

State Taxation (Amendment) Act 1994

No. 119 of 1994

TABLE OF PROVISIONS

Section

PART 1—PRELIMINARY

1. Purpose
2. Commencement

PART 2—DEBITS TAX ACT 1990

3. Principal Act
4. New sections 3 and 4 substituted
 3. Definitions
 4. Debits
5. New Parts 7 to 12 inserted

PART 7—ADMINISTRATION

21. General administration Act
22. Delegation of functions
23. Secrecy

PART 8—LIABILITY TO TAX

24. When tax payable
25. Recovery of tax by financial institutions
26. Certificates of exemption from tax
27. Offences relating to certificates of exemption

PART 9—RETURNS AND ASSESSMENTS

28. Returns in respect of taxable debits
29. Refunds
30. Refunds to be paid to person entitled
31. Application of section 30 to proceedings
32. Special assessments
33. Default assessments
34. Penalty for failure to furnish return etc.
35. Amendment of assessments
36. Validity of assessments

PART 10—OBJECTIONS, REVIEWS AND APPEALS

37. Definitions
38. Objections
39. Request for reference
40. Applications for extension of time

41. Consideration of applications for extension of time for lodging objections
42. Consideration of applications for extension of time for lodging requests for reference
43. Reference to Court
44. Notice to refer
45. Procedure on review or appeal
46. Decision of Supreme Court
47. Implementation of decisions
48. Pending review or appeal not to affect assessment etc.
49. Variation of prescribed decisions
50. Evidence

PART 11—RECOVERY OF TAX

51. Recovery of tax
52. Extension of time and payment by instalments
53. Penalty for unpaid tax
54. Evidence

PART 12—MISCELLANEOUS

55. Return in relation to exempt accounts
56. Representative officers etc. of financial institutions
57. Access to books etc.
58. Commissioner to obtain information and evidence
59. Service on partnerships and associations
60. Supreme Court—limitation of jurisdiction
61. Regulations
6. Amendment of Principal Act
7. New sections 39 to 44 substituted
 39. Appeals
 40. References to Administrative Appeals Tribunal
 41. Proceedings on references and appeals
 42. Appeals to Court
 43. Pending appeal not to delay payment of duty
 44. Provision of this Act to prevail
8. Transitional

PART 3—FINANCIAL INSTITUTIONS DUTY ACT 1982

9. Short term dealings
10. Amendment of section 9
11. New section 11A inserted
 - 11A. Term deposit reinvestment
12. Cheques and promissory notes
13. Exemptions by Order
14. Exempt bank accounts

PART 4—PAY-ROLL TAX ACT 1971

15. Wages liable to tax
16. Exemption for wages paid to apprentices
17. Payment reports and returns
18. New section 17 substituted
 17. Time for payment of tax

PART 5—STAMPS ACT 1958

19. Principal Act
20. Amendment of section 28
21. New section 28A inserted
 - 28A. Remission of penalty
22. Amendment of section 60F
23. New section 63B inserted
 - 63B. Refurbished lots
24. New section 67A inserted
 - 67A. Duty in respect of 2 or more transactions
25. Transitional provision for new section 67A
26. Refunds
27. Rental duty
28. Transfer of functions to Comptroller
29. New subdivision (11c) inserted

(11c)—Superannuation funds

- 111H. Definitions
- 111I. Exemption from duty
30. Duty on transfer of marketable securities
31. Permitted buy-backs of shares
32. Bookmakers' statements

PART 6—GENERAL AMENDMENT OF TAXATION ACTS

33. References to Corporations law

PART 7—AMENDMENT OF OTHER ACTS

34. Stamps (Further Amendment) Act 1993
35. Taxation (Interest on Overpayments) Act 1986
36. Taxation (Reciprocal Powers) Act 1987
37. Employment and Training Act 1981



Victoria

No. 119 of 1994

State Taxation (Amendment) Act 1994

[Assented to 20 December 1994]

The Parliament of Victoria enacts as follows:

PART 1—PRELIMINARY

1. *Purpose*

The purpose of this Act is to make amendments to certain taxation Acts.

2. *Commencement*

- (1) Subject to this section, this Act comes into operation on the day on which it receives the Royal Assent.
- (2) Section 34 is deemed to have come into operation on 23 November 1993.
- (3) Section 10 is deemed to have come into operation on 10 November 1994.

State Taxation (Amendment) Act 1994
Act No. 119/1994

s. 3

- (4) Sections 9, 12, 14, 15 and 16 come into operation on 1 January 1995.
- (5) Sections 17, 18 and 37 come into operation on 1 July 1995.
- (6) Section 7 comes into operation on a day to be proclaimed.
- (7) If section 7 does not come into operation within the period of 6 months beginning on, and including, the day on which this Act receives the Royal Assent, it comes into operation on the first day after the end of that period.

PART 2—DEBITS TAX ACT 1990

No. 78/1990
as amended
by Nos
76/1992 and
6/1993.

3. *Principal Act*

In this Part, the **Debits Tax Act 1990** is called the Principal Act.

4. *New sections 3 and 4 substituted*

For sections 3 and 4 of the Principal Act **substitute—**

3. *Definitions*

(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 34;

“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 26;

“cheque”, in relation to an account, means an order in writing, drawn on

State Taxation (Amendment) Act 1994
Act No. 119/1994

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;

“Commissioner” means the Comptroller of Stamps under the **Stamps Act 1958**;

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

“Deputy Commissioner” means a Deputy Comptroller of Stamps under the **Stamps Act 1958**;

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

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

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

“excluded debit” means a debit—

- (a) made to an account kept with a financial institution in the name of—

- (i) the Governor-General or the Governor of a State;
- (ii) a person who, but for section 8 (3) and (4) of the Commonwealth Act as in force immediately before the commencement of this Act, would have been entitled to exemption from the tax within the meaning of the Commonwealth Act by virtue of any law of the Commonwealth, 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 his private or domestic affairs, other than purposes related to activities that constitute the carrying on of a business by that person in Victoria;
- (iii) an organisation other than—
 - (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; or

State Taxation (Amendment) Act 1994
Act No. 119/1994

(C) a municipal corporation or other local governing body—

that, but for section 8 (3) and (4) of the Commonwealth Act as in force immediately before the commencement of this Act, would have been entitled to exemption from the tax within the meaning of the Commonwealth Act by virtue of any law of the Commonwealth, being a debit made in relation to a transaction or transactions carried out by or on behalf of the organisation wholly and exclusively in engaging in its official activities;

(iv) an organisation that is established by an agreement to which Australia is a party and which obliges Australia to grant that organisation an exemption from the tax, being a debit made in relation to a transaction or transactions carried out by or on behalf of the organisation wholly and exclusively in engaging in its official activities;

(v) a person who holds an office in an organisation established by an

agreement to which Australia is a party and which obliges Australia to grant the holder of that office an exemption from the tax, 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 his private or domestic affairs, other than purposes related to activities that constitute the carrying on of a business by that person in Australia;

- (vi) a government of a country other than Australia;
- (vii) 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

State Taxation (Amendment) Act 1994
Act No. 119/1994

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

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;

- (viii) 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 sub-paragraph (vii), 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;

(ix) 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 municipal corporation or other local governing body—

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

State Taxation (Amendment) Act 1994
Act No. 119/1994

- (x) an authority of the Commonwealth or of a State or Territory that is prescribed for the purposes of this sub-paragraph; 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 Victoria 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 Victoria; 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 the 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 made to an account kept with a financial institution that is an offshore banking unit (within the meaning of Division 11A of Part III of the Income Tax Assessment Act 1936 of the Commonwealth), being a debit made in relation to an "offshore banking activity" (within the meaning of section 121D of the Income Tax Assessment Act 1936 of the Commonwealth); or
- (e) that is included in a kind or class of debits that are prescribed for the purposes of this paragraph;

"exempt account" means an account kept in Victoria 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

State Taxation (Amendment) Act 1994
Act No. 119/1994

- previously made to the account; or
- (b) that is made for the purpose of deducting an amount under sub-section 221YH3C (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 made for the purpose of recovering from the account holder an amount in respect of an amount paid or payable under the **Financial Institutions Duty Act 1982**; or
 - (e) that is included in a kind or class of debits that are 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;
- (b) a body corporate;
- (c) a partnership; and
- (d) any other unincorporated association or body of persons;

“tax” means tax imposed by Part 2;

“taxable account” means an account (other than an exempt account) kept in Victoria;

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

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

- (2) For the purposes of this Act, a person shall be taken to have been a resident of Victoria at a particular time if—

State Taxation (Amendment) Act 1994
Act No. 119/1994

- (a) in the case of a person other than a company—
 - (i) that person resided in Victoria at that time; or
 - (ii) except in the case where the Commissioner is satisfied that the person's permanent place of residence at that time was outside Victoria—that person was domiciled in Victoria at that time;
 - (b) in the case of a company being a body corporate—
 - (i) the company was incorporated in Victoria at that time; or
 - (ii) if the company was incorporated outside Victoria at that time, at that time the company carried on business in Victoria and either—
 - (A) had its central management and control in Victoria; or
 - (B) had its voting power controlled by shareholders who were residents of Victoria; 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 Victoria at that time.
- (3) Where a debit made to an account is subsequently reversed, the debit shall, for the purposes of this Act, 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 sub-paragraph (a) (ix) of the definition of "excluded debit" in sub-section (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 shall be deemed 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 34 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 shall—

(c) in the case of a partnership—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—be read as a reference to each member of the committee of management of the association or body.

