

SOUTH AUSTRALIA

DEBITS TAX ACT, 1990

This Act is reprinted pursuant to the Acts Republication Act, 1967, and incorporates all amendments in force as at 1 January 1993.

It should be noted that the Act was not revised (for obsolete references, etc.) by the Commissioner of Statute Revision prior to the publication of this reprint.

SUMMARY OF PROVISIONS

PART I PRELIMINARY

Section

1. Short title
2. Commencement
3. Interpretation
4. Incorporation

PART II—IMPOSITION AND AMOUNT OF TAX

5. Imposition of Tax
6. Amount of tax
7. Amounts kept outside South Australia

PART III—LIABILITY TO TAX AND APPLICATION OF COMMONWEALTH ACT

8. Liability to tax
9. Commonwealth Act applies as law of South Australia

PART IV—ARRANGEMENTS WITH THE COMMONWEALTH

10. Arrangements for an administration of this Act
11. Conferral of functions and powers on Commissioner of Taxation

PART V—PENAL PROVISIONS

12. Offences
13. Evading tax
14. Time for commencing prosecutions
15. Penalties not to relieve from tax
16. Obstructing officers
17. Offences by bodies corporate

PART VI—GENERAL

18. Payments from Consolidated Fund
19. Certificate of exemption
20. State taxation officer
21. Amendment of *Taxation (Reciprocal Powers) Act, 1989*

SCHEDULES

APPENDIX 1 LEGISLATIVE HISTORY

APPENDIX 2 DIVISIONAL PENALTIES

DEBITS TAX ACT, 1990

being

Debits Tax Act, 1990, No. 79 of 1990
[Assented to 20 December 1990]¹

as amended by

Debits Tax (Rates) Amendment Act 1992 No. 48 of 1992 [Assented to 17 September 1992]²

¹ Came into operation 1 January 1991, being the day on which section 4A of the Debits Tax Act 1982 of the Commonwealth came into operation: s. 2.

² Came into operation 1 January 1993: s. 2.

An Act to give effect to arrangements with the Commonwealth for the transfer of the benefit of the debits tax to the State and for that purpose to provide for the imposition and collection of the debits tax and the making of arrangements with the Commonwealth about matters connected with the administration of this Act; and to make a related amendment to the Taxation (Reciprocal Powers) Act, 1989.

The Parliament of South Australia enact as follows:

PART I

PRELIMINARY

Short title

1. This Act may be cited as the *Debits Tax Act, 1990*.

Commencement

2. This Act will come into operation, or will be taken to have come into operation, as the case may require, on the date of commencement of section 4A of the *Debits Tax Act 1982* of the Commonwealth.

Interpretation

3. (1) In this Act—

"the applied provisions" means the provisions applying by reason of section 9:

"the Commissioner" has the same meaning as in the applied provisions:

"the Commonwealth Act" means the *Debits Tax Administration Act 1982* of the Commonwealth.

(2) In this Act and the applied provisions, a reference to a Commonwealth Act includes a reference to that Act as amended and in force for the time being and to an Act passed in substitution for that Act.

Note: For definition of divisional penalties see Appendix 2.

Incorporation

4. The applied provisions are incorporated and must be read as one with this Act.

PART II—IMPOSITION AND AMOUNT OF TAX

Imposition of Tax

5. (1) Tax is imposed in respect of—

- (a) each taxable debit of not less than \$1 made to a taxable account;
- (b) each eligible debit of not less than \$1 made to an exempt account;

and

- (c) each eligible debit of not less than \$1 made to an account kept outside South Australia if—

- (i) at the time when the debit is made, the person in whose name, or either or any of the persons in whose names, the account is kept is a resident of South Australia;

and

- (ii) it would be concluded that the account was used in connection with the transaction that resulted in the debit for the purpose, or for the purposes that included the purpose, of enabling—

- (A) the person in whose name, or either or any of the persons in whose names, the account is kept;

or

- (B) any other person,

to avoid liability for payment of the tax that would have been imposed if the debit that resulted from that transaction had been made to an account kept in South Australia.

(2) The conclusion referred to in subsection (1)(c)(ii) may not be drawn if, under the law of the place where the account is kept, the person concerned would be liable, in relation to the use of the account, to pay tax of a similar kind to the tax imposed by this section.

