

First print



New South Wales

# Taxation Administration Bill 1996

## Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

The *Taxation Administration (Consequential Amendments) Bill 1996* is cognate with this Bill.

## Overview of Bill

The object of this Bill is to reform and standardise the administration and enforcement of a number of New South Wales taxation laws. The Bill will apply initially to the following laws:

*Debits Tax Act 1990*

*Health Insurance Levies Act 1982*

*Land Tax Act 1956*

*Land Tax Management Act 1956*

*Parking Space Levy Act 1992*

*Pay-roll Tax Act 1971*

*Revenue Laws (Reciprocal Powers) Act 1987*

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Taxation Administration Bill 1996

Explanatory note

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a regulation under any of those Acts.

These laws and the proposed Act are collectively referred to as the *taxation laws* in this explanatory note.

## Outline of provisions

### **Part 1 Preliminary**

Part 1 contains **clauses 1–6** which make provision for the name of the proposed Act, its commencement and the definitions of certain words and expressions used in it. The Part lists the taxation laws to which the proposed Act applies and provides that the proposed Act is to bind the Crown.

### **Part 2 Purpose of Act and relationship with other taxation laws**

Part 2 contains **clause 7** which describes the purpose of the proposed Act and indicates how it is to relate to the other taxation laws.

### **Part 3 Assessment of tax liability**

Part 3 contains **clauses 8–17**. The Part deals with the assessment or reassessment of the tax liability of a taxpayer under a taxation law. It confers a general power on the Chief Commissioner of State Revenue to make assessments (including reassessments) and specifies the information on which assessments are to be made. It provides for the issuing of notices of assessment. It enables the withdrawal of an assessment. An assessment is not invalidated because a provision of a taxation law has not been complied with.

### **Part 4 Refunds of tax**

Part 4 contains **clauses 18–20**. The Part contains a general requirement that the Chief Commissioner make a refund of tax to a taxpayer if the taxpayer has paid more tax than is shown in a notice of assessment of the taxpayer's liability.

### **Part 5 Interest and penalty tax**

#### **Division 1 Interest**

Division 1 contains **clauses 21–25**. It imposes interest on tax defaults (a tax default being defined by the proposed Act as a failure by a taxpayer to pay, in accordance with a taxation law, the whole or part of tax that the taxpayer is liable to pay). The interest rate comprises a market rate component (determined by reference to the rate applicable to tax defaults under the Commonwealth *Income Tax Assessment Act 1936*) and a premium component (currently proposed to be 8% per annum). The interest rate is to prevail over the interest rate otherwise payable on a judgment debt. The Chief Commissioner is given power to remit interest.

## Division 2 Penalty tax

Division 2 contains **clauses 26–33**. It imposes penalty tax on tax defaults. The initial amount is 25% of the amount of tax unpaid but this may be increased or decreased depending on the circumstances. The following Table contains a summary of the provisions of Division 2.

PENALTY CATEGORY	PRIME RATE %	VOLUNTARY DISCLOSURE		CONCEALMENT OR HINDRANCE IN ESTABLISHING UNDERPAYMENT %
		BEFORE INVESTIGATION %	DURING INVESTIGATION %	
Failure to take reasonable care but no intentional disregard of the law	25	5	20	30
Intentional disregard of the law	75	15	60	90

The Chief Commissioner is given power to remit penalty tax.

## Part 6 Returns

### Division 1 General

Division 1 contains **clauses 34–36**. These provisions deal generally with returns that are required or permitted to be lodged under the taxation laws. They provide for the form of returns, the time of their lodgment and extensions of time for lodgment.

### Division 2 Approval of special tax return arrangements

Division 2 contains **clauses 37–42**. These provisions enable the Chief Commissioner to approve of special arrangements for the lodging of returns and payment of tax under the taxation laws. They deal with applications for approval, determination of applications, imposition of conditions of approval, the variation and cancellation of approvals and the effect of approvals.

## Part 7 Collection of tax

Part 7 contains **clauses 43–47**. It provides for the payment of tax to the Chief Commissioner, the recovery of taxes as a debt, recovery from persons who are jointly or severally liable, collection of tax from third parties, and the making of arrangements between the Chief Commissioner and taxpayers for the payment of tax within an extended period or by instalments, or both.

## **Part 8 Record keeping and general offences**

Part 8 contains **clauses 48–59**. It imposes requirements for record-keeping, the form in which records are to be kept, accessibility to records and the period for which records are to be retained. It creates offences for knowingly giving false or misleading information to a tax officer and for deliberately omitting information from a statement so that the statement is rendered false or misleading, for failing to lodge documents required to be lodged by a taxation law and for falsifying or concealing an identity or an address. A general defence is provided to a person who proves that reasonable care was taken to comply with the relevant requirement or that the requirement was contravened solely because of circumstances beyond the person's control.

## **Part 9 Tax officers, investigation and secrecy provisions**

### **Division 1 Tax officers**

Division 1 contains **clauses 60–70**. It creates the offices of Chief Commissioner of State Revenue and Commissioner of State Revenue. It confers on the Chief Commissioner the general administration of the taxation laws. It enables the appointment of staff and the use of consultants and contractors. It enables the delegation of the Chief Commissioner's functions. It provides for the appointment of persons to be authorised officers for the purposes of the taxation laws. It relieves the Chief Commissioner and tax officers from personal liability for things done in good faith for the purpose of executing the taxation laws.

### **Division 2 Investigation**

Division 2 contains **clauses 71–80**. It confers investigative powers on the Chief Commissioner, including powers to require information, the attendance of persons to give evidence and the production of records, and a power of entry onto premises. It makes it an offence to obstruct an authorised officer in the exercise of an investigative function or to impersonate an authorised officer. A general defence is provided to a person who establishes that the person could not, by the exercise of reasonable diligence, have complied with the requirement concerned or that the person complied with the requirement to the extent of the person's ability to do so.

The provisions of Division 2 do not affect legal professional privilege.

### **Division 3     Secrecy**

Division 3 contains **clauses 81–85**. It generally prohibits tax officers from disclosing to others information obtained by the tax officers in the course of their duties and sets out some limited circumstances in which the disclosure of information is permitted.

## **Part 10    Objections and appeals**

### **Division 1     Objections**

Division 1 contains **clauses 86–95**. It confers a right of objection on a taxpayer who is dissatisfied with an assessment that is shown in a notice of assessment or with certain decisions of the Chief Commissioner under the taxation laws. The Division sets out the procedures for the making and determination of objections. The making of an objection does not prevent the recovery by the Chief Commissioner of the tax concerned pending the determination of the objection.

### **Division 2     Appeals**

Division 2 contains **clauses 96–103**. It confers a right of appeal to the Supreme Court on a taxpayer who is dissatisfied with the Chief Commissioner's determination of, or failure to determine, the taxpayer's objection. The Division sets out the procedures for the making and determination of appeals.

### **Division 3     Refund of amounts and payment of interest following successful objection or appeal**

Division 3 contains **clauses 104 and 105**. It requires the Chief Commissioner to refund amounts found, following a successful objection or appeal, to have been paid in excess of a lawful requirement together with interest.

### **Division 4     Chief Commissioner may state case**

Division 4 contains **clause 106** which enables the Chief Commissioner to state a case on a question of law to the Supreme Court.

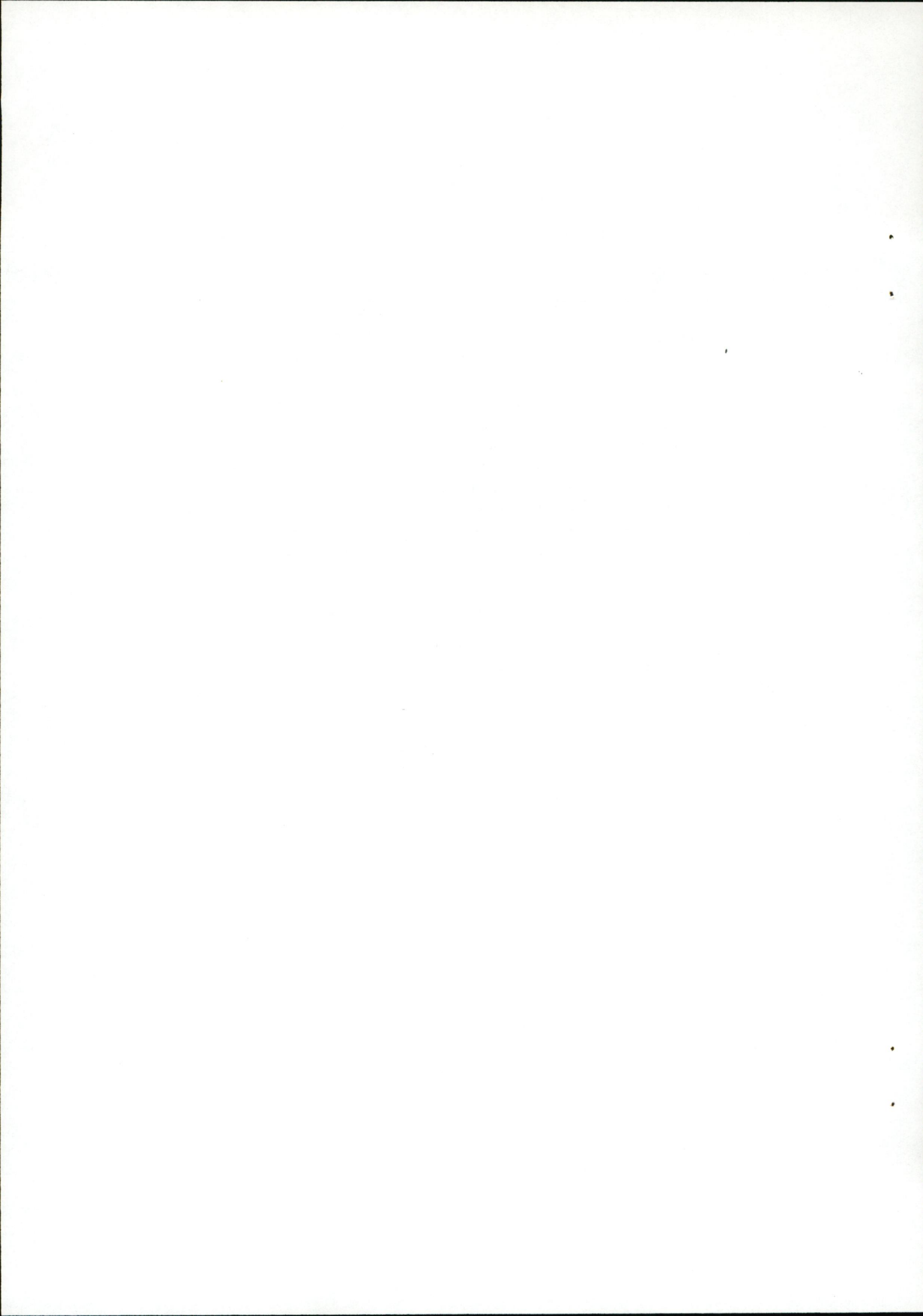
## **Part 11    Miscellaneous provisions**

Part 11 contains **clauses 107–128**. The Part contains miscellaneous provisions relating to the administration of the taxation laws. It contains provisions for the manner in which payments of tax may be made to the Chief Commissioner, the valuation of amounts expressed otherwise than in Australian currency, the writing off of tax and the appropriation of the Consolidated Fund for amounts that the Chief Commissioner is authorised or

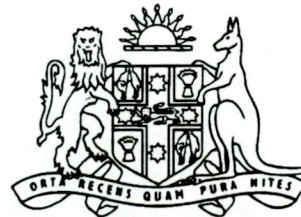
required to pay under the proposed Act. It enables the Chief Commissioner to require a corporation to appoint a natural person resident in New South Wales as the corporation's public officer for the purpose of serving documents. It requires a liquidator to notify the Chief Commissioner of the liquidator's appointment. It provides for the service of documents on and by the Chief Commissioner. It contains a number of evidentiary provisions. It provides for the commission of offences by persons involved in the management of corporations and increases the maximum penalty that may be imposed for offences committed by corporations. It specifies how proceedings for offences are to be taken. It contains a regulation-making power. It requires that a review of the proposed Act be undertaken after 5 years.

### **Schedule 1    Savings, transitional and other provisions**

Schedule 1 contains savings, transitional and other provisions consequent on the enactment of the proposed Act.







