

TASMANIA

TAXATION AND RELATED LEGISLATION (MISCELLANEOUS AMENDMENTS) BILL (No. 2) 2011

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**TAXATION AND RELATED LEGISLATION
(MISCELLANEOUS AMENDMENTS) BILL (No. 2)
2011**

*(Brought in by the Treasurer, the Honourable Larissa Tahireh
Giddings)*

A BILL FOR

An Act to amend the *Duties Act 2001*, the *First Home Owner Grant Act 2000*, the *Land Tax Act 2000*, the *Payroll Tax Act 2008* 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 (No. 2) 2011*.

2. Commencement

- (1) Except as provided by this section, this Act commences on the day on which this Act receives the Royal Assent.
- (2) Part 5 commences on 1 July 2012.

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Part 1 – Preliminary

- (3) Part 7 is taken to have commenced on 25 October 2008.

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Part 2 – Duties Act 2001 Amended

s. 3

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 “medical establishment”:

“mineral tenement” has the meaning it has in the *Mineral Resources Development Act 1995*;

- (b) by inserting the following definition after the definition of “significant relationship”:

“special disability trust” has the meaning it has in section 1209L of the *Social Security Act 1991* of the Commonwealth;

*No. 15 of 2001

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Part 2 – Duties Act 2001 Amended

5. Section 9 amended (What is dutiable property?)

Section 9(1)(b) of the Principal Act is amended by omitting “within the meaning of the *Mineral Resources Development Act 1995*”.

6. Section 24 inserted

After section 23 of the Principal Act, the following section is inserted in Part 2:

24. Certain transactions concerning leases of commercial property

(1) The Commissioner, if satisfied that it would not be just and reasonable in the circumstances to charge duty on the dutiable value of all the dutiable property in a dutiable transaction, which transaction –

(a) consists of a grant, surrender or transfer of a lease of a commercial property; and

(b) involves goods that are dutiable property in accordance with section 9(1)(j) –

may disregard the value of all or any of the goods in determining the dutiable value of the property.

(2) For the purposes of subsection (1), a lease of a commercial property is a lease

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Part 2 – Duties Act 2001 Amended

s. 7

in respect of real property that is to be used for the purposes of a business, whether or not there are premises on the property that may be used in whole or in part as a residence.

- (3) The Commissioner may only exercise the discretion referred to in subsection (1) if satisfied that the dutiable transaction was not structured for the purpose of reducing or avoiding the payment of duty.

7. Section 54 inserted

After section 53 of the Principal Act, the following section is inserted in Part 6:

54. Exemptions relating to special disability trusts

Duty is not chargeable under this Chapter on –

- (a) a declaration of trust over property that is to be held by the trustee in the trustee's capacity as trustee for a special disability trust; or
- (b) a transfer of dutiable property to the trustee of a special disability trust for the purpose of the trust –

if the Commissioner is satisfied that –

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Part 2 – Duties Act 2001 Amended

- (c) the property is land on which is situated a dwelling that is to be used by the beneficiary of the trust as his or her main place of residence; or
- (d) the property is goods that are situated on land referred to in paragraph (c) or that are to be used on such land by the beneficiary of the trust.

8. Section 61 amended (Land holdings of private corporations)

Section 61 of the Principal Act is amended as follows:

- (a) by inserting the following subsection after subsection (1):

(1A) For the purposes of this Part –

- (a) an interest in a mineral tenement is taken to be an interest in land; and
- (b) an interest in a pipeline, within the meaning of the *Gas Pipelines Act 2000*, is taken to be an interest in land.

- (b) by inserting the following subsections after subsection (4):

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Part 2 – Duties Act 2001 Amended

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- (5) If a private corporation has an entitlement to, or interest in, land, anything that is part of the land as a fixture is to be taken into account in determining the extent of the private corporation's interest in land for the purposes of this Chapter even if the fixture is, or purports to be, the subject of an entitlement or interest separate from the ownership of the rest of the land.
- (6) A fixture is not to be taken into account for the purposes of subsection (5) if the Commissioner is satisfied that it would not be just and reasonable to take the fixture into account in the circumstances.
- (7) If –
- (a) a private corporation has an entitlement to, or interest in, something that is part of land as a fixture; and
 - (b) that entitlement or interest is, or purports to be, separate from the ownership of the rest of the land –

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Part 2 – Duties Act 2001 Amended

the private corporation is to be regarded as having an interest in land for the purposes of this Chapter to the extent of its entitlement to, or interest in, the fixture.