Amount of tax

6. The amount of tax in respect of a taxable debit or eligible debit is the amount set out in Column 2 of Schedule 1 opposite to the reference in Column 1 of Schedule 1 to the range of amounts within which the amount of that debit is included.

Amounts kept outside South Australia

7. A reference in this Part to a debit made to an account kept outside South Australia includes a reference to a debit made to an account (in this section called a "non-bank account") kept outside South Australia with a building society, credit union or similar body (including an account kept by way of withdrawable share capital in, or money deposited with, the body) if—

- (a) another account is kept with a bank in the name of the body;

4.

and

(b) the non-bank account has characteristics such that a cheque may be drawn on the bank by the body and, at a time when it is incomplete, be delivered by the body to a customer under an agreement under which—

(i) the customer is authorised to fill up the cheque;

and

(ii) the body is authorised, for the purpose of making a payment to the bank to enable the bank to honour the cheque, to debit the non-bank account.

PART III—LIABILITY TO TAX AND APPLICATION OF
COMMONWEALTH ACT

Liability to tax

8. (1) A financial institution with which a taxable account is kept and the account holder (or, if there are two or more account holders, those account holders) are jointly and severally liable to pay the tax imposed by this Act on a taxable debit made to the account.

(2) The account holder of an account other than a taxable account is liable (or, if there are two or more account holders, those account holders are joint and severally liable) to pay the tax imposed by this Act on an eligible debit made to the account.

Commonwealth Act applies as law of South Australia

9. The Commonwealth Act (other than sections 1, 2, 6 and 8) applies as law of South Australia and so applies as if amended as set out in Schedule 2.

PART IV—ARRANGEMENTS WITH THE COMMONWEALTH

Arrangements for and administration of this Act

10. (1) The Commissioner may make an arrangement with the Commissioner of Taxation appointed under the *Taxation Administration Act 1953* of the Commonwealth about any matter connected with the administration of this Act.

(2) In particular, an arrangement may provide—

(a) for the performance of functions and exercise of powers conferred under section 11 by the Commissioner of Taxation or a Second Commissioner of Taxation;

or

(b) for the performance of functions or exercise of powers of the Commissioner under this Act by officers or employees under the control of the Commissioner of Taxation.

Conferral of functions and powers on Commissioner of Taxation

11. (1) Subject to subsection (2), the Commissioner of Taxation of the Commonwealth and the Second Commissioners of Taxation have the functions and powers of the Commissioner under this Act.

(2) The Commissioner of Taxation or a Second Commissioner must not perform a function or exercise a power conferred by subsection (1) except in accordance with an arrangement made under section 10.

PART V—PENAL PROVISIONS

Offences

12. (1) A person must not—

- (a) fail or neglect to furnish any return or information or comply with any requirement of the Commissioner or any officer employed in the administration of this Act and duly authorized by the Commissioner as and when required by this Act or by the Commissioner or officer;
- (b) without just cause, refuse or neglect to attend and give evidence when required by the Commissioner or any officer employed in the administration of this Act and duly authorised by the Commissioner, or to answer truly and fully any questions put to the person;
- (c) make or deliver a return which is false in any particular or make any false answer whether orally or in writing.

Penalty: Division 5 fine.

(2) A person must not, without just cause, refuse or neglect to produce any books required of the person by the Commissioner or any officer employed in the administration of this Act and duly authorised by the Commissioner.

Penalty: Division 6 fine.

(3) A person who, after conviction for an offence against this section, continues to fail to comply with the requirements in respect of which he or she was convicted, is guilty of an offence and punishable as provided in section 13.

(4) If an offence against this section arises under subsection (1)(a) or (b) or under subsection (2) by reason of the neglect or failure of a person to do any thing within a particular period, the offence is, for the purposes of subsection (3), taken to continue for as long as the thing remains undone, despite the lapsing of that period.

Evading tax

13. A person must not, by any wilful act, default or neglect, or by any fraud, act or contrivance whatever, evade or attempt to evade tax chargeable under this Act.

Penalty: Division 5 fine and treble the amount of tax evaded or attempted to be evaded.

Time for commencing prosecutions

14. (1) A prosecution in respect of an offence against section 13 may be commenced at any time within three years after the commission of the offence.

(2) A prosecution in respect of an offence arising under section 12(1)(a) or (c) may be commenced at any time.

Penalties not to relieve from tax

15. Payment of a penalty under this Act does not relieve a person from liability to any tax for which he or she would otherwise be liable.