New South Wales

# Taxation Administration Bill 1996

## Contents

---

	Page
<b>Part 1 Preliminary</b>	
1 Name of Act	2
2 Commencement	2
3 Definitions	2
4 Meaning of "taxation laws"	4
5 Meaning of "non-reviewable" in relation to certain decisions	4
6 Act binds the Crown	4

---

<b>Part 2 Purpose of Act and relationship with other taxation laws</b>	
7 Purpose of Act and relationship with other taxation laws	5

---

Taxation Administration Bill 1996

Contents

---

	Page
<b>Part 3 Assessment of tax liability</b>	
8 General power to make assessment	6
9 Reassessment	6
10 Requirement for full and true disclosure of relevant facts and circumstances	7
11 Information on which assessment is made	7
12 Compromise assessment	7
13 Withdrawal of assessment	8
14 Notice of assessment, reassessment or withdrawal of assessment	8
15 Inclusion of interest and penalty tax in notice of assessment	8
16 Validity of assessment	9
17 Acceptance of money not necessarily an assessment	9
<hr/>	
<b>Part 4 Refunds of tax</b>	
18 Entitlement to refund	10
19 Offset of refund against other tax liability	10
20 Windfalls—refusal of refund	10
<hr/>	
<b>Part 5 Interest and penalty tax</b>	
<b>Division 1 Interest</b>	
21 Interest in respect of tax defaults	11
22 Interest rate	11
23 Liability to payment of small amounts of interest	11
24 Interest rate to prevail over interest otherwise payable on a judgment debt	11
25 Remission of interest	12
<b>Division 2 Penalty tax</b>	
26 Penalty tax in respect of certain tax defaults	12
27 Amount of penalty tax	12
28 Reduction in penalty tax for disclosure before investigation	13

---

Taxation Administration Bill 1996

Contents

---

	Page
29 Reduction in penalty tax for disclosure during investigation	13
30 Increase in penalty tax for concealment	13
31 Minimum amount of penalty tax	14
32 Time for payment of penalty tax	14
33 Remission of penalty tax	14

---

**Part 6 Returns**

**Division 1 General**

34 Form of returns	15
35 Time of lodgment	15
36 Extending time or period for lodgment	15

**Division 2 Approval of special tax return arrangements**

37 Approval of special tax return arrangements	15
38 Application for approval	16
39 Conditions of approval	16
40 Variation and cancellation of approvals	16
41 Effect of approval	17
42 Stamping of instruments	17

---

**Part 7 Collection of tax**

43 Tax payable to the Chief Commissioner	19
44 Recovery of tax as a debt	19
45 Joint and several liability	19
46 Collection of tax from third parties	19
47 Arrangements for payment of tax	20

---

**Part 8 Record keeping and general offences**

48 Requirement to keep proper records	21
49 Additional records	21
50 Inclusion of false or misleading information	21
51 Accessibility	21

---

Taxation Administration Bill 1996

Contents

---

	Page
52 Form of record—English language	22
53 Period of retention	22
54 Wilfully destroying records	22
55 Knowingly giving false or misleading information	22
56 Deliberately omitting information	22
57 Failure to lodge documents	23
58 Falsifying or concealing identity	23
59 General defence under Part 8	23

---

**Part 9 Tax officers, investigation and secrecy provisions**

**Division 1 Tax officers**

60 The Chief Commissioner	24
61 General administration of the taxation laws	24
62 Legal proceedings in Chief Commissioner's name	24
63 Chief Commissioner may perform functions under Commonwealth Act	24
64 The Commissioner	24
65 Other staff	25
66 Use of consultants and contractors	25
67 Delegation by Chief Commissioner	25
68 Authorised officers	25
69 Identity cards for authorised officers	25
70 Personal liability	26

**Division 2 Investigation**

71 Circumstances in which investigative powers may be exercised	26
72 Power to require information, instruments and records, and attendance	26
73 Access to public records without fee	27
74 Use and inspection of documents and records provided to Chief Commissioner or authorised officer	27
75 Power of entry on premises	28
76 Functions exercisable on entry	29
77 Search warrant	30
78 Obstructing Chief Commissioner or authorised officer	30

Taxation Administration Bill 1996

Contents

---

	Page
79 Impersonating Chief Commissioner or authorised officer	31
80 Defence of reasonable compliance	31
 <b>Division 3 Secrecy</b>	
81 Prohibition on certain disclosures of information by tax officers	31
82 Permitted disclosures—to particular persons	31
83 Permitted disclosures—of a general nature	32
84 Prohibition on secondary disclosures of information	33
85 Further restrictions on disclosure	33

---

**Part 10 Objections and appeals**

**Division 1 Objections**

86 Objection	34
87 Grounds for objection	34
88 Onus of proof and evidence on objection	34
89 Time for lodging objection	34
90 Objections lodged out of time	35
91 Determination of objection	35
92 Suspension of determination	36
93 Notice of determination	36
94 Recovery of tax pending objection or appeal	36
95 Payment of interest following unsuccessful objection	36

**Division 2 Appeals**

96 Right of appeal	36
97 Time for appeal	37
98 Appeals made out of time	37
99 Notice to Chief Commissioner of appeal	37
100 Grounds of appeal	37
101 Onus on appeal	37
102 Powers of Supreme Court on appeal	38
103 Giving effect to decision on appeal	38

Taxation Administration Bill 1996

Contents

---

	Page
<b>Division 3 Refund of amounts and payment of interest following successful objection or appeal</b>	
104 Refund of amount	38
105 Payment of interest	39
<b>Division 4 Chief Commissioner may state case</b>	
106 Chief Commissioner may state case	39

---

<b>Part 11 Miscellaneous provisions</b>	
107 Means and time of payment	40
108 Adjustments for fraction of a dollar	40
109 Valuation of foreign currency	41
110 Writing off of tax	41
111 Appropriation of Consolidated Fund	41
112 Public officer of corporation	41
113 Notice of liquidator's appointment	43
114 Service of documents on Chief Commissioner	43
115 Day of service of document or payment of money	43
116 Service of documents by Chief Commissioner	43
117 Judicial notice of Chief Commissioner's name and signature	44
118 Presumption of regularity as to issue of documents	44
119 Evidence of assessment	44
120 Certificate evidence	45
121 Offences by persons involved in management of corporations	45
122 Penalties for corporations	46
123 Tax liability unaffected by payment of penalty	47
124 Continuing offences	47
125 Proceedings for offences	47
126 Regulations	47
127 Savings, transitional and other provisions	48
128 Review of Act	48

<b>Schedule 1 Savings, transitional and other provisions</b>	49
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New South Wales

## Taxation Administration Bill 1996

No. , 1996

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### **A Bill for**

An Act to make general provision with respect to the administration and enforcement of the other taxation laws.

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**The Legislature of New South Wales enacts:**

## **Part 1        Preliminary**

### **1    Name of Act**

This Act is the *Taxation Administration Act 1996*.

### **2    Commencement**

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This Act commences on a day or days to be appointed by proclamation.

### **3    Definitions**

(1) In this Act:

*assessment* means an assessment made by the Chief Commissioner under Part 3 of the tax liability of a person under a taxation law, and includes: 10

(a) a reassessment and a compromise assessment under Part 3, and

(b) an assessment by the Supreme Court on an appeal under Part 10. 15

*authorised officer* means a person who is an authorised officer under section 68.

*Chief Commissioner* means the Chief Commissioner referred to in section 60. 20

*Commissioner* means the Commissioner referred to in section 64.

*exercise* a function includes perform a duty.

*function* includes a power, authority or duty.

*investigation* means an investigation under Division 2 of Part 9. 25

*non-reviewable decision* has the meaning given by section 5.

*premises* includes land, a vehicle, a vessel and an aircraft.

*record* means:

(a) a documentary record, or



- (b) a record made by an electronic, electromagnetic, photographic or optical process, or
- (c) any other kind of record.

**return** means a return, statement, application, report or other record that:

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- (a) is required or authorised under a taxation law to be lodged by a person with the Chief Commissioner or a specified person, and
- (b) is liable to tax or records matters in respect of which there is or may be a tax liability.

10

**tax** means a tax, duty or levy under a taxation law, and includes:

- (a) interest and penalty tax under Part 5, and
- (b) any other amount paid or payable by a taxpayer to the Chief Commissioner under a taxation law.

**taxation law** has the meaning given by section 4.

15

**tax default** means a failure by a taxpayer to pay, in accordance with a taxation law, the whole or part of tax that the taxpayer is liable to pay.

**tax officer** means:

- (a) the Chief Commissioner, or
- (b) the Commissioner, or
- (c) an authorised officer, or
- (d) any other person engaged (whether as an officer or employee or otherwise) in the administration or enforcement of a taxation law.

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**taxpayer** means a person who has been assessed as liable to pay an amount of tax, who has paid an amount as tax or who is liable or may be liable to pay tax.

**this jurisdiction** means New South Wales.

**trustee** includes:

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- (a) a person who is a trustee under an implied or constructive trust, and
- (b) in relation to a deceased person—an executor of the will, or an administrator of the estate, of the deceased person, and

35

- (c) a receiver or manager of the property of a company, or a liquidator of a company for the purpose of its winding up, and
- (d) a receiver, guardian, committee or manager of the property of a person under a legal or other disability, and 5
- (e) a person having possession, control or management of a business or property of a person who is under a legal or other disability, and
- (f) any person acting in a fiduciary capacity.
- (2) Notes in the text of this Act do not form part of the Act. 10
- 4 Meaning of "taxation laws"**
- The following are taxation laws for the purposes of this Act: this Act
- Debits Tax Act 1990*
- Health Insurance Levies Act 1982* 15
- Land Tax Act 1956*
- Land Tax Management Act 1956*
- Parking Space Levy Act 1992*
- Pay-roll Tax Act 1971*
- Revenue Laws (Reciprocal Powers) Act 1987* 20
- a regulation under any of those Acts.
- 5 Meaning of "non-reviewable" in relation to certain decisions**
- If a provision of this Act provides that a decision is a non-reviewable decision, the decision cannot be the subject of objection or appeal under Part 10 and no court or administrative review body has jurisdiction or power to entertain any question as to the validity or correctness of the decision. 25
- 6 Act binds the Crown**
- (1) This Act binds the Crown in right of this jurisdiction and, in so far as the legislative power of the Legislature of this jurisdiction permits, the Crown in all its other capacities. 30
- (2) This section does not affect the liability of the Crown to tax under another taxation law.

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## **Part 2 Purpose of Act and relationship with other taxation laws**

### **7 Purpose of Act and relationship with other taxation laws**

- (1) The purpose of this Act is to make general provision with respect to the administration and enforcement of the other taxation laws. 5
- (2) The other taxation laws include provisions with respect to:
- (a) the imposition of tax and its payment, and
  - (b) exceptions to and exemptions from liability to the tax, and
  - (c) entitlements to refunds.
- (3) This Act includes general provisions with respect to: 10
- (a) assessment and reassessment of tax liability, and
  - (b) obtaining refunds of tax, and
  - (c) imposition of interest and penalty tax, and
  - (d) approval of special tax return arrangements, and
  - (e) collection of tax, and 15
  - (f) record keeping obligations of taxpayers and general offences, and
  - (g) tax officers and their investigative powers and secrecy obligations, and
  - (h) objections and appeals, and 20
  - (i) miscellaneous matters such as service of documents, corporate criminal liability and evidence.

## **Part 3        Assessment of tax liability**

### **8    General power to make assessment**

- (1)    The Chief Commissioner may make an assessment of the tax liability of a taxpayer.
- (2)    An assessment of a tax liability may consist of a determination        5  
         that there is not a particular tax liability.

### **9    Reassessment**

- (1)    The Chief Commissioner may make one or more reassessments of a tax liability of a taxpayer.
- (2)    A reassessment of a tax liability is to be made in accordance with        10  
         the legal interpretations and assessment practices generally applied by the Chief Commissioner in relation to matters of that kind at the time the tax liability arose except to the extent that any departure from those interpretations and practices is required by a change in the law (whether legislative or non-legislative)        15  
         made after that time.
- (3)    The Chief Commissioner cannot make a reassessment of a tax liability more than 5 years after the initial assessment of the liability, unless:
  - (a)    the reassessment is to adjust tax to give effect to a decision        20  
         on an objection or appeal as to the initial assessment, or
  - (b)    at the time the initial assessment or a reassessment was made, all the facts and circumstances affecting the liability under the relevant taxation law of the person in respect of whom the assessment or reassessment was made were not        25  
         fully and truly disclosed to the Chief Commissioner.
- (4)    The initial assessment of a tax liability remains the initial assessment of the liability for the purposes of this Act even if it is withdrawn under section 13.

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**10 Requirement for full and true disclosure of relevant facts and circumstances**

- (1) A person who is liable to pay tax under a taxation law must, before or at the time an assessment of the tax liability is made, fully and truly disclose to the Chief Commissioner all the facts and circumstances affecting the tax liability under the relevant taxation law. 5

Maximum penalty: 100 penalty units.

- (2) A defendant is not guilty of an offence under this section if the defendant proves that the defendant reasonably relied on some other person to ensure that the requirements of this section were satisfied. 10

**11 Information on which assessment is made**

- (1) The Chief Commissioner may make an assessment on the information that the Chief Commissioner has from any source at the time the assessment is made. 15
- (2) If the Chief Commissioner has insufficient information to make an exact assessment of a tax liability, the Chief Commissioner may make an assessment by way of estimate.

**12 Compromise assessment** 20

- (1) If it is difficult or impracticable for the Chief Commissioner to determine a person's tax liability under a taxation law without undue delay or expense because of the complexity or uncertainty of the case or for any other reason, the Chief Commissioner may make an assessment in accordance with this section. 25
- (2) The Chief Commissioner may, with the agreement of the taxpayer, assess liability in an amount specified in, or determined in accordance with, the agreement.
- (3) Despite section 9, the Chief Commissioner cannot make a reassessment of a tax liability assessed in accordance with this section: 30
- (a) except with the agreement of the taxpayer, or

(b) unless the assessment under this section was procured by fraud or there was a deliberate failure to disclose material information.

(4) An assessment or reassessment made under this section with the agreement of a taxpayer is a non-reviewable decision. 5

(5) This section does not limit the power of the Chief Commissioner to make an assessment by way of estimate under section 11.

**13 Withdrawal of assessment**

The Chief Commissioner may withdraw an assessment (being an assessment for which a notice of assessment has been issued) at any time within 5 years after the date of issue of the notice, whether or not the amount of tax specified in the assessment has been paid. 10

**14 Notice of assessment, reassessment or withdrawal of assessment**

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(1) The Chief Commissioner may issue a notice of assessment (showing the amount of the assessment).

