Taxation (Interest on Overpayments) Act 1983

No. 12 of 1983

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Taxation (Interest on Overpayments) Act 1983

No. 12 of 1983

An Act relating to the payment of interest in respect of certain overpayments of tax

[Assented to 8 June 1983]

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

# PART I—PRELIMINARY

Short title

**1.** This Act may be cited as the *Taxation* (*Interest on Overpayments*) *Act 1983.*

Commencement

**2.** This Act shall be deemed to have come into operation on 14 February 1983.

Interpretation

**3. (1)** In this Act, unless the contrary intention appears—

“Board of Review” means a Board of Review constituted under the *Income Tax Assessment Act 1936;*

“Commissioner” means the Commissioner of Taxation;

“decision to which this Act applies” means—

(a) a decision of the Commissioner upon an objection;

(b) a decision of a Board of Review; or

(c) a decision of a court in relation to—

(i) an objection; or

(ii) a decision of a Board of Review;

“Deputy Commissioner” means a Deputy Commissioner of Taxation;

“income tax” means—

(a) income tax as defined in sub-section 6 (1) of the *Income Tax Assessment Act 1936;* or

(b) levy payable in accordance with Part VIIb of the *Income Tax Assessment Act 1936*;

“objection” means an objection under—

(a) section 185 of the *Income Tax Assessment Act 1936* (including that section as applied by—

(i) sub-section 128p (1), section 159f or sub-section 160al (1) of that Act; or

(ii) sub-section 4 (1), 15 (9), 18 (3) or 18 (8) of the *Taxation* (*Unpaid Company Tax*) *Assessment Act 1982*)*;*

(b) sub-section 78b (5), 82kl (9), 136af (6), 177f (7) or 220 (3) of the *Income Tax Assessment Act 1936*;or

(c) sub-section 22 (1) of the *Bank Account Debits Tax Administration Act 1982*;

“person” includes—

(a) a body politic;

(b) a body corporate;

(c) a partnership; and

(d) any other unincorporated association or body of persons;

“provisional tax” means provisional tax as defined in sub-section 221ya (1) of the Income Tax Assessment Act 1936;

“relevant tax” means—

(a) tax within the meaning of section 207 of the *Income Tax Assessment Act 1936;*

(b) withholding tax as defined in sub-section 6 (1) of the *Income Tax Assessment Act 1936*;

(c) an amount payable to the Commissioner under sub-section 221yn (1) of the *Income Tax Assessment Act 1936;*

(d) recoupment tax as defined in sub-section 3 (1) of the *Taxation* (*Unpaid Company Tax*) *Assessment Act 1982;*

(e) additional tax under sub-section 226 (1) of the *Income Tax Assessment Act 1936* as that sub-section is applied by

sub-section 4 (1) of the *Taxation (Unpaid Company Tax) Assessment Act 1982*;

(f) tax as defined in sub-section 3 (1) of the *Bank Account Debits Tax Administration Act 1982*;or

(g) additional tax under section 17 of the *Bank Account Debits Tax Administration Act 1982*;

“Second Commissioner” means a Second Commissioner of Taxation;

“year of income” means year of income as defined in sub-section 6 (1) of the *Income Tax Assessment Act 1936.*

**(2)** A reference in this Act to a liability of a person to the Commonwealth is a reference to a liability of the person to the Commonwealth arising under, or by virtue of, an Act of which the Commissioner has the general administration.

# PART II—ADMINISTRATION

General administration of Act

**4.** The Commissioner has the general administration of this Act.

Second Commissioner

**5. (1)** A Second Commissioner has all the powers, and may perform all the functions, of the Commissioner under this Act.

**(2)** Sub-section (1) does not apply in relation to section 4 or 7.

**(3)** The exercise of a power, or the performance of a function, of the Commissioner under this Act by a Second Commissioner does not prevent the exercise of the power, or performance of the function, by the Commissioner.

**(4)** The Commissioner has, in relation to an act done by a Second Commissioner, the same powers as if the act were an act done by himself.

References to Commissioner

**6.** A reference in this Act to the Commissioner includes—

(a) in respect of matters as to which a Second Commissioner has exercised a power or performed a function—a reference to the Second Commissioner;

(b) in respect of matters as to which a Deputy Commissioner has exercised a power or performed a function delegated to him by the Commissioner—a reference to the Deputy Commissioner; and

(c) in respect of matters as to which any other person has exercised a power or performed a function delegated to him by the Commissioner—a reference to the other person.

