

**ภาคผนวก : ข**

**TAXATION ADMINISTRATION ACT 1953**

## **Part IV—Exchange control—taxation certificates**

### **14A Interpretation**

In this Part, unless the contrary intention appears:

*Australian tax* means tax imposed by a law of the Commonwealth or of a Territory.

*Reserve Bank* or *Bank* means the Reserve Bank of Australia.

*tax clearance certificate* or *certificate* means a certificate issued under section 14C.

*taxation law* means a law of the Commonwealth or of a Territory imposing a tax or otherwise dealing with Australian tax.

*this Part* includes Part IVC of the *Taxation Administration Act 1953*, insofar as that Part relates to this Part.

### **14B Applications for issue of certificates**

(1) Where:

(a) a person proposes to do an act or thing the doing of which, without the authority of the Reserve Bank, is prohibited by regulations made under section 39 of the *Banking Act 1959*; and

(b) by virtue of paragraph 39B(1)(a) of that Act, the Bank is not permitted to grant that authority unless there is produced to the Bank, in respect of that act or thing, a certificate issued under section 14C of this Act, or the Bank has, under paragraph 39B(1)(b) of the *Banking Act 1959*, refused to grant that authority unless there is produced to the Bank such a certificate; the person may apply in writing to the Commissioner for the issue of a tax clearance certificate under section 14C of this Act in respect of that act or thing.

(2) Where:

(a) an authority is issued pursuant to regulations made under section 39 of the *Banking Act 1959* authorizing a person, or persons included in a class of persons, specified in the authority or all persons to do an act or thing, or acts or things, specified in the authority, the doing of which, except with the authority of the Reserve Bank, would otherwise be prohibited by those regulations; and

(b) a tax clearance certificate under section 14C of this Act is required, for the purposes of a condition of the grant of the authority, to be issued to a person in respect of an act or thing; the last-mentioned person may apply in writing to the Commissioner for the issue to the person of a tax clearance certificate under section 14C of this Act in respect of the last-mentioned act or thing.

### **14C Issue of certificates**

(1) Where:

(a) application is made to the Commissioner under section 14B for the issue of a tax clearance certificate in respect of an act or thing; and

(b) the Commissioner is not authorized by section 14D to refuse to issue the certificate or, if he or she is so authorized, he or she is of the opinion that it is not necessary, for the purpose of protecting the revenue of Australia, to withhold the issue of the certificate; then, subject to subsection (2), the Commissioner shall issue the certificate.

(2) The Commissioner may, before issuing a certificate under subsection (1) in respect of an act or thing, require the applicant, or any other person or persons, to give to the Commissioner such undertaking or such undertakings in relation to the act or

thing as the Commissioner considers necessary for the purpose of protecting the revenue of the Commonwealth, being an undertaking or undertakings which the Commissioner is satisfied will be carried out.

(3) The Commissioner may require any person who gives, or any persons who give, an undertaking for the purposes of subsection (2) to agree to pay to the Commonwealth in the event of a breach of the undertaking such amount as is specified in, or is to be ascertained in accordance with, the undertaking and, if a court is satisfied that a breach of the undertaking given for the purposes of subsection (2) has occurred, the court may order the person, or all or any of those persons, as the case may be, to pay to the Commonwealth, as a debt due to the Commonwealth, such amount, not exceeding the amount so specified or to be ascertained, as the court determines to be appropriate having regard to all relevant matters, including the nature of the undertaking, the nature and extent of the breach, the circumstances in which the breach took place and the nature and extent of any benefit or advantage in relation to the application or operation of a taxation law which will be, or may reasonably be expected to be, received or obtained, or has been, or could reasonably have been expected to have been, received or obtained, by that person, by one or more of those persons, or by any other person, as a result or by virtue of the breach.

(4) A court may, for the purposes of subsection (3), treat a person as a person who will receive or obtain or has received or obtained, as a result or by virtue of a breach of an undertaking, a benefit or advantage in relation to the application or operation of a taxation law, being a taxation law with respect to a tax on incomes, if the person has not become, or could not reasonably be expected to have become, or will not become, or may not reasonably be expected to become, liable to pay tax or the liability of the person to pay tax has been, or could reasonably be expected to have been, or will be, or may reasonably be expected to be, reduced, by reason that:

(a) the person has not, or could not reasonably be expected to have, derived, or will not, or may not reasonably be expected to, derive income that the person would have, or could reasonably be expected to have, derived, or will, or could reasonably be expected to, derive, if the breach had not taken place; or

(b) the person has, or could reasonably be expected to have, incurred, or will, or may reasonably be expected to, incur, a loss or outgoing that the person would not have, or could not reasonably be expected to have, incurred, or will not, or may not reasonably be expected to, incur, if the breach had not taken place; but this subsection shall not be taken as limiting the generality of subsection (3).

(5) The Commissioner may institute a proceeding in any court, being a court having jurisdiction in proceedings for the recovery of debts up to an amount of not less than the amount that could be recovered in that proceeding, for the recovery on behalf of the Commonwealth of a debt referred to in subsection (3).

#### **14D Grounds on which issue of certificates may be refused**

(1) Where application is made to the Commissioner under section 14B for the issue of a tax clearance certificate in respect of an act or thing, the Commissioner may refuse to issue the certificate if the applicant does not satisfy the Commissioner that the act or thing will not, or may not reasonably be expected to, involve or assist in, or be associated with, the avoidance or evasion, whether in Australia or elsewhere, of

Australian tax by the applicant or by another person and, without limiting the generality of the foregoing, does not satisfy the Commissioner that:

(a) a person (whether or not the applicant), either alone or in association with another person and whether in Australia or elsewhere, as a result or by virtue of the doing of the act or thing or of an associated act or thing to be done or done:

(i) will not, or may not reasonably be expected to, receive or obtain; or

(ii) has not, or could not reasonably be expected to have, received or obtained; a benefit or advantage in relation to the application or operation of a taxation law, and the act or thing, or the associated act or thing:

(iii) would not be done, or could not reasonably be expected to be done, or done in the same form or in the same way; or

(iv) would not have been done, or could not reasonably have been expected to have been done, or done in the same form or in the same way; but for that benefit or advantage; and

(b) as a result or by virtue of the doing of the first-mentioned act or thing or an associated act or thing to be done or done, an amount of Australian tax that will become, or may reasonably be expected to become, or has become, or could reasonably be expected to have become, payable will not be, or may not reasonably be expected to be, or has not been, or could not reasonably be expected to have been, able to be collected.

