

TASMANIA

TAXATION AND RELATED LEGISLATION (MISCELLANEOUS AMENDMENTS) BILL 2008

CONTENTS

PART 1 – PRELIMINARY

1. Short title
2. Commencement

PART 2 – DUTIES ACT 2001 AMENDED

3. Principal Act
4. Section 3 amended (Interpretation)
5. Section 6 amended (Imposition of duty on certain transactions concerning dutiable property)
6. Section 47 amended (Deceased estates)
7. Section 53 amended (Exemptions relating to various transactions)
8. Section 60 amended (When is a private corporation land-rich?)
9. Section 64 amended (What are interests and majority interests in private corporations?)
10. Section 90 substituted
 90. Assessment of duty
11. Section 181 amended (Cancellation of registration by the Commissioner)
12. Section 190 amended (What insurance is exempt from duty?)
13. Section 192 amended (Imposition of duty)

14. Section 199 amended (Exemptions)
15. Section 225 amended (Intergenerational rural transfers)
16. Section 227 amended (Miscellaneous exemptions)
17. Section 247 amended (Valuation of property)
18. Sections 252 and 253 repealed
19. Section 259A inserted
 - 259A. Savings and transitional provisions consequent on *Taxation and Related Legislation (Miscellaneous Amendments) Act 2008*

PART 3 – FIRST HOME OWNER GRANT ACT 2000 AMENDED

20. Principal Act
21. Section 13 amended (Eligible transaction)
22. Section 36A inserted
 - 36A. Access to records
23. Section 37 substituted
 37. False or misleading statements
24. Section 38 amended (Power to require repayment and impose penalty)
25. Section 39 amended (Power to recover amount paid in error, &c.)

PART 4 – JUDICIAL REVIEW ACT 2000 AMENDED

26. Principal Act
27. Schedule 1 amended (Decisions to which Act does not apply)

PART 5 – LAND TAX ACT 2000 AMENDED

28. Principal Act
29. Section 3 amended (Interpretation)
30. Section 6 amended (Principal residence land)
31. Section 7 amended (Primary production land)
32. Section 18 amended (Exempt trust land)
33. Section 19 amended (Other exempt land)
34. Section 25 amended (Subdivisions)
35. Section 29 substituted

- 29. Retirement villages
- 36. Section 37 amended (Land tax rebate)
- 37. Section 37A amended (Land tax rebate (Transitional circumstances))
- 38. Section 39 amended (Recovery of unpaid land tax)

PART 6 – TAXATION ADMINISTRATION ACT 1997 AMENDED

- 39. Principal Act
- 40. Section 41 amended (Reduction in penalty tax for disclosure)
- 41. Section 51 amended (Conditions of approval)
- 42. Section 55 substituted
 - 55. Recovery of tax, &c.
- 43. Section 79E amended (Disclosure of information)
- 44. Section 95 amended (Payment of interest)

**TAXATION AND RELATED LEGISLATION
(MISCELLANEOUS AMENDMENTS) BILL 2008**

*(Brought in by the Premier, the Honourable Paul Anthony
Lennon)*

A BILL FOR

An Act to amend the *Duties Act 2001*, the *First Home Owner Grant Act 2000*, the *Judicial Review Act 2000*, the *Land Tax Act 2000* and the *Taxation Administration Act 1997*

Be it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

PART 1 – PRELIMINARY

1. Short title

This Act may be cited as the *Taxation and Related Legislation (Miscellaneous Amendments) Act 2008*.

2. Commencement

- (1) Except as provided in this section, this Act commences on the day on which this Act receives the Royal Assent.
- (2) Part 5 commences on 1 July 2008.

Taxation and Related Legislation (Miscellaneous Amendments)
Act 2008
Act No. of

s. 3

Part 2 – Duties Act 2001 Amended

PART 2 – DUTIES ACT 2001 AMENDED

3. Principal Act

In this Part, the *Duties Act 2001** is referred to as the Principal Act.