State Taxation (Amendment) Act 1994
Act No. 119/1994

- (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 34 or 53) or other amount, that liability shall be deemed 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 is a reference to a liability of a person to the State arising under, or by virtue of, an Act of which the 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.

4. Debits

- (1) 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 shall be treated as being separate debits in relation to each of those account transactions.
- (2) 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.

5. *New Parts 7 to 12 inserted*

For section 21 of the Principal Act substitute—

'PART 7—ADMINISTRATION

21. *General administration of Act*

- (1) The Commissioner has the general administration of this Act.
- (2) Each Deputy Commissioner has all the powers and functions of the Commissioner under this Act.

22. *Delegation of functions*

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

23. *Secrecy*

- (1) In this section, unless the contrary intention appears, "officer" means a person—
 - (a) who is or has been appointed or employed by the State; or
 - (b) to whom powers or functions have been delegated by the Commissioner—

and who, by reason of that appointment or employment, or in the course of the exercise of those powers or the performance of those functions, as the case may be, may acquire or has acquired information with respect to the affairs of any other person disclosed or obtained under this Act.

State Taxation (Amendment) Act 1994
Act No. 119/1994

s. 5

- (2) For the purposes of this section, a person who, although not appointed or employed by the State, performs services for the State shall be taken to be employed by the State.
- (3) Subject to this section, an officer who, either directly or indirectly, except for the purposes of this Act or otherwise in the performance of duties as an officer, and either while being, or after ceasing to be, an officer—
- (a) makes a record of any information with respect to the affairs of a second person; or
 - (b) divulges or communicates to a second person any information with respect to the affairs of a third person—

being information acquired by reason of, or in the course of, exercising powers or performing functions under this Act, is guilty of an offence.

Penalty: 100 penalty units or imprisonment for 2 years, or both.

- (4) An officer shall not be required to produce in court any return, assessment or notice of assessment or other document made or given in or for the purposes of this Act, or to divulge or communicate to a court a matter or thing that has come to his or her notice in the performance of his or her duties as an officer, except when it is necessary to do so for the purpose of carrying into effect the provisions of this Act.

- (5) Nothing in this section prohibits the Commissioner, a Deputy Commissioner or a person authorised by the Commissioner or by a Deputy Commissioner from communicating any information to—
- (a) a court or tribunal in connection with proceedings under an Act of which the Commissioner has the general administration; or
 - (b) a person performing as an officer a function or duty arising under this Act or any other Act administered by the Commissioner, for the purpose of enabling that person to carry out that function or duty.
- (6) Any person to whom information is communicated under sub-section (5) and any other person under his or her control are, in respect of that information, entitled to the same rights and privileges and subject to the same obligations and liabilities under sub-sections (3) and (4) as if they were officers.
- (7) For the purposes of sub-sections (3) and (6), an officer or person shall be deemed to have communicated information to another person in contravention of those sub-sections if he or she communicates that information to any Minister.
- (8) An officer shall, if and when required by the Commissioner or a Deputy Commissioner to do so, make an oath or declaration, in a manner and form specified by the Commissioner, to maintain secrecy in conformity with the provisions of this section.

PART 8—LIABILITY TO TAX

24. *When tax payable*

(1) Subject to this Act—

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

(b) tax to which an assessment made under section 33 (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 34 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.

25. *Recovery of tax by financial institutions*

- (1) If 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 sub-section (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 29.
- (3) A financial institution may debit an account with an amount that the account holder is, or the account holders are,

State Taxation (Amendment) Act 1994
Act No. 119/1994

liable to pay to the financial institution under sub-section (1).

- (4) If 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.

26. *Certificates of exemption from tax*

- (1) Where an account holder in respect of an account kept in Victoria applies to the Commissioner in accordance with this section for the issue of a certificate of exemption in relation to the account—
- (a) if the Commissioner is satisfied that all debits made, or to be made, to the account are, or are likely to be, either excluded debits or exempt debits—he or she shall issue a certificate of exemption in relation to the account; or
- (b) if the Commissioner is not so satisfied—he or she shall refuse the application and shall cause notice in writing of his or her 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 sub-section (6).

- (3) If the Commissioner—

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

(b) becomes satisfied that an eligible debit has been, or is to be, made to an exempt account—

he or she may, in his or her discretion, by writing signed by him or her, revoke the certificate.

- (4) Subject to sub-section (5), if—

(a) an eligible debit has been made to an exempt account; or

(b) the account holder or one or more of the account holders, as the case requires, 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, as the case requires, of the

State Taxation (Amendment) Act 1994
Act No. 119/1994

s. 5

exempt account, must, within 7 days, notify the Commissioner in writing accordingly.

(5) If—

(a) there are 2 or more account holders of an exempt account; and

(b) one of those account holders notifies the Commissioner in accordance with sub-section (4) of an eligible debit to, or expected to be made to, the exempt account—

the other account holder or account holders, as the case requires, are not required to notify the Commissioner under that sub-section of the eligible debit.

(6) If the Commissioner has revoked a certificate of exemption in relation to an account, he or she 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 shall furnish such information as the Commissioner requires in connection with his or her consideration of that application.

27. Offences relating to certificates of exemption

- (1) A person must not—
- (a) forge a certificate or utter a certificate knowing it to be forged;
 - (b) without lawful authority, alter or sign a certificate;
 - (c) deliver a document (not being a certificate) that purports to be a certificate; or
 - (d) knowingly represent that a certificate is in respect of an account other than the account in respect of which the certificate was issued.

Penalty: 100 penalty units or imprisonment for 2 years, or both.

- (2) In sub-section (1), “certificate” means a certificate of exemption.

PART 9—RETURNS AND ASSESSMENTS

28. Returns in respect of taxable debits

- (1) If, in any month, a taxable debit is made to a taxable account kept with a financial institution, the financial institution must, not later than 14 days after the end of that month or such later date as the Commissioner allows, furnish to the Commissioner a return, or, where sub-section (2) applies, returns, relating to all taxable debits made during that month to taxable accounts kept with the financial institution.
- (2) A financial institution may, with the consent of the Commissioner, furnish separate returns under sub-section (1) in

State Taxation (Amendment) Act 1994
Act No. 119/1994

s. 5

relation to taxable debits made to taxable accounts kept with a particular branch or branches of the financial institution.

- (3) If the Commissioner has reason to believe that an account holder is liable to pay tax by virtue of section 8 (2) in respect of an eligible debit or eligible debits made to an account, the Commissioner may, by notice in writing, require that account holder to furnish to him or her, within a time specified in the notice, not being a time earlier than 21 days after the day on which the notice is given, a return relating to all eligible debits in respect of which that account holder is liable to pay tax by virtue of section 8 (2) during the period specified in the notice.
- (4) A return under this section must be in accordance with a form approved by the Commissioner and shall contain such particulars as are required by the form.

29. Refunds

- (1) Proceedings for the refund or recovery of tax paid under, or purportedly paid under, this Act, whether before or after the commencement of section 5 of the **State Taxation (Amendment) Act 1994**, must not be brought, whether against the Commissioner or otherwise, except as provided in this section.
- (2) If a person claims to be entitled to receive a refund of or to recover tax paid under, or purportedly paid under, this Act, the person must lodge with the Commissioner within 3 years after the payment was made an application in the

prescribed form for the refund of the payment.

(3) If—

- (a) a person has lodged an application for the refund of an amount in accordance with sub-section (2); and
- (b) the Commissioner has not, within the period of 3 months after the application was lodged—
 - (i) refunded the amount; or
 - (ii) applied the amount in accordance with sub-section (6) (d); or
 - (iii) refunded part of the amount and applied the remainder in accordance with sub-section (6) (d)—

or has, in writing given to the person within that period, refused to make a refund, the person may, within 3 months after the end of that period or after that refusal, whichever first occurs, bring proceedings for the recovery of the amount, or, if the Commissioner has refunded or applied part, the remainder of the amount.

- (4) Sub-section (3) applies whether or not the period for bringing proceedings for the refund or recovery of the amount prescribed by section 20A (1) of the **Limitation of Actions Act 1958** has expired.
- (5) Sub-sections (1) and (2) do not apply to a person if the person claims to be entitled to receive a refund or to recover tax paid under, or purportedly paid

State Taxation (Amendment) Act 1994
Act No. 119/1994

under, this Act by reason of the invalidity of a provision of this Act.

(6) If—

(a) an application for a refund is lodged with the Commissioner in accordance with sub-section (2); and

(b) the Commissioner finds that an amount has been overpaid by the applicant—

the Commissioner—

(c) must refund the overpaid amount; or

(d) must—

(i) apply the overpaid amount against any liability of the applicant to the State, being a liability arising under, or by reason of, an Act of which the Commissioner has the general administration; and

(ii) refund any part of the overpayment that is not so applied.