(2) If the Chief Commissioner has not issued a notice of assessment of the tax liability of a taxpayer, the Chief Commissioner must issue the notice if a request to do so is made by the taxpayer within 5 years after the liability arose. 20

(3) If the Chief Commissioner makes a reassessment, the Chief Commissioner must issue a notice of assessment (showing the amount of the reassessment).

(4) If the Chief Commissioner withdraws an assessment, the Chief Commissioner must issue a notice of withdrawal of assessment. 25

(5) The notice is to be in a form approved by the Chief Commissioner.

**15 Inclusion of interest and penalty tax in notice of assessment**

A notice of assessment of a taxpayer's tax liability issued following a tax default by the taxpayer must specify any interest and penalty tax payable by the taxpayer under Part 5 or section 95 in respect of the default. 30

**16 Validity of assessment**

The validity of an assessment is not affected because a provision of a taxation law has not been complied with.

**17 Acceptance of money not necessarily an assessment**

The acceptance of money by the Chief Commissioner paid in connection with the lodging of a return or other document is not, only because of the acceptance, an assessment.

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## **Part 4      Refunds of tax**

### **18    Entitlement to refund**

- (1) If a taxpayer has paid a greater amount of tax in relation to a tax liability than the amount assessed for that liability and shown in a notice of assessment, the Chief Commissioner must refund the difference to the taxpayer, subject to this Part. 5
- (2) For the avoidance of doubt, it is declared that an amount by which tax is overpaid is taken to be tax for the purposes of this Part.

### **19    Offset of refund against other tax liability** 10

- (1) Instead of making a refund to a taxpayer, the Chief Commissioner may apply the amount that would otherwise be refunded to meet tax or any other amount payable by the taxpayer under a taxation law.
- (2) A refund may be credited towards a taxpayer's future liability, but only with the taxpayer's consent. 15

### **20    Windfalls—refusal of refund**

The Chief Commissioner may refuse to make a refund to a taxpayer if:

- (a) the relevant taxation law provides for the passing on of the tax to another person, and 20
- (b) the tax sought to be refunded has been passed on to another person, and
- (c) the Chief Commissioner is not satisfied that appropriate arrangements have been made to pass the tax sought to be refunded on to that other person. 25



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## Part 5 Interest and penalty tax

### Division 1 Interest

#### 21 Interest in respect of tax defaults

- (1) If a tax default occurs, the taxpayer is liable to pay interest on the amount of tax unpaid calculated on a daily basis from the end of the last day for payment until the day it is paid at the interest rate from time to time applying under this Division. 5
- (2) Interest is payable under this section in respect of a tax default that consists of a failure to pay penalty tax under Division 2 but is not payable in respect of any failure to pay interest under this Division. 10

#### 22 Interest rate

- (1) The interest rate is the sum of:
- (a) the market rate component, and
  - (b) the premium component. 15
- (2) The *market rate component* is:
- (a) unless an order is in force under paragraph (b), the rate applicable for the time being under section 214A (8) of the Commonwealth *Income Tax Assessment Act 1936*, or
  - (b) the rate specified for the time being by order of the Minister published in the *Gazette*. 20
- (3) The *premium component* is 8% per annum.

#### 23 Liability to payment of small amounts of interest

There is no liability imposed by a taxation law to pay an amount of interest if the amount is less than \$20. 25

#### 24 Interest rate to prevail over interest otherwise payable on a judgment debt

If judgment is given by or entered in a court for an amount of unpaid tax (or an amount that includes an amount of unpaid tax), the interest rate determined in accordance with this Division continues to apply, to the exclusion of any other interest rate, until the tax is paid. 30

**25 Remission of interest**

The Chief Commissioner may, in such circumstances as the Chief Commissioner considers appropriate, remit the market rate component or the premium component of interest, or both, by any amount.

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**Division 2 Penalty tax**

**26 Penalty tax in respect of certain tax defaults**

- (1) If a tax default occurs, the taxpayer is liable to pay penalty tax in addition to the amount of tax unpaid.
- (2) Penalty tax imposed under this Division is in addition to interest. 10
- (3) Penalty tax is not payable in respect of a tax default that consists of a failure to pay:
  - (a) interest under Division 1, or
  - (b) penalty tax previously imposed under this Division.

**27 Amount of penalty tax** 15

- (1) The amount of penalty tax payable in respect of a tax default is 25% of the amount of tax unpaid, subject to this Division.
- (2) The Chief Commissioner may increase the amount of penalty tax payable in respect of a tax default to 75% of the amount of tax unpaid if the Chief Commissioner is satisfied that the tax default was caused wholly or partly by the intentional disregard by the taxpayer (or a person acting on behalf of the taxpayer) of a taxation law. 20
- (3) The Chief Commissioner may determine that no penalty tax is payable in respect of a tax default if the Chief Commissioner is satisfied that: 25
  - (a) the taxpayer (or a person acting on behalf of the taxpayer) took reasonable care to comply with the taxation law, or
  - (b) the tax default occurred solely because of circumstances beyond the taxpayer's control (or if a person acted on behalf of the taxpayer, because of circumstances beyond either the person's or the taxpayer's control) but not amounting to financial incapacity. 30

**28 Reduction in penalty tax for disclosure before investigation**

The amount of penalty tax determined under section 27 is to be reduced by 80% if, before the Chief Commissioner informs the taxpayer that an investigation relating to the taxpayer is to be carried out, the taxpayer discloses to the Chief Commissioner, in writing, sufficient information to enable the nature and extent of the tax default to be determined.

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**29 Reduction in penalty tax for disclosure during investigation**

The amount of penalty tax determined under section 27 is to be reduced by 20% if, after the Chief Commissioner informs the taxpayer that an investigation relating to the taxpayer is to be carried out and before it is completed, the taxpayer discloses to the Chief Commissioner, in writing, sufficient information to enable the nature and extent of the tax default to be determined.

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**30 Increase in penalty tax for concealment**

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- (1) The amount of penalty tax determined under section 27 is to be increased by 20% if, after the Chief Commissioner has informed the taxpayer that an investigation is to be carried out and before the investigation is completed, the taxpayer took steps to prevent or hinder the Chief Commissioner from becoming aware of the nature and extent of the tax default in whole or part. 20
- (2) For the purposes of this section, a taxpayer takes steps to prevent or hinder the Chief Commissioner if the taxpayer:
  - (a) deliberately damages or destroys records required to be kept under the taxation law to which the investigation relates, or 25
  - (b) refuses or fails (without reasonable excuse) to comply with a requirement made by the Chief Commissioner under Division 2 of Part 9 for the purposes of determining the taxpayer's tax liability, or 30
  - (c) hinders or obstructs an authorised officer exercising functions under that Division for that purpose.

**Note.** This Table contains a summary of the provisions of sections 27–30.

**PENALTIES**

PENALTY CATEGORY	PRIME RATE %	VOLUNTARY DISCLOSURE		CONCEALMENT OR HINDRANCE IN ESTABLISHING UNDERPAYMENT %
		BEFORE INVESTIGATION %	DURING INVESTIGATION %	
Failure to take reasonable care but no intentional disregard of the law	25	5	20	30
Intentional disregard of the law	75	15	60	90

5

**31 Minimum amount of penalty tax**

Penalty tax is not to be imposed if the amount of the penalty tax is less than \$20. 10

**32 Time for payment of penalty tax**

Penalty tax must be paid by a taxpayer within the period specified for that purpose in a notice of assessment of the tax liability of the taxpayer, being a period of not less than 14 days. 15

**33 Remission of penalty tax**

The Chief Commissioner may, in such circumstances as the Chief Commissioner considers appropriate, remit penalty tax by any amount.

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## Part 6 Returns

### Division 1 General

#### 34 Form of returns

A return is to be in a form approved by the Chief Commissioner.

#### 35 Time of lodgment

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A return is taken to have been lodged by a person at the time the return is served on the Chief Commissioner.

#### 36 Extending time or period for lodgment

The Chief Commissioner may extend the time or period for lodgment of a return by a person.

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### Division 2 Approval of special tax return arrangements

#### 37 Approval of special tax return arrangements

(1) Despite the provisions of another taxation law, the Chief Commissioner may, by written notice, give approval for a special arrangement for the lodging of returns and payment of tax under the taxation law to:

15

- (a) a specified taxpayer, or
- (b) a specified agent or other person on behalf of a specified taxpayer or taxpayers of a specified class.

(2) An approval, among other things:

20

- (a) may provide an exemption for the taxpayer or taxpayers from specified provisions of the taxation law to which it applies, and
- (b) may authorise the lodging of returns and payments of tax by electronic means.

25

- (3) An approval may be given on the initiative of the Chief Commissioner or on application.

**38 Application for approval**

- (1) An application for an approval under this Division must be made to the Chief Commissioner in a form approved by the Chief Commissioner. 5
- (2) The Chief Commissioner may grant or refuse an application for an approval under this Division.

**39 Conditions of approval**

- (1) An approval under this Division is subject to conditions specified by the Chief Commissioner in the notice of approval or by subsequent written notice. 10
- (2) The conditions of an approval may include:
- (a) conditions limiting the approval to tax liabilities of a specified class, and 15
  - (b) conditions limiting the approval to transactions effected by instruments of a specified class, and
  - (c) conditions requiring the lodging of returns at specified times and conditions as to the contents of the returns, and
  - (d) conditions requiring payments of tax at specified times, and 20
  - (e) conditions as to the means by which returns are to be lodged or payments of tax are to be made, and
  - (f) if the approval provides an exemption from a requirement for the stamping of instruments, conditions as to the endorsement of the instruments, and 25
  - (g) conditions requiring the taxpayer or agent to whom the approval was given to keep specified records.

**40 Variation and cancellation of approvals**

The Chief Commissioner may vary or cancel an approval under this Division by written notice served on the taxpayer or agent to whom the approval was given. 30

**41 Effect of approval**

- (1) If an approval is given under this Division to a specified taxpayer, the conditions of the approval are binding on the taxpayer and the taxpayer is guilty of an offence if any of the conditions is contravened. 5

Maximum penalty: 100 penalty units.

- (2) If:
- (a) an approval is given under this Division to a specified agent on behalf of a specified taxpayer or taxpayers of a specified class, and 10
- (b) the agent acts on behalf of that taxpayer or a taxpayer of that class in relation to a tax liability to which the approval applies,

the conditions of the approval are binding on the agent and the taxpayer and the agent and the taxpayer are each guilty of an offence if any of the conditions is contravened in relation to that tax liability. 15

Maximum penalty: 100 penalty units.

- (3) However, if the provisions of a taxation law from which a taxpayer is exempted by an approval under this Division are complied with in relation to a tax liability, subsections (1) and (2) do not apply to the taxpayer or an agent of the taxpayer in relation to that tax liability. 20

**42 Stamping of instruments**

- (1) If: 25
- (a) an approval under this Division provides for an exemption from a requirement for the stamping of an instrument, and
- (b) the instrument is endorsed in accordance with the conditions of the approval,

the instrument is taken to be duly stamped but without affecting liability for the payment of tax in relation to the instrument under the relevant taxation law. 30

Clause 42      Taxation Administration Bill 1996

Part 6            Returns  
Division 2

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- (2) A person who endorses an instrument otherwise than under and in accordance with an approval under this Division so as to suggest or imply that the instrument is properly so endorsed and as a result is taken to be duly stamped is guilty of an offence.

Maximum penalty: 100 penalty units.

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## Part 7 Collection of tax

### 43 Tax payable to the Chief Commissioner

Tax that is payable is payable to the Chief Commissioner.

### 44 Recovery of tax as a debt

If the whole or part of tax payable by a taxpayer has not been paid to the Chief Commissioner as required, the Chief Commissioner may recover the amount unpaid as a debt to the Chief Commissioner. 5

**Note.** Because of the provisions of section 94, recovery action may be taken despite the fact that an objection or appeal concerning the tax remains unresolved. 10

### 45 Joint and several liability

(1) If two or more persons are jointly or severally liable to pay an amount under a taxation law, the Chief Commissioner may recover the whole of the amount from them, or any of them, or any one of them. 15

(2) Nothing in this Act prevents a person who is jointly or severally liable to pay an amount of tax and who pays the amount to the Chief Commissioner from recovering a contribution from any other person who is liable to pay the whole or part of that amount. 20

### 46 Collection of tax from third parties

(1) The Chief Commissioner may require any of the following persons instead of the taxpayer to pay tax that is payable but remains unpaid: 25

(a) a person by whom any money is due or accruing or may become due to the taxpayer,

(b) a person who holds or may subsequently hold money for or on account of the taxpayer,

(c) a person who holds or may subsequently hold money on account of some other person for payment to the taxpayer, 30

(d) a person having authority from some other person to pay money to the taxpayer.

- (2) The Chief Commissioner's requirement is to be made by notice in writing.
- (3) A copy of the notice must be served on the taxpayer.
- (4) The amount of money required to be paid to the Chief Commissioner is: 5
  - (a) if the amount of the money so held or due or authorised to be paid does not exceed the amount payable by the taxpayer to the Chief Commissioner—all the money, or
  - (b) if the amount of the money exceeds the amount so payable—sufficient money to pay the amount so payable. 10
- (5) The money must be paid to the Chief Commissioner on receipt of the notice, or when the money is held by the person and becomes due to the taxpayer, or after such period (if any) as may be specified by the Chief Commissioner, whichever is the later.
- (6) A person subject to a requirement of the Chief Commissioner under this section must comply with the requirement. 15

Maximum penalty: 100 penalty units.
- (7) A person who makes a payment in accordance with this section is taken to be acting under the authority of the taxpayer and of all other persons concerned and is indemnified by this section in respect of the payment. 20
- (8) If, after a person is given a notice under this section by the Chief Commissioner, the whole or a part of the amount is paid by another person, the Chief Commissioner must promptly notify the person to whom the notice is given of the payment and the notice is taken to be amended accordingly. 25
- (9) In this section, *tax* includes a judgment debt and costs in respect of such an amount.