4. Section 3 amended (Interpretation)

Section 3 of the Principal Act is amended as follows:

- (a) by inserting the following definition after the definition of “corresponding Act”:

“day-procedure centre” means premises at which a person is admitted for medical treatment and discharged on the same day, but does not include –

- (a) such premises conducted by or on behalf of the State or the Commonwealth; or
- (b) a hospital or other health service conducted by or on behalf of the State or the Commonwealth; or
- (c) a private hospital; or

*No. 15 of 2001

Taxation and Related Legislation (Miscellaneous Amendments)
Act 2008
Act No. of

Part 2 – Duties Act 2001 Amended

s. 4

(d) a residential care service;

(b) by inserting the following definition after the definition of “matrimonial property”:

“medical establishment” means –

(a) a day-procedure centre; or

(b) a private hospital; or

(c) a residential care service;

(c) by omitting the definition of “private hospital” and substituting the following definition:

“private hospital” means premises at which a person is provided for fee, gain or reward with medical, surgical or other treatment, or accommodation for the purposes of such treatment, and with ancillary nursing care but does not include –

(a) such premises conducted by or on behalf of the State or the Commonwealth; or

(b) a day-procedure centre; or

(c) a residential care service;

Taxation and Related Legislation (Miscellaneous Amendments)
Act 2008
Act No. of

s. 5

Part 2 – Duties Act 2001 Amended

- (d) by omitting paragraph (b) from the definition of “recognised stock exchange”;
- (e) by inserting the following definition after the definition of “replica”:

“residential care service” means premises where accommodation and personal care or nursing are provided to an elderly person who is not a member of the immediate family of the proprietor of the service, but does not include a service providing accommodation for persons otherwise living independently, even though the provision of accommodation may or may not include domestic services such as the preparation of meals, cleaning services and laundry services;

5. Section 6 amended (Imposition of duty on certain transactions concerning dutiable property)

Section 6(1)(b)(ii) of the Principal Act is amended by omitting “over dutiable property”.

6. Section 47 amended (Deceased estates)

Section 47(1) of the Principal Act is amended as follows:

Taxation and Related Legislation (Miscellaneous Amendments)
Act 2008
Act No. of

Part 2 – Duties Act 2001 Amended

s. 7

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- (a) by omitting from paragraph (b) “person.” and substituting “person; or”;
 - (b) by inserting the following paragraph after paragraph (b):
 - (c) a transfer of property in accordance with an order made under the *Testator’s Family Maintenance Act 1912*.

7. Section 53 amended (Exemptions relating to various transactions)

Section 53 of the Principal Act is amended by inserting after paragraph (a) the following paragraph:

- (b) a transfer of dutiable property consequent on an incorporated association under the *Associations Incorporation Act 1964* becoming a prescribed body corporate as provided for by that Act;

8. Section 60 amended (When is a private corporation land-rich?)

Section 60(1)(b) of the Principal Act is amended by omitting “80%” and substituting “60%”.

Taxation and Related Legislation (Miscellaneous Amendments)
Act 2008
Act No. of

s. 9

Part 2 – Duties Act 2001 Amended

9. Section 64 amended (What are interests and majority interests in private corporations?)

Section 64(2) of the Principal Act is amended by omitting “more than 50%” and substituting “50% or more”.

10. Section 90 substituted

Section 90 of the Principal Act is repealed and the following section is substituted:

90. Assessment of duty

An acquisition statement, in relation to the acquisition of a land use entitlement, that is required to be lodged with the Commissioner under section 88 is chargeable with duty at the general rate of duty set out in section 29 on the dutiable value of the land use entitlement acquired.

11. Section 181 amended (Cancellation of registration by the Commissioner)

Section 181(1)(a) of the Principal Act is amended by omitting “registration” and substituting “authorisation”.