(2) A person may, for the purposes of subsection (1), be treated as a person who will receive or obtain or has received or obtained, as a result or by virtue of the doing of an act or thing, a benefit or advantage in relation to the application or operation of a taxation law, being a taxation law with respect to a tax on incomes, if the person has not become, or could not reasonably be expected to have become, or will not become, or may not reasonably be expected to become, liable to pay tax or the liability of the person to pay tax has been, or could reasonably be expected to have been, or will be, or may reasonably be expected to be, reduced, by reason that:

(a) the person has not, or could not reasonably be expected to have, derived, or will not, or may not reasonably be expected to, derive income that the person would have, or could reasonably be expected to have, derived, or will, or could reasonably be expected to, derive, if the act or thing had not been, or were not, done; or

(b) the person has, or could reasonably be expected to have, incurred, or will, or may reasonably be expected to, incur, a loss or outgoing that the person would not have, or could not reasonably be expected to have, incurred, or will not, or may not reasonably be expected to, incur, if the act or thing had not been, or were not, done; but this subsection shall not be taken as limiting the generality of subsection (1).

(3) For the purposes of this section:

(a) the Commissioner may have regard to arrangements, understandings and practices not having legal force in the same manner as if they had legal force; and

(b) the fact that an act or thing is, forms part of or relates to an ordinary commercial or family dealing is irrelevant.

(4) Where the Commissioner refuses to issue a tax clearance certificate, he or she shall cause to be served on the applicant for the issue of the certificate notice of the refusal.

#### **14E Objections**

An applicant who is dissatisfied with a decision of the Commissioner to refuse an application made under section 14B may object against the decision in the manner set out in Part IVC.

**14I Commissioner may obtain information and evidence**

(1) For the purposes of this Part, the Commissioner may, by notice in writing, require any person, whether an applicant for a certificate or not, including any officer employed in or in connexion with any department of a government or by any public authority:

- (a) to furnish the Commissioner with such information as the Commissioner requires;
- (b) to attend before the Commissioner, or before an officer authorized by the Commissioner for the purpose, at a time and place specified in the notice, and then and there answer questions; and
- (c) to produce to the Commissioner any documents in the custody or under the control of the person.

(2) The Commissioner may cause copies to be made of, or extracts to be taken from, any documents which are produced to the Commissioner in pursuance of paragraph (1)(c).

(3) A person, not being the applicant for the issue of a tax clearance certificate, who, in relation to an application for the issue of a certificate, is required in pursuance of paragraph (1)(b) to attend before the Commissioner or an officer authorized by the Commissioner is entitled to payment of an allowance in respect of the person's expenses of an amount determined by the Commissioner in accordance with the regulations.

**14J Access to books etc.**

(1) For the purposes of this Part, an officer authorized by the Commissioner to exercise powers under this section:

- (a) may, at all reasonable times, enter upon any land;
- (b) shall have full and free access at all reasonable times to all documents; and
- (c) may take extracts from, and make copies of, any documents.

(2) An officer who enters upon land in pursuance of subsection (1) is not authorized to remain on the land if, on request by the occupier of the land, he or she does not produce a certificate issued by the Commissioner certifying that he or she is an officer authorized to exercise powers under subsection (1).

(3) The occupier of land entered or proposed to be entered by an officer under subsection (1) shall provide the officer with all reasonable facilities and assistance for the effective exercise of powers under this section. Penalty for a contravention of this subsection: 10 penalty units.

**14L Application of Part outside Australia**

This Part applies both within and without Australia.

**14N Notices**

A notice that is required or permitted by this Part, or the regulations made for the purposes of this Part, to be given to or served on a person by the Commissioner may, without prejudice to any other method of service, be given or served personally, or by post addressed to the person at the person's place of residence or business last known to the Commissioner or at an address that, under the regulations, is the person's address for service for the purposes of this Part.

**Part IVA—Departure from Australia of certain tax debtors**

**Division 1—Interpretation**

**14Q Interpretation**

(1) In this Part, unless the contrary intention appears:

*Australia*, when used in a geographical sense, includes the external Territories.

*authorized officer* means a person who is:

(a) an officer for the purposes of the *Customs Act 1901*; or

(b) a member of the Australian Federal Police.

*departure authorization certificate* means a certificate under subsection 14U(1).

*departure prohibition order* means an order under subsection 14S(1).

*Immigration Department* means the Department of Immigration and Ethnic Affairs.

(2) A reference in this Part to the departure of a person from Australia for a foreign country is a reference to the departure of the person from Australia for a foreign country, whether or not the person intends to return to Australia.

**Division 2—Prohibition and authorisation of departure of certain tax debtors**

**14R Departure from Australia of certain tax debtors prohibited**

(1) A person in respect of whom a departure prohibition order is in force, and who knows that such an order is in force in respect of him or her, shall not depart from Australia for a foreign country. Penalty: 50 penalty units or imprisonment for 12 months, or both.

(2) Subsection (1) does not apply if the departure is authorised by a departure authorization certificate. Note: A defendant bears an evidential burden in relation to the matters in subsection (2), see subsection 13.3(3) of the *Criminal Code*.

**14S Departure prohibition orders**

(1) Where:

(a) a person is subject to a tax liability; and

(b) the Commissioner believes on reasonable grounds that it is desirable to do so for the purpose of ensuring that the person does not depart from Australia for a foreign country without:

(i) wholly discharging the tax liability; or

(ii) making arrangements satisfactory to the Commissioner for the tax liability to be wholly discharged; the Commissioner may, by order in accordance with the prescribed form, prohibit the departure of the person from Australia for a foreign country.

