

TAXATION ADMINISTRATION ACT 1953 - SECT 8J

Interpretation

(1) In this Subdivision:

"accounting records" includes invoices, receipts, orders for the payment of money, bills of exchange, cheques, **promissory notes**, vouchers and other documents of prime entry and also includes:

(a) such working papers and other documents as are necessary to explain the methods and calculations by which **accounts** are made up; and

(b) such other documents (if any) as are prescribed.

"accounts" means ledgers, journals, profit and loss **accounts** and balance-sheets, and includes **statements**, reports and notes attached to, or intended to be read with, any of the foregoing.

"data processing device" means any article or material from which information is capable of being reproduced with or without the aid of any other article or device.

"taxation officer" means a person exercising powers or performing functions under, pursuant to or in relation to a **taxation law**.

(2) A reference in this Subdivision to a **statement** made to a **taxation officer** is a reference to a **statement** made to a **taxation officer** orally, in writing, in a **data processing device**, by way of electronic transmission or in any other form and, without limiting the generality of the foregoing, includes a **statement**:

(a) made in an application, certificate, declaration, notification, objection, return, claim or other document made, prepared, given or furnished, or purporting to be made, prepared, given or furnished, under or pursuant to a **taxation law**; or

(b) made in an **instrument** lodged for assessment under or pursuant to a **taxation law**; or

(c) made in answer to a question asked of a person under or pursuant to a **taxation law**; or

(d) made in any information furnished, or purporting to be furnished, under or pursuant to a **taxation law**; or

(e) made in a document furnished to a **taxation officer** otherwise than under or pursuant to a **taxation law**;

but does not include a **statement** made in a document **produced** pursuant to:

(kaa) subparagraph 451(2)(c)(ii) or **paragraph** 453(1)(e) of the *Income Tax Assessment Act 1936* ;

(p) **paragraph** 13G(1)(c) of this Act; or

(pa) **paragraph** 353-10(1)(c) in Schedule 1 to this Act; or

(q) **paragraph** 353-25(1)(b) or (c) in Schedule 1 to this Act.

(2A) If a document is given on a **data processing device**, or by way of electronic transmission, by a **registered tax agent** or **BAS agent** on behalf of a taxpayer, then, for the purposes of this Subdivision, each **statement** in the document is taken to have been made by the taxpayer unless the taxpayer can show that the taxpayer did not authorise the **statement**.

(3) A reference in this Subdivision to a relevant offence is a reference to:

(a) an offence against:

(i) subsection 8K(1) or (1B) or 8L(1) or (1A) or section 8N, 8Q, 8T or 8U; or

(ii) the *Crimes (Taxation Offences) Act 1980* ;

(b) an offence against:

(i) section 6 of the *Crimes Act 1914* ; or

(ii) section 11.1, 11.4 or 11.5 of the *Criminal Code* ;

being an offence that relates to an offence of a kind referred to in paragraph (a) of this subsection; or

(c) an offence against section 134.1, 134.2, 135.1, 135.2 or 135.4 of the *Criminal Code* , being an offence that relates to a tax liability.

(4) For the purposes of this Subdivision, a person who is convicted of an offence against subsection 8K(1) or (1B) or 8L(1) or (1A) or section 8N, 8Q, 8T or 8U (in this subsection referred to as the **subsequent offence**) shall be treated as having been previously convicted of a relevant offence (in this subsection referred to as the **earlier offence**) if:

(a) the person was convicted of the earlier offence on an occasion earlier than, but not more than 10 years earlier than, the person's conviction of the subsequent offence; or

(b) the person is convicted of the earlier offence and the subsequent offence before the same court at the same sitting and the earlier offence was committed:

(i) at a time or on a day earlier than, but not more than 10 years earlier than, the subsequent offence; or

(ii) at the same time, or on the same day, as the subsequent offence.

(5) Unless the contrary intention appears, a reference in paragraph (4)(a) or (b) to a conviction of a person for an offence includes a reference to the making of an order under section 19B of the *Crimes Act 1914* in relation to the person in respect of the offence.

(6) A reference in subsection (4) of this section or subsection 8M(2) to an offence against subsection 8K(1) or (1B) or 8L(1) or (1A) includes a reference to an offence against section 11.1 of the *Criminal Code* that relates to an offence against subsection 8K(1) or (1B) or 8L(1) or (1A), as the case may be.

(7) A reference in subsection 8R(2) or 8S(1) or subsection (4) of this section to an offence against section 8N or 8Q includes a reference to an offence against section 11.1 of the *Criminal Code* that relates to an offence against section 8N or 8Q, as the case may be.

(8) A reference in subsection 8V(2) or subsection (4) of this section to an offence against section 8T or 8U includes a reference to an offence against section 11.1 of the *Criminal Code* that relates to an offence against section 8T or 8U, as the case may be.