(7) If, under this section, the Commissioner determines to refund an amount, the amount is payable from the Consolidated Fund which is to the necessary extent appropriated accordingly.

(8) In this section, “proceedings” includes—

(a) seeking the grant of any relief or remedy in the nature of certiorari, prohibition, mandamus or quo warranto, or the grant of a declaration of right or an injunction; or

(b) seeking any order under the
Administrative Law Act 1978.

30. Refunds to be paid to person entitled

(1) The Commissioner must not make a refund of tax unless satisfied that the person to whom the refund is payable (in this section called "the applicant")—

(a) has not charged to, or recovered from, and will not charge to, or recover from, any other person any amount in respect of the whole or any part of that tax; or

(b) if the applicant has so charged or recovered any such amount, will reimburse, or will take all reasonable steps to reimburse, each such other person for the amount so charged or recovered.

(2) If a refund is made to an applicant to whom sub-section (1) (b) applies—

(a) the applicant must—

(i) not later than 90 days after receiving the refund, reimburse each other person for the amount charged to or recovered from that person; and

(ii) notify the Commissioner in writing not later than 7 days after that period of 90 days that all amounts charged or recovered have been reimbursed; or

(b) if any such amount is not reimbursed within that period of 90 days, the applicant must not later

State Taxation (Amendment) Act 1994
Act No. 119/1994

than 7 days after that period of 90 days—

- (i) notify the Commissioner in writing of the amounts not reimbursed; and
- (ii) pay those amounts to the Commissioner, together with interest at the specified rate from the date the refund was made to the date of payment.

Penalty: 50 penalty units.

- (3) An amount payable under sub-section (2) (b) (ii) is a debt due from the applicant to the Crown.
- (4) In this section, “specified rate” means such percentage, not exceeding 20 per centum per annum, as the Commissioner specifies when the refund is made.
- (5) In this section, “charge” includes pass on.

31. Application of section 30 to proceedings

Section 30 applies in respect of proceedings (within the meaning of section 29) for the refund or recovery of tax paid under, or purportedly paid under, this Act as if—

- (a) a reference in section 29 to the Commissioner (except in sub-section (2) (b) (ii)) were a reference to the court; and
- (b) a reference in section 29 to the making of a refund were a reference to the making of an order or decision that a refund be made.

32. *Special assessments*

- (1) A financial institution may, in relation to a return lodged by it under section 28, request the Commissioner, in accordance with this section, to make an assessment of the amount of tax that, in his or her opinion, is payable in respect of taxable debits to which that return relates.
- (2) A request under sub-section (1) must be made in writing within 30 days after the day on which the return was furnished to the Commissioner.
- (3) If a financial institution has made a request in accordance with sub-section (1) in relation to a return, the Commissioner must make an assessment of the amount of tax that, in his or her opinion, 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 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.

33. *Default assessments*

- (1) If the Commissioner is of the opinion that 2 or more persons are jointly and severally liable to pay tax on a taxable debit or taxable debits made to a taxable account (whether or not any return has been furnished), the Commissioner may make an assessment of the amount of the tax.

State Taxation (Amendment) Act 1994
Act No. 119/1994

- (2) If the Commissioner is of the opinion that a person is liable, or 2 or more persons are jointly and severally liable, to pay tax on an eligible debit or eligible debits made to an account other than a taxable account (whether or not any return has been furnished), the Commissioner may make an assessment of the amount of the tax.
- (3) As soon as practicable after an assessment is made in pursuance of this section, the 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 sub-section (1) applies—the financial institution with which the account is kept; or
 - (b) in a case to which sub-section (2) applies—the person liable, or the persons jointly and severally liable, to pay the tax.

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

- (1) If 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 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) If—

(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) If, but for this sub-section, an amount of additional tax, being an amount less than \$20, is payable by a person under this

State Taxation (Amendment) Act 1994
Act No. 119/1994

section in respect of an act or omission, then, by force of this sub-section, the amount of the additional tax shall be taken to be \$20.

- (4) The 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 shall be taken to preclude notice of an assessment made in respect of a person under sub-section (4) from being incorporated in notice of any other assessment made in respect of the person under this Act.
- (6) The Commissioner may, in the Commissioner's discretion, remit the whole or any part of the additional tax payable by a person under this section and may do so before an assessment is made under sub-section (4) of the additional tax.
- (7) A reference in sub-section (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;

- (b) made in answer to a question asked of a person under or pursuant to this Act or the regulations;
- (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 58 (1) (b) (ii).

- (8) A reference in sub-section (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;

State Taxation (Amendment) Act 1994
Act No. 119/1994

s. 5

“taxation officer” means a person exercising powers, or performing functions under, pursuant to or in relation to this Act or the regulations.

35. Amendment of assessments

- (1) Subject to this section, the Commissioner may, at any time within a period of 3 years after an assessment is made by him or her, amend the assessment by making such alterations or additions to it as he or she thinks necessary to correct an error in calculation or a mistake of fact or to prevent avoidance of tax.
- (2) Sub-section (1) does not prevent the amendment of an assessment after the expiration of the period referred to in that sub-section—
 - (a) pending any appeal or review under Part 10;
 - (b) in order to give effect to the decision upon any appeal or review under that Part;
 - (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 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) If, 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 shall be taken, for the purposes of section 53, never to have been payable; and
 - (b) subject to sub-section (4), the 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 and refund any part of the amount that is not so applied.
- (4) If by reason of an amendment under this section of an assessment made in pursuance of section 33 (1) a financial institution has overpaid tax, the amount of the tax overpaid shall not be refunded to the financial institution or applied against a liability of the financial institution to the State unless—
- (a) the amount of tax overpaid has not been recovered by the financial institution from an account holder; or
 - (b) if the amount of tax overpaid has been recovered from an account holder and the Commissioner is satisfied that that amount has been or will be refunded to that account holder by the financial institution.
- (5) As soon as practicable after the amendment under this section of an assessment, the Commissioner 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

State Taxation (Amendment) Act 1994
Act No. 119/1994

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, unless the contrary intention appears, “tax” includes additional tax under section 34 or 53.

36. *Validity of assessments*

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

PART 10—OBJECTIONS, REVIEWS AND APPEALS

37. *Definitions*

In this Part—

“**objector**” means a person who has duly lodged, or is to be treated as having duly lodged, under section 38 an objection against a prescribed decision or an assessment;

“**prescribed decision**” means a decision by the Commissioner—

- (a) to refuse to issue a certificate of exemption;
- (b) to revoke a certificate of exemption;
- (c) specifying a day in a certificate of exemption as the day of commencement or expiry of the certificate;
- (d) in relation to an application made in accordance with

section 29 for a refund of an amount of tax.

38. *Objections*

- (1) A person dissatisfied with a prescribed decision or an assessment under this Act may, within 60 days after service on him or her of notice of that prescribed decision or assessment, lodge with the Commissioner an objection in writing against the prescribed decision or assessment stating fully and in detail the grounds on which he or she relies.
- (2) The Commissioner must consider the objection, and may either disallow it or allow it wholly or in part.
- (3) The Commissioner must cause notice in writing of his or her decision on the objection to be served, by post or otherwise, on the objector.
- (4) If 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) If a notice of assessment of tax incorporates a notice of one or more assessments of additional tax, the assessments shall, for the purposes of this Part, be regarded as one assessment.

39. *Request for reference*

An objector who is dissatisfied with a decision under section 38 on an objection by the objector may, within 60 days after service on the objector of notice of the decision, lodge with the

State Taxation (Amendment) Act 1994
Act No. 119/1994

Commissioner, in writing, a request to refer the decision to the Supreme Court.

40. *Applications for extension of time*

- (1) If 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 Commissioner together with an application in writing requesting the Commissioner to treat the objection as having been duly lodged.
- (2) If the period for the lodgment by an objector of a request under section 39 has ended, the objector may, notwithstanding that the period has ended, send the request to the 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 sub-section (1) or (2) must state fully and in detail the circumstances concerning, and the reasons for, the failure by the person to lodge the objection or request as required by this Act.

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

- (1) The Commissioner must consider each application made under section 40 (1) and may grant or refuse the application.
- (2) The Commissioner must give to the person who made the application notice in writing of the decision of the application.

- (3) A person who is dissatisfied with a decision under sub-section (1) in respect of an application made by the person may apply to the Supreme Court for review of the decision.
- (4) If an application under section 40 (1) has been granted, the person who made the application shall, for the purposes of this Part, be treated as having duly lodged the objection to which the application relates.

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

- (1) If the Commissioner receives an application under section 40 (2), the Commissioner must, as soon as practicable, send the application to the Supreme Court.
- (2) The sending of an application to the Supreme Court under sub-section (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 Commissioner.
- (3) The Supreme Court may grant or refuse the application.
- (4) If an application under section 40 (2) has been granted, the person must, for the purposes of this Part, be treated as having duly lodged the request to which the application relates.