(2) Subject to subsection (3), a departure prohibition order remains in force unless and until revoked under section 14T or set aside by a court.

(3) A departure prohibition order made in respect of a person shall be taken, by virtue of this subsection, not to be in force in respect of the person during any period during which an order is in force under the *Migration Act 1958* for the deportation of the person.

(4) Where a departure prohibition order is made in respect of a person, the Commissioner shall forthwith:

(a) cause the person to be informed, as prescribed, of the making of the order; and  
 (b) subject to subsection (5), cause a copy of the order, and such information as the Commissioner considers is likely to facilitate the identification of the person, to be given to:

(i) the Secretary to the Immigration Department; and  
 (ii) such other persons as the Commissioner considers appropriate, being persons prescribed, or included in a class of persons prescribed, for the purposes of this paragraph.

(5) Where a departure prohibition order is made in respect of a person whom the Commissioner is satisfied is an Australian citizen, the Commissioner shall not cause a copy of the order, or any information likely to facilitate the identification of the person, to be given to the Secretary to the Immigration Department unless the Commissioner is of the opinion that it is desirable to do so.

#### **14T Revocation and variation of departure prohibition orders**

(1) Where a departure prohibition order is in force in respect of a person and:

(a) the tax liabilities to which the person is subject have been wholly discharged and the Commissioner is satisfied that it is likely that the tax liabilities to which the person may become subject in respect of, or arising out of, matters that have occurred will be:

(i) wholly discharged; or

(ii) completely irrecoverable; or

(b) the Commissioner is satisfied that the tax liabilities to which the person is subject are completely irrecoverable; the Commissioner shall, on application being made to the Commissioner by the person to do so or on the Commissioner's own motion, revoke the departure prohibition order.

(2) Where a departure prohibition order is in force in respect of a person, the Commissioner may, in the Commissioner's discretion and on application being made to the Commissioner to do so or on the Commissioner's own motion, revoke or vary the departure prohibition order.

(3) A reference in paragraph (1)(a) to tax liabilities having been wholly discharged includes a reference to arrangements satisfactory to the Commissioner having been made for those tax liabilities to be wholly discharged and a reference in that paragraph to the Commissioner being satisfied that it is likely that tax liabilities to which a person may become subject will be wholly discharged includes a reference to the Commissioner being satisfied that it is likely that arrangements satisfactory to the Commissioner will be made for those tax liabilities to be wholly discharged.

(4) As soon as practicable after a departure prohibition order made in respect of a person is revoked or varied under this section, the Commissioner shall:

(a) cause to be served, as prescribed, on the person; and

(b) cause to be given to each person to whom a copy of the departure prohibition order was given; notification of the revocation or variation of the departure prohibition order.

(5) As soon as practicable after a decision is made under subsection (1) or (2) refusing to revoke a departure prohibition order made in respect of a person, the Commissioner shall cause to be served, as prescribed, on the person notification of the decision.

#### **14U Departure authorisation certificates**

- (1) Where, on application made by a person in respect of whom a departure prohibition order is in force:
  - (a) the Commissioner is satisfied:
    - (i) that, if a departure authorization certificate is issued in respect of the person, it is likely that:
      - (A) the person will depart from Australia and will return to Australia within such period as the Commissioner considers to be appropriate in relation to the person; and
      - (B) circumstances of the kind referred to in paragraph 14T(1)(a) will come into existence within such period as the Commissioner considers to be appropriate in relation to the person; and
    - (ii) that it is not necessary or desirable for the person to give security under subsection (2) for the person's return to Australia; or (b) in a case where the Commissioner is not satisfied with respect to the matters referred to in paragraph (a):
      - (i) the person has given security under subsection (2) to the satisfaction of the Commissioner for the person's return to Australia; or
      - (ii) if the person is unable to give such security, the Commissioner is satisfied that:
        - (A) a departure authorization certificate should be issued in respect of the person on humanitarian grounds; or
        - (B) a refusal to issue a departure authorization certificate in respect of the person would be detrimental to the interests of Australia; the Commissioner shall issue a certificate authorizing the person to depart from Australia for a foreign country on or before the seventh day after a day (being a day later than, but not more than 7 days later than, the day on which the certificate is issued) specified in the certificate.
  - (2) For the purposes of this section:
    - (a) a person may give security, by bond, deposit or any other means, for the person's return to Australia by such day as is agreed between the person and the Commissioner;
    - (b) the Commissioner may, in the Commissioner's discretion and on application by the person or on the Commissioner's own motion, substitute a later day for the day so agreed (including a day substituted by virtue of a previous application of this paragraph); and
    - (c) the Commissioner may refuse to substitute such a later day unless the person:
      - (i) increases, to the satisfaction of the Commissioner, the value of the security given by the person under this subsection; or
      - (ii) gives a further security, to the satisfaction of the Commissioner, by bond, deposit or any other means, for the person's return to Australia by that later day.
  - (3) As soon as practicable after a departure authorization certificate is issued in respect of a person, the Commissioner shall:
    - (a) cause a copy of the departure authorization certificate to be served, as prescribed, on the person; and
    - (b) cause a copy of the departure authorization certificate to be given to each person to whom a copy of the departure prohibition order made in respect of the person was given.
  - (4) As soon as practicable after a decision is made under subsection (1) refusing to issue a departure authorization certificate in respect of a person or a decision is made under subsection (2) refusing to substitute a later day in relation to the return of a

person to Australia, the Commissioner shall cause to be served, as prescribed, on the person notification of the decision.

### **Division 3—Appeals from, and review of, decisions of the Commissioner**

#### **14V Appeals to courts against making of departure prohibition orders**

(1) A person aggrieved by the making of a departure prohibition order may appeal to the Federal Court of Australia or the Supreme Court of a State or Territory against the making of the departure prohibition order.