Taxation and Related Legislation (Miscellaneous Amendments)
Act 2008
Act No. of

Part 2 – Duties Act 2001 Amended

s. 12

12. Section 190 amended (What insurance is exempt from duty?)

Section 190 of the Principal Act is amended as follows:

- (a) by inserting the following paragraph after paragraph (h):
 - (ha) insurance taken out by a self-insurer, within the meaning of the *Workers Rehabilitation and Compensation Act 1988*, to indemnify himself or herself against liability or payment in relation to workers compensation claims;
- (b) by omitting from paragraph (k) “private hospital” and substituting “medical establishment”;
- (c) by omitting from paragraph (k) “hospital;” and substituting “medical establishment;”.

13. Section 192 amended (Imposition of duty)

Section 192(b) of the Principal Act is amended by omitting “if the acquirer of that beneficial ownership is not, or is not to be, the registered operator of that motor vehicle under that Act”.

Taxation and Related Legislation (Miscellaneous Amendments)
Act 2008
Act No. of

s. 14

Part 2 – Duties Act 2001 Amended

14. Section 199 amended (Exemptions)

Section 199 of the Principal Act is amended as follows:

(a) by inserting the following paragraph after paragraph (d) in subsection (1):

(da) a notice of change of beneficial ownership of a motor vehicle if the person who has acquired the beneficial ownership is, or was immediately before the acquisition, the registered operator of the vehicle under a lease agreement;

(b) by inserting the following subsection after subsection (1):

(1A) In subsection (1)(da) –

“lease agreement” means an agreement by which a right to use a motor vehicle at any time and for any purpose is conferred on or acquired by a person.

Taxation and Related Legislation (Miscellaneous Amendments)
Act 2008
Act No. of

Part 2 – Duties Act 2001 Amended

s. 15

15. Section 225 amended (Intergenerational rural transfers)

Section 225(1) of the Principal Act is amended by omitting paragraph (a) and substituting the following paragraph:

- (a) relates to land that –
 - (i) is currently used, and which will continue to be used, in the business of primary production; and
 - (ii) is primary production land within the meaning of section 7 of the *Land Tax Act 2000*; and

16. Section 227 amended (Miscellaneous exemptions)

Section 227(1)(b) of the Principal Act is amended by omitting “private hospital” three times occurring and substituting “medical establishment”.

17. Section 247 amended (Valuation of property)

Section 247(4) of the Principal Act is amended by omitting “dutiable person.” and substituting “person liable to pay the duty.”.

Taxation and Related Legislation (Miscellaneous Amendments)
Act 2008
Act No. of

s. 18

Part 2 – Duties Act 2001 Amended

18. Sections 252 and 253 repealed

Sections 252 and 253 of the Principal Act are repealed.

19. Section 259A inserted

After section 259 of the Principal Act, the following section is inserted in Part 3:

259A. Savings and transitional provisions consequent on *Taxation and Related Legislation (Miscellaneous Amendments) Act 2008*

(1) In this section –

“**commencement day**” means the day on which the *Taxation and Related Legislation (Miscellaneous Amendments) Act 2008*, other than Part 5, commences;

“**loan agreement**” means an agreement made in accordance with section 253 in respect of a loan under section 252 that is in force immediately before the commencement day;

“**section 252**” means section 252 of this Act as in force immediately before the commencement day;

Taxation and Related Legislation (Miscellaneous Amendments)
Act 2008
Act No. of

Part 2 – Duties Act 2001 Amended

s. 19

“section 253” means section 253 of this Act as in force immediately before the commencement day.

(2) On and after the commencement day –

- (a) a loan agreement continues in force until it is completed or otherwise ends or is terminated according to its terms; and
- (b) sections 252 and 253 continue to apply in respect of that loan agreement as if they had not been repealed by the *Taxation and Related Legislation (Miscellaneous Amendments) Act 2008*.

Taxation and Related Legislation (Miscellaneous Amendments)
Act 2008
Act No. of

s. 20

Part 3 – First Home Owner Grant Act 2000 Amended

**PART 3 – FIRST HOME OWNER GRANT ACT 2000
AMENDED**

20. Principal Act

In this Part, the *First Home Owner Grant Act 2000** is referred to as the Principal Act.

