

Queensland



# DEBITS TAX ACT 1990

**Reprinted as in force on 21 February 1997  
(includes amendments up to Act No. 70 of 1996)**

**Reprint No. 1A**

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# Information about this reprint

This Act is reprinted as at 21 February 1997. The reprint shows the law as amended by all amendments that commenced on or before that day (Reprints Act 1992 s 5(c)).

The reprint includes a reference to the law by which each amendment was made—see list of legislation and list of annotations in endnotes.

This page is specific to this reprint. See previous reprint for information about earlier changes made under the Reprints Act 1992. A table of earlier reprints is included in the endnotes.

**Also see endnotes for information about—**

- **when provisions commenced**
- **editorial changes made in earlier reprints.**

Queensland



**DEBITS TAX ACT 1990**

**TABLE OF PROVISIONS**

Section		Page
<b>PART 1—PRELIMINARY</b>		
1	Short title .....	3
2	Definitions .....	3
3	Incorporation .....	3
<b>PART 2—IMPOSITION AND AMOUNT OF TAX</b>		
4	Imposition of tax .....	4
5	Amount of tax .....	4
6	Accounts kept outside Queensland .....	5
<b>PART 3—LIABILITY TO TAX AND APPLICATION OF COMMONWEALTH ACT</b>		
7	Liability to tax .....	5
8	Commonwealth Act applies as law of Queensland .....	6
<b>PART 4—ARRANGEMENTS WITH THE COMMONWEALTH</b>		
9	Arrangements for and administration of this Act .....	6
10	Conferral of functions and powers on commissioner of taxation .....	6
<b>PART 5—PENAL PROVISIONS</b>		
11	Offences .....	7
12	Evading tax .....	8
13	Time for commencing prosecutions .....	8
14	Penalties not to relieve from tax .....	8
15	Obstructing officers .....	8
16	Offences by bodies corporate .....	8
17	Defence to charge .....	8

**PART 6—GENERAL**

18	Commonwealth Act exemptions continued . . . . .	9
----	---	---

	<b>SCHEDULE 1</b> . . . . .	10
--	-----------------------------	----

**AMOUNT OF TAX**

	<b>SCHEDULE 2</b> . . . . .	11
--	-----------------------------	----

**MODIFICATIONS OF COMMONWEALTH ACT****ENDNOTES**

1	Index to endnotes . . . . .	20
2	Date to which amendments incorporated . . . . .	20
3	Key . . . . .	21
4	Table of earlier reprints . . . . .	21
5	Tables in earlier reprints . . . . .	21
6	List of legislation . . . . .	22
7	List of annotations . . . . .	22
8	Table of renumbered provisions . . . . .	23

# DEBITS TAX ACT 1990

[as amended by all amendments that commenced on or before 21 February 1997]

## **An Act to provide for the imposition and collection of a tax in respect of certain debits made to accounts kept with financial institutions and for related purposes**

### PART 1— PRELIMINARY

#### **Short title**

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

#### **Definitions**

- 2.(1) In this Act—

“**applied provisions**” means the provisions applying by virtue of section 8.

“**Commonwealth Act**” means the *Debits Tax Administration Act 1982* (Cwlth).

(2) In the applied provisions, a reference to ‘this Act’, ‘part’, ‘section’, ‘subsection’, ‘paragraph’ and ‘subparagraph’ is a reference to the applied provisions, a part of the applied provisions, a section of the applied provisions, a subsection of the applied provisions, a paragraph of the applied provisions and a subparagraph of the applied provisions respectively.

#### **Incorporation**

3. The applied provisions are incorporated in and are to be read as one with this Act.

## **PART 2—IMPOSITION AND AMOUNT OF TAX**

### **Imposition of tax**

**4.(1)** Tax is imposed in respect of—

- (a) each taxable debit of not less than \$1 made to a taxable account; and
- (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 Queensland where—
  - (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 Queensland; 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 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 Queensland.

**(2)** The conclusion referred to in subsection (1)(c)(ii) is not to be drawn where, 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**

**5.** The amount of tax in respect of a taxable debit or eligible debit is the amount set out in schedule 1, column 2 opposite to the reference in schedule 1, column 1 to the range of amounts within which the amount of that debit is included.