(2) This section has effect:

(a) subject to chapter III of the Constitution; and

(b) notwithstanding anything contained in section 9 of the *Administrative Decisions (Judicial Review) Act 1977*.

#### **14W Jurisdiction of courts**

(1) The jurisdiction of a court under section 14V shall be exercised by a single Judge or Justice.

(2) An appeal lies to the Federal Court of Australia from a judgment or order of the Supreme Court of a State or Territory exercising jurisdiction under section 14V.

(3) An appeal lies to the High Court, with special leave of the High Court, from a judgment or order referred to in subsection (2).

(4) Except as provided in subsection (2) or (3), no appeal lies from a judgment or order referred to in subsection (2).

#### **14X Orders of court on appeal**

A court hearing an appeal under section 14V against the making of a departure prohibition order may, in its discretion:

(a) make an order setting aside the departure prohibition order; or

(b) dismiss the appeal.

#### **14Y Applications for review of certain decisions**

(1) Applications may be made to the Tribunal for review of decisions of the Commissioner under section 14T or 14U.

(2) In subsection (1), *decision* has the same meaning as in the *Administrative Appeals Tribunal Act 1975*.

### **Division 4—Enforcement**

#### **14Z Powers of authorised officers**

(1) Where an authorized officer believes on reasonable grounds that:

(a) a person is about to depart from Australia for a foreign country;

(b) a departure prohibition order is in force in respect of the person; and

(c) the departure is not authorized by a departure authorization certificate; the authorized officer may:

(d) take such steps as are reasonably necessary to prevent the departure of the person, including, but without limiting the generality of the foregoing, steps to prevent the person going on board, or steps to remove the person from, a vessel or aircraft in which the authorized officer believes on reasonable grounds the departure will take place; and

(e) require the person to answer questions or produce documents to the authorized officer, or both, for the purposes of ascertaining whether:

(i) a departure prohibition order is in force in respect of the person; and  
 (ii) if a departure prohibition order is in force in respect of the person—the departure of the person from Australia for a foreign country is authorized by a departure authorization certificate.

(2) A person who refuses or fails, when and as required to do so pursuant to subsection (1), to answer a question or produce a document, is guilty of an offence punishable on conviction by a fine not exceeding \$1,000. (2A) Subsection (2) does not apply to the extent that the person has a reasonable excuse. Note: A defendant bears an evidential burden in relation to the matters in subsection (2A), see subsection 13.3

(3) of the *Criminal Code*.

(4) Section 8C does not apply in relation to a requirement made pursuant to subsection (1) of this section.

(5) Subsection 8K(1) and (1B) and section 8N do not apply in relation to an answer given to a question asked, or a document produced, pursuant to subsection (1).

**14ZA Certain tax debtors to produce authority to depart etc.**

(1) Where:

(a) a person in respect of whom a departure prohibition order is in force is about to depart from Australia for a foreign country; and

(b) the departure is authorized by a departure authorization certificate; the person shall, if required to do so pursuant to this subsection by an authorized officer, produce a copy of the departure authorization certificate for inspection by the authorized officer. Penalty: 5 penalty units. (1A) An offence under subsection (1) is an offence of strict liability. Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

(2) Section 8C does not apply in relation to a requirement made pursuant to subsection (1) of this section.

**Part IVC—Taxation objections, reviews and appeals**

**Division 1—Introduction**

**14ZL Part applies to taxation objections**

(1) This Part applies if a provision of an Act or of regulations (including the provision as applied by another Act) provides that a person who is dissatisfied with an assessment, determination, notice or decision, or with a failure to make a private ruling, may object against it in the manner set out in this Part.

(2) Such an objection is in this Part called a *taxation objection*.

**14ZM Division 2—Interpretive**

Division 2 contains interpretive provisions necessary for this Part.

**14ZN Division 3—Taxation objections**

Division 3 describes how taxation objections are to be made and how they are to be dealt with by the Commissioner.

**14ZO Division 4—Tribunal review**

Division 4 contains provisions about applications to the Tribunal for review of decisions by the Commissioner in relation to certain taxation objections and requests for extension of time.

**14ZP Division 5—Federal Court appeals**

Division 5 contains provisions about appeals to the Federal Court against decisions by the Commissioner in relation to certain taxation objections.

**Division 2—Interpretive provisions**

**14ZQ General interpretation provisions** In this Part:

*AAT* means the Administrative Appeals Tribunal.

*AAT Act* means the *Administrative Appeals Tribunal Act 1975*.

*AAT extension application* means an application under subsection 29(7) of the AAT Act that relates to a review of a reviewable objection decision or an extension of time refusal decision.

*appealable objection decision* means an objection decision other than one made on a taxation objection under section 14E of this Act.

*delayed administration (beneficiary) objection* means a taxation objection made under: (b) subsection 220(3) of the *Income Tax Assessment Act 1936* (including that subsection as applied by any other Act); or (g) subsection 260-145(5) in Schedule 1 (because of paragraph (a) of that subsection).

*delayed administration (trustee) objection* means a taxation objection made under: (a) subsection 220(7) of the *Income Tax Assessment Act 1936* (including that subsection as applied by any other Act); or (b) subsection 260-145(5) in Schedule 1 (because of paragraph (b) of that subsection).

*extension of time refusal decision* means a decision of the Commissioner under subsection 14ZX(1) to refuse a request by a person.

*Family Court* means the Family Court of Australia.

*Family Court Judge* means a Judge of the Family Court (including the Chief Judge, the Deputy Chief Judge, a Judge Administrator or a Senior Judge).

*Federal Court* means the Federal Court of Australia.

*franking assessment* has the same meaning as in the *Income Tax Assessment Act 1997*.

*ineligible income tax remission decision* has the meaning given by section 14ZS.

*objection decision* has the meaning given by subsection 14ZY(2).

*private ruling* has the same meaning as in Division 359 in Schedule 1.

*reviewable objection decision* means an objection decision that is not an ineligible income tax remission decision.

*taxation decision* means the assessment, determination, notice or decision against which a taxation objection may be, or has been, made.