43. *Reference to Court*

- (1) Where an objector duly lodges, or is to be treated as having duly lodged, a request under section 39, the

State Taxation (Amendment) Act 1994
Act No. 119/1994

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.

44. *Notice to refer*

- (1) Subject to sub-sections (2) and (3), if, within 60 days after receiving a request under section 39 in relation to a decision on an objection, the Commissioner does not comply with the request, the objector may give notice in writing to the Commissioner requiring the Commissioner to do so and the Commissioner must, within 60 days after receiving the notice, comply with the request.
- (2) If an application under section 40 in relation to a request has been granted the objector who made the request is not entitled to give notice under sub-section (1) of this section 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 section 39 in relation to a decision on an objection or, in a case to which sub-section (2) of this section applies, within 60 days after an application under section 40 in relation to a request has been granted, the Commissioner, by notice in writing served on the objector who made the request, requires the objector to give information relating to the objection, the Commissioner is not required to comply

with the request until the expiration of 60 days after the receipt by the Commissioner of that information.

45. *Procedure on review or appeal*

In proceedings under this Part on appeal to the Supreme Court—

- (a) the objector is, unless the Supreme Court otherwise orders, limited to the grounds stated in the objection; and
- (b) the burden of proving that a prescribed decision is incorrect, or that an assessment is excessive, lies on the objector.

46. *Decision of Supreme Court*

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.

47. *Implementation of decisions*

- (1) When a decision of the Supreme Court under this Part becomes final, the 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

State Taxation (Amendment) Act 1994
Act No. 119/1994

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 Full Court of the Supreme Court 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 section, “decision”, in relation to a court, includes the making of an order under section 46.

48. *Pending review or appeal not to affect assessment etc.*

- (1) The fact that a review or 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 review or appeal were pending.
- (2) In sub-section (1), “tax” includes additional tax under section 34 or 53.

49. *Variation of prescribed decisions*

- (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 Commissioner must cause notice in writing of the variation to be given to the objector;
 - (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 shall be taken, for the purposes of section 53, never to have been payable;

(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 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 and refund any part of the amount that is not so applied.

(2) In sub-section (1), unless the contrary intention appears, “tax” includes additional tax under section 34 or 53.

50. Evidence

In proceedings under this Part—

(a) the production of a document under the hand of the Commissioner or a Deputy 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 Commissioner or a Deputy 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.

PART 11—RECOVERY OF TAX

51. *Recovery of tax*

- (1) Tax is, upon becoming due and payable under this Act, a debt due to the State and payable to the Commissioner.
- (2) Any tax that is unpaid may be sued for and recovered in any court of competent jurisdiction by the Commissioner or a Deputy Commissioner suing in his or her official name.
- (3) In this section, “tax” includes additional tax under section 34 or 53.

52. *Extension of time and payment by instalments*

- (1) The Commissioner may in any case grant such extension of time for payment of tax, or permit payment of tax to be made by such instalments and within such time, as he or she 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 34.

53. Penalty for unpaid tax

- (1) If any tax remains unpaid after the time when it became due and payable, or would, but for section 52, have become due and payable, additional tax is due and payable by way of penalty by the person liable, or the persons jointly and severally liable, to pay the tax at the rate of 20% per annum on the amount unpaid, computed from that time or, where, under section 52, the Commissioner has granted an extension of time for payment of the tax or has permitted payment of the tax to be made by instalments, from such day as the Commissioner determines, not being a day prior to the day on which the tax was originally due and payable.
- (2) If additional tax is payable by a person under this section and—
 - (a) the Commissioner is satisfied that—
 - (i) the circumstances that contributed to the delay in payment of the tax were not due to, or caused directly or indirectly by, an act or omission of the person; and
 - (ii) the person has taken reasonable action to mitigate, or mitigate the effects of, those circumstances; or
 - (b) the Commissioner is satisfied that—
 - (i) the circumstances that contributed to the delay in payment of the tax were due to, or caused directly or

State Taxation (Amendment) Act 1994
Act No. 119/1994

s. 5

indirectly by, an act or omission of the person;

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

(iii) having regard to the nature of those circumstances, it would be fair and reasonable to remit the additional tax or part of the additional tax; or

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

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

(3) If 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 shall not be taken, for the purposes of sub-section (1), to have ceased 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 shall, by force of this paragraph, be reduced by—

- (i) in the 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) Despite anything contained in this section, the Commissioner may sue for recovery of any tax unpaid immediately after the expiry of the time when it becomes due and payable.
- (5) In this section, unless the contrary intention appears, “tax” includes additional tax under section 34.

54. Evidence

- (1) In any proceedings for the recovery of tax payable under this Act—
- (a) the production of a document under the hand of the Commissioner or a Deputy Commissioner purporting to be a copy of a notice of assessment is conclusive evidence of the due making of the assessment and that the amount and all the particulars of the assessment are correct;
 - (b) the production of a document under the hand of the Commissioner or a Deputy Commissioner purporting to be a copy of a document issued or given by him or her under this Act is conclusive evidence that the last-mentioned document was so issued or given;

State Taxation (Amendment) Act 1994
Act No. 119/1994

- (c) a document under the hand of the Commissioner or a Deputy Commissioner purporting to be a copy of, or extract from, a return or notice of assessment is prima facie evidence of the matter set out in the document to the same extent as the original return or notice would be if it were produced; and
 - (d) a certificate in writing signed by the Commissioner or a Deputy Commissioner certifying that a sum specified in the certificate was, at the date of the certificate, due by a person to the State in respect of amounts payable to the Commissioner under this Act is prima facie evidence of the matters stated in the certificate.
- (2) In this section, “tax” includes additional tax under section 34 or 53.

PART 12—MISCELLANEOUS

55. *Return in relation to exempt accounts*

- (1) A financial institution must, within 2 months, or such further time as the Commissioner allows, after the end of the year ending on 31 December 1991, and within 2 months, or such further time as the Commissioner allows, after the end of each subsequent year, furnish to the Commissioner a return relating to all exempt accounts kept with the financial institution during the year concerned.
- (2) A return required to be furnished by a financial institution under sub-section (1) shall be—

- (a) if the Commissioner agrees to the return being in the form of a disc, tape or other device from which information required by the Commissioner to be contained in the return is capable of being reproduced—in that form; or
- (b) in any other case—in writing in accordance with a form approved by the Commissioner and containing such particulars as are required by that form.

56. *Representative officers etc. of financial institutions*

- (1) A bank that carries on banking business in Victoria 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 Commissioner, must ensure that, at all times after the expiration of one month after the commencement of this Act, or after the day on which the bank commences to carry on banking business in Victoria, whichever is the later, there is at least one officer who holds an appointment as such a representative officer and, in respect of each day on which a bank refuses or fails to comply with this sub-section (including the day of a conviction of an offence against this sub-section or any subsequent day), the bank is guilty of an offence.

Penalty: $\frac{1}{2}$ penalty unit.

- (2) A non-bank financial institution that carries on a business in Victoria that

State Taxation (Amendment) Act 1994
Act No. 119/1994

s. 5

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 Commissioner, must ensure that, at all times after the end of one month after the commencement of this sub-section, or after the day on which the institution commences to carry on that business in Victoria, whichever is the later, there is at least one officer who holds an appointment as such a representative officer.
- (3) A non-bank financial institution that contravenes sub-section (2) is, in respect of each day on which it contravenes that sub-section (including the day of a conviction of an offence against this sub-section or any subsequent day), guilty of an offence.

Penalty: $\frac{1}{2}$ penalty unit.

- (4) If 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 Commissioner in writing—
- (a) in the case of an appointment—of the name of the officer appointed and an address at which documents may be served on that officer; and

(b) in the case of a termination of appointment—of that fact—

and, if the financial institution refuses or fails so to notify the Commissioner within those 7 days, the financial institution is, in respect of each subsequent day until it so notifies the Commissioner (including the day of a conviction of an offence against this sub-section or any subsequent day), guilty of an offence.

Penalty: $\frac{1}{2}$ penalty unit.

(5) A financial institution may at any time notify the Commissioner in writing of a new address at which documents may be served on a representative officer of the financial institution in lieu of the address previously notified under this section.

(6) A document purporting to be a return furnished by a financial institution under this Act shall be deemed 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 sub-paragraph (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

State Taxation (Amendment) Act 1994
Act No. 119/1994

s. 5

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

57. Access to books etc.

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

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

Penalty for a contravention of this sub-section: 10 penalty units.

58. *Commissioner to obtain information and evidence*

- (1) The Commissioner may, for the purposes of this Act, by notice in writing, require any person, whether or not a person liable to pay tax under this Act, including any officer employed in or in connection with any Department of the Government of Victoria or by any public authority—
- (a) to furnish him or her with such information as he or she may require; and
 - (b) to attend before him or her or before any officer authorised by him or her in that behalf and—
 - (i) answer questions put to him or her concerning the business or other affairs of that person or of any other person; and

State Taxation (Amendment) Act 1994
Act No. 119/1994

s. 5

- (ii) produce all books, documents and other records in his or her custody or under his or her control relating to that business or those affairs.
- (2) The Commissioner may require the information or answers to be verified or given, as the case may be, on oath or affirmation and either orally or in writing, and for that purpose the Commissioner or an officer authorised by him or her may administer an oath or an affirmation.
- (3) The oath or affirmation to be taken or made by a person for the purposes of this section is an oath or affirmation that the information is or the answers will be true.
- (4) The regulations may prescribe scales of expenses to be allowed to persons required to attend under this section.