### **Accounts kept outside Queensland**

6. A reference in this part to a debit made to an account kept outside Queensland includes a reference to a debit made to an account (a “**non-bank account**”) kept outside Queensland 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) where—

- (a) another account is kept with a bank in the name of the body; 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 3—LIABILITY TO TAX AND APPLICATION OF COMMONWEALTH ACT**

### **Liability to tax**

7.(1) A financial institution with which a taxable account is kept and the account holder (or, if there are 2 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 2 or more account holders, those account holders are jointly 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 Queensland**

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

**PART 4—ARRANGEMENTS WITH THE COMMONWEALTH****Arrangements for and administration of this Act**

9.(1) The commissioner may make an arrangement with the commissioner of taxation appointed under the *Taxation Administration Act 1953* (Cwlth) 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 10 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**

10.(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 is not to perform a function or exercise a power conferred by subsection (1) except in accordance with an arrangement made under section 9.

## **PART 5—PENAL PROVISIONS**

### **Offences**

**11.(1)** A person is not—

- (a) to fail or to 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 authorised by the commissioner as and when required by this Act or by the commissioner or officer;
- (b) without just cause, to refuse or to 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) to make or to deliver a return which is false in any particular or to make any false answer whether orally or in writing.

Maximum penalty—100 penalty units.

**(2)** A person is not, without just cause, to refuse or to 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.

Maximum penalty—50 penalty units.

**(3)** A person who, after conviction for an offence against this section, continues to fail to comply with the requirements in respect of which that person was convicted, is guilty of an offence and punishable as provided in section 12.

**(4)** If an offence against this section arises under subsection (1)(a) or (b) or under subsection (2) because of the neglect or failure of a person to do anything 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**

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

Maximum penalty—100 penalty units and treble the amount of tax evaded or attempted to be evaded.

**Time for commencing prosecutions**

**13.(1)** A prosecution in respect of an offence against section 12 may be commenced at any time within 3 years after the commission of the offence.

**(2)** A prosecution in respect of an offence arising under section 11(1)(a) or (c) may be commenced at any time.

**Penalties not to relieve from tax**

**14.** Payment of a penalty under this Act does not relieve a person from liability to any tax for which that person would otherwise be liable.

**Obstructing officers**

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

Maximum penalty—50 penalty units.

**Offences by bodies corporate**

**16.** If a body corporate is guilty of an offence against this Act, each of the chairperson of directors, managing director or other officer, by whatever name called, and every member of the governing body, by whatever name called, is to be taken to have committed the offence and is liable to be proceeded against and punished accordingly.

**Defence to charge**

**17.** It is a defence to a charge of an offence against this Act brought

against a person specified in section 16 to prove that the offence was committed without that person's knowledge or connivance and that the person could not by due diligence have prevented the commission of the offence.

## **PART 6—GENERAL**

### **Commonwealth Act exemptions continued**

**18.** 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.

**SCHEDULE 1**

**AMOUNT OF TAX**

section 5

<b>Column 1</b>	<b>Column 2</b>
<b>Range of taxable debits or eligible debits</b>	<b>Amount of tax</b>
	\$
\$1 or more but less than \$100 . . . . .	0.30
\$100 or more but less than \$500 . . . . .	0.70
\$500 or more but less than \$5 000 . . . . .	1.50
\$5 000 or more but less than \$10 000 . . . . .	3.00
\$10 000 or more . . . . .	4.00

## SCHEDULE 2

### MODIFICATIONS OF COMMONWEALTH ACT

section 8

The Commonwealth Act applies as if—

(1) in section 3(1)—

(aa) for the definition of “account” there were substituted—

‘**“account”** means:

- (a) a primary account; or
- (b) a source of funds account;

**“account certificate”** means a certificate under section 11B;’.

(ab) after the definition of “bank” the following definition were inserted—

‘**“certificate account”** means an account of a class for which an account certificate is in force;’.

(a) for the definition of “Commissioner” there were substituted—

‘**“Commissioner”** means the commissioner of stamp duties appointed under the *Stamp Act 1894*;’;

(b) for the definition of “Deputy Commissioner” there were substituted—

‘**“Deputy Commissioner”** means a deputy commissioner of stamp duties under the *Stamp Act 1894*;’;

(c) in the definition of “excluded debit”—

(i) in paragraph (a)(ii)—

(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

## SCHEDULE 2 (continued)

Act would have been entitled to exemption from the tax within the meaning of the Commonwealth Act by virtue of any law’;

(B) for ‘Australia’ there were substituted ‘Queensland’;

(ii) in paragraph (a)(iii) 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’;

(iii) in paragraph (b) for ‘Australia’ (where twice occurring) there were substituted ‘Queensland’ in each case;

(d) in the definition of “exempt account” for ‘Australia’ there were substituted ‘Queensland’;

(e) for the definition of “exempt debit” there were substituted—

‘ **“exempt debit”**, in relation to an account, means:

(a) a debit that is made solely for the purpose of reversing a credit previously made to the account; or

