

# DEBITS TAX ACT

No. 97 of 1990

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No. 97 of 1990

**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**

[ASSENTED TO 12TH DECEMBER, 1990]

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Assembly of Queensland in Parliament assembled, and by the authority of the same, as follows:—

## PART 1—PRELIMINARY

**1.1 Short title.** This Act may be cited as the *Debits Tax Act 1990*.

**1.2 Commencement.** This Act is to commence, or is to be taken to have commenced, as the case may require, on the day section 4A of the *Debits Tax Act 1982* of the Commonwealth commences.

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

“applied provisions” means the provisions applying by virtue of section 3.2;

“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.

(3) In the applied provisions, a reference to “this Act”, “Part”, “section”, “sub-section”, “paragraph” and “sub-paragraph” is a reference to the applied provisions, a Part of the applied provisions, a section of the applied provisions, a sub-section of the applied provisions, a paragraph of the applied provisions and a sub-paragraph of the applied provisions respectively.

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

## PART 2—IMPOSITION AND AMOUNT OF TAX

**2.1 Imposition of tax.** (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 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 connexion 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.

**2.2 Amount of tax.** 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.

**2.3 Accounts kept outside Queensland.** 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 (in this section called 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 authorized to fill up the cheque;

and

(ii) the body is authorized, 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

**3.1 Liability to tax.** (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.

**3.2 Commonwealth Act applies as law of Queensland.** 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**

**4.1 Arrangements for and administration of this Act.** (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 4.2 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.

#### **4.2 Conferral of functions and powers on Commissioner of Taxation.**

(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 4.1.

#### **PART 5—PENAL PROVISIONS**

**5.1 Offences.** (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 authorized 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 authorized 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.

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 authorized by the Commissioner.

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 5.2.

(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 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.

**5.2 Evading tax.** 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.

Penalty: 100 penalty units and treble the amount of tax evaded or attempted to be evaded.

**5.3 Time for commencing prosecutions.** (1) A prosecution in respect of an offence against section 5.2 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 5.1 (1) (a) or (c) may be commenced at any time.

**5.4 Penalties not to relieve from tax.** 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.

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

Penalty: 50 penalty units.

**5.6 Offences by bodies corporate.** If a body corporate is guilty of an offence against this Act, each of the chairman 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.

**5.7 Defence to charge.** It is a defence to a charge of an offence against this Act brought against a person specified in section 5.6 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**

**6.1 Commonwealth Act exemptions continued.** 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**

[s. 2.2]

**AMOUNT OF TAX**

Column 1	Column 2
Range of amounts of taxable debits or eligible debits	Amount of tax
Not less than \$1 but less than \$100 . . . . .	15 cents
Not less than \$100 but less than \$500 . . . . .	35 cents
Not less than \$500 but less than \$5,000 . . . . .	75 cents
Not less than \$5,000 but less than \$10,000 . . . . .	\$1.50
\$10,000 or more . . . . .	\$2.00



## SCHEDULE 2

[s. 3.2]

## MODIFICATIONS OF COMMONWEALTH ACT

The Commonwealth Act applies as if—

(1) in section 3 (1)—

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

““Commissioner” means the Commissioner of Stamp Duties appointed under the *Stamp Act 1894-1990*;”;

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

““Deputy Commissioner” means a Deputy Commissioner of Stamp Duties under the *Stamp Act 1894-1990*;”;

(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 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) in the definition of “exempt debit” after “1936” there were inserted “of the Commonwealth”;

(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”;

(i) the definition of “Second Commissioner” were omitted;

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

“ “tax” means tax imposed by Part 2 of the *Debits Tax Act 1990*;”;

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

(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—

**“4. General administration of Act.** (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.

**4A. Delegation of functions.** 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)—

(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 “3.1 (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”;

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

(14) in section 12 (4), for “8 (2)” (where twice occurring) there were substituted “3.1 (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 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;

(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”.