59. *Service on partnerships and associations*

Service, whether by post or otherwise, of a notice or document on a member of a partnership or on a member of the committee of management of an unincorporated association or other body of persons shall be deemed, 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.

60. *Supreme Court—limitation of jurisdiction*

It is the intention of this section to alter or vary section 85 of the **Constitution**

Act 1975 to the extent necessary to prevent the Supreme Court entertaining proceedings of a kind to which section 29 (1) applies, except as provided in that section.

61. Regulations

The Governor in Council may make regulations prescribing matters—

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act;

and, in particular, may make regulations prescribing penalties not exceeding 5 penalty units for offences against the regulations.

6. Amendment of Principal Act

In the Principal Act, Schedule 2 is repealed.

7. New sections 39 to 49 substituted

For sections 39 to 49 of the Principal Act substitute—

“39. Appeals

- (1) A person who is dissatisfied with the decision of the Commissioner on an objection made by that person may, within 60 days after service on him or her of notice of that decision or within such further time as the Commissioner may allow—

- (a) in writing request the Commissioner to refer the decision

State Taxation (Amendment) Act 1994
Act No. 119/1994

s. 7

to the Administrative Appeals Tribunal; or

(b) in writing request the Commissioner to treat the objection as an appeal and to cause it to be set down for hearing at the next sittings of the Supreme Court.

(2) The Commissioner must within 60 days of the request refer the decision for review or cause the objection to be set down for hearing accordingly.

(3) Notwithstanding the provisions of sub-section (2), the Commissioner may within 30 days after receiving a request to refer a decision to review or treat an objection as an appeal require the person by notice in writing to give further and better particulars of the objection and if, within 30 days after the giving of the notice—

(a) particulars are given, the Commissioner is not bound to refer the decision or cause the objection to be set down for hearing until 30 days after the Commissioner has received full details of the objection; or

(b) particulars are not given, the Commissioner must not refer the decision or cause the objection to be set down for hearing.

40. *References to Administrative Appeals Tribunal*

(1) Upon any review or appeal under this Act—

(a) unless the Administrative Appeals Tribunal or the Supreme Court

otherwise orders, the objector is limited to the grounds stated in the objection and the Commissioner is limited to the grounds upon which he or she has disallowed the objection; and

(b) the burden of proving—

(i) that any assessment is excessive; or

(ii) that any decision affecting the liability of an objector to pay tax or any determination is erroneous is upon the objector.

(2) If the person's liability or assessment has been reduced by the Commissioner after considering the objection, the reduced liability or assessment is the liability or assessment to be dealt with on the review or appeal.

41. *Proceedings on references and appeals*

(1) Subject to sub-section (2), where a decision is referred to the Administrative Appeals Tribunal, the Tribunal must review the decision, and may confirm, reduce, increase or vary the decision, assessment or determination.

(2) In default of the appearance of the objector before the Tribunal for the purpose of review, the Tribunal must confirm the decision, assessment or determination but, upon good cause shown, the Tribunal may within the prescribed time re-open the matter and review the decision, assessment or determination.

(3) For the purpose of reviewing the decision, assessment or determination,

State Taxation (Amendment) Act 1994
Act No. 119/1994

s. 7

the Tribunal has all the powers and functions of the Commissioner in making decisions, assessments and determinations under this Act and the decisions, assessments and determinations of the Tribunal and its decision upon review are for all purposes (except for the purpose of objections thereto and review thereof and appeals therefrom) deemed to be decisions, assessments and determinations of the Commissioner.

- (4) The Commissioner or the objector may, within 30 days after the decision of the Tribunal, appeal to the Supreme Court from any decision of the Tribunal under this section which, in the opinion of the Supreme Court, involves a question of law, and the Tribunal shall, upon the request of the Commissioner or the objector, refer to the Supreme Court any question of law arising before the Tribunal.

42. Appeals to Court

- (1) On the hearing of an appeal by the Supreme Court under this Act, the Supreme Court may make such order as it thinks fit and may by its order confirm, reduce, increase or vary the assessment.
- (2) The costs of an appeal under this Act shall be in the discretion of the Supreme Court.

43. Pending appeal not to delay payment of duty

- (1) The fact that an appeal or review is pending with respect to any liability or assessment shall not in the meantime interfere with or affect the liability or

assessment the subject of that appeal or review, and the tax may be recovered as if no appeal or review were pending.

- (2) If the liability or assessment is altered on appeal or review, a due adjustment shall be made, for which purpose amounts paid in excess shall be refunded, and amounts short paid shall be recoverable as arrears.

44. Provision of this Act to prevail

Where a provision of the **Administrative Appeals Tribunal Act 1984** is inconsistent with a provision of this Part, the provision of this Part prevails.”.

8. Transitional

Sections 13 and 14 of the applied provisions within the meaning of the Principal Act, as in force immediately before the commencement of this section, continue to apply in relation to tax paid before that commencement if, before that commencement—

- (a) proceedings for the recovery of the tax had been begun; or
- (b) a person had made an application in writing for a refund of the tax and—
 - (i) the Commissioner had not informed the applicant whether he or she had found the tax to have been overpaid; or
 - (ii) the Commissioner had informed the applicant that he or she had not found the tax to have been overpaid and, within the period of 12 months preceding that commencement, the applicant had disputed that finding in writing to the Commissioner.

State Taxation (Amendment) Act 1994
Act No. 119/1994

s. 9

PART 3—FINANCIAL INSTITUTIONS DUTY ACT 1982

No. 9850.
Reprinted to
No. 10168 and
subsequently
amended by
Nos 23/1986,
88/1988,
119/1988,
37/1987,
55/1987,
12/1989,
57/1989 (as
amended by
No. 34/1990),
68/1989,
55/1990,
76/1992 (as
amended by
No. 8/1993),
8/1993,
104/1993 and
45/1994.

9. Short term dealings

In section 7 (1) of the **Financial Institutions Duty Act 1982**, for paragraph (b) substitute—

“(b) the amount is a repayment of not less than \$50 000 of a loan, advance or deposit made by that person within 185 days before the amount is repaid;”.

10. Amendment of section 9

(1) After section 9 (1) of the **Financial Institutions Duty Act 1982** insert—

“(1A) If a financial institution credits or causes to be credited an amount of money to an account of a person kept by it in Victoria, not being an amount deposited by that person with the financial institution for the credit of the account, that amount is deemed, for the purposes of this Act, to have been received by the financial institution at the time it is so credited.”.

(2) An amount paid or purporting to be paid as financial institutions duty before the commencement of this section in respect of an amount referred to in section 9 (1A) of the **Financial Institutions Duty Act 1982** as amended by this section is, and is deemed always to have been, an amount duly payable as financial institutions duty in accordance with that Act as in force when the amount was paid.

11. *New section 11A inserted*

After section 11 of the **Financial Institutions Duty Act 1982** insert—

“11A. *Term deposit reinvestment*

- (1) Despite anything to the contrary in this Act, if money is invested on term deposit with a financial institution and the principal is not repaid immediately and in full upon the expiration of the term but is re-invested on a term deposit, the non-payment of the principal is not a dutiable receipt of the financial institution.
- (2) Despite sub-section (1), if an amount received by a person in the course of a short-term dealing is re-invested in whole or in part in such a manner that—
 - (a) the re-investment is not received in the course of a short-term dealing; and
 - (b) but for this section, the amount is not a dutiable receipt—the amount is deemed for the purposes of this Act to be a dutiable receipt.”

12. *Cheques and promissory notes*

In section 18 (3) of the **Financial Institutions Duty Act 1982**—

- (a) in paragraph (b), after “a cheque)” insert “or a promissory note”;
- (b) in paragraph (m) omit “or by reason of the dishonour of a cheque”;
- (c) after paragraph (m) insert—

“(ma) a receipt of money by a financial institution solely by reason of an amount

State Taxation (Amendment) Act 1994
Act No. 119/1994

paid in error into an account kept by the financial institution;

(mb) a receipt of money by a financial institution in respect of a cheque that is dishonoured;”.

13. Exemptions by Order

After section 25 (12) (i) of the **Financial Institutions Duty Act 1982** insert—

“and

(j) any other person declared by Order of the Governor in Council published in the Government Gazette to be a non-bank financial institution for the purposes of this section.”.

14. Exempt bank accounts

(1) In section 3 (1) of the **Financial Institutions Duty Act 1982**, in the definition of “financial institutions duty”, for “or 21” substitute “, 21 or 32”.

(2) After section 46 (3) of the **Financial Institutions Duty Act 1982** insert—

“(3A) If the Commissioner finds in any case that duty is payable by an exempt bank account holder, the Commissioner may—

(a) assess the amounts paid into or out of the exempt bank account otherwise than in accordance with this Act; and

(b) calculate the duty payable by the exempt bank account holder.