21. Section 13 amended (Eligible transaction)

Section 13(3)(b) of the Principal Act is amended by inserting “home” after “comprehensive”.

22. Section 36A inserted

After section 36 of the Principal Act, the following section is inserted in Division 2:

36A. Access to records

(1) In this section –

“record” means –

- (a) any document; or
 - (b) any other information kept in any form or device.
- (2) For the purposes of an authorised investigation, an authorised officer may

*No. 19 of 2000

Taxation and Related Legislation (Miscellaneous Amendments)
Act 2008
Act No. of

Part 3 – First Home Owner Grant Act 2000 Amended

s. 23

inspect and take copies of a public record kept under an Act without payment of any fee required by that Act.

23. Section 37 substituted

Section 37 of the Principal Act is repealed and the following section is substituted:

37. False or misleading statements

- (1) A person must not, in giving any information under this Act, dishonestly –
- (a) make a statement that is false or misleading; or
 - (b) omit any matter from a statement if, without that matter, the statement is false or misleading; or
 - (c) provide a document that is false or misleading without informing the person to whom the document is provided of that fact.

Penalty: Fine not exceeding 150 penalty units.

- (2) A person must not, in giving any information under this Act, intentionally or negligently –

Taxation and Related Legislation (Miscellaneous Amendments)
Act 2008
Act No. of

s. 24

Part 3 – First Home Owner Grant Act 2000 Amended

- (a) make a statement that is false or misleading; or
- (b) omit any matter from a statement if, without that matter, the statement is false or misleading; or
- (c) provide a document that is false or misleading without informing the person to whom the document is provided of that fact.

Penalty: Fine not exceeding 100 penalty units.

24. Section 38 amended (Power to require repayment and impose penalty)

Section 38 of the Principal Act is amended as follows:

- (a) by omitting subsection (2) and substituting the following subsection:

(2) If –

- (a) an applicant (or former applicant) contravenes section 37(1) or (2); and
- (b) as a result of that contravention a first home owner grant, or part of such a grant, is paid under

Taxation and Related Legislation (Miscellaneous Amendments)
Act 2008
Act No. of

Part 3 – First Home Owner Grant Act 2000 Amended

s. 25

Division 5 of Part 2 or
applied under
section 19(3) –

the Commissioner, by the notice specified in subsection (1) or another notice, may impose a penalty not exceeding the amount the applicant (or former applicant) is required to repay under subsection (1).

- (b) by inserting in subsection (3) “(or former applicant)” after “the applicant”.

25. Section 39 amended (Power to recover amount paid in error, &c.)

Section 39 of the Principal Act is amended as follows:

- (a) by inserting in subsection (4) “and any interest payable in respect of that amount” after “applies”;
- (b) by inserting the following subsections after subsection (4):
- (4A) If a person fails to pay an amount to which this section applies, or any part of that amount, within the time specified in the notice under section 38 which requires that payment, the Commissioner,

Taxation and Related Legislation (Miscellaneous Amendments)
Act 2008
Act No. of

s. 25

Part 3 – First Home Owner Grant Act 2000 Amended

by written notice to the person,
may require the person to pay
interest on the unpaid amount.

(4B) If the Commissioner requires a
person to pay interest on an
amount under subsection (4A),
the person is liable to pay interest
on the amount, or part of the
amount, that is unpaid –

(a) on a daily basis from the
end of the last day for
payment specified in the
notice under section 38
until the day it is paid;
and

(b) at the interest rate
specified in section 35 of
the *Taxation
Administration Act 1997*.

(4C) Despite subsection (4B), a person
is not liable to pay interest on an
amount as required by that
subsection if the amount of
interest that would be payable
under subsection (4B) would be
less than \$20.