*taxation objection* has the meaning given by section 14ZL.

**14ZR Taxation decisions covered by single notice to be treated as single decision**

(1) If:

(a) a provision of an Act (including a provision as applied by another Act, but not including section 14E of this Act) provides that a person who is dissatisfied with a taxation decision may object against it in the manner set out in this Part; and

(b) a notice incorporates notice of 2 or more such taxation decisions; then, for the purposes of the provision and of this Part, the taxation decisions are taken to be one taxation decision.

(2) If:

(a) under subsection (1), 2 or more taxation decisions are taken to be a single taxation decision (in this subsection called the *deemed single taxation decision*); and

(b) the Commissioner makes an objection decision in relation to the deemed single taxation decision; and

(c) the objection decision is to any extent an ineligible income tax remission decision; then, this Part has effect, in relation to any review or appeal, as if so much of the objection decision as consists of one or more ineligible income tax remission decisions were taken to be a separate objection decision.

### **14ZS Ineligible income tax remission decisions**

(1) For the purposes of this Part, an objection decision is an ineligible income tax remission decision if subsection (2) or (4) applies. (2) An objection decision is an ineligible income tax remission decision if it relates to the remission of additional tax payable by a taxpayer under the *Income Tax Assessment Act 1936* (other than Division 11 of former Part IIIAA), except where the additional tax is payable under former section 163B, 224, 225, 226, 226G, 226H, 226J, 226K, 226L or 226M of that Act, whatever its amount, or is payable under a provision of former Part VII of that Act other than any of the preceding sections and its amount, after the decision is made, exceeds:

(a) in the case of additional tax payable under former section 222 of that Act because of the refusal or failure to furnish a return, or any information, relating to a year of income—the amount calculated, in respect of the period commencing on the last day allowed for furnishing the return or information and ending on:

(i) the day on which the return or information is furnished; or

(ii) the day on which the assessment of the additional tax is made; whichever first happens, at the rate of 20% per year of the tax properly payable by the taxpayer in respect of the year of income; or (d) if the amount calculated in accordance with paragraph (a) is less than \$20—\$20. (5) A reference in this section to a provision of the *Income Tax Assessment Act 1936* includes a reference to that provision as applied by any other Act.

### **Division 3—Taxation objections**

#### **14ZU How taxation objections are to be made**

A person making a taxation objection must:

(a) make it in the approved form; and

(b) lodge it with the Commissioner within the period set out in section 14ZW; and

(c) state in it, fully and in detail, the grounds that the person relies on.

Note: A person who objects against the Commissioner's failure to make a private ruling must lodge a draft private ruling with the objection: see subsection 359-50(4).

#### **14ZV Limited objection rights in the case of certain amended taxation decisions**

If the taxation objection is made against a taxation decision, being an assessment or determination that has been amended in any particular, then a person's right to object against the amended assessment or amended determination is limited to a right to object against alterations or additions in respect of, or matters relating to, that particular.

#### **14ZVA Limited objection rights because of objection against private ruling**

If there has been a taxation objection against a private ruling, then the right of objection against an assessment relating to the matter ruled is limited to a right to

object on grounds that neither were, nor could have been, grounds for the taxation objection against the ruling.

**14ZW When taxation objections are to be made**

(1) Subject to this section, the person must lodge the taxation objection with the Commissioner within:

(aa) if the taxation objection is made under section 175A of the *Income Tax Assessment Act 1936*:

(i) if item 1, 2 or 3 of the table in subsection 170(1) of that Act applies to the assessment concerned—2 years after notice of the assessment is given to the person; or

(ii) otherwise—4 years after notice of the assessment concerned is given to the person; or

(aaa) if the taxation objection is made under section 78A of the *Fringe Benefits Tax Assessment Act 1986* or former section 160AL of the *Income Tax Assessment Act 1936*—4 years after notice of the taxation decision to which it relates has been given to the person; or

(aab) if the taxation objection is made under section 292-245 of the *Income Tax Assessment Act 1997*—4 years after notice of the assessment concerned is given to the person; or

(ab) if the taxation objection is a delayed administration (beneficiary) objection made under subsection 260-145(5) in Schedule 1 (because of paragraph (a) of that subsection) or subsection 220(3) of the *Income Tax Assessment Act 1936* (not including that subsection as applied by any other Act)—4 years after notice of the taxation decision to which it relates has been first published; or

(ac) if the taxation objection is a delayed administration (trustee) objection made under subsection 260-145(5) in Schedule 1 (because of paragraph (b) of that subsection) or subsection 220(7) of the *Income Tax Assessment Act 1936* (not including that subsection as applied by any other Act)—4 years after probate of the will, or letters of administration of the estate, of the deceased person concerned has been granted; or

(a) if the taxation objection is a delayed administration (beneficiary) objection to which paragraph (ab) does not apply—60 days after notice of the taxation decision to which it relates has been first published; or

(b) if the taxation objection is a delayed administration (trustee) objection to which paragraph (ac) does not apply—60 days after probate of the will, or letters of administration of the estate, of the deceased person concerned has been granted; or

(ba) if the taxation objection is an objection under subsection 359-50(3) in Schedule 1 against the Commissioner's failure to make a private ruling—60 days after the end of the period of 30 days referred to in that subsection; or

(bb) if the taxation objection is made under section 66 of the *Petroleum Resource Rent Tax Assessment Act 1987* to an assessment under that Act—4 years after notice of the assessment is given to the person; or

(bc) if the taxation objection is made under subsection 73IA(2) of the *Income Tax Assessment Act 1936*:

(i) if item 2 or 3 of the table in subsection 170(1) of that Act would apply to an assessment of the person for the tax offset year referred to in section 73I of that Act—

2 years after notice of the amount (if any) of a tax offset allowable to the person under section 73I of that Act is given to the person; or

(ii) otherwise—4 years after the notice concerned is given to the person; or

(bd) if the taxation objection is made under section 20P of the *Superannuation (Unclaimed Money and Lost Members) Act 1999* against a notice given to a superannuation provider under section 20C of that Act and the person is not the superannuation provider—2 years after the notice was given to the superannuation provider; or

(be) if the taxation objection is made under section 20P of the *Superannuation (Unclaimed Money and Lost Members) Act 1999* against a decision under Division 4 or 5 of Part 3A of that Act and the person is not a superannuation provider (as defined in that Act)—2 years after the person was given notice of the decision; or

(c) in any other case—60 days after notice of the taxation decision to which it relates has been served on the person.