(3B) If the Commissioner has reason to believe or suspect that an exempt bank account holder is liable to pay financial institutions duty—

(a) the Commissioner may cause an assessment to be made of the amounts paid into or out of the exempt bank account otherwise than in accordance with this Act upon which, in the Commissioner’s

judgement, financial institutions duty ought to be imposed; and

- (b) the exempt bank account holder is liable to pay financial institutions duty on those amounts, except in so far as the holder establishes an objection or appeal that the assessment is excessive.
- (3C) An exempt bank account holder who becomes liable to pay financial institutions duty by virtue of an assessment under sub-section (3B) is also liable to pay, by way of additional duty, double the amount of that financial institutions duty but the Commissioner may, in any particular case, for reasons which he or she thinks sufficient, remit the additional duty or any part of it.”.
- (3) In section 46 (4) of the **Financial Institutions Duty Act 1982**, for “or depositor” substitute “, depositor or exempt bank account holder”.
- (4) After section 46 (6) of the **Financial Institutions Duty Act 1982** insert—
- ‘(7) In this section “**exempt bank account holder**” means a person in whose name an exempt bank account to which section 32 applies is kept.’.

PART 4—PAY-ROLL TAX ACT 1971

15. *Wages liable to tax*

In section 6 of the **Pay-roll Tax Act 1971**, for sub-section (1) substitute—

- “(1) Subject to section 10, the wages liable to pay-roll tax under this Act are wages that are paid or payable by an employer for services performed or rendered during a month or part of a month and—
- (a) are wages that are paid or payable in Victoria, other than wages so paid or payable for—

No. 6154.
Reprinted to
No. 14/1991
and
subsequently
amended by
Nos 76/1992,
9/1993 and
104/1993.

State Taxation (Amendment) Act 1994
Act No. 119/1994

s. 16

- (i) services performed or rendered wholly in one other State; or
 - (ii) services performed or rendered by a person wholly outside Australia for more than 6 months after wages were first paid to that person for services so performed or rendered; or
 - (b) are wages that are paid or payable outside Victoria for services performed or rendered wholly in Victoria; or
 - (c) are wages that are paid or payable outside Australia for services performed or rendered mainly in Victoria.
- (1A) Sub-section (1) applies to wages paid or payable after the commencement of that sub-section (as substituted by the **State Taxation (Amendment) Act 1994**) for services performed or rendered by a person wholly outside Australia, even though the first payment for services so performed or rendered was made before that commencement.”.

16. Exemption for wages paid to apprentices

- (1) After section 10 (1) (j) of the **Pay-roll Tax Act 1971** insert—

“(k) to a trainee under—

- (i) a contract of training registered under section 69 of the **Vocational Education and Training Act 1990**; or
- (ii) a training agreement in a training scheme approved under section 51 of the **Vocational Education and Training Act 1990** which is registered under section 69 of that Act and is endorsed by the Minister administering this Act as a scheme to which an exemption under this Act is applicable;

- (1) to an apprentice or a person registered as a trainee under section 69 of the **Vocational Education and Training Act 1990**, being an apprentice or person who is employed as part of a group training scheme approved by the Minister administering that Act by notice in writing given to the Commissioner during any period during which—
- (i) the apprentice or person was or is employed as part of the scheme; and
 - (ii) the scheme is or was an approved scheme.”.
- (2) In section 10 of the **Pay-roll Tax Act 1971**, sub-sections (2) and (3) are repealed.

17. *Payment reports and returns*

In section 13 of the **Pay-roll Tax Act 1971**, for sub-section (2), substitute—

“(2) The Commissioner, by notice in writing given to an employer who is required to furnish returns under sub-section (1)—

- (a) may vary the time within which the employer is required to furnish returns under that sub-section;
- (b) may authorise the employer to furnish returns relating to such periods as are specified in the notice—

and the employer must, while the notice remains unrevoked, furnish returns accordingly.”.

18. *New section 17 substituted*

For section 17 of the **Pay-roll Tax Act 1971** substitute—

“17. *Time for payment of tax*

- (1) Each employer liable to pay pay-roll tax in respect of taxable wages must pay the

State Taxation (Amendment) Act 1994
Act No. 119/1994

pay-roll tax within 7 days after the close of the month during which the taxable wages were paid or payable.

(2) The Commissioner, by notice in writing given to an employer who is required to pay pay-roll tax—

(a) may vary the time within which the employer is required to pay the tax; or

(b) may authorise the employer to make payments in respect of such periods as are specified in the notice—

and the employer must, while the notice remains unrevoked, make payments accordingly.”.

PART 5—STAMPS ACT 1958

No. 6375.
Reprinted to
No. 50/1993
and
subsequently
amended by
Nos 103/1993,
104/1993,
18/1994,
37/1994 and
44/1994.

19. *Principal Act*

In this Part, the **Stamps Act 1958** is called the **Principal Act**.

20. *Amendment of section 28*

In section 28 of the Principal Act, sub-section (3) is **repealed**.

21. *New section 28A inserted*

After section 28 of the Principal Act **insert—**

“28A. *Remission of penalty*

The Comptroller of Stamps may, if he or she thinks fit, at any time after the first

execution of an instrument, mitigate or remit any penalty payable on stamping.”.

22. Amendment of section 60F

In section 60F of the Principal Act—

(a) in sub-section (1) (a) after “subdivision (4)” insert “or (4AB)”;

(b) in sub-section (1) (a), for sub-paragraph (ii) substitute—

“(ii) unless the transfer is duly stamped or an officer of the company, corporation or society has, by notice in writing, expressed the opinion that the transfer is, by reason of the exemptions under heading IV in the Third Schedule, other than clause (5) of those exemptions, exempt from duty or is a transfer that the Comptroller of Stamps is likely to find to be, or declare to be, exempt from duty; and”;

(c) in sub-section (1) (b), omit “or (4AB)”;

(d) in sub-section (2), after “the transfer” insert “and, if applicable, the notice of the officer of the company, corporation or society under sub-section (1) (a) (ii)”.

23. New section 63B inserted

After section 63A of the Principal Act insert—

‘63B. Refurbished lots

- (1) A reference to the consideration for the sale of real property that is a lot on a plan of subdivision within the meaning of the **Subdivision Act 1988** does not include a reference to an amount, attributable exclusively to that lot, in respect of refurbishment of that lot if—

State Taxation (Amendment) Act 1994
Act No. 119/1994

- (a) the transferor is the first registered proprietor within the meaning of the **Transfer of Land Act 1958** of that lot; and
- (b) the conveyance of that lot to the transferee is the first conveyance of the lot after registration of the plan of subdivision; and
- (c) the transferee has not entered into a contract for refurbishment of the lot, other than in respect of the refurbishment referred to above; and
- (d) the conveyance, when presented to or lodged with, the Comptroller of Stamps, is accompanied by—
 - (i) a copy of the building permit, or building approval or permit; and
 - (ii) a copy of the contract with the transferee for the refurbishment; and
 - (iii) a statutory declaration (whether included in the declaration under section 63A or in a separate document) by the transferor as to the prescribed matters and as to whether or not the transferor has entered into any agreement with the transferee in respect of works (other than refurbishment) to be undertaken in relation to the lot before the conveyance; and
 - (iv) if the Comptroller of Stamps so determines, a statutory declaration in the prescribed form by the transferee declaring that the transferee

has not entered into any contract, other than the contract referred to in sub-paragraph (ii), for the refurbishment of the lot; and

- (v) if the Comptroller of Stamps so determines, a statutory declaration in the prescribed form by the person that issued the building permit or building approval or permit.

- (2) In this section, “**refurbishment**” means building work for which a building permit has been issued under the **Building Act 1993** or for which a building approval or permit was granted under the **Building Control Act 1981**, being work for the conversion of an existing building for which such a permit or approval is required.’.