(b) a debit that is made for the purpose of deducting an amount under subsection 221YHZC(1A) of the *Income Tax Assessment Act 1936* (Cwlth); or

(c) a debit that is made for the purpose of recovering from the account holder an amount equal to an amount of tax that the financial institution has paid or is liable to pay; or

(d) a debit that is a transfer debit; or

(e) if the account is a loan account to which transfer debits may be made (other than a loan account to which payments by a financial institution in respect of cheques or payment orders drawn on the institution by the account holder, or by any 1 or more of the account holders, may be directly debited)—a debit that is made to the account; or

## SCHEDULE 2 (continued)

- (f) if the account is a certificate account—a debit that is made to the account; or
- (g) a debit that is included in a kind or class of debits that are prescribed for the purposes of this paragraph;’.
- (f) in the definition of “non-bank financial institution” after ‘1986’ there were inserted ‘of the Commonwealth’;
- (g) in the definition of “officer”, ‘Australian’ were omitted;
- (h) in the definition of “payment order” after ‘1986’ there were inserted ‘of the Commonwealth’;
- (ha) after the definition of “person” the following definition were inserted—

‘ **“primary account”** means:

- (a) an account kept with a bank, being an account to which payments by the bank in respect of cheques drawn on the bank by the account holder, or by any 1 or more of the account holders, may be debited; or
- (b) an account kept with a non-bank financial institution, being an account to which payments by the institution in respect of payment orders drawn on the institution by the account holder, or by any 1 or more of the account holders, may be debited;’.
- (i) the definition of “Second Commissioner” were omitted;
- (ia) before the definition of “tax” the following definition were inserted—

‘ **“source of funds account”** means an account (other than a primary account) kept with or by a financial institution to which transfer debits may be made;’.

- (j) for the definition of “tax” there were substituted—

‘ **“tax”** means tax imposed by the *Debits Tax Act 1990*, part 2;’;

- (k) in the definition of “taxable account” for ‘Australia’ there were substituted ‘Queensland’;

## SCHEDULE 2 (continued)

(ka) after the definition of “taxable debit” the following definition were inserted—

‘ **“transfer debit”** means a debit made by a financial institution to an account kept with or by the institution, but only to the extent the debit is made (whether directly or indirectly through 1 or more interposed accounts) in respect of a debit—

(a) that is made, or is to be made, to a primary account kept with the institution; and

(b) that is made, or is to be made, to satisfy a cheque or payment order drawn on the institution;’.

(l) the definition of “Tribunal” were omitted;

(2) in section 3(2), for ‘Australia’ (wherever occurring) there were substituted ‘Queensland’ in each case;

(3) in section 3(8), for ‘Commonwealth’ (where twice occurring) there were substituted ‘State’ in each case;

(4) for section 4 there were substituted—

**‘General administration of Act**

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

‘(2) Each 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.’;

(5) in section 7, for ‘Commonwealth’ (wherever occurring) there were substituted ‘State’ in each case;

(6) in section 7(2), for ‘\$5,000’ there were substituted ‘85 penalty units’;

(7) in section 7(4)—

## SCHEDULE 2 (continued)

(a) ‘a Second Commissioner,’ and ‘, by a Second Commissioner’ were omitted;

(b) for ‘the Tribunal’ there were substituted ‘a Court’;

(8) in section 7(6), for ‘Minister’ there were substituted ‘Minister unless the communication is made with the consent (express or implied) of the person to whose affairs the information relates’;

(9) in section 7(7), ‘, a Second Commissioner’ were omitted;

(10) in section 9(1)(a), for ‘8(1)’ there were substituted ‘7(1) of the *Debits Tax Act 1990*’;

(11) in section 11(1), for ‘Australia’ there were substituted ‘Queensland’;

(12) in section 11A(1), for ‘\$10,000’ there were substituted ‘170 penalty units’;

(12A) in section 11A(2), for ‘a certificate of exemption’ there were substituted ‘an account certificate or certificate of exemption’;

(12B) after section 11A the following section were inserted in Part III—

**‘Certificate accounts**

**‘11B.(1)** A financial institution may make written application to the commissioner for a certificate for a class of accounts—

(a) that are not primary accounts to which payments by the financial institution in respect of cheques or payment orders drawn on the institution by an account holder, or by any 1 or more of the account holders, may be directly debited; and

(b) that are kept in Queensland; and

(c) to which transfer debits may be made.

**‘(2)** The financial institution must give the commissioner the information the commissioner asks for to help the commissioner decide the application.

**‘(3)** The commissioner may issue the certificate only if the commissioner is satisfied that accounts of the class are not sufficiently connected with any primary account.