(8) For the purposes of subsections (5), (6) and (7), anything that –

(a) under the authority (whether direct or indirect) of a mineral tenement is fixed to land that is the subject of that mineral tenement; and

(b) would be part of that land as a fixture if the mineral tenement were a freehold estate in the land –

is to be taken to be part of land as a fixture.

9. Section 225 amended (Intergenerational rural transfers)

Section 225 of the Principal Act is amended as follows:

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Part 2 – Duties Act 2001 Amended

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- (a) by inserting the following subparagraph after subparagraph (iii) in subsection (1)(c):
 - (iiia) a company (other than as a trustee) to another company (other than as trustee) of which all the shareholders are relatives of all the shareholders of the first-mentioned company; or
 - (b) by inserting in subsection (1)(c)(v) “named” after “those”;
 - (c) by omitting from subsection (1)(c)(v) “named” second occurring;
 - (d) by omitting subsection (2) and substituting the following subsection:
 - (2) Duty is not chargeable under Chapter 3 on a relevant acquisition, within the meaning of section 67, of an interest in a farming company to the extent of the unencumbered value of the company’s farming property, if the interest is transferred from a person specified in a subparagraph of subsection (1)(c) to a person specified in the same subparagraph.
 - (e) by inserting the following subsection after subsection (3):

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Part 2 – Duties Act 2001 Amended

- (4) For the purposes of this section, a reference to a relative of a person is to be taken to include a reference to the person himself or herself.

10. Sections 259C and 259D inserted

After section 259B of the Principal Act, the following sections are inserted in Part 3:

259C. Transitional provisions consequent on repeal of *Revenue Legislation (Miscellaneous Amendments) Act 2002*

- (1) Any word or expression used in this section has the same meaning as in this Act, as in force immediately before the commencement of the *Revenue Legislation (Miscellaneous Amendments) Act 2002*.
- (2) A reference in this section to a provision of this Act is to be taken to be a reference to the provision as in force immediately before the commencement of the *Revenue Legislation (Miscellaneous Amendments) Act 2002*.
- (3) After 1 July 2002 –
- (a) a lessor is not required to produce to the Commissioner a lease instrument for periodic

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Bill (No. 2) 2011
Act No. of

Part 2 – Duties Act 2001 Amended

s. 10

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- assessment at any estimate date determined by the Commissioner under section 108 of this Act; and
- (b) any additional duty that would have been payable if the periodic assessment had been made is not payable; and
 - (c) any refund of duty that would have been payable if the periodic assessment had been made is not payable.
- (4) If duty has been paid or a liability to duty exists on a lease before 1 July 2002 and an application for a reassessment of duty paid on a lease instrument has been made under section 112 of this Act on or after 23 May 2002, the Commissioner may refuse to grant a refund of any duty that would have been refundable if this subsection, or section 32(3) of the *Revenue Legislation (Miscellaneous Amendments) Act 2002*, had not been enacted, if satisfied that, at any time after the termination of the lease, the lessee or an associated person has occupied the leased property, or substantially the same property, with the agreement, express or implied, of the lessor other than as a result of the sale of the property to the lessee or associated person.

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Part 2 – Duties Act 2001 Amended

- (5) A refund of duty is not payable on an application for a reassessment of duty paid on a lease instrument that is lodged under section 113 of this Act on or after 23 May 2002.

259D. Savings and transitional provisions consequent on repeal of *Revenue Measures Act 2005*

- (1) Notwithstanding the repeal of Chapter 6 of this Act by the *Revenue Measures Act 2005*, the Commissioner may recover from a mortgagor any mortgage duty that relates to a mortgage executed, or an advance or further advance made, before 1 July 2007 and that was unpaid at that day.
- (2) For the purposes of subsection (1), the *Taxation Administration Act 1997* is to be read as if Chapter 6 of this Act had not been repealed.
- (3) Notwithstanding the amendments to this Act effected by Part 6 of the *Revenue Measures Act 2005*, the Commissioner may recover any duty that relates to a transaction entered into before 1 July 2008 involving the dutiable property referred to in section 9(1)(g), (h) or (i) of this Act (as in force immediately before that day) and that was unpaid at that day.

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Part 2 – Duties Act 2001 Amended

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- (4) For the purposes of subsection (3), the *Taxation Administration Act 1997* is to be read as if the amendments to this Act effected by Part 6 of the *Revenue Measures Act 2005* had not been made.