Annual report

**7. (1)** The Commissioner shall, as soon as practicable after 30 June in each year, prepare and furnish to the Minister a report on the working of this Act.

**(2)** The Minister shall cause a copy of a report furnished to him under sub-section (1) to be laid before each House of the Parliament within 15 sitting days of that House after the day on which he receives the report.

Secrecy

**8. (1)** In this section, “officer” means a person—

(a) who is or has been appointed or employed by the Commonwealth; or

(b) to whom powers or functions have been delegated by the Commissioner,

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

**(2)** Subject to sub-section (4), an officer who, either directly or indirectly, except for the purposes of this Act or otherwise than in the performance of his duties as an officer, and either while he is, or after he ceases 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 disclosed or obtained under or for the purposes of this Act and acquired by him by reason of his appointment or employment by the Commonwealth or in the course of such employment, or by reason of the delegation to him of powers or functions by the Commissioner, or in the course of the exercise of such powers or the performance of such functions, as the case may be, is guilty of an offence punishable on summary conviction by a fine not exceeding $5,000 or imprisonment for a period not exceeding one year, or both.

**(3)** Except when it is necessary to do so for the purpose of carrying into effect the provisions of this Act, an officer shall not be required to produce in court any document made or given under or for the purposes of this Act, or to divulge or communicate to a court a matter or thing with respect to information disclosed or obtained under or for the purposes of this Act and acquired by him by reason of his appointment or employment by the Commonwealth or in the course of such employment, or by reason of the delegation to him of powers or functions by the Commissioner, or in the course of the exercise of such powers or the performance of such functions, as the case may be.

**(4)** Nothing in sub-section (2) shall be taken to prohibit the Commissioner, a Second Commissioner, a Deputy Commissioner or a person authorized by the Commissioner, a Second Commissioner or a Deputy Commissioner from communicating any information to a person performing, as an officer, duties in relation to any Act administered by the Commissioner, for the purpose of enabling the person to perform those duties.

**(5)** For the purposes of sub-section (2), an officer shall be deemed to have communicated information to another person in contravention of that sub-section if he communicates that information to any Minister.

**(6)** An officer shall, if and when required by the Commissioner, a Second 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 III—ENTITLEMENT TO INTEREST

Entitlement to interest

**9. (1)** Subject to sections 11 and 12, where—

(a) an amount of relevant tax is paid by a person to the Commissioner (in this sub-section referred to as the “amount paid”); and

(b) as a result of a decision to which this Act applies, the whole or a part of the amount paid is overpaid by the person and is refunded to the person or applied against any liability of the person to the Commonwealth,

interest calculated in accordance with sub-sections (2) and (3) and section 10 is payable to the person in respect of—

(c) in a case where the whole of the amount paid is so refunded or applied—the amount paid; or

(d) in a case where a part of the amount paid is so refunded or applied—the part of the amount paid so refunded or applied.

**(2)** Where an amount of relevant tax has, whether by agreement or otherwise, been paid by a person to the Commissioner in instalments, each instalment shall, for the purposes of sub-section 10 (1), be treated as a separate amount of relevant tax paid by the person to the Commissioner.

**(3)** Where—

(a) an amount of relevant tax has, whether by agreement or otherwise, been paid by a person to the Commissioner in instalments; and

(b) as a result of a decision to which this Act applies, a part only of the amount of relevant tax is overpaid by the person and is refunded to the person or applied against any liability of the person to the Commonwealth,

the amount so refunded or applied shall, for the purposes of sub-section 10 (1), be attributed to the instalments in reverse order to the order in which the instalments were paid to the Commissioner.

**(4)** Where the Commissioner applies an amount that has been paid to him by a person against the liability of another person to pay an amount of relevant tax, the other person shall, for the purposes of this Act, be deemed to have paid to the Commissioner, to the extent of the amount so applied and on the day on which the amount is so applied, the amount of relevant tax.