**47 Arrangements for payment of tax**

- (1) The Chief Commissioner may extend the time for payment of tax by a taxpayer and may accept the payment of tax by instalments. 30
- (2) A decision of the Chief Commissioner under this section may be made subject to such conditions (for example, as to the payment of interest) as the Chief Commissioner may determine.

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## Part 8 Record keeping and general offences

### 48 Requirement to keep proper records

- (1) A person must keep, or cause to be kept, such records as are necessary to enable the person's tax liability under a taxation law to be properly assessed. 5

Maximum penalty: 100 penalty units.

- (2) This section does not affect a provision of any other taxation law concerning the keeping of records.

**Note.** A person who is required by a taxation law to keep a record may include other information in the record for the person's own use. 10

### 49 Additional records

- (1) The Chief Commissioner may, by written notice given to a person who is required by a taxation law to keep a record or cause a record to be kept, require the person to keep, or cause to be kept, such additional records as are specified in the notice. 15

- (2) A person who fails to comply with such a notice is guilty of an offence.

Maximum penalty: 100 penalty units.

### 50 Inclusion of false or misleading information

A person must not: 20

- (a) make a record required to be made by a taxation law that comprises or contains matter that the person knows is false or misleading in a material particular, or
- (b) include in a record required to be made or kept by a taxation law matter that the person knows is false or misleading in a material particular. 25

Maximum penalty: 100 penalty units.

### 51 Accessibility

A person who is required by a taxation law to keep a record must keep the record so that it is able to be readily produced to the Chief Commissioner if the Chief Commissioner requires its production. 30

Maximum penalty: 100 penalty units.

**52 Form of record—English language**

A person who is required by a taxation law to keep a record must keep the record in English or in a form that can be readily converted or translated into English.

Maximum penalty: 100 penalty units. 5

**53 Period of retention**

- (1) A person who is required by a taxation law to keep a record must retain the record for not less than 5 years after:
- (a) the date it was made or obtained, or
  - (b) the date of completion of the transaction or act to which it relates, 10
- whichever is the later.

Maximum penalty: 100 penalty units.

- (2) A person may, with the written approval of the Chief Commissioner, destroy a record within the 5-year period unless another law requires the record to be retained for not less than 5 years. 15

**54 Wilfully destroying records**

A person must not wilfully damage or destroy a record required to be kept by a taxation law. 20

Maximum penalty: 100 penalty units.

**55 Knowingly giving false or misleading information**

A person must not:

- (a) make a statement, orally or in writing, to a tax officer, or
  - (b) give information, orally or in writing, to a tax officer, 25
- knowing that it is false or misleading in a material particular.

Maximum penalty: 100 penalty units.

**56 Deliberately omitting information**

A person must not omit from a statement made to a tax officer any matter or thing without which the statement is, to the person's knowledge, false or misleading in a material particular. 30

Maximum penalty: 100 penalty units.

**57 Failure to lodge documents**

A person must not fail or refuse to lodge a document, statement or return that is required to be lodged by a taxation law.

Maximum penalty: 100 penalty units.

**58 Falsifying or concealing identity**

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A taxpayer who:

- (a) falsifies or conceals the identity, or the address or location of a place of residence or business, of the taxpayer or of another person, or
- (b) does, by act or omission, anything that facilitates the falsification or concealment of the identity, or the address or location of a place of residence or business, of the taxpayer or another person,

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is guilty of an offence.

Maximum penalty: 100 penalty units.

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**59 General defence under Part 8**

A person is not guilty of an offence against a requirement of this Part if the person proves that:

- (a) the person took reasonable care to comply with the requirement, or
- (b) the contravention of the requirement was caused solely because of circumstances beyond the person's control.

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## **Part 9      Tax officers, investigation and secrecy provisions**

### **Division 1   Tax officers**

#### **60   The Chief Commissioner**

- (1) There is to be a Chief Commissioner of State Revenue. 5
- (2) The person for the time being holding office or acting as Executive Director, Office of State Revenue, is also to hold office as Chief Commissioner.

#### **61   General administration of the taxation laws**

The Chief Commissioner has the general administration of this Act and the other taxation laws and may do all such things as are necessary or convenient to give effect to this Act and the other taxation laws. 10

#### **62   Legal proceedings in Chief Commissioner's name**

- (1) Legal proceedings may be taken by or against the Chief Commissioner in the name "Chief Commissioner of State Revenue". 15
- (2) A person who takes legal proceedings in the name of the Chief Commissioner is taken to be authorised to take those proceedings, in the absence of evidence to the contrary. 20

#### **63   Chief Commissioner may perform functions under Commonwealth Act**

The Chief Commissioner may exercise the functions of a State taxation officer under Part IIIA of the Commonwealth *Taxation Administration Act 1953*. 25

#### **64   The Commissioner**

- (1) There is to be a Commissioner of State Revenue.

(2) The person for the time being holding office or acting as Director, Revenue Advisory Services, Office of State Revenue, is also to hold office as Commissioner.

(3) While there is no person holding office as Chief Commissioner, the Commissioner of State Revenue has the same functions as the Chief Commissioner under a taxation law.

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#### 65 Other staff

Such other staff as may be necessary for the administration of the taxation laws may be appointed under Part 2 of the *Public Sector Management Act 1988*.

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#### 66 Use of consultants and contractors

The Chief Commissioner may engage such consultants and contractors as may be necessary or convenient to exercise the Chief Commissioner's functions.

#### 67 Delegation by Chief Commissioner

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The Chief Commissioner may delegate to any person any function of the Chief Commissioner under a taxation law, other than this power of delegation.

#### 68 Authorised officers

(1) The Chief Commissioner and the Commissioner are authorised officers for the purposes of the taxation laws.

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(2) The Chief Commissioner may appoint persons to be authorised officers for the purposes of the taxation laws.

(3) A tax officer to whom the Chief Commissioner delegates functions under Division 2 is an authorised officer for the purposes of the taxation laws.

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#### 69 Identity cards for authorised officers

An authorised officer must be issued with an identity card in a form approved by the Chief Commissioner:

- (a) containing the person's name and a photograph of the person, and
- (b) stating that the person is an authorised officer for the purposes of the taxation laws.

**70 Personal liability** 5

A matter or thing done or omitted by the Chief Commissioner or a tax officer does not, if the matter or thing was done or omitted in good faith for the purpose of executing a taxation law, subject the Chief Commissioner or the tax officer so acting personally to any action, liability, claim or demand. 10

**Division 2 Investigation**

**71 Circumstances in which investigative powers may be exercised**

A function conferred under this Division may be exercised only for the purposes of a taxation law.

**72 Power to require information, instruments and records, and attendance** 15

- (1) The Chief Commissioner may require a person, by written notice, to do any one or more of the following:
  - (a) to provide to the Chief Commissioner (either orally or in writing) information that is described in the notice, 20
  - (b) to attend and give evidence before the Chief Commissioner or an authorised officer,
  - (c) to produce to the Chief Commissioner an instrument or record in the person's custody or control that is described in the notice. 25
- (2) The Chief Commissioner must, if the requirement is made of a person to determine that person's tax liability, indicate in the notice that the requirement is made for that purpose, but the Chief Commissioner is not otherwise required to identify a person in relation to whom any information, evidence, instrument or record is required under this section. 30



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- (3) The Chief Commissioner may require information or evidence that is not given orally to be provided in the form of or verified by statutory declaration.
- (4) The Chief Commissioner may require evidence that is given orally to be given on oath or by affirmation and for that purpose the Chief Commissioner or an authorised officer may administer an oath or affirmation. 5
- (5) A person who is required to attend and give evidence orally is to be paid expenses in accordance with the scale of allowances to witnesses in force for the time being under the rules of the District Court. 10
- (6) Subsection (5) does not apply to a person, or a representative of a person, whose liability under a taxation law is being investigated by the Chief Commissioner.
- (7) The Chief Commissioner may make a recording, by such means as the Chief Commissioner determines, of the evidence given orally by a person. 15
- (8) The person to whom the notice is given must comply with the notice within such period as is specified in the notice or such extended period as the Chief Commissioner may allow. 20
- Maximum penalty (subsection (8)): 100 penalty units.

**73 Access to public records without fee**

The Chief Commissioner is entitled to inspect and take copies of any public record kept under an Act or law of this jurisdiction without payment of any fee that would be payable but for this section. 25

**74 Use and inspection of documents and records provided to Chief Commissioner or authorised officer**

- (1) This section applies to a document or record that is provided or produced to the Chief Commissioner or an authorised officer. 30
- (2) The Chief Commissioner or the authorised officer may take and retain possession of the document or record solely for the purpose of enabling the document or record to be inspected and for copies of, or extracts or notes from, the document or record to be made or taken by or on behalf of the Chief Commissioner or authorised officer. 35

- (3) However, if the record was provided or produced to the Chief Commissioner or an authorised officer on the premises where it is normally kept, the Chief Commissioner or authorised officer may remove it from those premises for the purposes referred to in subsection (2) only: 5
- (a) with the consent of the owner or occupier of the premises, or
  - (b) if it is not practicable to inspect or copy or take extracts or notes from the record on the premises.
- (4) The Chief Commissioner or authorised officer may retain possession of the document or record: 10
- (a) except in the case of a document impounded under section 76 (1) (d), for a reasonable period, but not exceeding 28 days without the consent of the person entitled to it, or
  - (b) in the case of a document impounded under section 76 (1) (d), until the tax payable in respect of the instrument has been paid. 15
- (5) The Chief Commissioner or the authorised officer must permit a person who would be entitled to inspect the document or record if it were not in the possession of the Chief Commissioner or authorised officer to inspect the document or record at any reasonable time. 20
- (6) Nothing in this section prejudices a lien a person has on the document or record.
- (7) Nothing in this section limits or affects section 76. 25

**75 Power of entry on premises**

- (1) The Chief Commissioner may enter and remain on premises if the Chief Commissioner has reason to believe or suspect that there are records at the premises that are relevant to the administration of a taxation law. 30
- (2) Entry may be made at any reasonable time.
- (3) The power of an authorised officer to enter premises may not be exercised unless the authorised officer has the written delegation issued by the Chief Commissioner and produces it if requested to do so by the owner or occupier of the premises, or a person in physical occupation of the premises. 35

- 
- (4) Before the Chief Commissioner or an authorised officer enters premises under this Act, the Chief Commissioner or authorised officer must give the owner or occupier of the premises, or a person in physical occupation of the premises, reasonable notice of the intention to enter unless: 5
- (a) entry is made with the consent of the owner, occupier or person, or
  - (b) the giving of notice would, in the opinion of the Chief Commissioner or authorised officer, defeat the purpose for which it is intended to enter the premises. 10
- (5) The powers of entry and inspection conferred by this Part are not exercisable in relation to premises or a part of premises used for residential purposes except:
- (a) with the consent of the owner or occupier of the premises or part, or a person in physical occupation of the premises or part, or 15
  - (b) under the authority conferred by a search warrant.

## 76 Functions exercisable on entry

- (1) The Chief Commissioner or an authorised officer who has entered premises in accordance with this Division may: 20
- (a) require any person at those premises to produce any records in the custody or possession or under the control of the person (including a written record that reproduces in an understandable form information stored by computer, microfilm or other means or process), and 25
  - (b) require any person at those premises to answer questions or otherwise furnish information, and
  - (c) require the owner or occupier of the premises, or any person physically in occupation of the premises, to provide the Chief Commissioner or authorised officer with such assistance and facilities as is or are reasonably necessary to enable the Chief Commissioner or authorised officer to exercise the functions of the Chief Commissioner or an authorised officer under this Part, and 30
  - (d) impound an instrument that ought to be but is not stamped or is insufficiently stamped. 35

- (2) A receipt is to be issued for anything removed.
- (3) Any material seized and removed may be destroyed by the Chief Commissioner if:
  - (a) the taxpayer refuses to accept the return of the material, or
  - (b) the taxpayer cannot be located or ceases to exist.            5
- (4) Nothing in this section limits or affects section 74.

**77 Search warrant**

- (1) The Chief Commissioner or an authorised officer may apply to an authorised justice for a warrant to search any premises if the Chief Commissioner or the authorised officer has reasonable grounds to believe that any records are to be found there, being records to which the Chief Commissioner or authorised officer would have access if they were kept on premises to which the Chief Commissioner or authorised officer has access.            10
- (2) An authorised justice to whom the application is made may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising the Chief Commissioner or authorised officer to enter and search the premises.            15
- (3) Nothing in this section limits or restricts any power conferred on the Chief Commissioner or an authorised officer under this Part.            20
- (4) In this section, *authorised justice* has the same meaning as in the *Search Warrants Act 1985*.

**78 Obstructing Chief Commissioner or authorised officer**

- (1) A person who:
  - (a) prevents the Chief Commissioner or an authorised officer from exercising a function under this Division, or            25
  - (b) hinders or obstructs the Chief Commissioner or an authorised officer in the exercise of such a function, or
  - (c) without reasonable excuse, refuses or fails to comply with a requirement made or to answer a question of the Chief Commissioner or an authorised officer asked in accordance with section 76,            30

is guilty of an offence.

Maximum penalty: 100 penalty units.