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s. 11

Part 3 – First Home Owner Grant Act 2000 Amended

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

11. Principal Act

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

12. Section 28 inserted

After section 27 of the Principal Act, the following section is inserted in Division 6:

28. Limitation on review of decisions

A court or administrative review body, including the Magistrates Court (Administrative Appeals Division), does not have jurisdiction or power to consider any question concerning a decision of the Commissioner except as provided in this Division.

*No. 19 of 2000

PART 4 – LAND TAX ACT 2000 AMENDED

13. Principal Act

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

14. Section 3 amended (Interpretation)

Section 3 of the Principal Act is amended by inserting after the definition of “shareholder” the following definition:

“**special disability trust**” has the meaning it has in section 1209L of the *Social Security Act 1991* of the Commonwealth;

15. Section 6 amended (Principal residence land)

Section 6(3)(a) of the Principal Act is amended by inserting after subparagraph (ii) the following subparagraph:

(iia) the trustee of a special disability trust; or

*No. 74 of 2000

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Act No. of

s. 16

Part 5 – Payroll Tax Act 2008 Amended

PART 5 – PAYROLL TAX ACT 2008 AMENDED

16. Principal Act

In this Part, the *Payroll Tax Act 2008** is referred to as the Principal Act.

17. Section 3 amended (Definitions)

Section 3(1) of the Principal Act is amended by omitting “within the meaning of section 139GCD of the *Income Tax Assessment Act 1936* of the Commonwealth” from the definition of “share”.

18. Section 18 amended (Inclusion of grant of shares and options as wages)

Section 18 of the Principal Act is amended by omitting subsection (1) and substituting the following subsection:

- (1) For the purposes of this Act, “wages” include the grant of a share or option to an employee by an employer in respect of services performed by the employee if the share or option is an ESS interest (within the meaning of section 83A-10 of the *Income Tax Assessment Act 1997* of the Commonwealth) and is granted to the

*No. 16 of 2008

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Part 5 – Payroll Tax Act 2008 Amended

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employee under an employee share scheme (within the meaning of that section).

Note: A grant of a share or an option to an employee by an employer that is not an ESS interest will be taxable as a fringe benefit under Division 2 of this Part.

19. Section 19 amended (Choice of relevant day)

Section 19 of the Principal Act is amended by omitting subsections (2), (3) and (4) and substituting the following subsections:

- (2) A share or option is “**granted**” to a person if –
- (a) another person transfers the share or option to that person (other than, in the case of a share, by issuing the share to that person); or
 - (b) in the case of a share – another person allots the share to that person; or
 - (c) in the case of an option – another person confers the option on, or otherwise creates the option in, that person; or
 - (d) the person otherwise acquires a legal interest in the share or option from another person; or

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s. 19

Part 5 – Payroll Tax Act 2008 Amended

- (e) the person acquires a beneficial interest in the share or option from another person.
- (2A) To avoid doubt, if an employee acquires a right to be granted a share or an option, or some other material benefit, at the election of the employer, the share or option is not granted until the employer elects to grant the share or option.
- (3) The “**vesting date**” in respect of a share is one of the following dates (whichever happens first):
 - (a) the date on which the share vests in the employee (that is, when any conditions applying to the grant of the share have been met and the employee’s legal or beneficial interest in the share cannot be rescinded);
 - (b) the date at the end of the period of 7 years from the date on which the share is granted to the employee.
- (4) The “**vesting date**” in respect of an option is one of the following dates (whichever happens first):
 - (a) the date on which the share to which the option relates is granted to the employee;

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Part 5 – Payroll Tax Act 2008 Amended

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- (b) the date on which the employee exercises a right under the option to have the share the subject of the option transferred to, allotted to or vested in him or her;
- (c) the date at the end of the period of 7 years from the date on which the option is granted to the employee.

20. Section 23 amended (Value of shares and options)

Section 23 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “market”;
- (b) by omitting subsections (2), (3), (4) and (5) and substituting the following subsections:
 - (2) The value of a share or an option is –
 - (a) the market value; or
 - (b) the amount determined as provided for by the Commonwealth income tax provisions.
 - (3) The employer may elect the method by which the value of a

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Part 5 – Payroll Tax Act 2008 Amended

share or an option is determined in any return lodged under this Act.