(c) by inserting in subsection (6) “or any
interest relating to such an amount” after
“applies”;

Taxation and Related Legislation (Miscellaneous Amendments)
Act 2008
Act No. of

Part 3 – First Home Owner Grant Act 2000 Amended

s. 25

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- (d) by inserting in subsection (6) “or interest” after “outstanding”.

Taxation and Related Legislation (Miscellaneous Amendments)
Act 2008
Act No. of

s. 26

Part 4 – Judicial Review Act 2000 Amended

PART 4 – JUDICIAL REVIEW ACT 2000 AMENDED

26. Principal Act

In this Part, the *Judicial Review Act 2000** is referred to as the Principal Act.

27. Schedule 1 amended (Decisions to which Act does not apply)

Clause 3 of Schedule 1 to the Principal Act is amended by omitting paragraphs (c), (d), (e), (f), (g), (h), (i), (j), (k) and (l) and substituting the following paragraphs:

- (c) *Duties Act 2001*;
- (d) *Gaming Control Act 1993*;
- (e) *Land Tax Act 2000*;
- (f) *Land Tax Rating Act 2000*;
- (g) *Pay-roll Tax Act 1971*;
- (h) *Racing Regulation Act 2004*;
- (i) *Taxation Administration Act 1997*;
- (j) *TT-Line Gaming Act 1993*;
- (k) *Vehicle and Traffic Act 1999*.

*No. 54 of 2000

PART 5 – LAND TAX ACT 2000 AMENDED

28. Principal Act

In this Part, the *Land Tax Act 2000** is referred to as the Principal Act.

29. Section 3 amended (Interpretation)

Section 3 of the Principal Act is amended as follows:

- (a) by inserting the following definition after the definition of “cooperative housing society”:

“day-procedure centre” means premises at which a person is admitted for medical treatment and discharged on the same day, but does not include –

- (a) such premises conducted by or on behalf of the State or the Commonwealth; or
- (b) a hospital or other health service conducted by or on behalf of the State or the Commonwealth; or

*No. 74 of 2000

Taxation and Related Legislation (Miscellaneous Amendments)
Act 2008
Act No. of

s. 29

Part 5 – Land Tax Act 2000 Amended

- (c) a private hospital; or
- (d) a residential care service;
- (b) by inserting the following definitions after the definition of “land value”:

“medical establishment” means –

- (a) a day-procedure centre; or
- (b) a private hospital; or
- (c) a residential care service;

“owner”, in respect of land, means –

- (a) a person appearing by a folio of the Register kept under section 33 of the *Land Titles Act 1980* to be entitled to the estate in fee simple in the land; or
- (b) a person, or a person of a class, prescribed by the regulations for the purposes of this definition;
- (c) by omitting the definition of “private hospital” and substituting the following definition:

“private hospital” means premises at which a person is provided for fee, gain or reward with medical,

Taxation and Related Legislation (Miscellaneous Amendments)
Act 2008
Act No. of

Part 5 – Land Tax Act 2000 Amended

s. 29

surgical or other treatment, or accommodation for the purposes of such treatment, and with ancillary nursing care but does not include –

- (a) such premises conducted by or on behalf of the State or the Commonwealth; or
- (b) a day-procedure centre; or
- (c) a residential care service;
- (d) by omitting the definition of “retirement village company” and substituting the following definitions:

“residential care service” means premises where accommodation and personal care or nursing are provided to an elderly person who is not a member of the immediate family of the proprietor of the service, but does not include a service providing accommodation for persons otherwise living independently, even though the provision of accommodation may or may not include domestic services such as the preparation of meals, cleaning services and laundry services;

Taxation and Related Legislation (Miscellaneous Amendments)
Act 2008
Act No. of

s. 29

Part 5 – Land Tax Act 2000 Amended

“retirement village” means a complex of residential premises, including adjacent land, established for retired persons and their spouses, or predominantly for retired persons and their spouses –

(a) if before or on becoming a resident of the complex a retired person or spouse, or both, is required to pay a contribution to the operator of the complex; and

(b) if any one or more of the following situations apply:

(i) a residential premises in the complex is occupied by a retired person and spouse by reason of a contract, lease or licence for the residency of the premises to which the retired person or spouse, or both, is a party;

Taxation and Related Legislation (Miscellaneous Amendments)
Act 2008
Act No. of

Part 5 – Land Tax Act 2000 Amended

s. 29

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- (ii) a residential premises in the complex is occupied by a retired person and spouse by a right of occupation conferred by the ownership of shares by the retired person or spouse, or both;
 - (iii) a residential premises in the complex is purchased from the operator of the complex by a retired person or spouse, or both, subject to a right or option of the operator to buy back those premises;
 - (iv) a residential premises in the complex is purchased from the operator of the complex by a retired person or spouse, or both,

Taxation and Related Legislation (Miscellaneous Amendments)
Act 2008
Act No. of

s. 29

Part 5 – Land Tax Act 2000 Amended

subject to
conditions
restricting the
right of the retired
person or spouse,
or both, to dispose
of those premises;

(v) other prescribed
circumstances
exist;

“retirement village company” means
a company that operates a
retirement village;

(e) by inserting the following definition after
the definition of “taxpayer”:

“transfer”, in relation to land, means
the passage of an estate or interest
in land from one person to
another person –

(a) by an act done by any
means by the transferor
with that intention,
regardless of whether or
not consideration is given;
or

(b) by operation of law,
including but not limited
to a transfer on forfeiture
of the land under an Act,
on inheritance or descent

Taxation and Related Legislation (Miscellaneous Amendments)
Act 2008
Act No. of

Part 5 – Land Tax Act 2000 Amended

s. 30

on the death of the person,
on the bankruptcy or
administration of the
person and on the order of
a court;

30. Section 6 amended (Principal residence land)

Section 6 of the Principal Act is amended as follows:

- (a) by omitting subsection (6);
- (b) by inserting the following subsection after subsection (7):
 - (8) If a person occupies residential premises in a retirement village as his or her principal place of residence, any other land owned by the person is not that person's principal place of residence.

31. Section 7 amended (Primary production land)

Section 7 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1)(c) "*Forestry Act 1920.*" and substituting "*Forestry Act 1920; or*";

Taxation and Related Legislation (Miscellaneous Amendments)
Act 2008
Act No. of

s. 31

Part 5 – Land Tax Act 2000 Amended

(b) by inserting the following paragraph after paragraph (c) in subsection (1):

(d) land in respect of which there is in effect a certified forest practices plan, being a plan certified by the Forest Practices Authority under section 19 of the *Forest Practices Act 1985* in accordance with the State Permanent Forest Estate Policy.

(c) by inserting the following subsection after subsection (1):

(1A) In subsection (1)(d) –

“certified forest practices plan” has the same meaning as in the *Forest Practices Act 1985*;

“Forest Practices Authority” means the body continued by section 4AA of the *Forest Practices Act 1985* under the name “Forest Practices Authority”;

“State Permanent Forest Estate Policy” means the policy of that name referred to in section 4C(fb) of the *Forest Practices Act 1985*.

Taxation and Related Legislation (Miscellaneous Amendments)
Act 2008
Act No. of

Part 5 – Land Tax Act 2000 Amended

s. 32

32. Section 18 amended (Exempt trust land)

Section 18(a) of the Principal Act is amended by omitting “private hospital, rest home” twice occurring and substituting “medical establishment”.

33. Section 19 amended (Other exempt land)

Section 19 of the Principal Act is amended by inserting after paragraph (b) the following paragraphs:

- (ba) land used for the purposes of a retirement village;
- (bb) land used for purposes which are ancillary to the purposes of a retirement village;

34. Section 25 amended (Subdivisions)

Section 25 of the Principal Act is amended as follows:

- (a) by omitting from paragraph (a) “sold,” and substituting “sold or transferred,”;
- (b) by omitting from paragraph (b) “sold,” and substituting “sold or transferred,”;
- (c) by omitting from paragraph (b) “unsold blocks.” and substituting “blocks not sold nor transferred.”.