- (2) A person is not guilty of an offence under this section arising from the entry of the Chief Commissioner or an authorised officer onto premises unless it is established that, at the material time, the Chief Commissioner or the authorised officer:
- (a) identified himself or herself as the Chief Commissioner or an authorised officer, and 5
  - (b) warned the person that a failure or refusal to comply with the requirement may constitute an offence.

**79 Impersonating Chief Commissioner or authorised officer**

A person who impersonates or falsely represents that he or she is the Chief Commissioner or an authorised officer is guilty of an offence. 10

Maximum penalty: 100 penalty units.

**80 Defence of reasonable compliance**

A person is not guilty of an offence under this Division if the court hearing the charge is satisfied: 15

- (a) that the defendant could not, by the exercise of reasonable diligence, have complied with the requirement to which the charge relates, or
- (b) that the defendant complied with the requirement to the extent of his or her ability to do so. 20

**Division 3 Secrecy****81 Prohibition on certain disclosures of information by tax officers**

A person who is or was a tax officer must not disclose any information obtained under or in relation to the administration of a taxation law, except as permitted by this Division. 25

Maximum penalty: 100 penalty units.

**82 Permitted disclosures—to particular persons**

A tax officer may disclose information obtained under or in relation to the administration of a taxation law: 30

- (a) with the consent of the person to whom the information relates or at the request of a person acting on behalf of the person to whom the information relates, or

- (b) in connection with the administration or execution of a taxation law (including for the purpose of any legal proceedings arising out of a taxation law or a report of any such proceedings), or
- (c) in connection with the administration or execution of a law of another Australian jurisdiction that is prescribed by the regulations to be a reciprocal taxation law for the purposes of this section, or 5
- (d) in accordance with a requirement imposed under an Act, or
- (e) to an authorised recipient, being any of the following persons or a person authorised to be an authorised recipient by any of the following persons: 10
  - (i) the Ombudsman, or
  - (ii) the Commissioner of Police, or
  - (iii) the Archives Authority, or 15
  - (iv) the Australian Statistician, or
  - (v) the Auditor-General, or
  - (vi) an authorised revenue officer, or a New South Wales revenue officer, within the meaning of the *Revenue Laws (Reciprocal Powers) Act 1987*, or 20
  - (vii) a member of the Public Service acting in the execution or administration of the *Country Industries (Pay-roll Tax Rebates) Act 1977*, or
  - (viii) the Workcover Authority, or
  - (ix) a person prescribed by the regulations to be an authorised recipient for the purposes of this section. 25

**83 Permitted disclosures—of a general nature**

The Chief Commissioner may disclose information obtained under or in relation to the administration of a taxation law unless that information will or is likely to: 30

- (a) directly or indirectly identify a particular taxpayer, or
- (b) disclose matters concerning the personal affairs of a particular taxpayer.

**84 Prohibition on secondary disclosures of information**

A person must not disclose any information obtained from a tax officer in accordance with Division 2 unless the disclosure is made with the consent of the Chief Commissioner or so as to enable the person to exercise a function conferred on the person by law for the purpose of the enforcement of a law or protecting the public revenue.

5

Maximum penalty: 100 penalty units.

**85 Further restrictions on disclosure**

A person who is or was a tax officer is not required to disclose or produce in any court any information obtained under or in relation to the administration of a taxation law except:

10

- (a) if it is necessary to do so for the purposes of the administration or execution of a taxation law or the *Revenue Laws (Reciprocal Powers) Act 1987*, or
- (b) if the requirement is made for the purposes of enabling a person who is specified for the time being to be an authorised recipient to exercise a function conferred or imposed on the person by law.

15

## Part 10      Objections and appeals

### Division 1      Objections

#### 86      Objection

- (1) A taxpayer who is dissatisfied with:
- (a) an assessment that is shown in a notice of assessment served on the taxpayer, or
  - (b) a decision of the Chief Commissioner under a taxation law, unless the taxation law states that the decision is a non-reviewable decision,
- may lodge a written objection with the Chief Commissioner.      10
- (2) No court or administrative review body has jurisdiction or power to consider any question concerning an assessment or decision of the Chief Commissioner to which this section applies, except as provided by this Part.
- (3) Subsection (2) does not apply to a decision of the Chief Commissioner under Part 4, 7, 8, 9 or 11.      15
- (4) This section does not affect the right of any person to make an objection under the *Land Tax Management Act 1956*.

#### 87      Grounds for objection

- (1) The grounds for the objection must be stated fully and in detail, and must be in writing.      20
- (2) The grounds for the objection, in the case of a reassessment, are limited to the extent of the reassessment.

#### 88      Onus of proof and evidence on objection

On an objection, the objector has the onus of proving the objector's case.      25

#### 89      Time for lodging objection

- (1) An objection must be lodged with the Chief Commissioner not later than 60 days after the date of service of the notice of the assessment or the date on which the decision referred to in section 86 (1) (b) is served on the taxpayer, except as provided by section 90.      30



- (2) An objection is taken to have been lodged with the Chief Commissioner when it is served on the Chief Commissioner.

### 90 Objections lodged out of time

- (1) The Chief Commissioner may permit a person to lodge an objection after the 60-day period. 5
- (2) The person seeking to so lodge the objection must state fully and in detail, and in writing, the circumstances concerning and the reasons for the failure to lodge the objection within the 60-day period.
- (3) The Chief Commissioner may grant permission unconditionally or subject to conditions or may refuse permission. 10
- (4) The Chief Commissioner must give notice to the person of the Chief Commissioner's decision and include in the notice the reasons for refusing to grant permission or for imposing conditions of the permission. 15
- (5) The notice is to be in a form approved by the Chief Commissioner.

### 91 Determination of objection

- (1) The Chief Commissioner must consider an objection and either allow the objection in whole or in part or disallow the objection. 20
- Note.** The Chief Commissioner should endeavour to determine the objection within 90 days after it is received. Failure to make a determination within the 90-day period is a ground for appeal under section 96 (1) (b).
- (2) The Chief Commissioner may determine an objection that is subject to an appeal under section 96 (1) (b) at any time before the hearing of the appeal proceedings commences. 25
- (3) If the Chief Commissioner delegates the functions conferred by this section, the delegate who considers the objection must be a different person from, and not subordinate to, the person who made the assessment or decision against which the objection is lodged. 30

**92 Suspension of determination**

- (1) The Chief Commissioner may suspend the determination of an objection for any period during which the objector, or another person having information relevant to the objection, fails to provide information relevant to the objection that the Chief Commissioner has requested under a taxation law. 5
- (2) The Chief Commissioner must give the objector written notice of a suspension under subsection (1).
- (3) The Chief Commissioner, at the request of the objector, may suspend the determination of an objection pending the outcome of legal proceedings relating to a tax liability of the same kind as the tax liability the subject of the objection. 10

**93 Notice of determination**

- (1) The Chief Commissioner must give notice to the objector of the determination of the objection. 15
- (2) The Chief Commissioner must, in the notice, give the reasons for disallowing an objection or for allowing an objection in part only.
- (3) The notice is to be in a form approved by the Chief Commissioner.

**94 Recovery of tax pending objection or appeal** 20

The fact that an objection or appeal is pending does not in the meantime affect the assessment or decision to which the objection or appeal relates and tax may be recovered as if no objection or appeal were pending.

**95 Payment of interest following unsuccessful objection** 25

Division 1 of Part 5 applies to an amount of tax required to be paid following the determination of an objection.

**Division 2 Appeals**

**96 Right of appeal**

- (1) A taxpayer may appeal to the Supreme Court if: 30
  - (a) the taxpayer is dissatisfied with the Chief Commissioner's determination of the taxpayer's objection, or

- (b) 90 days (not including any period of suspension under section 92) have passed since the taxpayer's objection was served on the Chief Commissioner and the Chief Commissioner has not determined the objection.
- (2) No person or body has jurisdiction or power to conduct a review or hear an appeal in respect of the determination of an objection except as provided by this section. 5
- Note.** The right of appeal conferred by this section may be exercised in accordance with Part 51A of the *Supreme Court Rules 1970*.
- 97 Time for appeal** 10
- An appeal:
- (a) must be made not later than 60 days after the date of issue of the notice of the Chief Commissioner's determination of the objection, or
- (b) may be made at any time after the 90-day period referred to in section 96 (1) (b) (not including any period of suspension under section 92). 15
- 98 Appeals made out of time**
- The Supreme Court may allow a person to appeal after the 60-day period. 20
- 99 Notice to Chief Commissioner of appeal**
- (1) An appellant must give written notice to the Chief Commissioner of the making of an appeal under section 97 (b) not less than 14 days before the appeal is made.
- (2) If the notice is not given as required by this section, the appeal cannot be made. 25
- 100 Grounds of appeal**
- The appellant's and respondent's cases on an appeal are not limited to the grounds of the objection.
- 101 Onus on appeal** 30
- On an appeal, the appellant has the onus of proving the appellant's case.

**102 Powers of Supreme Court on appeal**

On an appeal, the Supreme Court may do any one or more of the following:

- (a) confirm or revoke the assessment or decision to which the appeal relates, 5
- (b) make an assessment or decision in place of the assessment or decision to which the appeal relates,
- (c) make an order for payment to the Chief Commissioner of any amount of tax that is assessed as being payable but has not been paid, 10
- (d) remit the matter to the Chief Commissioner for determination in accordance with the Court's finding or decision,
- (e) make any further order as to costs or otherwise as it thinks fit. 15

**103 Giving effect to decision on appeal**

- (1) Within 60 days after the decision on appeal becomes final, the Chief Commissioner must take any action that is necessary to give effect to the decision. That action may include amending any relevant assessment. 20
- (2) If no appeal from a decision of the Supreme Court is instituted within 30 days after the day on which the decision is made, the decision of the Supreme Court is taken, for the purposes of this section, to have become final at the end of the 30-day period.

**Division 3 Refund of amounts and payment of interest following successful objection or appeal** 25

**104 Refund of amount**

If a taxpayer's objection is allowed in whole or in part or a taxpayer's appeal is upheld, the Chief Commissioner must refund any amount paid in excess of a requirement for payment under the relevant taxation law. 30

**105 Payment of interest**

In addition to an amount refunded under this Division, the Chief Commissioner is required to pay interest on the amount calculated on a daily basis from the date of its payment by the taxpayer until the date of the refund at the market rate component under section 22.

5

**Division 4 Chief Commissioner may state case**

**106 Chief Commissioner may state case**

- (1) The Chief Commissioner may, if the Chief Commissioner thinks fit, state a case on any question of law concerning the assessment or refund of tax and forward the case to the Supreme Court for its opinion.
- (2) The Supreme Court is to give its opinion on any case forwarded to it and cause the Chief Commissioner to be notified of that opinion.

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## Part 11 Miscellaneous provisions

### 107 Means and time of payment

- (1) Tax may be paid to the Chief Commissioner:
  - (a) by a cash payment made at, or a bank cheque or postal money order delivered to, an office of the Chief Commissioner, or 5
  - (b) by any other means approved by the Chief Commissioner.
- (2) An approval of the Chief Commissioner may be:
  - (a) general or limited to particular taxes, persons or payments, and 10
  - (b) unconditional or subject to conditions.
- (3) If the Chief Commissioner approves payment by a personal cheque:
  - (a) payment will be taken to be effected when the cheque is received by the Chief Commissioner provided that payment occurs when the Chief Commissioner first presents the cheque to the bank for payment, or 15
  - (b) in any other case, payment will be taken to be effected when payment occurs under the cheque following presentation by the Chief Commissioner (however, the Chief Commissioner is under no obligation to present a cheque for payment more than once). 20
- (4) An approval of a means of payment (other than by personal cheque) may include a stipulation as to when payment by that means will be taken to be effected and any such stipulation will have effect according to its terms. 25
- (5) The Chief Commissioner may vary or cancel an approval under this section.

### 108 Adjustments for fraction of a dollar

- (1) If a single amount of tax payable by a taxpayer is not a multiple of a dollar, the Chief Commissioner may decrease the amount but not lower than the nearest dollar. 30

- 
- (2) If the Chief Commissioner aggregates two or more amounts of tax that are payable by a taxpayer and the aggregated amount is not a multiple of a dollar, the Chief Commissioner may decrease the aggregated amount but not lower than the nearest dollar.