- (4) However, the Commissioner may determine the method by which the value of a share or an option is determined if the grant of the share or option is not included as wages in a return lodged by an employer as required by this Act.
- (5) In working out the market value of a share or option, anything that would prevent or restrict conversion of the share or option to money is to be disregarded.
- (6) The Commonwealth income tax provisions apply with the following modifications, and any other necessary modifications:
 - (a) the value of an option is to be determined as if it were a right to acquire a beneficial interest in a share;
 - (b) a reference to the acquisition of a beneficial interest in a share or right is to be read as a reference to the grant of a share or an option.

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Act No. of

Part 5 – Payroll Tax Act 2008 Amended

s. 21

(7) In this section –

“Commonwealth income tax provisions” means section 83A-315 of the *Income Tax Assessment Act 1997* of the Commonwealth and the regulations made for the purpose of that section.

Note: See Division 83A of the *Income Tax Assessment Regulations 1997* of the Commonwealth for the relevant regulations

21. Section 24 amended (Inclusion of shares and options granted to directors as wages)

Section 24 of the Principal Act is amended as follows:

(a) by omitting subsection (1) and substituting the following subsection:

(1) For the purposes of this Act, **“wages”** include the grant of a share or an option by a company to a director of the company who is not an employee of the company by way of remuneration for the appointment or services of the director.

(b) by inserting the following subsection after subsection (3):

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s. 22

Part 5 – Payroll Tax Act 2008 Amended

- (4) However, if wages referred to in this section are fringe benefits, the value of the wages is to be determined in accordance with Division 2 of this Part (and not this Division).

Note: Section 13 provides that a reference to an employee in this Act includes a reference to any person to whom any amount that is treated as wages under this Act is paid or payable. See also section 11, which deems the wages to be paid or payable for services performed.

22. Schedule 3 amended (Savings, transitional and other provisions)

Schedule 3 to the Principal Act is amended by inserting after clause 11 in Part 3 the following Part:

**PART 4 – PROVISIONS CONSEQUENT ON ENACTMENT OF
TAXATION AND RELATED LEGISLATION (MISCELLANEOUS
AMENDMENTS) ACT (NO. 2) 2011**

12. Assessment and payment of payroll tax in relation to employee shares and options

Anything done or omitted to be done by an employer in connection with the assessment and payment of payroll tax, in respect of a month occurring after June 2009 and before July 2012, that would have been validly done or omitted to be done had the amendments made to this Act by the *Taxation and Related*

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Part 5 – Payroll Tax Act 2008 Amended

s. 22

Legislation (Miscellaneous Amendments)
Act (No.2) 2011 been in force, is taken to
have been validly done or omitted.

Note: This provision validates a decision by an employer to treat the grant of a share or an option to an employee that is not an ESS interest as a fringe benefit under Division 2 of Part 3 of this Act and to determine the value of those fringe benefits in accordance with those provisions, rather than by reference to Division 4 of Part 3 of this Act.

13. Determination of vesting date and value of employee shares and options

- (1) Division 4 of Part 3 of this Act continues to apply in respect of a share or an option granted before 1 July 2012 that constitutes wages under old section 18, whether or not the grant of the share or option would constitute wages under new section 18, if the relevant day in relation to the grant of the share or option is not a day occurring before 1 July 2012.

Note: For example, a share granted before 1 July 2012 that is not an ESS interest continues to be treated as wages under Division 4 of Part 3 of this Act if the vesting date for the share did not occur before 1 July 2012 and the employer did not elect to treat the date of the grant as the relevant day.

- (2) The assessment amendments apply in respect of any such share or option.
- (3) Accordingly, the vesting date and the value of the share or option are to be

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Part 5 – Payroll Tax Act 2008 Amended

determined in accordance with the assessment amendments.

(4) This clause does not apply in respect of a share or option granted before 1 July 2012 if the liability for payroll tax in respect of the grant is determined in accordance with Division 2 of Part 3, as permitted by clause 12.

(5) In this clause –

“**assessment amendments**” means the amendments made to this Act by the *Taxation and Related Legislation (Miscellaneous Amendments) Act (No.2) 2011*;

“**new section 18**” means section 18 as amended by the *Taxation and Related Legislation (Miscellaneous Amendments) Act (No.2) 2011*;

“**old section 18**” means section 18 as in force immediately before the day on which it is amended by the *Taxation and Related Legislation (Miscellaneous Amendments) Act (No.2) 2011*;

“**relevant day**” – see section 18(3).