(1AAA) The person must lodge the taxation objection against a reviewable indirect tax decision (within the meaning of section 105-40 in Schedule 1) before the end of whichever of the following ends last:

(a) the 60 days after notice of the decision was served on the person;

(b) the 4 years after the end of the tax period, or after the importation of goods, to which the decision relates.

(1A) The person cannot lodge a taxation objection against a private ruling that relates to a year of income after the end of whichever of the following ends last:

(a) 60 days after the ruling was made;

(b) whichever of the following is applicable:

(i) if item 1, 2 or 3 of the table in subsection 170(1) of the *Income Tax Assessment Act 1936* applies to the person's assessment for that income year—2 years after the last day allowed to the person for lodging a return in relation to the person's income for that year of income;

(ii) otherwise—4 years after that day.

(1AA) The person cannot lodge a taxation objection against a private ruling that relates to a year of tax and a petroleum project under the *Petroleum Resource Rent Tax Assessment Act 1987* after the end of whichever of the following ends last:

(a) the 60 days after the ruling was made;

(b) the 4 years after the last day allowed to the person for lodging a return in relation to the year of tax and the project.

(1B) If:

(a) section 14ZV applies to a taxation objection; and

(b) apart from this subsection, subparagraph (1)(aa)(ii) or paragraph (1)(aaa), (aab), (ab), (ac) or (bb) would apply to the taxation objection; the person must lodge the taxation objection before the end of whichever of the following ends last:

(c) the 4 years after notice of the assessment or determination that has been amended by the amended assessment or amended determination to which the taxation objection relates has been served on the person;

(d) the 60 days after the notice of the amended assessment or amended determination to which the taxation objection relates has been served on the person.

(1BA) If:

- (a) section 14ZV applies to a taxation objection; and
- (b) apart from this subsection, subparagraph (1)(aa)(i) would apply to the taxation objection; the person must lodge the taxation objection before the end of whichever of the following ends last:
  - (c) 2 years after notice of the assessment or determination that has been amended by the amended assessment or amended determination to which the taxation objection relates has been served on the person;
  - (d) 60 days after the notice of the amended assessment to which the taxation objection relates has been served on the person.

(1BB) If:

- (a) the taxation objection is against an assessment by the Commissioner of the amount of an administrative penalty under Division 284; and
- (b) that penalty relates to an assessment of the person; and
- (c) the person has longer than 60 days to lodge a taxation objection against the assessment referred to in paragraph (b); the person must lodge the taxation objection within that longer period.

(1C) For the purposes of paragraph (1B)(c), if an assessment or determination has been amended more than once, the notice is the notice of the first assessment or determination in relation to the year of income, franking year or year of tax, as the case requires.

(2) If the period within which an objection by a person is required to be lodged has passed, the person may nevertheless lodge the objection with the Commissioner together with a written request asking the Commissioner to deal with the objection as if it had been lodged within that period.

(3) The request must state fully and in detail the circumstances concerning, and the reasons for, the person's failure to lodge the objection with the Commissioner within the required period.

**14ZX Commissioner to consider applications for extension of time**

(1) After considering the request, the Commissioner must decide whether to agree to it or refuse it.

(2) The Commissioner must give the person written notice of the Commissioner's decision.

(3) If the Commissioner decides to agree to the request, then, for the purposes of this Part, the objection is taken to have been lodged with the Commissioner within the required period.

(4) If the Commissioner decides to refuse the request, the person may apply to the Tribunal for review of the decision.

**14ZY Commissioner to decide taxation objections**

(1) Subject to subsection (1A), if the taxation objection has been lodged with the Commissioner within the required period, the Commissioner must decide whether to:

- (a) allow it, wholly or in part; or
- (b) disallow it.

(1A) If the taxation objection is an objection under subsection 359-50(3) in Schedule 1 against the Commissioner's failure to make a private ruling, the Commissioner must:

- (a) make a private ruling in the same terms as the draft ruling lodged with the objection; or
- (b) make a different private ruling.
- (2) Such a decision is in this Part called an *objection decision*.
- (3) The Commissioner must cause to be served on the person written notice of the Commissioner's objection decision.

**14ZYA Person may require Commissioner to make an objection decision**

(1) This section applies if the taxation objection (other than one under subsection 359-50(3) in Schedule 1) has been lodged with the Commissioner within the required period and the Commissioner has not made an objection decision by whichever is the later of the following times:

- (a) the end of the period (in this section called the *original 60-day period*) of 60 days after whichever is the later of the following days:
  - (i) the day on which the taxation objection is lodged with the Commissioner;
  - (ii) if the Commissioner decides under section 14ZX to agree to a request in relation to the taxation objection—the day on which the decision is made;
- (b) if the Commissioner, by written notice served on the person within the original 60-day period, requires the person to give information relating to the taxation objection—the end of the period of 60 days after the Commissioner receives that information.

(2) The person may give the Commissioner a written notice requiring the Commissioner to make an objection decision.

(3) If the Commissioner has not made an objection decision by the end of the period of 60 days after being given the notice, then, at the end of that period, the Commissioner is taken to have made a decision under subsection 14ZY(1) to disallow the taxation objection.

**14ZYB Requiring Commissioner to make a private ruling**

(1) This section applies if the taxation objection is an objection under subsection 359-50(3) in Schedule 1 against the Commissioner's failure to make a private ruling and the Commissioner has not made an objection decision by the end of 60 days after the later of these days:

- (a) the day on which the taxation objection was lodged with the Commissioner;
- (b) if the Commissioner decides under section 14ZX to agree to a request in relation to the taxation objection—the day on which the decision was made.