## SCHEDULE 2 (continued)

‘(4) In deciding whether or not accounts of the class are sufficiently connected with any primary account, the commissioner must have regard to—

- (a) the terms on which the accounts and any primary account to which the accounts may be connected are established; and
- (b) the circumstances in which transfer debits may be made to the accounts in respect of debits made, or to be made, to a primary account; and
- (c) the frequency with which transfer debits may be made to the accounts; and
- (d) any other circumstances the commissioner considers appropriate.

‘(5) For subsection (4)(b), the circumstances to which the commissioner may have regard include, in particular—

- (a) if the primary account is an overdraft account—whether the sole purpose of any transfer debit is to reduce a debit balance in the primary account to an agreed overdraft limit (if the excess of the debit balance over the limit arises inadvertently); and
- (b) in any other case—whether the sole purpose of any transfer debit is to offset a debit balance in the primary account (if the debit balance arises inadvertently).

‘(6) An account certificate—

- (a) may be issued on conditions the commissioner considers appropriate about the nature of any connection with a primary account; and
- (b) if issued on conditions—must state the conditions.

‘(7) If a certificate account ceases to satisfy the conditions of the account certificate, the account ceases to be a certificate account for the period the account does not satisfy the conditions.

‘(8) An account certificate—

- (a) comes into force on the day stated in the certificate (which may be a day before the day on which the certificate is issued); and

## SCHEDULE 2 (continued)

(b) remains in force until—

(i) the expiry day stated in the certificate; or

(ii) if no expiry day is stated—no accounts of the class exist.’.

**(13)** in section 12, subsection (2) were omitted;

**(14)** in section 12(4), for ‘8(2)’ (where twice occurring) there were substituted ‘7(2) of the *Debits Tax Act 1990*’ in each case;

**(15)** in section 13(1)(b), for ‘Commonwealth’ there were substituted ‘State’;

**(16)** in section 13(5), for ‘Commonwealth’ (where twice occurring) there were substituted ‘State’ in each case;

**(17)** in section 14(1)(b), for ‘Commonwealth’ there were substituted ‘State’;

**(18)** 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.’;

**(19)** in section 18, for ‘Commonwealth’ (where twice occurring) there were substituted ‘State’ in each case;

**(20)** in section 20, the definition of ‘Federal Court’ were omitted;

**(21)** in section 23, for ‘either—’ to the end thereof there were substituted ‘a request to refer the decision to the Supreme Court.’;

**(22)** in section 25(3), for ‘Tribunal’ there were substituted ‘Supreme Court’;

**(23)** in section 25A(1), for ‘practicable—’ to the end thereof there were substituted ‘practicable send the application to the Supreme Court.’;

**(24)** section 25A(2) were omitted;

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

‘**(3)** The sending of an application to the Supreme Court under

## SCHEDULE 2 (continued)

subsection (1) constitutes the making by the person concerned of an application to that 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.’;
- (26) section 25B(2) were omitted;
- (27) in section 25B(3), for ‘Federal’ there were substituted ‘Supreme’;
- (28) in section 25D, for ‘a review before the Tribunal or on appeal to a court’ there were substituted ‘appeal to the Supreme Court’;
- (29) in section 25D(a), for ‘Tribunal or court’ there were substituted ‘Supreme Court’;
- (30) section 25E were repealed;
- (31) in section 26, for ‘Federal’ there were substituted ‘Supreme’;
- (32) in section 29A(1), for ‘Tribunal or of a court’ there were substituted ‘Supreme Court’;
- (33) in section 29A(2)—
  - (a) for ‘Tribunal or of the Federal’ there were substituted ‘Supreme’;
  - (b) for ‘Tribunal, or of the Federal’ there were substituted ‘Supreme’;
- (34) in section 29A(2)(b), for ‘Federal’ there were substituted ‘Supreme’;
- (35) in section 31(1), for ‘Tribunal or of a court’ there were substituted ‘Supreme Court’;
- (36) in section 31(1)(c)(ii), for ‘Commonwealth’ there were substituted ‘State’;
- (37) in section 33, ‘, a Second Commissioner’ (where twice occurring) were omitted;
- (38) in section 34(1), for ‘Commonwealth’ there were substituted ‘State’;
- (39) in section 37(1), ‘, a Second Commissioner’ (wherever occurring) were omitted;

## SCHEDULE 2 (continued)

(40) in section 37(1)(d), for ‘Commonwealth’ there were substituted ‘State’;

(41) in section 56(1), for ‘1983’ there were substituted ‘1991’;

(42) in section 57—

- (a) for ‘Australia’ (wherever occurring) there were substituted ‘Queensland’ in each case;
- (b) for ‘\$50’(wherever occurring) there were substituted ‘1 penalty unit’ in each case;

(43) in section 62—

- (a) for ‘Governor-General’ there were substituted ‘Governor in Council’;
- (b) for ‘\$500’ there were substituted ‘85 penalty units’.

