

# DEPARTURE TAX COLLECTION ACT 1978

## No. 119 of 1978

An Act relating to taxation imposed in respect of the departure of persons from Australia.

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

- Short title            1. This Act may be cited as the *Departure Tax Collection Act 1978*.<sup>1</sup>
- Commence-            2. This Act shall come into operation on the day on which the  
ment                    *Departure Tax Act 1978* comes into operation.
- Interpret-            3. In this Act, unless the contrary intention appears—  
ation                    “authorized officer” means a person who is an officer as defined by  
                              sub-section 5 (1) of the *Migration Act 1958* and is appointed by  
                              the Minister by instrument in writing to be an authorized officer  
                              for the purposes of this Act;  
                              “master”, in relation to a vessel, means the person in charge or com-  
                              mand of the vessel;  
                              “tax” means tax imposed by the *Departure Tax Act 1978*;  
                              “refund” means refund of tax under this Act;  
                              “vessel” includes an aircraft.
- Act binds the            4. This Act binds the Crown in right of the Commonwealth and of  
Crown                    each State.
- Persons                5. (1) Tax is not payable in respect of the departure from Australia  
exempt from            of a person who, at the time of his departure, is—  
tax                        (a) a person who is not 18 years of age, that is to say, the 18th anni-  
                              versary of whose birth has not occurred;  
                              (b) a person who is a member of the crew of the vessel on which he  
                              departs from Australia;  
                              (c) a person who is referred to in paragraph 8 (1) (b) of the  
                              *Migration Act 1958*;  
                              (d) a person who, being a person who has arrived in Australia, is  
                              not, for the purposes of the *Migration Act 1958*, deemed by sub-  
                              section 5 (2) of that Act to have entered Australia;  
                              (e) a person who is, for the purposes of the Agreement between  
                              Australia and the United States of America concerning the  
                              status of United States Forces in Australia signed on 9 May  
                              1963—

- (i) a member of the United States Forces or a member of the civilian component; or
  - (ii) a dependant of a person referred to in sub-paragraph (i);
- (f) a person who is, for the purposes of the Agreement between Australia and Papua New Guinea regarding the Status of Forces of each country in the territory of the other country signed on 26 January 1977—
- (i) a member of the Visiting Force of Papua New Guinea or a member of the civilian component; or
  - (ii) a dependant of a person referred to in sub-paragraph (i);
- (g) a person being deported or extradited from Australia; or
- (h) a person, or a person included in a class of persons, prescribed for the purposes of this section.
- (2) In paragraph (1) (b), “member of the crew” has the same meaning as in the *Migration Act* 1958.

6. (1) Tax in respect of the departure of a person from Australia is payable by the person before the departure. Liability to pay tax

(2) Where tax in respect of the departure of a person from Australia is not paid before the departure, the person is guilty of an offence punishable upon conviction by a fine not exceeding \$100.

(3) Where a person is convicted of an offence against sub-section (2), the court may, in addition to imposing a penalty under that sub-section, order the person to pay to the Commonwealth the amount of tax not paid by the person.

7. (1) Where an authorized officer has reasonable grounds for believing— Powers of authorized officers

- (a) that a person is about to depart from Australia for another country or for an external Territory; and
- (b) that any tax payable in respect of the departure of the person has not been paid, and will not be paid, before the departure,

the authorized officer may take such steps as are reasonably necessary to prevent the departure of the person, including, without limiting the generality of the foregoing, steps to prevent the person from going on board, or steps to remove the person from, any vessel which the authorized officer has reasonable grounds for believing is the vessel on which the departure will take place.

(2) An authorized officer may, for the purpose of ascertaining whether tax has been or will be paid in respect of the departure from Australia of a person who, in the opinion of the authorized officer, is about to depart from Australia for another country or for an external Territory, require that person, or any other person who may, in the

opinion of the authorized officer, have information with respect to the matter, to answer questions or produce documents to him, or both.

## Offences

8. (1) A person shall not, without reasonable excuse, refuse to answer a question or produce a document when required to do so in pursuance of sub-section 7 (2).

Penalty: \$100.

(2) A person shall not, when required to answer a question or produce a document in pursuance of sub-section 7 (2), make a statement, or produce a document, that is false or misleading in a material particular.

Penalty: \$500.

(3) A person shall not, without reasonable excuse, obstruct or hinder an authorized officer acting in the performance of his functions or the exercise of his powers under this Act.

Penalty: \$500.

(4) A person shall not assault or threaten an authorized officer acting in the performance of his functions or the exercise of his powers under this Act.