**(5)** Where—

(a) an amount of provisional tax paid by a person to the Commissioner in respect of income of a year of income (in this sub-section referred to as the “relevant year of income”) is credited or refunded by the Commissioner under sub-section 221ye (1) of the *Income Tax Assessment Act 1936*;

(b) interest is payable to the person under this Act in respect of an amount of income tax refunded to the person, or applied against any liability of the person to the Commonwealth, as a result of a decision to which this Act applies in relation to an assessment of income tax in respect of the year of income next preceding the relevant year of income; and

(c) the amount of provisional tax, or a part of the amount of provisional tax, would, if it had not been so credited or refunded by the Commissioner, have been refunded to the person, or applied against any liability of the person to the Commonwealth, as a result of the decision,

the amount of provisional tax or the part of the amount of provisional tax, as the case may be, shall, for the purposes of this Act, be deemed to have been refunded to the person as a result of the decision on the day on which the amount of provisional tax was so credited or refunded.

Amount of interest

**10. (1)** Interest payable to a person by virtue of section 9 in respect of an amount of relevant tax, or the part of an amount of relevant tax, refunded to the person, or applied against any liability of the person to the Commonwealth, as a result of a decision to which this Act applies shall be calculated—

(a) in respect of the period that commenced on whichever is the latest of the following days, namely:

(i) the day on which notice of the assessment, determination or decision, being the assessment, determination or decision in relation to which the decision to which this Act applies was made, was issued to the person by the Commissioner;

(ii) the day on which the amount of relevant tax was paid to the Commissioner; or

(iii) 14 February 1983,

and ended on the day on which the amount of the relevant tax or the part of the amount of relevant tax, as the case may be, was so refunded or applied; and

(b) at such rate of interest as is, or such rates of interest as are, applicable under the regulations.

**(2)** Regulations made for the purposes of paragraph (1) (b) may prescribe different rates of interest in respect of different periods.

**(3)** Until regulations are made for the purposes of paragraph (1) (b), interest payable to a person by virtue of section 9 shall be calculated at the rate of 14.026% per annum.

**(4)** Where an amount of interest calculated in accordance with sub-section (1) is not a multiple of 1 cent, the amount of the interest shall be—

(a) if the amount of the interest is a multiple of 0.5 cent—increased by 0.5 cent; or

(b) in any other case—increased or decreased, as the case requires, to the nearest multiple of 1 cent.

Small amounts of interest not to be paid

**11.** Where the amount of interest that would, but for this section, be payable under this Act to a person in respect of an amount of relevant tax, or the part of an amount of relevant tax, refunded to the person, or applied against any liability of the person to the Commonwealth, as a result of a decision to which this Act applies is less than 50 cents, interest is not payable under this Act in respect of the amount of relevant tax or the part of the amount of relevant tax, as the case may be.

Certain agreements, &c., to remit additional tax

**12.** Where—

(a) the Commissioner has, in respect of an amount of relevant tax, being relevant tax of the kind referred to in paragraph (a) of the definition of “relevant tax” in sub-section 3 (1), that is payable, or will become payable, by a person (in this section referred to as the “applicable amount”), entered into an agreement or arrangement with the person before the commencement of the *Income Tax Assessment Amendment Act* (*No. 6*) *1982,* or otherwise indicated his intention to the person before the commencement of that Act, to remit the whole or a part of any additional tax payable under sub-section 207 (1) of the *Income Tax Assessment Act 1936* in respect of a part of the applicable amount on condition that another part of the applicable amount is paid by the person to the Commissioner within a particular period of time;

(b) the person, in pursuance of the agreement, arrangement or indication, pays a part of the applicable amount to the Commissioner (in this section referred to as the “amount paid”); and

(c) the amount paid is, whether in whole or in part, refunded to the person, or applied against any liability of the person to the Commonwealth, as a result of a decision to which this Act applies,

interest is not payable to the person under this Act in respect of the amount paid or the part of the amount paid so refunded or applied, as the case may be in respect of any period in relation to which the agreement, arrangement or indication, as the case may be, applies.

# PART IV—MISCELLANEOUS

Commissioner may apply interest as credit

**13.** The Commissioner may apply an amount of interest payable under this Act to a person in total or partial discharge of a liability of the person to the Commonwealth.

Payments to be made out of Consolidated Revenue Fund

**14.** Payments of interest under this Act shall be made out of the Consolidated Revenue Fund, which is appropriated accordingly.

Regulations

**15.** The Governor-General may make regulations, not inconsistent with this Act, 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.