**109 Valuation of foreign currency** 5

- (1) If an amount involved in the calculation of tax is not in Australian currency, the amount is to be converted to Australian currency at the rate of exchange last reported by the Reserve Bank before the liability to pay the tax arose.
- (2) This section is subject to a provision of another taxation law governing the calculation of tax where an amount involved in the calculation is not in Australian currency. 10

**110 Writing off of tax**

- (1) The Chief Commissioner may write off the whole or any part of any unpaid tax if satisfied that action, or further action, to recover the tax is impracticable or unwarranted. 15
- (2) The writing off of tax does not affect the liability of the taxpayer to pay the tax or the power of the Chief Commissioner to recover it.
- (3) This section has effect despite the provisions of the *Public Finance and Audit Act 1983* or another taxation law. 20

**111 Appropriation of Consolidated Fund**

If the Chief Commissioner is authorised or required to pay an amount under this Act, the amount is to be paid from the Consolidated Fund which is appropriated by this section to the necessary extent. 25

**112 Public officer of corporation**

- (1) The Chief Commissioner may, by written notice served on a corporation, require the corporation to appoint, within a period specified in the notice, a natural person whose principal place of residence is in this jurisdiction as a public officer of the corporation for the purposes of the taxation laws, and to keep the office of public officer constantly filled by such a person. 30

- (2) An appointment of a public officer is not duly made until written notice of the appointment, specifying the name and residential address of the officer, has been lodged with the Chief Commissioner.
- (3) If: 5
- (a) the Chief Commissioner has required a corporation to appoint a public officer, and
  - (b) the corporation does not make such an appointment as required or does not keep the office of public officer constantly filled as required, 10
- the Chief Commissioner may appoint a person as the public officer of the corporation by written notice served on the person and the corporation.
- (4) Service of a document on the public officer of the corporation is sufficient service on the corporation for the purposes of a taxation law, and, if at any time the corporation does not have a public officer as required under this section, then service on a person acting or appearing to act in the business of the corporation is sufficient. 15
- (5) The public officer is answerable for the discharge of all obligations imposed on the corporation under a taxation law, and, in case of default, is liable to the same penalties. 20
- (6) Everything that the public officer is required to do and does in his or her representative capacity is taken to have been done by the corporation, but the absence or non-appointment of a public officer does not excuse the corporation from the necessity of complying, or from a penalty for failure to comply, with a provision of a taxation law and the corporation is liable to comply with the taxation laws as if there were no requirement to appoint a public officer. 25
- (7) A document served on or requirement made of the public officer is taken to have been served on or made of the corporation. 30
- (8) Any civil or criminal proceedings brought under a taxation law against the public officer are taken to have been brought against the corporation, and the corporation is liable jointly with the public officer for any penalty imposed on the public officer, or for compliance with any order made against the public officer. 35



**113 Notice of liquidator's appointment**

A liquidator appointed to wind up a company must notify the Chief Commissioner of the appointment within 14 days after the date of the appointment.

Maximum penalty: 100 penalty units.

5

**114 Service of documents on Chief Commissioner**

(1) A document authorised or required to be served on, given to or lodged with the Chief Commissioner for the purposes of a taxation law may be served, given or lodged:

(a) by delivering it at an office of the Chief Commissioner, or

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(b) by post addressed to the Chief Commissioner at an office of the Chief Commissioner, or

(c) by a means indicated by the Chief Commissioner as being an available means of service (such as by facsimile transmission or by delivering it, addressed to the Chief Commissioner, to the facilities of a document exchange), or

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(d) by leaving it with a person who has authority to accept documents on the Chief Commissioner's behalf.

**115 Day of service of document or payment of money**

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If a document is served on the Chief Commissioner or a payment of money is tendered to the Chief Commissioner at a time on a day that is after the ordinary hours of business when the offices of the Chief Commissioner are open to the public on that day, the document or money is taken to have been served on or tendered to the Chief Commissioner on the following business day.

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**116 Service of documents by Chief Commissioner**

(1) A document authorised or required to be served on or given to a person by the Chief Commissioner for the purposes of a taxation law may be served on or given to the person:

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(a) personally, or

(b) by leaving it at the last address of the person known to the Chief Commissioner (including, in the case of a corporation, the registered address or a business address of the corporation), or

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- (c) by post addressed to the person at the last address of the person known to the Chief Commissioner (including, in the case of a corporation, the registered address or a business address of the corporation), or
  - (d) by a means indicated by the person as being an available means of service (such as by facsimile transmission or by delivering it, addressed to the person, to the facilities of a document exchange), or 5
  - (e) by any means provided for the service of the document by another Act or law. 10
- (2) If a person (*the agent*) has actual or apparent authority to accept service of a document on behalf of another, the Chief Commissioner may, for the purposes of a taxation law, serve the document on the agent as if the agent were that other person.
- (3) Service of a document on a member of a partnership, or on a member of the committee of management of an unincorporated association or other body of persons, is taken, for the purposes of a taxation law, to constitute service of the document on each member of the partnership, or on each member of the association or other body of persons. 15  
20
- 117 Judicial notice of Chief Commissioner's name and signature**
- Judicial notice is to be taken of:
- (a) the name of a person who holds or has held the office of Chief Commissioner, and
  - (b) the signature of a person who holds or has held the office of Chief Commissioner. 25
- 118 Presumption of regularity as to issue of documents**
- A document or a copy of a document bearing the written, printed or stamped signature or name of the Chief Commissioner or a person described in the document as a delegate of the Chief Commissioner is, in the absence of evidence to the contrary, taken to have been lawfully issued by the Chief Commissioner. 30
- 119 Evidence of assessment**
- Production of a notice of assessment, or of a document signed by the Chief Commissioner purporting to be a copy of a notice of assessment, is: 35

- 
- (a) conclusive evidence of the due making of the assessment, and
  - (b) conclusive evidence that the amount and all particulars of the assessment are correct, except in objection or appeal proceedings when it is prima facie evidence only.

5

**120 Certificate evidence**

A certificate signed by the Chief Commissioner that states any of the following matters is admissible in proceedings under a taxation law and, in the absence of evidence to the contrary, is proof of the matters stated in the certificate:

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- (a) the person named in the certificate is liable to pay tax,
- (b) an assessment of tax has been made in relation to circumstances specified in the certificate,
- (c) notice of an assessment was issued to a person named in the certificate, or the person's agent, on the day specified in the certificate,
- (d) the amount of tax, a penalty or interest specified in the certificate is payable by a person named in the certificate or has been paid in whole or in part by or on behalf of a person so named,
- (e) a document specified in the certificate was posted to, delivered to, or served personally on, a person named in the certificate on a day specified in the certificate,
- (f) a person named in the certificate is, or is not, registered or licensed as required by the relevant taxation law,
- (g) a return or statement required by a taxation law has been, or has not been, lodged by or on behalf of a person named in the certificate on or as at a day specified in the certificate,
- (h) a person named in the certificate is, or was, an authorised officer on the date specified in the certificate.

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**121 Offences by persons involved in management of corporations**

- (1) If a corporation contravenes, by act or omission, a provision of a taxation law, a person who is concerned in, or takes part in, the management of the corporation is taken to have contravened the same provision.

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- (2) A person is not to be taken to have contravened the provision if the person satisfies the court that:
- (a) the corporation contravened the provision without the person's knowledge, or
  - (b) the person was not in a position to influence the conduct of the corporation in relation to its contravention of the provision, or 5
  - (c) the person, if in such a position, used all due diligence to prevent the contravention by the corporation.
- (3) A person may be convicted of a contravention of a provision of a taxation law whether or not the corporation has been convicted of its contravention. 10
- (4) This section does not affect a liability imposed on a corporation for an offence committed by it against a taxation law.
- (5) For the purposes of this section, the following persons are persons who are concerned in, or take part in, the management of a corporation: 15
- (a) a director of the corporation,
  - (b) a secretary of the corporation,
  - (c) a receiver and manager of property of the corporation, 20
  - (d) an official manager or deputy official manager of the corporation,
  - (e) a liquidator of the corporation appointed in a voluntary winding up of the corporation,
  - (f) a trustee or other person administering a compromise or arrangement made between the corporation and another person or other persons. 25

## 122 Penalties for corporations

The maximum penalty that a court may impose for an offence against a taxation law that is committed by a corporation is 5 times the maximum penalty that the court could, but for this section, impose as a penalty for the offence. 30

**123 Tax liability unaffected by payment of penalty**

The payment by a person of a penalty imposed by a court does not relieve the person from the payment of any other amount the person is liable to pay under a taxation law.

**124 Continuing offences**

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- (1) A person may be convicted of a second or subsequent offence for a failure to do an act (where the failure constitutes an offence) if the failure continues beyond the period or date in respect of which the person is convicted for the failure.
- (2) The maximum penalty for the offence is the same whether it is a second or subsequent offence. 10

**125 Proceedings for offences**

- (1) Proceedings for an offence against a taxation law may be dealt with before a Local Court constituted by a Magistrate sitting alone or before the Supreme Court in its summary jurisdiction. 15
- (2) Proceedings for an offence against a taxation law may be commenced at any time within 2 years after the date on which it is alleged the offence was committed.
- (3) If proceedings for an offence against a taxation law are taken before a Local Court, the maximum penalty that the Court may impose is, despite any provision of a taxation law to the contrary, 100 penalty units or the maximum penalty provided by the taxation law for the offence, whichever amount is the smaller. 20
- (4) If proceedings for an offence against a taxation law are taken before the Supreme Court, the Court may impose a penalty not exceeding the maximum penalty provided by the taxation law for the offence. 25

**126 Regulations**

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act. 30

- (2) A regulation may create an offence punishable by a penalty not exceeding 20 penalty units.

**127 Savings, transitional and other provisions**

Schedule 1 has effect.

**128 Review of Act**

5

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.

- (2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.

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- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

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## Schedule 1 Savings, transitional and other provisions

(Section 127)

### Part 1 Preliminary

#### 1 Regulations

5

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:

this Act

*Taxation Administration (Consequential Amendments) Act 1996*

10

- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later day.

- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:

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(a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or

(b) to impose liabilities on any person (other than the State or an authority of the State), in respect of anything done or omitted to be done before the date of its publication.

20

#### 2 Application of s 30 of Interpretation Act 1987

Except to the extent otherwise provided by this Schedule, nothing in this Schedule affects the application of section 30 of the *Interpretation Act 1987*.

25

### Part 2 Provisions arising from enactment of this Act

#### 3 Existing assessments

An assessment made under a taxation law before the commencement of Part 3 is taken to have been made under that Part, except as provided by clause 16 (2).

30

**4 Assessments of existing liabilities**

The power to make an assessment under Part 3 extends to a tax liability existing before the commencement of that Part.

**5 Inclusion of interest and penalties in notices of assessment**

Despite section 15, a notice of assessment in respect of a tax liability existing before the commencement of Part 3 must specify any interest accrued or fine, penalty or penalty tax payable in relation to the liability calculated in accordance with clauses 8 and 9. 5

**6 Refunds of tax paid before commencement of Part 4** 10

Part 4 extends to tax paid before the commencement of that Part.

**7 Existing refund applications**

Part 4 extends to an application for a refund of tax that was made to the Chief Commissioner before the commencement of that Part and that has not been determined by the Chief Commissioner on that commencement. 15

**8 Interest in respect of existing tax defaults**

- (1) If a tax default occurred before the commencement of Division 1 of Part 5, interest accrues in relation to that default on and from that commencement in accordance with that Division, subject to this clause. 20
- (2) The taxpayer concerned may elect that interest accrue under the law that applied to the tax default immediately before the commencement of Division 1 of Part 5.
- (3) An election is made by written notice served on the Chief Commissioner. 25
- (4) If the taxpayer makes an election under this clause, the relevant taxation law as in force immediately before the commencement of Division 1 of Part 5 continues to apply to the accrual of interest in relation to the tax default as if this Act and the *Taxation Administration (Consequential Amendments) Act 1996* had not been enacted. 30



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**9 Penalty tax**

- (1) Division 2 of Part 5 does not apply to a tax default that occurred before the commencement of that Division.
- (2) The relevant taxation law as in force immediately before the commencement of Division 2 of Part 5 continues to apply to the liability for, and calculation of, any fine or penalty payable in relation to a tax default that occurred before that commencement as if this Act and the *Taxation Administration (Consequential Amendments) Act 1996* had not been enacted.

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**10 Form of returns**

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Section 34 extends to an approval that has been given under a relevant taxation law before the commencement of that section and that is in force on that commencement.

**11 Approval of special tax return arrangements**

Division 2 of Part 6 extends to an approval that has been given under a relevant taxation law before the commencement of that Division and that is in force on that commencement.

15

**12 Unpaid tax**

Part 7 extends to tax that is payable but remains unpaid immediately before the commencement of that Part.

20

**13 Records**

Sections 51, 52, 53 and 54 extend to records required to be kept, before the commencement of those sections, under a taxation law.

**14 References to tax officers**

25

On and from the commencement of Division 1 of Part 9, a reference (however expressed) in any other Act (whether assented to before, on or after that commencement), in any instrument made under an Act or in any other instrument of any kind:

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Taxation Administration Bill 1996

Schedule 1 Savings, transitional and other provisions

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- (a) to the Chief Commissioner of Stamp Duties, the Deputy Chief Commissioner of Stamp Duties, the Chief Commissioner of Health Insurance Levies, the Deputy Chief Commissioner of Health Insurance Levies, the Chief Commissioner of Land Tax, the Deputy Chief Commissioner of Land Tax, the Chief Commissioner of Pay-roll Tax or the Deputy Chief Commissioner of Pay-roll Tax—is to be read as a reference to the Chief Commissioner of State Revenue, or 5
- (b) to the Commissioner of Stamp Duties, the Commissioner of Health Insurance Levies, the Commissioner of Land Tax, an Assistant Commissioner of Land Tax or the Commissioner of Pay-roll Tax—is to be read as a reference to the Commissioner of State Revenue. 10

**15 Secrecy** 15

Division 3 of Part 9 extends to information obtained under or in relation to the administration of a taxation law before the commencement of that Division.

**16 Objection and appeals**

- (1) Part 10 applies only to a notice of assessment, or a notice of decision or determination of the Chief Commissioner, served after the commencement of that Part. 20
- (2) The provisions of the relevant taxation law as in force immediately before the commencement of Part 10 continue to apply to a notice of assessment, or a notice of decision or determination of a tax officer, served before the commencement of that Part as if this Act and the *Taxation Administration (Consequential Amendments) Act 1996* had not been enacted. 25
- (3) Sections 104 and 105 apply to an objection that is allowed, or an appeal that is upheld, after the commencement of those sections, despite the other provisions of this clause. 30

**17 Writing off of tax**

Section 110 extends to tax that was unpaid before the commencement of that section.

**18 Public officer of corporation**

The appointment of a public officer under section 41 of the *Pay-roll Tax Act 1971*, being an appointment that is in force immediately before the repeal of that section, is taken to be an appointment under section 112.