24. New section 67A inserted

After section 67 of the Principal Act insert—

‘67A. Duty in respect of 2 or more transactions

(1) If—

- (a) a person (“**the vendor**”) agrees to transfer any real property (“**the agreement**”) to another person (“**the first purchaser**”) (whether or not the agreement provides for that other person to nominate another person as purchaser); and
- (b) the conveyance of the real property executed by the vendor conveys the whole or any part of the real property not to the first purchaser but to another person (“**the**

State Taxation (Amendment) Act 1994
Act No. 119/1994

s. 24

transferee”) who has acquired, whether directly or indirectly, the whole or any part of the rights and interest under the agreement of the first purchaser in the real property—

the conveyance shall not be charged with duty in respect of the transfer from the vendor to the transferee but shall be separately and distinctly charged with duty in respect of—

- (c) the value of the real property in the agreement (whether or not the agreement has been discharged by performance, novation or agreement or has otherwise ceased to exist); and
 - (d) the value of the real property conveyed to the transferee; and
 - (e) if the transferee did not acquire those rights and interest directly from the first purchaser, the value of the real property in each other transaction or agreement as a result of which the rights and interest of the first purchaser in the real property were acquired.
- (2) For the purposes of sub-section (1), the value of the real property is—
- (a) if there was a consideration for the agreement or transaction in respect of which duty is chargeable—
 - (i) that consideration; or
 - (ii) the amount for which the real property might reasonably have been sold if it had been sold, free from encumbrances, in the open market on the date of the agreement or transaction

in respect of which duty is chargeable—

whichever is the greater; and

- (b) in any other case, the amount for which the real property might reasonably have been sold, free from encumbrances, in the open market on the date of the agreement or transaction in respect of which duty is chargeable.
- (3) A conveyance referred to in sub-section (1) is not required to be separately and distinctly charged with duty in accordance with that sub-section if—
- (a) the agreement was entered into by the first purchaser—
- (i) as agent for another person and with the authority in writing of the transferee to enter into the transaction on behalf of the transferee; or
 - (ii) in anticipation of the incorporation of the transferee and, at the time of the transfer, the first purchaser or a relative of the first purchaser holds a bona fide beneficial interest in the transferee or in a holding company (within the meaning of the Corporations Law) of the transferee; or
 - (iii) as trustee for the transferee under a trust recorded in writing on or before the entering into of the agreement; or
- (b) the transferee is a body corporate and the first purchaser was a

State Taxation (Amendment) Act 1994
Act No. 119/1994

- director of the body corporate when the agreement was entered into; or
- (c) the transferee is a relative of the first purchaser; or
 - (d) the first purchaser was a related corporation of the transferee when the agreement was entered into; or
 - (e) a conveyance executed in respect of the agreement would be exempt from duty under another provision of this Act.
- (4) Duty charged under sub-section (1) (c), (d) or (e) in relation to an agreement or transaction is payable by the person acquiring rights or an interest under the agreement or transaction.
- (5) A transferee who pays duty in respect of a transaction or agreement payable under this section by another person, may recover the amount of that duty as a debt due to the transferee from the person.
- (6) For the purposes of this section but without limiting the ways in which a person may be taken to acquire the rights and interest of another person in real property, a person who has rights or an interest in real property (**“the first person”**) acquires the rights and interest of another person (**“the second person”**) in that real property if, as a direct or indirect result of an agreement, arrangement or understanding involving those persons (with or without other persons)—
- (a) the second person acquires rights or an interest in the real property; and
 - (b) the rights or interest of the first person in the real property are varied.

(7) In this section—

“**relative**”, in relation to a natural person, means a person who is—

- (a) a child or remoter lineal descendant of the person or of a spouse of the person;
- (b) a parent or remoter lineal ancestor of the person or of a spouse of the person;
- (c) a brother or sister of the person or of the spouse of the person;
- (d) a brother or sister of a parent of the person or of a parent of the spouse of the person;
- (e) a child of a brother or sister of the person or of the spouse of the person;
- (f) a child of a brother or sister of a parent of the person or of a parent of the spouse of the person;
- (g) the spouse of the person or a spouse of any person referred to in paragraph (a) to (f).’.

25. Transitional provision for new section 67A

The Principal Act as amended by section 24 does not apply to a transfer—

- (a) executed before the commencement of this section; or
- (b) executed on or after that commencement in pursuance of an agreement entered into before that commencement.

26. Refunds

In section 83 (3A) of the Principal Act, for “three months” substitute “3 years”.

State Taxation (Amendment) Act 1994
Act No. 119/1994

27. Rental duty

In section 131AC of the Principal Act—

- (a) in sub-section (1) (a) omit “by the registered person” (wherever occurring);
- (b) in sub-section (2), omit “by or on behalf of the registered person” (wherever occurring).

28. Transfer of functions to Comptroller

For “Minister” wherever occurring in sections 139, 141, 143, 144, 145, 148, 149, 150, 151, 153, 164 and 166 of the Principal Act substitute “Comptroller of Stamps”.

29. New subdivision (11C) inserted

After subdivision (11B) of Division 3 of Part II of the Principal Act insert—

(11C)—Superannuation funds

111H. Definitions

In this subdivision—

“complying approved deposit fund”
means a fund which is a complying ADF within the meaning of section 267 of the Income Tax Assessment Act 1936 of the Commonwealth;

“complying pooled superannuation trust” means a trust which is a pooled superannuation trust within the meaning of section 267 of that Act;

“complying superannuation fund”
means a fund which is a complying superannuation fund within the meaning of section 267 of that Act.

111i. Exemption from duty

The following are exempt from duty:

- (a) an instrument which contains or amends provisions governing a superannuation fund, an approved deposit fund or a pooled superannuation trust, being a fund or trust which, in the opinion of the trustees, will be a complying superannuation fund, a complying approved deposit fund or a complying pooled superannuation trust within 12 months after the instrument, or amending instrument, takes effect;
- (b) an instrument under which an employer agrees to participate in or contribute to a complying superannuation fund or a superannuation fund which, in the opinion of the trustees, will become a complying superannuation fund within 12 months after the employer agrees to participate in or contribute to the fund;
- (c) an instrument which the Comptroller of Stamps is satisfied is an agreement to convey or a conveyance of property between superannuation funds (which, in the opinion of the respective trustees, will be complying superannuation funds or complying approved deposit funds for the year in which the conveyance occurs) in connection with a person's ceasing to be a member of, or otherwise ceasing to be entitled to benefits in respect of, the transferor fund and becoming a member of, or

State Taxation (Amendment) Act 1994
Act No. 119/1994

otherwise becoming entitled to benefits in respect of, the transferee fund.’.

30. *Duty on transfer of marketable securities*

In heading IV in the Third Schedule to the Principal Act, under the heading “(A) TRANSFER OF MARKETABLE SECURITIES” for all words and expressions in clause 1 preceding paragraph (a) (where secondly occurring) substitute—

“1. Upon the transfer of a marketable security, being—

- (a) a share, or a right in respect of a share, in a company within the meaning of the Corporations Law incorporated in Victoria or in a body corporate formed or established under an Act;
- (b) a share, or an interest in a share, in a corporation incorporated outside Australia if its principal Australian register is in Victoria, or, if it does not keep a principal Australian register, its registered office is in Victoria;
- (c) a right or interest (whether described as a unit or sub-unit or otherwise) of a beneficiary under a unit trust scheme the principal register of which is in Victoria; or
- (d) a right or interest (whether described as a unit or sub-unit or otherwise) of a beneficiary under a unit trust scheme in relation to which no register exists in Australia and—
 - (i) that has as the manager of the scheme a person principally resident in Victoria; or
 - (ii) that does not have a manager but has a trustee that is a person principally resident in Victoria—

not being a transfer to perfect a sale or purchase to which subdivision (4AA) of Division 3 of Part II applies—”.

31. Permitted buy-backs of shares

In the Third Schedule to the Principal Act, after clause (19) under the heading “*Exemptions—*” under heading IV insert—

“(20) A transfer of a marketable security, being a share in a corporation, to the corporation where the corporation buys back the share as permitted by section 206CA of the Corporations Law.”.

32. Bookmakers’ statements

(1) In the Third Schedule to the Principal Act, in heading XV—

(a) in paragraph (a), for “Two and a quarter per centum of the said aggregate” substitute “2% of that aggregate”;

(b) in paragraph (b), for “One and three quarters per centum of the said aggregate” substitute “1.5% of that aggregate”.

(2) Heading XV of the Third Schedule to the Principal Act, as amended by sub-section (1), applies in respect of bets made by a bookmaker on or after 3 October 1994.

PART 6—GENERAL AMENDMENT OF TAXATION ACTS

33. References to Corporations Law

(1) In the Business Franchise (Tobacco) Act 1974—

(a) in section 2 (1)—

(i) in the definition of “corporation” for “section 5 (1) of the Companies (Victoria) Code” substitute “section 9 of the Corporations Law”; and

State Taxation (Amendment) Act 1994
Act No. 119/1994

- (ii) in the definition of “voting share” for “section 5 (1) of the Companies (Victoria) Code” substitute “section 9 of the Corporations Law”;
- (b) in section 2B (1) for “section 7 (5) of the Companies (Victoria) Code to be deemed for the purposes of that Act to be related to each other” substitute “section 50 of the Corporations Law related to each other for the purposes of that Act”;
- (c) in section 2C (4) for “section 7 (5) of the Companies (Victoria) Code, to be deemed, for the purposes of that Act, to be related to it” substitute “section 50 of the Corporations Law related to it for the purposes of that Act”.
- (2) In section 17 (2) of the **Debits Tax Act 1990** for “section 5 (1) of the Companies (Victoria) Code” substitute “section 82A of the Corporations Law”.
- (3) In the **Energy Consumption Levy Act 1982**—
 - (a) in section 2, in the definition of “books”, for “Companies (Victoria) Code” substitute “Corporations Law”;
 - (b) in section 2, in the definition of “corporation” for “section 5 (1) of the Companies (Victoria) Code” substitute “section 9 of the Corporations Law”;
 - (c) in section 2 in the definition of “voting share” for “section 5 (1) of the Companies (Victoria) Code” substitute “section 9 of the Corporations Law”;
 - (d) in section 47 (3) for “sections 528, 529 and 530 of the Companies (Victoria) Code” substitute “section 220 or 363 of the Corporations Law”.
- (4) In the **Financial Institutions Duty Act 1982**—
 - (a) in section 3—
 - (i) in the definition of “books” for “Companies (Victoria) Code” substitute “Corporations Law”;