(2) The Commissioner is taken, at the end of that 60 day period, to have disallowed the objection.

**14ZZ Person may seek review of, or appeal against, Commissioner's decision**

If the person is dissatisfied with the Commissioner's objection decision (including a decision under paragraph 14ZY(1A)(b) to make a different private ruling), the person may:

- (a) if the decision is both a reviewable objection decision and an appealable objection decision—either:
  - (i) apply to the Tribunal for review of the decision; or
  - (ii) appeal to the Federal Court against the decision; or
- (b) if the decision is a reviewable objection decision (other than an appealable objection decision)—apply to the Tribunal for review of the decision; or

(c) if the decision is an appealable objection decision (other than a reviewable objection decision)—appeal to the Federal Court against the decision.

**Division 4—AAT review of objection decisions and extension of time refusal decisions**

**14ZZA Modified AAT Act to apply**

The AAT Act applies in relation to:

- (a) the review of reviewable objection decisions; and
- (b) the review of extension of time refusal decisions; and
- (c) AAT extension applications; subject to the modifications set out in this Division.

**14ZZB Sections 27, 28, 41 and 44A of the AAT Act not to apply to certain decisions**

(1) Sections 27 and 41 of the AAT Act do not apply in relation to:

- (a) a reviewable objection decision; or
- (b) an extension of time refusal decision.

(2) Sections 28 and 44A of the AAT Act do not apply in relation to a reviewable objection decision.

**14ZZC Modification of section 29 of the AAT Act**

Section 29 of the AAT Act applies in relation to a reviewable objection decision as if subsections (1) to (6) (inclusive) of that section were omitted and the following subsection were substituted:

“(1) An application to the Tribunal for a review of a decision:

- (a) must be in writing; and
- (b) may be made in accordance with the prescribed form; and
- (c) must set out a statement of the reasons for the application; and
- (d) must be lodged with the Tribunal within 60 days after the person making the application is served with notice of the decision.”.

**14ZZD Modification of section 30 of the AAT Act**

Section 30 of the AAT Act applies in relation to a reviewable objection decision or an extension of time refusal decision as if subsection (1A) of that section were omitted and the following subsection were substituted:

“(1A) If an application has been made by a person to the Tribunal for the review of a reviewable objection decision or an extension of time refusal decision:

- (a) any other person whose interests are affected by the decision may apply, in writing, to the Tribunal to be made a party to the proceeding; and
- (b) the Tribunal may, in its discretion, by order, if it is satisfied that the person making the application consents to the order, make that person a party to the proceeding.”.

**14ZZE Hearings before Tribunal other than Small Taxation Claims Tribunal to be held in private if applicant so requests**

Despite section 35 of the AAT Act, the hearing of a proceeding before the Tribunal, other than the Small Taxation Claims Tribunal, for:

- (a) a review of a reviewable objection decision; or
- (b) a review of an extension of time refusal decision; or
- (c) an AAT extension application; is to be in private if the party who made the application requests that it be in private.

**14ZZF Modification of section 37 of the AAT Act**

(1) Section 37 of the AAT Act applies in relation to an application for review of a reviewable objection decision as if:

(a) the requirement in subsection (1) of that section to lodge with the Tribunal such numbers of copies as is prescribed of statements or other documents were instead a requirement to lodge with the Tribunal such numbers of copies as is prescribed of:

- (i) a statement giving the reasons for the decision; and
- (ii) the notice of the taxation decision concerned; and
- (iii) the taxation objection concerned; and
- (iv) the notice of the objection decision; and
- (v) every other document that is in the Commissioner's possession or under the Commissioner's control and is considered by the Commissioner to be necessary to the review of the objection decision concerned; and
- (vi) a list of the documents (if any) being lodged under subparagraph (v); and

(b) the power of the Tribunal under subsection (2) of that section to cause a notice to be served containing a statement and imposing a requirement on a person were instead:

- (i) a power to make such a statement and impose such a requirement orally at a conference held in accordance with subsection 34(1) of the AAT Act; and
- (ii) a power, by such a notice, to make such a statement and impose a requirement that the person lodge with the Tribunal, within the time specified in the notice, the prescribed number of copies of each of those other documents that is in the person's possession or under the person's control; and
- (iii) a power, by such a notice, to make such a statement and impose a requirement that the person lodge with the Tribunal, within the time specified in the notice, the prescribed number of copies of a list of the documents in the person's possession or under the person's control considered by the person to be relevant to the review of the objection decision concerned.

(2) Paragraph (1)(b) does not affect any powers that the Tribunal has apart from that paragraph.

(3) The imposition of a requirement covered by subparagraph (1)(b)(iii) does not prevent the subsequent imposition of a requirement covered by subparagraph (1)(b)(ii).

#### **14ZZG Modification of section 38 of the AAT Act**

Section 38 of the AAT Act applies in relation to an application for a review of a reviewable objection decision as if the reference to paragraph 37(1)(a) of that Act were instead a reference to subparagraph 14ZZF(1)(a)(i) of this Act.

#### **14ZZJ Modification of section 43 of the AAT Act**

Section 43 of the AAT Act applies in relation to:

- (a) a review of a reviewable objection decision; and
- (b) a review of an extension of time refusal decision; and
- (c) an AAT extension application; as if the following subsections were inserted after subsection (2B):

“(2C) If a hearing of a proceeding for the review of a decision or an AAT extension application is not conducted in public, that fact does not prevent the Tribunal from publishing its reasons for the decision.

“(2D) If:

- (a) a hearing of a proceeding for the review of a decision or an AAT extension application is not conducted in public; and
- (b) a notice of appeal has not been lodged with the Federal Court; the Tribunal must ensure, as far as practicable, that its reasons for the decision are framed so as not to be likely to enable the identification of the person who applied for the review.

“(2E) In subsections (2C) and (2D):

*reasons for decision* includes findings on material questions of fact and references to the evidence or other material on which those findings were based.”.