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New South Wales

# Taxation Administration Act 1996 No 97

## Contents

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	Page
<b>Part 1 Preliminary</b>	
1 Name of Act	2
2 Commencement	2
3 Definitions	2
4 Meaning of "taxation laws"	4
5 Meaning of "non-reviewable" in relation to certain decisions	4
6 Act binds the Crown	4
<hr/>	
<b>Part 2 Purpose of Act and relationship with other taxation laws</b>	
7 Purpose of Act and relationship with other taxation laws	5

---

	Page
<hr/>	
<b>Part 3 Assessment of tax liability</b>	
8 General power to make assessment	6
9 Reassessment	6
10 Requirement for full and true disclosure of relevant facts and circumstances	7
11 Information on which assessment is made	7
12 Compromise assessment	7
13 Withdrawal of assessment	8
14 Notice of assessment, reassessment or withdrawal of assessment	8
15 Inclusion of interest and penalty tax in notice of assessment	8
16 Validity of assessment	9
17 Acceptance of money not necessarily an assessment	9
<hr/>	
<b>Part 4 Refunds of tax</b>	
18 Entitlement to refund	10
19 Offset of refund against other tax liability	10
20 Windfalls—refusal of refund	10
<hr/>	
<b>Part 5 Interest and penalty tax</b>	
<b>Division 1 Interest</b>	
21 Interest in respect of tax defaults	11
22 Interest rate	11
23 Liability to payment of small amounts of interest	11
24 Interest rate to prevail over interest otherwise payable on a judgment debt	11
25 Remission of interest	12
<b>Division 2 Penalty tax</b>	
26 Penalty tax in respect of certain tax defaults	12
27 Amount of penalty tax	12
28 Reduction in penalty tax for disclosure before investigation	13

Contents

---

	Page
29 Reduction in penalty tax for disclosure during investigation	13
30 Increase in penalty tax for concealment	13
31 Minimum amount of penalty tax	14
32 Time for payment of penalty tax	14
33 Remission of penalty tax	14

---

**Part 6 Returns**

**Division 1 General**

34 Form of returns	15
35 Time of lodgment	15
36 Extending time or period for lodgment	15

**Division 2 Approval of special tax return arrangements**

37 Approval of special tax return arrangements	15
38 Application for approval	16
39 Conditions of approval	16
40 Variation and cancellation of approvals	16
41 Effect of approval	17
42 Stamping of instruments	17

---

**Part 7 Collection of tax**

43 Tax payable to the Chief Commissioner	19
44 Recovery of tax as a debt	19
45 Joint and several liability	19
46 Collection of tax from third parties	19
47 Arrangements for payment of tax	20

---

**Part 8 Record keeping and general offences**

48 Requirement to keep proper records	21
49 Additional records	21
50 Inclusion of false or misleading information	21
51 Accessibility	21

---

Contents

---

	Page
52 Form of record—English language	22
53 Period of retention	22
54 Wilfully destroying records	22
55 Knowingly giving false or misleading information	22
56 Deliberately omitting information	22
57 Failure to lodge documents	23
58 Falsifying or concealing identity	23
59 General defence under Part 8	23

---

**Part 9 Tax officers, investigation and secrecy provisions**

**Division 1 Tax officers**

60 The Chief Commissioner	24
61 General administration of the taxation laws	24
62 Legal proceedings in Chief Commissioner's name	24
63 Chief Commissioner may perform functions under Commonwealth Act	24
64 The Commissioner	24
65 Other staff	25
66 Use of consultants and contractors	25
67 Delegation by Chief Commissioner	25
68 Authorised officers	25
69 Identity cards for authorised officers	25
70 Personal liability	26

**Division 2 Investigation**

71 Circumstances in which investigative powers may be exercised	26
72 Power to require information, instruments and records, and attendance	26
73 Access to public records without fee	27
74 Use and inspection of documents and records provided to Chief Commissioner or authorised officer	27
75 Power of entry on premises	28
76 Functions exercisable on entry	29
77 Search warrant	30
78 Obstructing Chief Commissioner or authorised officer	30



Contents

---

	Page
79 Impersonating Chief Commissioner or authorised officer	31
80 Defence of reasonable compliance	31
 <b>Division 3 Secrecy</b>	
81 Prohibition on certain disclosures of information by tax officers	31
82 Permitted disclosures—to particular persons	31
83 Permitted disclosures—of a general nature	32
84 Prohibition on secondary disclosures of information	33
85 Further restrictions on disclosure	33

---

**Part 10 Objections and appeals**

**Division 1 Objections**

86 Objection	34
87 Grounds for objection	34
88 Onus of proof and evidence on objection	34
89 Time for lodging objection	34
90 Objections lodged out of time	35
91 Determination of objection	35
92 Suspension of determination	36
93 Notice of determination	36
94 Recovery of tax pending objection or appeal	36
95 Payment of interest following unsuccessful objection	36

**Division 2 Appeals**

96 Right of appeal	36
97 Time for appeal	37
98 Appeals made out of time	37
99 Notice to Chief Commissioner of appeal	37
100 Grounds of appeal	37
101 Onus on appeal	37
102 Powers of Supreme Court on appeal	38
103 Giving effect to decision on appeal	38

Contents

	Page
<hr/>	
<b>Division 3 Refund of amounts and payment of interest following successful objection or appeal</b>	
104 Refund of amount	38
105 Payment of interest	39
<b>Division 4 Chief Commissioner may state case</b>	
106 Chief Commissioner may state case	39
<hr/>	
<b>Part 11 Miscellaneous provisions</b>	
107 Means and time of payment	40
108 Adjustments for fraction of a dollar	40
109 Valuation of foreign currency	41
110 Writing off of tax	41
111 Appropriation of Consolidated Fund	41
112 Public officer of corporation	41
113 Notice of liquidator's appointment	43
114 Service of documents on Chief Commissioner	43
115 Day of service of document or payment of money	43
116 Service of documents by Chief Commissioner	43
117 Judicial notice of Chief Commissioner's name and signature	44
118 Presumption of regularity as to issue of documents	44
119 Evidence of assessment	44
120 Certificate evidence	45
121 Offences by persons involved in management of corporations	45
122 Penalties for corporations	46
123 Tax liability unaffected by payment of penalty	47
124 Continuing offences	47
125 Proceedings for offences	47
126 Regulations	47
127 Savings, transitional and other provisions	48
128 Review of Act	48
 <b>Schedule 1 Savings, transitional and other provisions</b>	 49



New South Wales

# **Taxation Administration Act 1996 No 97**

Act No 97, 1996

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An Act to make general provision with respect to the administration and enforcement of the other taxation laws. [Assented to 26 November 1996]

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See also *Taxation Administration (Consequential Amendments) Act 1996*.

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The Legislature of New South Wales enacts:

## Part 1      Preliminary

### 1      Name of Act

This Act is the *Taxation Administration Act 1996*.

### 2      Commencement

This Act commences on a day or days to be appointed by proclamation.

### 3      Definitions

(1)      In this Act:

**assessment** means an assessment made by the Chief Commissioner under Part 3 of the tax liability of a person under a taxation law, and includes:

- (a)      a reassessment and a compromise assessment under Part 3, and
- (b)      an assessment by the Supreme Court on an appeal under Part 10.

**authorised officer** means a person who is an authorised officer under section 68.

**Chief Commissioner** means the Chief Commissioner referred to in section 60.

**Commissioner** means the Commissioner referred to in section 64.

**exercise** a function includes perform a duty.

**function** includes a power, authority or duty.

**investigation** means an investigation under Division 2 of Part 9.

**non-reviewable decision** has the meaning given by section 5.

**premises** includes land, a vehicle, a vessel and an aircraft.

**record** means:

- (a)      a documentary record, or

- (b) a record made by an electronic, electromagnetic, photographic or optical process, or
- (c) any other kind of record.

**return** means a return, statement, application, report or other record that:

- (a) is required or authorised under a taxation law to be lodged by a person with the Chief Commissioner or a specified person, and
- (b) is liable to tax or records matters in respect of which there is or may be a tax liability.

**tax** means a tax, duty or levy under a taxation law, and includes:

- (a) interest and penalty tax under Part 5, and
- (b) any other amount paid or payable by a taxpayer to the Chief Commissioner under a taxation law.

**taxation law** has the meaning given by section 4.

**tax default** means a failure by a taxpayer to pay, in accordance with a taxation law, the whole or part of tax that the taxpayer is liable to pay.

**tax officer** means:

- (a) the Chief Commissioner, or
- (b) the Commissioner, or
- (c) an authorised officer, or
- (d) any other person engaged (whether as an officer or employee or otherwise) in the administration or enforcement of a taxation law.

**taxpayer** means a person who has been assessed as liable to pay an amount of tax, who has paid an amount as tax or who is liable or may be liable to pay tax.

**this jurisdiction** means New South Wales.

**trustee** includes:

- (a) a person who is a trustee under an implied or constructive trust, and
- (b) in relation to a deceased person—an executor of the will, or an administrator of the estate, of the deceased person, and

- (c) a receiver or manager of the property of a company, or a liquidator of a company for the purpose of its winding up, and
  - (d) a receiver, guardian, committee or manager of the property of a person under a legal or other disability, and
  - (e) a person having possession, control or management of a business or property of a person who is under a legal or other disability, and
  - (f) any person acting in a fiduciary capacity.
- (2) Notes in the text of this Act do not form part of the Act.

#### **4 Meaning of "taxation laws"**

The following are taxation laws for the purposes of this Act:  
this Act

*Debits Tax Act 1990*

*Health Insurance Levies Act 1982*

*Land Tax Act 1956*

*Land Tax Management Act 1956*

*Parking Space Levy Act 1992*

*Pay-roll Tax Act 1971*

*Revenue Laws (Reciprocal Powers) Act 1987*

a regulation under any of those Acts.

#### **5 Meaning of "non-reviewable" in relation to certain decisions**

If a provision of this Act provides that a decision is a non-reviewable decision, the decision cannot be the subject of objection or appeal under Part 10 and no court or administrative review body has jurisdiction or power to entertain any question as to the validity or correctness of the decision.

#### **6 Act binds the Crown**

- (1) This Act binds the Crown in right of this jurisdiction and, in so far as the legislative power of the Legislature of this jurisdiction permits, the Crown in all its other capacities.
- (2) This section does not affect the liability of the Crown to tax under another taxation law.

## **Part 2 Purpose of Act and relationship with other taxation laws**

### **7 Purpose of Act and relationship with other taxation laws**

- (1) The purpose of this Act is to make general provision with respect to the administration and enforcement of the other taxation laws.
- (2) The other taxation laws include provisions with respect to:
  - (a) the imposition of tax and its payment, and
  - (b) exceptions to and exemptions from liability to the tax, and
  - (c) entitlements to refunds.
- (3) This Act includes general provisions with respect to:
  - (a) assessment and reassessment of tax liability, and
  - (b) obtaining refunds of tax, and
  - (c) imposition of interest and penalty tax, and
  - (d) approval of special tax return arrangements, and
  - (e) collection of tax, and
  - (f) record keeping obligations of taxpayers and general offences, and
  - (g) tax officers and their investigative powers and secrecy obligations, and
  - (h) objections and appeals, and
  - (i) miscellaneous matters such as service of documents, corporate criminal liability and evidence.

## **Part 3            Assessment of tax liability**

### **8    General power to make assessment**

- (1)    The Chief Commissioner may make an assessment of the tax liability of a taxpayer.
- (2)    An assessment of a tax liability may consist of a determination that there is not a particular tax liability.

### **9    Reassessment**

- (1)    The Chief Commissioner may make one or more reassessments of a tax liability of a taxpayer.
- (2)    A reassessment of a tax liability is to be made in accordance with the legal interpretations and assessment practices generally applied by the Chief Commissioner in relation to matters of that kind at the time the tax liability arose except to the extent that any departure from those interpretations and practices is required by a change in the law (whether legislative or non-legislative) made after that time.
- (3)    The Chief Commissioner cannot make a reassessment of a tax liability more than 5 years after the initial assessment of the liability, unless:
  - (a)    the reassessment is to adjust tax to give effect to a decision on an objection or appeal as to the initial assessment, or
  - (b)    at the time the initial assessment or a reassessment was made, all the facts and circumstances affecting the liability under the relevant taxation law of the person in respect of whom the assessment or reassessment was made were not fully and truly disclosed to the Chief Commissioner.
- (4)    The initial assessment of a tax liability remains the initial assessment of the liability for the purposes of this Act even if it is withdrawn under section 13.



**10 Requirement for full and true disclosure of relevant facts and circumstances**

- (1) A person who is liable to pay tax under a taxation law must, before or at the time an assessment of the tax liability is made, fully and truly disclose to the Chief Commissioner all the facts and circumstances affecting the tax liability under the relevant taxation law.

Maximum penalty: 100 penalty units.

- (2) A defendant is not guilty of an offence under this section if the defendant proves that the defendant reasonably relied on some other person to ensure that the requirements of this section were satisfied.

**11 Information on which assessment is made**

- (1) The Chief Commissioner may make an assessment on the information that the Chief Commissioner has from any source at the time the assessment is made.
- (2) If the Chief Commissioner has insufficient information to make an exact assessment of a tax liability, the Chief Commissioner may make an assessment by way of estimate.