Obstructing officers

16. A person who obstructs or hinders any person acting in the administration of this Act is guilty of an offence.

Penalty: Division 6 fine.

Offences by bodies corporate

17. (1) If a body corporate is guilty of an offence against this Act, an officer of the body corporate who was knowingly a party to the commission of the offence is also guilty of that offence and liable to the penalty for that offence.

(2) In this section, "officer", in relation to a body corporate, includes a person who is an officer of the body corporate within the meaning of section 5(1) of the *Companies (South Australia) Code*.

PART VI—GENERAL

Payments from Consolidated Fund

18. If the Commissioner becomes liable to pay an amount under this Act, that amount must be paid from the Consolidated Account which is hereby to the necessary extent appropriated accordingly.

Certificate of exemption

19. A certificate of exemption in force under section 11 of the Commonwealth Act immediately before the commencement of this section continues, until it ceases to be in force under section 11 of the applied provisions, to be a certificate of exemption for the purposes of this Act.

State taxation officer

20. The Commissioner may perform the functions of a State taxation officer for the purposes of Part IIIA of the *Taxation Administration Act 1953* of the Commonwealth.

Amendment of Taxation (Reciprocal Powers) Act, 1989

21. The *Taxation (Reciprocal Powers) Act, 1989*, is amended by inserting the following item in the definition of "South Australian Taxation Act" in section 3(1):

Debits Tax Act, 1990.

SCHEDULE 1—AMOUNT OF TAX

Column 1 Range of amounts of taxable debits or eligible debits	Column 2 Amount of tax
Not less than \$1 but less than \$100	30 cents
Not less than \$100 but less than \$500	70 cents
Not less than \$500 but less than \$5 000	\$1.50
Not less than \$5 000 but less than \$10 000	\$3.00
\$10 000 or more	\$4.00

SCHEDULE 2—MODIFICATIONS OF COMMONWEALTH ACT

The Commonwealth Act applies as if—

- (1) in section 3(1), for the definition of "Commissioner" there were substituted—
"Commissioner" means the Commissioner of Stamps;
- (2) in section 3(1), for the definition of "Deputy Commissioner" there were substituted—
"Deputy Commissioner" means the Deputy Commissioner of Stamps;
- (3) in section 3(1), in paragraph (a)(ii) of the definition of "excluded debit"—
(a) for "8(3) and (4), would be entitled to exemption from the tax by virtue of any other law" there were substituted "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";
and
(b) for "Australia" there were substituted "South Australia";
- (4) in section 3(1), in paragraph (a)(iii) of the definition of "excluded debit" for "8(3) and (4), would be entitled to exemption from the tax by virtue of any other law" there were substituted "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";
- (5) in section 3(1), in paragraph (b) of the definition of "excluded debit", for "Australia" (where twice occurring) there were substituted "South Australia";
- (6) in section 3(1), in the definition of "exempt account" for "Australia" there were substituted "South Australia";
- (7) in section 3(1), in the definition of "exempt debit" after "1936" there were inserted "of the Commonwealth";
- (8) in section 3(1), in the definitions of "non-bank financial institution" and "payment order", after "1986" there were inserted "of the Commonwealth";
- (9) in section 3(1), in the definition of "officer", "Australian" were omitted;

11.

- (10) in section 3(1), after the definition of "officer" there were inserted—
"Part", in the applied provisions, means part of the applied provisions;;
- (11) in section 3(1), the definition of "Second Commissioner" were omitted;
- (12) in section 3(1), for the definition of "tax" there were substituted—
"section", in the applied provisions, means section of the applied provisions;
"tax" means tax imposed by Part II of the *Debits Tax Act, 1990*;;
- (13) in section 3(1), in the definition of "taxable account" for "Australia" there were substituted "South Australia";
- (14) in section 3(1), for the definition of "Tribunal" there were substituted—
"this Act" means the *Debits Tax Act, 1990*;
"Tribunal" means the Supreme Court of South Australia;;
- (15) in section 3(2), for "Australia" (wherever occurring) there were substituted "South Australia";
- (16) in section 3(8), for "Commonwealth" (where twice occurring) there were substituted "State";
- (17) for section 4 there were substituted—

General administration of Act

4. (1) The Commissioner has the general administration of this Act.

(2) The Deputy Commissioner has all the powers and functions of the Commissioner under this Act.