Penalty: \$1,000 or imprisonment for 6 months, or both.

## Refunds of tax

9. (1) A person is entitled to a refund of tax paid by him if—

- (a) the departure in respect of which the tax was paid does not take place;
- (b) the departure in respect of which the tax was paid takes place, but the person returns to Australia without having entered another country;
- (c) by virtue of section 5, tax was not payable in respect of the departure in respect of which the tax was paid; or
- (d) the person is entitled to a refund under the regulations.

(2) If an authorized officer, by instrument in writing, so directs, a refund to which a person is entitled by virtue of sub-section (1) shall be applied in discharge of the liability of the person for tax payable by the person in respect of a departure specified in the instrument, and a refund that is so applied shall be deemed to have been paid to the person.

(3) A person shall not—

- (a) obtain a refund that is not payable;
- (b) make, in or in connection with a claim for a refund, a statement that is false or misleading in a material particular; or
- (c) present, in connection with an application for a refund, a document that is false or misleading in a material particular.

Penalty: \$500.

(4) Where a person is convicted of an offence against sub-section (3), the court may, in addition to imposing a penalty under that sub-section, order the person to repay to the Commonwealth the amount of any refund incorrectly paid to the person.

10. (1) The Minister may make an arrangement with a person under which the person agrees to pay to the Commonwealth, in the manner provided in the arrangement, an amount equal to any tax that may become payable by any person to whom the arrangement applies. Special arrangements for payment of tax

(2) Where an arrangement under sub-section (1) applies to a person who departs from Australia for another country, the person shall, for the purposes of this Act, be deemed to have paid any tax payable in respect of that departure.

(3) An amount payable by a person to the Commonwealth under an arrangement under sub-section (1) may be recovered by the Commonwealth by action against the person in a court of competent jurisdiction.

11. (1) The regulations may make provision for and in relation to the payment of tax by the production to authorized officers or such other officers as are prescribed of tax stamps by or on behalf of persons liable to pay tax and, in particular, without limiting the generality of the foregoing, may make provision for and in relation to— Tax stamps and exemption stamps

- (a) the issue of tax stamps by the Commonwealth and the sale of tax stamps by the Commonwealth and other bodies or persons; and
- (b) refunds of amounts paid for the purchase of tax stamps that are not produced for the purpose of payment of tax or in respect of which a refund is otherwise payable under the regulations.

(2) The regulations may make provision for and in relation to the issue by the Commonwealth of stamps (in this sub-section referred to as “exemption stamps”) to or in respect of persons in respect of the departure of whom from Australia tax would be payable but for the operation of sub-section 5 (1) and, in particular, without limiting the generality of the foregoing, may make provision for and in relation to the production to authorized officers or such other officers as are prescribed of exemption stamps by or on behalf of such persons.

12. Tax that a person has become liable to pay and has not paid is a debt due to the Commonwealth by the person by whom the tax is payable. Recovery of tax

13. (1) In any prosecution for an offence against sub-section 6 (2) or in any proceedings for the recovery of tax, a statement or averment of the prosecutor or plaintiff in the information, complaint, claim or declaration is *prima facie* evidence of the matter so stated or averred. Averment

- (2) This section shall apply to any matter so averred although—
- (a) evidence in support or rebuttal of the matter averred or any other matter is given; or
  - (b) the matter averred is a mixed question of law and fact, but in that case the averment shall be *prima facie* evidence of the fact only.

(3) Any evidence given in support or rebuttal of a matter so averred shall be considered on its merits, and the credibility and probative value of such evidence shall be neither increased nor diminished by reason of this section.

(4) This section shall not lessen or affect any onus of proof otherwise falling on the defendant.

#### Delegation

**14.** (1) The Minister may, either generally or as otherwise provided by the instrument of delegation, by instrument in writing, delegate to an officer of the Department that deals with matters arising under this Act any of his powers under this Act, other than this power of delegation.

(2) A power so delegated, when exercised by the delegate, shall, for the purposes of this Act, be deemed to have been exercised by the Minister.

(3) A delegation under this section does not prevent the exercise of a power by the Minister.

#### Regulations

**15.** The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters required or permitted by this Act to be prescribed or necessary or convenient to be prescribed for carrying out or giving effect to this Act, and, in particular—

- (a) making provision for and in relation to claims for refunds, the allowance or payment of refunds and the recovery of refunds paid incorrectly; and
- (b) prescribing penalties not exceeding \$500 for offences against the regulations.

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#### NOTE

1. Act No. 119, 1978; assented to 29 September 1978.