; or
- (b) if that decision is a decision of the Court of Appeal and an application is not made for special leave to appeal to the High Court within the period of 30 days after the making of the decision - that decision becomes final at the end of that period.

(3) In this clause, "**decision**" includes the making of an order under clause 19.

**Pending appeal not to affect assessment etc,**

21. (1) The fact that an appeal is pending in relation to a prescribed decision or an assessment does not in the meantime interfere with, or affect, the decision or assessment and tax may be recovered as if no appeal were pending.

SCHEDULE 3 - TRANSITIONAL PROVISIONS - *continued*

(2) In this clause, "**tax**" includes additional tax under section 20 or 34.

**Variation of prescribed decision**

22. (1) If a prescribed decision is varied on an objection or to give effect to a decision of the Supreme Court under this Part:

- (a) the Chief Commissioner must cause notice in writing of the variation to be given to the objector, and
- (b) in a case where the variation of the prescribed decision results in a reduction of tax - the amount by which the tax is so reduced is taken, for the purposes of section 34, never to have been payable; and
- (c) the amount of any tax not paid or underpaid as a result of the variation of the prescribed decision is recoverable from the objector; and
- (d) the Chief Commissioner must:
  - (i) refund the amount of any tax overpaid as a result of the variation of the prescribed decision; or
  - (ii) apply the amount of any tax overpaid as a result of the variation of the prescribed decision against any liability of the person to the State of New South Wales and refund any part of the amount that is not so applied.

(2) In this clause, unless the contrary intention appears, "**tax**" includes additional tax under section 20 or 34.

**Evidence**

23. In proceedings under this Part:

- (a) the production of a document under the hand of the Chief Commissioner purporting to be a copy of a notice of the making of a prescribed decision or a copy of a notice of assessment is conclusive evidence of the due making of the prescribed decision or of the assessment, as the case may be; and
- (b) a document certified under the hand of the Chief Commissioner to be a copy of, or extract from, a return, a notice of the making of a prescribed decision or a notice of assessment

SCHEDULE 3 - TRANSITIONAL PROVISIONS - *continued*

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.

**Period for which Part 3 is in force**

24. (1) This Part is repealed on the day appointed under section 2 for the commencement of Part 5 of this Act.

(2) The regulations may make provisions of a savings or transitional nature as a consequence of the repeal of this Part with respect to any matter to which this Part relates.

---

*[Minister's second reading speech made in -  
Legislative Assembly on 14 November 1990  
Legislative Council on 26 November 1990]*