Delegation of functions

4A. 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.;

- (18) in section 7, for "Commonwealth" (wherever occurring) there were substituted "State";
- (19) in section 7(4), for the words preceding paragraph (a) there were substituted—

(4) Nothing in this section prohibits the Commissioner, the Deputy Commissioner or a person authorised by the Commissioner or by the Deputy Commissioner from communicating any information to—;
- (20) in section 7(7), for ", a Second Commissioner or a" there were substituted "or the";
- (21) in section 9(1)(a), for "8(1)" there were substituted "8(1) of the *Debits Tax Act, 1990*";
- (22) in section 11(1), for "Australia" there were substituted "South Australia";
- (23) in section 12, subsection (2) were omitted;
- (24) in section 12(4), for "8(2)" (where twice occurring) there were substituted "8(2) of the *Debits Tax Act 1990*";
- (25) in section 13(1)(b), for "Commonwealth" there were substituted "State";
- (26) in section 13(5), for "Commonwealth" (where twice occurring) there were substituted "State";
- (27) in section 14(1)(b), for "Commonwealth" there were substituted "State";

(28) in section 17, for subsection (6) there were substituted—

(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 subsection (4) of the additional tax.;

(29) in section 18, for "Commonwealth" (wherever occurring) there were substituted "State";

(30) in section 18(3), for "bank" (where twice occurring) there were substituted "financial institution";

(31) in section 20, the definition of "Federal Court" were omitted;

(32) in section 23, paragraph (b) was repealed;

(33) in section 25A(1), for paragraph (a) and (b) there were substituted "send the application to the Supreme Court.";

(34) section 25A(2) was repealed;

(35) in section 25A, for subsections (3) and (4) there were substituted—

(3) The sending of an application to the Supreme Court under subsection (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.

(4) The Supreme Court may grant or refuse the application.;

(36) section 25B(2) was repealed;

(37) in section 25B(3), the "Federal Court" there were substituted "Supreme Court";

(38) in section 25D, for "a review before the Tribunal or on appeal to a court" there were substituted "appeal to the Supreme Court";

(39) in section 25D(a), for "Tribunal or court" there were substituted "Supreme Court";

(40) section 25E was repealed;

(41) in section 26, for "Federal Court" there were substituted "Supreme Court";

(42) in section 29A(1), for "Tribunal or of a court" there were substituted "Supreme Court";

(43) in section 29A(2), for "Tribunal or of the Federal Court" (where twice occurring) there were substituted "Supreme Court";

(44) in section 29A(2)(b), for "Federal Court" there were substituted "Supreme Court";

(45) in section 31(1), for "Tribunal or of a court" there were substituted "Supreme Court";

(46) in section 31(1)(c)(ii), for "Commonwealth" there were substituted "State";

(47) in section 33, for ", a Second Commissioner or a" (where twice occurring) there were substituted "or the";

(48) in section 34(1), for "Commonwealth" there were substituted "State";

(49) in section 34(2), for "a Deputy Commissioner" there were substituted "the Deputy Commissioner";

(50) in section 37(1), for ", a Second Commissioner or a" (wherever occurring) there were substituted "or the";

(51) in section 37(1)(d), for "Commonwealth" there were substituted "State";

(52) in section 56(1), for "1983" there were substituted "1991";

13.

- (53) in section 57, for "Australia" (wherever occurring) there were substituted "South Australia";
- (54) in section 58(2), for "a Deputy Commissioner" there were substituted "the Deputy Commissioner";
- (55) in section 59(1), for "the Commonwealth, of a State or of a Territory" there were substituted "South Australia";
- (56) in section 62, for "Governor-General" there were substituted "Governor".

14.

APPENDIX 1

LEGISLATIVE HISTORY

Schedule 1:

amended by 48, 1992, s. 3

APPENDIX 2**DIVISIONAL PENALTIES**

At the date of publication of this reprint divisional penalties are, as provided by section 28a of the *Acts Interpretation Act, 1915*, as follows:

Division	Maximum imprisonment	Maximum fine
1	15 years	\$60 000
2	10 years	\$40 000
3	7 years	\$30 000
4	4 years	\$15 000
5	2 years	\$8 000
6	1 year	\$4 000
7	6 months	\$2 000
8	3 months	\$1 000
9	-	\$500
10	-	\$200
11	-	\$100
12	-	\$50

Note: This appendix is provided for convenience of reference only.