**ENDNOTES****1 Index to endnotes**

	Page
2 Date to which amendments incorporated . . . . .	20
3 Key . . . . .	21
4 Table of earlier reprints . . . . .	21
5 Tables in earlier reprints . . . . .	21
6 List of legislation . . . . .	22
7 List of annotations . . . . .	22
8 Table of renumbered provisions . . . . .	23

**2 Date to which amendments incorporated**

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). Accordingly, this reprint includes all amendments that commenced operation on or before 21 February 1997. Future amendments of the Debits Tax Act 1990 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

### 3 Key

#### Key to abbreviations in list of legislation and annotations

AIA	=	Acts Interpretation Act 1954	(prev)	=	previously
amd	=	amended	proc	=	proclamation
ch	=	chapter	prov	=	provision
def	=	definition	pt	=	part
div	=	division	pubd	=	published
exp	=	expires/expired	R[X]	=	Reprint No.[X]
gaz	=	gazette	RA	=	Reprints Act 1992
hdg	=	heading	reloc	=	relocated
ins	=	inserted	renum	=	renumbered
lap	=	lapsed	rep	=	repealed
notfd	=	notified	s	=	section
om	=	omitted	sch	=	schedule
o in c	=	order in council	sdiv	=	subdivision
p	=	page	SIA	=	Statutory Instruments Act 1992
para	=	paragraph	SL	=	subordinate legislation
prec	=	preceding	sub	=	substituted
pres	=	present	unnum	=	unnumbered
prev	=	previous			

### 4 Table of earlier reprints

#### TABLE OF EARLIER REPRINTS

[If a reprint number includes an arabic letter, the reprint was released in unauthorised, electronic form only.]

Reprint No.	Amendments included	Reprint date
1	to Act No. 57 of 1995	13 December 1995

### 5 Tables in earlier reprints

#### TABLES IN EARLIER REPRINTS

Name of table	Reprint No.
Obsolete and redundant provisions	1
Renumbered provisions	1

## **6 List of legislation**

### **Debits Tax Act 1990 No. 97**

date of assent 12 December 1990

commenced 1 January 1991 (see s 1.2 and Commonwealth of Australia Act No. 136 of 1990 s 2)

as amended by—

### **Revenue Laws Amendment Act 1993 No. 51 pts 1–2**

date of assent 25 October 1993

ss 1–2 commenced on date of assent

remaining provisions commenced 1 January 1994 (see s 2(3))

### **Statute Law Revision Act 1995 No. 57 ss 1–2, 4 sch 2**

date of assent 28 November 1995

commenced on date of assent

### **Revenue Laws Amendment Act 1996 No. 48 pts 1–2**

date of assent 15 November 1996

ss 1–2 commenced on date of assent

remaining provisions commenced 1 October 1996 (see s 2(1))

### **Revenue Laws Amendment Act (No. 2) 1996 No. 70 pts 1–2**

date of assent 9 December 1996

commenced on date of assent

## **7 List of annotations**

### **Commencement**

s 1.2 om R1 (see RA s 37)

### **Definitions**

s 2 amd 1995 No. 57 s 4 sch 2

### **Numbering and renumbering of Act**

s 6.2 ins 1995 No. 57 s 4 sch 2

om R1 (see RA s 37)

### **SCHEDULE 1—AMOUNT OF TAX**

sub 1993 No. 51 s 4; 1996 No. 48 s 4

### **SCHEDULE 2—MODIFICATIONS OF COMMONWEALTH ACT**

amd 1996 No. 70 s 4

**8 Table of renumbered provisions**

TABLE OF RENUMBERED PROVISIONS (Reprint No. 1)  
under the Reprints Act 1992 s 43 as required by Debits Tax Act 1990 s 6.2

Previous	Renumbered as
1.1 .....	1
1.3 .....	2
1.3(3) .....	2(2)
1.4 .....	3
2.1 .....	4
2.2 .....	5
2.3 .....	6
3.1 .....	7
3.2 .....	8
4.1 .....	9
4.2 .....	10
5.1 .....	11
5.2 .....	12
5.3 .....	13
5.4 .....	14
5.5 .....	15
5.6 .....	16
5.7 .....	17
6.1 .....	18