### **14ZZK Grounds of objection and burden of proof**

On an application for review of a reviewable objection decision:

- (a) the applicant is, unless the Tribunal orders otherwise, limited to the grounds stated in the taxation objection to which the decision relates; and
- (b) the applicant has the burden of proving that:
  - (i) if the taxation decision concerned is an assessment (other than a franking assessment)—the assessment is excessive; or
  - (ii) if the taxation decision concerned is a franking assessment—the assessment is incorrect; or
  - (iii) in any other case—the taxation decision concerned should not have been made or should have been made differently.

### **14ZZL Implementation of Tribunal decisions**

(1) When the decision of the Tribunal on the review of a reviewable objection decision or an extension of time refusal decision becomes final, the Commissioner must, within 60 days, take such action, including amending any assessment or determination concerned, as is necessary to give effect to the decision.

(2) For the purposes of subsection (1), if no appeal is lodged against the Tribunal’s decision within the period for lodging an appeal, the decision becomes final at the end of the period.

### **14ZZM Pending review not to affect implementation of taxation decisions**

The fact that a review is pending in relation to a taxation decision does not in the meantime interfere with, or affect, the decision and any tax, additional tax or other amount may be recovered as if no review were pending.

## **Division 5—Federal Court appeals against objection decisions**

### **14ZZN Time limit for appeals**

An appeal to the Federal Court against an appealable objection decision must be lodged with the Court within 60 days after the person appealing is served with notice of the decision.

### **14ZZO Grounds of objection and burden of proof**

In proceedings on an appeal under section 14ZZ to the Federal Court against an appealable objection decision:

- (a) the appellant is, unless the Court orders otherwise, limited to the grounds stated in the taxation objection to which the decision relates; and
- (b) the appellant has the burden of proving that:

- (i) if the taxation decision concerned is an assessment (other than a franking assessment)—the assessment is excessive; or
- (ii) if the taxation decision concerned is a franking assessment—the assessment is incorrect; or
- (iii) in any other case—the taxation decision should not have been made or should have been made differently.

#### **14ZZP Order of Federal Court on appealable objection decision**

Where the Federal Court hears an appeal against an appealable objection decision under section 14ZZ, the Court may make such order in relation to the decision as it thinks fit, including an order confirming or varying the decision.

#### **14ZZQ Implementation of Federal Court order in respect of appealable objection decision**

(1) When the order of the Federal Court in relation to the decision becomes final, the Commissioner must, within 60 days, take such action, including amending any assessment or determination concerned, as is necessary to give effect to the decision.

(2) For the purposes of subsection (1):

- (a) if the order is made by the Federal Court constituted by a single Judge and no appeal is lodged against the order within the period for lodging an appeal—the order becomes final at the end of the period; and
- (b) if the order is made by the Full Court of the Federal Court and no application for special leave to appeal to the High Court against the order is made within the period of 30 days after the order is made—the order becomes final at the end of the period.

#### **14ZZR Pending appeal not to affect implementation of taxation decisions**

The fact that an appeal is pending in relation to a taxation decision does not in the meantime interfere with, or affect, the decision and any tax, additional tax or other amount may be recovered as if no appeal were pending.

#### **14ZZS Transfer of certain proceedings to Family Court**

(1) If:

- (a) a proceeding is pending in the Federal Court on an appeal under section 14ZZ in relation to an appealable objection decision; and
- (b) the taxation decision to which the appealable objection decision relates was made under the *Income Tax Assessment Act 1936*; the Federal Court may, on the application of a party to the proceeding or on its own initiative, transfer the proceeding to the Family Court.

(2) Subject to subsection (3), if the proceeding is transferred to the Family Court:

- (a) the Family Court has jurisdiction to hear and determine the proceeding; and
- (b) the Family Court also has jurisdiction to hear and determine matters not otherwise within its jurisdiction (whether because of paragraph (a) or otherwise):
  - (i) that are associated with matters arising in the proceeding; or
  - (ii) that, apart from subsection 32(1) of the *Federal Court of Australia Act 1976*, the Federal Court would have had jurisdiction to hear and determine in the proceeding; and
- (c) the Family Court may, in and in relation to the proceeding:

- (i) grant such remedies; and
- (ii) make orders of such kinds; and
- (iii) issue, and direct the issue of, writs of such kinds; as the Federal Court could have granted, made, issued or directed the issue of, as the case may be, in and in relation to the proceeding; and
- (d) remedies, orders and writs granted, made or issued by the Family Court in and in relation to the proceeding have effect, and may be enforced by the Family Court, as if they had been granted, made or issued by the Federal Court; and.
- (e) appeals lie from judgments of the Family Court given in and in relation to the proceeding as if the judgments were judgments of the Federal Court constituted by a single Judge of that Court, and do not otherwise lie; and
- (f) subject to paragraphs (a) to (e) (inclusive), this Act, the regulations, the *Federal Court of Australia Act 1976*, the Rules of the Court made under that Act, and other laws of the Commonwealth, apply in and in relation to the proceeding as if:
  - (i) a reference to the Federal Court (other than in the expression “the Court or a Judge”) included a reference to the Family Court; and
  - (ii) a reference to a Judge of the Federal Court (other than in the expression “the Court or a Judge”) included a reference to a Family Court Judge; and
  - (iii) a reference to the expression “the Court or a Judge” when used in relation to the Federal Court included a reference to a Family Court Judge sitting in Chambers; and.
  - (iv) a reference to a Registrar of the Federal Court included a reference to a Registrar of the Family Court; and
  - (v) any other necessary changes were made.
- (3) If any difficulty arises in the application of paragraphs (2)(c), (d) and (f) in or in relation to a particular proceeding, the Family Court may, on the application of a party to the proceeding or on its own initiative, give such directions, and make such orders, as it considers appropriate to resolve the difficulty.
- (4) An appeal does not lie from a decision of the Federal Court in relation to the transfer of a proceeding under this Part to the Family Court.