Taxation and Related Legislation (Miscellaneous Amendments)
Act 2008
Act No. of

s. 35

Part 5 – Land Tax Act 2000 Amended

35. Section 29 substituted

Section 29 of the Principal Act is repealed and the following section is substituted:

29. Retirement villages

If a part of land owned by a retirement village company is exempt land, the Commissioner is to apportion the land value of the land between exempt land and general land.

36. Section 37 amended (Land tax rebate)

Section 37(1) of the Principal Act is amended by omitting paragraph (c) and substituting the following paragraph:

- (c) the owner during the financial year did not own –
 - (i) in Tasmania any other land classified as principal residence land; or
 - (ii) in another State or a Territory any land which in that State or Territory is treated for the purposes of an Act or other law that substantially corresponds to this Act as the principal residence of the owner.

Taxation and Related Legislation (Miscellaneous Amendments)
Act 2008
Act No. of

Part 5 – Land Tax Act 2000 Amended

s. 37

**37. Section 37A amended (Land tax rebate
(Transitional circumstances))**

Section 37A of the Principal Act is amended by inserting after subsection (3) the following subsection:

- (4) In this section, a person is an owner of land if the person is the owner of 50% or more of the principal residence land and 50% or more of the other land.

38. Section 39 amended (Recovery of unpaid land tax)

Section 39(1)(a) of the Principal Act is amended by omitting “is” and substituting “is, or was at the time the land tax was imposed or payable,”.

Taxation and Related Legislation (Miscellaneous Amendments)
Act 2008
Act No. of

s. 39

Part 6 – Taxation Administration Act 1997 Amended

**PART 6 – TAXATION ADMINISTRATION ACT 1997
AMENDED**

39. Principal Act

In this Part, the *Taxation Administration Act 1997** is referred to as the Principal Act.

40. Section 41 amended (Reduction in penalty tax for disclosure)

Section 41(2) of the Principal Act is amended by omitting “sufficient information to enable the nature and extent of the tax default to be determined.” and substituting “information that identifies the precise nature and extent of the tax default without the need for further investigation by the Commissioner.”.

41. Section 51 amended (Conditions of approval)

Section 51(2) of the Principal Act is amended by omitting “An approval” and substituting “Without limiting the conditions to which an approval may be subject, those conditions”.

*No. 74 of 1997

Taxation and Related Legislation (Miscellaneous Amendments)
Act 2008
Act No. of

Part 6 – Taxation Administration Act 1997 Amended

s. 42

42. Section 55 substituted

Section 55 of the Principal Act is repealed and the following section is substituted:

55. Recovery of tax, &c.

- (1) The Commissioner, in a court of competent jurisdiction, may do either or both of the following:
 - (a) recover an amount of tax that is due and unpaid;
 - (b) recover, as a debt due to the Crown, any costs and expenses incurred by the Commissioner in connection with the recovery, or attempted recovery, by any means of an amount of unpaid tax.
- (2) Before proceeding under subsection (1), the Commissioner may use any other lawful means to recover, or attempt to recover, an amount of unpaid tax and, if he or she does so, may also recover the reasonable costs and expenses incurred in using those other means.

43. Section 79E amended (Disclosure of information)

Section 79E(1) of the Principal Act is amended by omitting paragraphs (c), (d), (e), (f), (g), (h),

Taxation and Related Legislation (Miscellaneous Amendments)
Act 2008
Act No. of

s. 44

Part 6 – Taxation Administration Act 1997 Amended

(i), (j), (k) and (l) and substituting the following paragraph:

(c) a person or body specified in section 77(1)(e).

44. Section 95 amended (Payment of interest)

Section 95 of the Principal Act is amended as follows:

(a) by omitting “In” and substituting “(1) In”;

(b) by inserting the following subsection:

(2) The Commissioner is not required to pay interest under subsection (1) on an amount refunded unless the amount of interest exceeds \$20.00.