(9) A reference in this Subdivision to a statement made to a taxation officer includes a reference to a statement made to a person other than a taxation officer for a purpose in connection with the operation of a taxation law.

(10) A reference in subsection (9) to a statement made to a person other than a taxation officer for a purpose in connection with the operation of a taxation law is a reference to such a statement made orally, in writing, in a data processing device or in any other form and, without limiting the generality of the foregoing, includes such a statement:

(a) made in an application, certificate, declaration, notification or other document, made, given or furnished to the person; or

(aa) made in:

(i) a tax invoice (within the meaning of the *A New Tax System (Goods and Services Tax) Act 1999*); or

(ii) an adjustment note (within the meaning of that Act); or

(iii) a third party adjustment note (within the meaning of that Act);

given to the person; or

(b) made in answer to a question asked by the person; or

(c) made in any information furnished to the person.

(11) Where a person omits from a return furnished under or pursuant to the *Income Tax Assessment Act 1936* or the regulations under that Act, being a return of income derived by the person, a partnership or a trust estate during a period, any assessable income derived by the person, partnership or the trust estate, as the case may be, during the period, the person shall, for the purposes of this Subdivision, be taken to have made a **statement** in the return to the effect that the person, the partnership or the trust estate, as the case requires, did not derive the assessable income during the period.

(12) Where:

(a) a person issues a notice to another person under [section 265B](#) of the *Income Tax Assessment Act 1936* ;

(b) a person to whom a notice is issued under that section gives the notice to another person in connection with the transfer of a qualifying security to the other person; or

(c) a person gives advice in writing to another person, in connection with the transfer of a qualifying security, of a variation or partial redemption of the qualifying security;

any **statement** in the notice when so issued or given, or in the advice when so given, to the other person shall, for the purposes of [this Division](#), be taken to have been made by the issuer or person giving the notice or advice, as the case may be, to the other person for a purpose in connection with the operation of a **taxation law**.

(13) Where:

(a) the holder of a qualifying security transfers the security to another person;

(b) by virtue of the application of [section 128AA](#) of the *Income Tax Assessment Act 1936* , the holder is liable to pay withholding tax in relation to the transfer of the qualifying security;

(c) before the security was transferred, the holder gave to the transferee, in connection with the transfer, a notice issued to the holder under section 265B of that Act identifying the security;

(d) after the notice was issued to the holder, the security was varied or partially redeemed; and

(e) the holder did not advise the transferee in writing of the variation or partial redemption;

the holder shall, for the purposes of [this Division](#), be taken to have made for a purpose in connection with the operation of a **taxation law** a **statement** that the qualifying security was not so varied or partially redeemed.

(14) Where:

(a) the holder of a qualifying security who acquired the security on transfer (in this [subsection](#) referred to as the **current acquisition transfer**) transfers the security to another person;

(b) by virtue of the application of [section 128AA](#) of the *Income Tax Assessment Act 1936* , the holder is liable to pay withholding tax in relation to the transfer of the security;

(c) before the security was transferred, the holder gave to the transferee, in connection with the transfer, a certificate issued to the holder under section 128AB of that Act identifying the security; and

(d) the holder had acquired the security on transfer on any occasion before the current acquisition transfer;

the holder shall, for the purposes of [this Division](#), be taken to have made for a purpose in connection with the operation of a [taxation law](#) a [statement](#) that the certificate relates to the current acquisition transfer.

(15) Where:

(a) a qualifying security is redeemed or partially redeemed from the holder;

(b) the holder acquired the security on transfer (in this [subsection](#) referred to as the **current acquisition transfer**);

(c) the holder is liable to pay withholding tax in relation to the redemption or partial redemption of the security;

(d) before the security was redeemed or partially redeemed, the holder gave to the issuer, in connection with the redemption or partial redemption, a certificate issued to the holder under [section 128AB](#) of the *Income Tax Assessment Act 1936* identifying the security; and

(e) the holder had acquired the security on transfer on any occasion before the current acquisition transfer;

the holder shall, for the purposes of [this Division](#), be taken to have made for a purpose in connection with the operation of a [taxation law](#) a [statement](#) that the certificate relates to the current acquisition transfer.

(16) Subject to [subsection](#) (17), for the purposes of [subsections](#) (12) to (15) (inclusive):

(a) expressions used in those [subsections](#) that are also used in Division 16E of Part III of the *Income Tax Assessment Act 1936* have the same respective meanings as in that Division; and

(b) sections 159GV (other than [subsection](#) 159GV(2)) and 159GZ of the *Income Tax Assessment Act 1936* apply as if references in those sections to "this Division" were references to " [section 8J](#) of the *Taxation Administration Act 1953* ".

(17) [Subsection](#) (16) applies as if [paragraph](#) (c) of the definition of **qualifying security** in [subsection](#) 159GP(1) of the *Income Tax Assessment Act 1936* were omitted.