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Part 6 – Taxation Administration Act 1997 Amended

s. 23

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

23. Principal Act

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

24. Section 28 amended (Application for refund)

Section 28 of the Principal Act is amended as follows:

- (a) by inserting in subsection (2) “, and is not entitled to,” after “for”;
- (b) by inserting the following subsection after subsection (2):
 - (2A) Subsection (2) does not apply in relation to a refund of tax paid under the *Land Tax Act 2000*.

25. Section 29 substituted

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

*No. 74 of 1997

Taxation and Related Legislation (Miscellaneous Amendments)
Bill (No. 2) 2011
Act No. of

s. 25

Part 6 – Taxation Administration Act 1997 Amended

29. Refund

- (1) The Commissioner, if satisfied that a person has overpaid an amount, is to –
 - (a) refund the overpaid amount; or
 - (b) apply the overpaid amount against any liability of the person under a taxation law, or another Act of which the Commissioner has the general administration, and refund any part of the overpayment that is not so applied.
- (2) The Commissioner may only take an action under subsection (1) in relation to an amount that a person has overpaid, if –
 - (a) the person has lodged an application under section 28 in relation to the overpayment; or
 - (b) the overpayment has been identified during an investigation conducted in accordance with Part 9 or Part 9A.
- (3) A person is not, after 3 years from the date on which the person has overpaid an amount, entitled to a refund of the amount or to have such an amount applied against any liability referred to in subsection (1)(b), unless an application is

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Part 6 – Taxation Administration Act 1997 Amended

s. 26

lodged under section 28 in relation to the amount before 3 years from the date on which the person has overpaid the amount.

26. Section 80 amended (Objection)

Section 80(1)(a) of the Principal Act is amended by inserting “or an assessment that gives effect to the determination of an objection made under section 84” after “compromise assessment”.

27. Section 120A inserted

After section 120 of the Principal Act, the following section is inserted in Division 4:

120A. Savings and transitional provisions consequent on repeal of *Revenue Measures Act 2005*

- (1) Notwithstanding the repeal of the *Debits Duties Act 2001* by the *Revenue Measures Act 2005*, the Commissioner may recover from an account holder, financial institution, credit card holder or credit card provider, each within the meaning of the *Debits Duties Act 2001* as in force immediately before the repeal, any duty that relates to a transaction made before 1 July 2005 and that was unpaid at that day.

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s. 27

Part 6 – Taxation Administration Act 1997 Amended

- (2) For the purposes of subsection (1), this Act is to be read as if the *Debits Duties Act 2001* had not been repealed.

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Part 7 – Taxation Administration Act 1997 Further Amended

s. 28

**PART 7 – TAXATION ADMINISTRATION ACT 1997
FURTHER AMENDED**

28. Principal Act

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

29. Section 19A inserted

After section 19 of the Principal Act, the following section is inserted in Part 3:

19A. Effect on assessment of change in interpretation

If an assessment is based on a particular interpretation of the applicable law or a particular practice of the Commissioner that was generally applied to assessments of that kind when the assessment was made, the Commissioner cannot make a reassessment based on an interpretation or practice that applied after the assessment was made, other than to give effect to a change in interpretation or practice brought about by a legislative change.

*No. 74 of 1997

Taxation and Related Legislation (Miscellaneous Amendments)
Bill (No. 2) 2011
Act No. of

s. 30

Part 7 – Taxation Administration Act 1997 Further Amended

30. Section 29AA inserted

After section 29 of the Principal Act, the following section is inserted in Part 4:

29AA. Effect on refund of change in interpretation

If a person has paid, or purportedly paid, an amount of tax, the Commissioner cannot refund all or part of the amount based on a particular interpretation of the applicable law or a particular practice of the Commissioner that applied after the time at which it was paid, other than to give effect to a change in interpretation or practice brought about by a legislative change.

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Part 8 – Legislation repealed

s. 31

PART 8 – LEGISLATION REPEALED

31. Legislation repealed

The legislation specified in Schedule 1 is repealed.

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Act No. of

s. 32

Part 9 – Repeal of Act

PART 9 – REPEAL OF ACT

32. Repeal of Act

This Act is repealed on the ninetieth day from the day on which all of the provisions of this Act commence.

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sch. 1

SCHEDULE 1 – LEGISLATION REPEALED

Section 31

Revenue Legislation (Miscellaneous Amendments) Act 2002
(No. 24 of 2002)

Revenue Measures Act 2005 (No. 22 of 2005)