- (ii) in paragraph (f) of the definition of “financial institution” for “Division 6 of Part IV of the Companies (Victoria) Code” **substitute** “section 9 of the Corporations Law”;
 - (iii) in paragraph (a) of the definition of “short-term dealer” for “a corporation that, under section 97 (7) (b) of the Companies (Victoria) Code” **substitute** “a body corporate that, under section 65 (1) (a) of the Corporations Law”;
 - (iv) in the definition of “voting share” for “section 5 (1) of the Companies (Victoria) Code” **substitute** “section 9 of the Corporations Law”;
 - (b) in section 12 (1) (a), for “section 7 (5) of the Companies (Victoria) Code deemed to be” **substitute** “section 50 of the Corporations Law”;
 - (c) in section 12 (1) (d) and (2) for “section 7 (5) of the Companies (Victoria) Code, deemed to be” **substitute** “section 50 of the Corporations Law”;
 - (d) in section 18 (3) (j) for “Division 6 of Part IV of the Companies (Victoria) Code” **substitute** “Division 5 of Part 7.12 of the Corporations Law”;
 - (e) in section 53 (7) (b) for “Companies (Victoria) Code” **substitute** “Corporations Law”;
 - (f) in section 72 (2) for “section 5 (1) of the Companies (Victoria) Code” **substitute** “section 82A of the Corporations Law”;
 - (g) in section 82 (3) for “sections 528, 529 and 530 of the Companies (Victoria) Code” **substitute** “section 220 or 363 of the Corporations Law”.
- (5) In the section 4 (1) of the **Gift Duty Act 1971**—
- (a) in the definition of “corporation” for “section 5 (1) of the Companies (Victoria) Code” **substitute** “section 9 of the Corporations Law”;

State Taxation (Amendment) Act 1994
Act No. 119/1994

- (b) in the definition of “listed corporation” for “section 7 (5) of the Companies (Victoria) Code deemed to be” substitute “section 50 of the Corporations Law”;
- (6) In section 9 of the **Land Tax Act 1958** for “Companies (Victoria) Code” (wherever occurring) substitute “Corporations Law”.
- (7) In the **Pay-roll Tax Act 1971**—
- (a) in section 3 (1)—
- (i) in the definition of “corporation” for “section 5 (1) of the Companies (Victoria) Code” substitute “section 9 of the Corporations Law”; and
- (ii) in the definition of “voting share” for “section 5 (1) of the Companies (Victoria) Code” substitute “section 9 of the Corporations Law”;
- (b) in section 9A (1A) (a) for “section 7 (5) of the Companies (Victoria) Code, to be deemed to be” substitute “section 50 of the Corporations Law”;
- (c) in section 9A (1F) for “section 7 (5) of the Companies (Victoria) Code to be deemed, for the purposes of that Code, to be” substitute “section 50 of the Corporations Law,”;
- (d) in section 9A (1K) for “section 7 (5) of the Companies (Victoria) Code, is deemed to be” substitute “section 50 of the Corporations Law, is”;
- (e) in section 25 (7) (b) for “Companies (Victoria) Code” substitute “Corporations Law”;
- (f) in section 47 (3) for “sections 528, 529 and 530 of the Companies (Victoria) Code” substitute “section 220 or 363 of the Corporations Law”.
- (8) In section 7 (3) (a) (iv) of the **Probate Duty Act 1962** for “Companies (Victoria) Code” substitute “Corporations Law”.

(9) In the Stamps Act 1958—

(a) in section 3—

(i) in the definition of “books” for “Companies (Victoria) Code” **substitute** “Corporations Law”; and

(ii) in the definition of “related corporation” for “section 7 (5) of the Companies (Victoria) Code deemed to be” **substitute** “section 50 of the Corporations Law”;

(b) in section 56 (1A) for “instrument of transfer under Division 8 of Part IV of the Companies (Victoria) Code” substitute “transfer under Division 3 of Part 7.13 of the Corporations Law”;

(c) in section 60 (1) for “Companies (Victoria) Code” substitute “Corporations Law”;

(d) in section 60G (1) (b) for “instrument of transfer under Division 8 of Part IV of the Companies (Victoria) Code” substitute “transfer under Division 3 of Part 7.13 of the Corporations Law”;

(e) in section 60H (1) (a) for “section 262 (5) of the Companies (Victoria) Code” substitute “section 214 (7) of the Corporations Law”;

(f) in section 75 (1), in paragraph (d) (iii) of the definition of “acquire” for “Part VIII of the Companies (Victoria) Code” substitute “Part 5.1 of the Corporations Law”;

(g) in section 75 (1) in the definitions of “corporation” and “director” for “Companies (Victoria) Code” substitute “Corporations Law”;

(h) in section 75 (5) (b) for “section 136 of the Companies (Victoria) Code” substitute “section 708 of the Corporations Law”;

(i) in section 75I (1) (a) for “a recognised stock exchange within the meaning of the Securities Industry (Victoria) Code” substitute “Australian Stock Exchange Limited”;

State Taxation (Amendment) Act 1994
Act No. 119/1994

s. 33

- (j) in section 75I (4) (d) for “section 7 of the Companies (Victoria) Code” **substitute** “section 9 of the Corporations Law”;
- (k) in section 75I (5) (a) for “section 7 of the Companies (Victoria) Code” **substitute** “section 9 of the Corporations Law”;
- (l) in section 75N (1) in paragraph (a) of the definition of “private unit trust scheme” for “Division 6 of Part IV of the Companies (Victoria) Code” **substitute** “Division 5 of Part 7.12 of the Corporations Law”;
- (m) in section 131AC (4) (b) for “section 7 (5) of the Companies (Victoria) Code deemed to be” **substitute** “section 50 of the Corporations Law”;
- (n) in section 137M (5) (e) for “Companies (Victoria) Code” **substitute** “Corporations Law”;
- (o) in section 137MB (6) (e) for “Companies (Victoria) Code” **substitute** “Corporations Law”;
- (p) in section 137N (1) (a) for “Companies (Victoria) Code” **substitute** “Corporations Law”;
- (q) in section 137N (1) (c) (i) for “section 97 of the Companies (Victoria) Code” **substitute** “section 1023 of the Corporations Law”;
- (r) in section 137N (1) (d) for “section 97 (7) (b) of the Companies (Victoria) Code” **substitute** “section 65 (1) (a) of the Corporations Law”;
- (s) in the Third Schedule, in heading IV (A), in Exemption (3) for “Companies (Victoria) Code” (wherever occurring) **substitute** “Corporations Law”;
- (t) in the Third Schedule, in heading IV (B) for “Companies (Victoria) Code” **substitute** “Corporations Law”;

- (u) in the Third Schedule, in heading VI (B), in Exemption (25) for “section 374 of the Companies (Victoria) Code” substitute “section 474 of the Corporations Law”.

PART 7—AMENDMENT OF OTHER ACTS

34. *Stamps (Further Amendment) Act 1993*

In section 6 of the **Stamps (Further Amendment) Act 1993**, after the proposed new section 137DA (5) (b), insert—

“and

- (c) the value, at the date of first execution of the instrument, of the property outside Australia secured by those instruments.”.

35. *Taxation (Interest on Overpayments) Act 1986*

No. 35/1986.

In section 3 (1) of the **Taxation (Interest on Overpayments) Act 1986**, in the definition of “decision to which this Act applies”, after paragraph (c) insert—

“; or

- (d) a decision of the Commissioner of Land Tax upon a decision on an objection under Part III of the **Valuation of Land Act 1960**.”.

36. *Taxation (Reciprocal Powers) Act 1987*

No. 37/1987
amended by
Nos 57/1989,
78/1990 and
80/1990.

In the **Taxation (Reciprocal Powers) Act 1987**, Part 5 is repealed.

37. *Employment and Training Act 1981*

- (1) The **Employment and Training Act 1981** is repealed.

State Taxation (Amendment) Act 1994
Act No. 119/1994

- (2) Despite sub-section (1), the **Employment and Training Act 1981** as in force immediately before the commencement of this section continues to apply to and in respect of rebates paid or payable in respect of a period before the repeal.

NOTES

1. *Minister's second reading speech—*

Legislative Assembly: 10 November 1994

Legislative Council: 7 December 1994

2. The long title for the Bill for this Act was "A Bill to amend the **Debits Tax Act 1990**, the **Financial Institutions Duty Act 1982**, the **Pay-roll Tax Act 1971**, the **Stamps Act 1958** and certain other Acts and for other purposes."

3. **Constitution Act 1975:**

Section 85 (5) statement:

Legislative Assembly: 10 November 1994

Legislative Council: 7 December 1994

Absolute majorities:

Legislative Assembly: 7 December 1994

Legislative Council: 13 December 1994

4. Section headings appear in bold italics and are not part of the Act. (See **Interpretation of Legislation Act 1984**.)