**12 Compromise assessment**

- (1) If it is difficult or impracticable for the Chief Commissioner to determine a person's tax liability under a taxation law without undue delay or expense because of the complexity or uncertainty of the case or for any other reason, the Chief Commissioner may make an assessment in accordance with this section.
- (2) The Chief Commissioner may, with the agreement of the taxpayer, assess liability in an amount specified in, or determined in accordance with, the agreement.
- (3) Despite section 9, the Chief Commissioner cannot make a reassessment of a tax liability assessed in accordance with this section:
  - (a) except with the agreement of the taxpayer, or

- (b) unless the assessment under this section was procured by fraud or there was a deliberate failure to disclose material information.
- (4) An assessment or reassessment made under this section with the agreement of a taxpayer is a non-reviewable decision.
- (5) This section does not limit the power of the Chief Commissioner to make an assessment by way of estimate under section 11.

### **13 Withdrawal of assessment**

The Chief Commissioner may withdraw an assessment (being an assessment for which a notice of assessment has been issued) at any time within 5 years after the date of issue of the notice, whether or not the amount of tax specified in the assessment has been paid.

### **14 Notice of assessment, reassessment or withdrawal of assessment**

- (1) The Chief Commissioner may issue a notice of assessment (showing the amount of the assessment).
- (2) If the Chief Commissioner has not issued a notice of assessment of the tax liability of a taxpayer, the Chief Commissioner must issue the notice if a request to do so is made by the taxpayer within 5 years after the liability arose.
- (3) If the Chief Commissioner makes a reassessment, the Chief Commissioner must issue a notice of assessment (showing the amount of the reassessment).
- (4) If the Chief Commissioner withdraws an assessment, the Chief Commissioner must issue a notice of withdrawal of assessment.
- (5) The notice is to be in a form approved by the Chief Commissioner.

### **15 Inclusion of interest and penalty tax in notice of assessment**

A notice of assessment of a taxpayer's tax liability issued following a tax default by the taxpayer must specify any interest and penalty tax payable by the taxpayer under Part 5 or section 95 in respect of the default.

**15 Validity of assessment**

The validity of an assessment is not affected because a provision of a taxation law has not been complied with.

**17 Acceptance of money not necessarily an assessment**

The acceptance of money by the Chief Commissioner paid in connection with the lodging of a return or other document is not, only because of the acceptance, an assessment.

## **Part 4      Refunds of tax**

### **18 Entitlement to refund**

- (1) If a taxpayer has paid a greater amount of tax in relation to a tax liability than the amount assessed for that liability and shown in a notice of assessment, the Chief Commissioner must refund the difference to the taxpayer, subject to this Part.
- (2) For the avoidance of doubt, it is declared that an amount by which tax is overpaid is taken to be tax for the purposes of this Part.

### **19 Offset of refund against other tax liability**

- (1) Instead of making a refund to a taxpayer, the Chief Commissioner may apply the amount that would otherwise be refunded to meet tax or any other amount payable by the taxpayer under a taxation law.
- (2) A refund may be credited towards a taxpayer's future liability, but only with the taxpayer's consent.

### **20 Windfalls—refusal of refund**

The Chief Commissioner may refuse to make a refund to a taxpayer if:

- (a) the relevant taxation law provides for the passing on of the tax to another person, and
- (b) the tax sought to be refunded has been passed on to another person, and
- (c) the Chief Commissioner is not satisfied that appropriate arrangements have been made to pass the tax sought to be refunded on to that other person.

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## Part 5 Interest and penalty tax

### Division 1 Interest

#### 21 Interest in respect of tax defaults

- (1) If a tax default occurs, the taxpayer is liable to pay interest on the amount of tax unpaid calculated on a daily basis from the end of the last day for payment until the day it is paid at the interest rate from time to time applying under this Division.
- (2) Interest is payable under this section in respect of a tax default that consists of a failure to pay penalty tax under Division 2 but is not payable in respect of any failure to pay interest under this Division.

#### 22 Interest rate

- (1) The interest rate is the sum of:
  - (a) the market rate component, and
  - (b) the premium component.
- (2) The *market rate component* is:
  - (a) unless an order is in force under paragraph (b), the rate applicable for the time being under section 214A (8) of the Commonwealth *Income Tax Assessment Act 1936*, or
  - (b) the rate specified for the time being by order of the Minister published in the Gazette.
- (3) The *premium component* is 8% per annum.

#### 23 Liability to payment of small amounts of interest

There is no liability imposed by a taxation law to pay an amount of interest if the amount is less than \$20.

#### 24 Interest rate to prevail over interest otherwise payable on a judgment debt

If judgment is given by or entered in a court for an amount of unpaid tax (or an amount that includes an amount of unpaid tax), the interest rate determined in accordance with this Division continues to apply, to the exclusion of any other interest rate, until the tax is paid.

## **25 Remission of interest**

The Chief Commissioner may, in such circumstances as the Chief Commissioner considers appropriate, remit the market rate component or the premium component of interest, or both, by any amount.

## **Division 2 Penalty tax**

### **26 Penalty tax in respect of certain tax defaults**

- (1) If a tax default occurs, the taxpayer is liable to pay penalty tax in addition to the amount of tax unpaid.
- (2) Penalty tax imposed under this Division is in addition to interest.
- (3) Penalty tax is not payable in respect of a tax default that consists of a failure to pay:
  - (a) interest under Division 1, or
  - (b) penalty tax previously imposed under this Division.

### **27 Amount of penalty tax**

- (1) The amount of penalty tax payable in respect of a tax default is 25% of the amount of tax unpaid, subject to this Division.
- (2) The Chief Commissioner may increase the amount of penalty tax payable in respect of a tax default to 75% of the amount of tax unpaid if the Chief Commissioner is satisfied that the tax default was caused wholly or partly by the intentional disregard by the taxpayer (or a person acting on behalf of the taxpayer) of a taxation law.
- (3) The Chief Commissioner may determine that no penalty tax is payable in respect of a tax default if the Chief Commissioner is satisfied that:
  - (a) the taxpayer (or a person acting on behalf of the taxpayer) took reasonable care to comply with the taxation law, or
  - (b) the tax default occurred solely because of circumstances beyond the taxpayer's control (or if a person acted on behalf of the taxpayer, because of circumstances beyond either the person's or the taxpayer's control) but not amounting to financial incapacity.

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**28 Reduction in penalty tax for disclosure before investigation**

The amount of penalty tax determined under section 27 is to be reduced by 80% if, before the Chief Commissioner informs the taxpayer that an investigation relating to the taxpayer is to be carried out, the taxpayer discloses to the Chief Commissioner, in writing, sufficient information to enable the nature and extent of the tax default to be determined.

**29 Reduction in penalty tax for disclosure during investigation**

The amount of penalty tax determined under section 27 is to be reduced by 20% if, after the Chief Commissioner informs the taxpayer that an investigation relating to the taxpayer is to be carried out and before it is completed, the taxpayer discloses to the Chief Commissioner, in writing, sufficient information to enable the nature and extent of the tax default to be determined.

**30 Increase in penalty tax for concealment**

- (1) The amount of penalty tax determined under section 27 is to be increased by 20% if, after the Chief Commissioner has informed the taxpayer that an investigation is to be carried out and before the investigation is completed, the taxpayer took steps to prevent or hinder the Chief Commissioner from becoming aware of the nature and extent of the tax default in whole or part.
- (2) For the purposes of this section, a taxpayer takes steps to prevent or hinder the Chief Commissioner if the taxpayer:
  - (a) deliberately damages or destroys records required to be kept under the taxation law to which the investigation relates, or
  - (b) refuses or fails (without reasonable excuse) to comply with a requirement made by the Chief Commissioner under Division 2 of Part 9 for the purposes of determining the taxpayer's tax liability, or
  - (c) hinders or obstructs an authorised officer exercising functions under that Division for that purpose.

**Note.** This Table contains a summary of the provisions of sections 27–30.

**PENALTIES**

PENALTY CATEGORY	PRIME RATE %	VOLUNTARY DISCLOSURE		CONCEALMENT OR HINDRANCE IN ESTABLISHING UNDERPAYMENT %
		BEFORE INVESTIGATION %	DURING INVESTIGATION %	
Failure to take reasonable care but no intentional disregard of the law	25	5	20	30
Intentional disregard of the law	75	15	60	90

**31 Minimum amount of penalty tax**

Penalty tax is not to be imposed if the amount of the penalty tax is less than \$20.

**32 Time for payment of penalty tax**

Penalty tax must be paid by a taxpayer within the period specified for that purpose in a notice of assessment of the tax liability of the taxpayer, being a period of not less than 14 days.

**33 Remission of penalty tax**

The Chief Commissioner may, in such circumstances as the Chief Commissioner considers appropriate, remit penalty tax by any amount.



## **Part 6 Returns**

### **Division 1 General**

#### **34 Form of returns**

A return is to be in a form approved by the Chief Commissioner.

#### **35 Time of lodgment**

A return is taken to have been lodged by a person at the time the return is served on the Chief Commissioner.

#### **36 Extending time or period for lodgment**

The Chief Commissioner may extend the time or period for lodgment of a return by a person.

### **Division 2 Approval of special tax return arrangements**

#### **37 Approval of special tax return arrangements**

- (1) Despite the provisions of another taxation law, the Chief Commissioner may, by written notice, give approval for a special arrangement for the lodging of returns and payment of tax under the taxation law to:
  - (a) a specified taxpayer, or
  - (b) a specified agent or other person on behalf of a specified taxpayer or taxpayers of a specified class.
- (2) An approval, among other things:
  - (a) may provide an exemption for the taxpayer or taxpayers from specified provisions of the taxation law to which it applies, and
  - (b) may authorise the lodging of returns and payments of tax by electronic means.

- (3) An approval may be given on the initiative of the Chief Commissioner or on application.

### **38 Application for approval**

- (1) An application for an approval under this Division must be made to the Chief Commissioner in a form approved by the Chief Commissioner.
- (2) The Chief Commissioner may grant or refuse an application for an approval under this Division.

### **39 Conditions of approval**

- (1) An approval under this Division is subject to conditions specified by the Chief Commissioner in the notice of approval or by subsequent written notice.
- (2) The conditions of an approval may include:
- (a) conditions limiting the approval to tax liabilities of a specified class, and
  - (b) conditions limiting the approval to transactions effected by instruments of a specified class, and
  - (c) conditions requiring the lodging of returns at specified times and conditions as to the contents of the returns, and
  - (d) conditions requiring payments of tax at specified times, and
  - (e) conditions as to the means by which returns are to be lodged or payments of tax are to be made, and
  - (f) if the approval provides an exemption from a requirement for the stamping of instruments, conditions as to the endorsement of the instruments, and
  - (g) conditions requiring the taxpayer or agent to whom the approval was given to keep specified records.

### **40 Variation and cancellation of approvals**

The Chief Commissioner may vary or cancel an approval under this Division by written notice served on the taxpayer or agent to whom the approval was given.

**41 Effect of approval**

- (1) If an approval is given under this Division to a specified taxpayer, the conditions of the approval are binding on the taxpayer and the taxpayer is guilty of an offence if any of the conditions is contravened.

Maximum penalty: 100 penalty units.

- (2) If:
- (a) an approval is given under this Division to a specified agent on behalf of a specified taxpayer or taxpayers of a specified class, and
  - (b) the agent acts on behalf of that taxpayer or a taxpayer of that class in relation to a tax liability to which the approval applies,

the conditions of the approval are binding on the agent and the taxpayer and the agent and the taxpayer are each guilty of an offence if any of the conditions is contravened in relation to that tax liability.

Maximum penalty: 100 penalty units.

- (3) However, if the provisions of a taxation law from which a taxpayer is exempted by an approval under this Division are complied with in relation to a tax liability, subsections (1) and (2) do not apply to the taxpayer or an agent of the taxpayer in relation to that tax liability.

**42 Stamping of instruments**

- (1) If:
- (a) an approval under this Division provides for an exemption from a requirement for the stamping of an instrument, and
  - (b) the instrument is endorsed in accordance with the conditions of the approval,

the instrument is taken to be duly stamped but without affecting liability for the payment of tax in relation to the instrument under the relevant taxation law.

- (2) A person who endorses an instrument otherwise than under and in accordance with an approval under this Division so as to suggest or imply that the instrument is properly so endorsed and as a result is taken to be duly stamped is guilty of an offence.

Maximum penalty: 100 penalty units.

## **Part 7      Collection of tax**

### **43   Tax payable to the Chief Commissioner**

Tax that is payable is payable to the Chief Commissioner.

### **44   Recovery of tax as a debt**

If the whole or part of tax payable by a taxpayer has not been paid to the Chief Commissioner as required, the Chief Commissioner may recover the amount unpaid as a debt to the Chief Commissioner.

**Note.** Because of the provisions of section 94, recovery action may be taken despite the fact that an objection or appeal concerning the tax remains unresolved.

### **45   Joint and several liability**

- (1) If two or more persons are jointly or severally liable to pay an amount under a taxation law, the Chief Commissioner may recover the whole of the amount from them, or any of them, or any one of them.
- (2) Nothing in this Act prevents a person who is jointly or severally liable to pay an amount of tax and who pays the amount to the Chief Commissioner from recovering a contribution from any other person who is liable to pay the whole or part of that amount.

### **46   Collection of tax from third parties**

- (1) The Chief Commissioner may require any of the following persons instead of the taxpayer to pay tax that is payable but remains unpaid:
  - (a) a person by whom any money is due or accruing or may become due to the taxpayer,
  - (b) a person who holds or may subsequently hold money for or on account of the taxpayer,
  - (c) a person who holds or may subsequently hold money on account of some other person for payment to the taxpayer,
  - (d) a person having authority from some other person to pay money to the taxpayer.

- (2) The Chief Commissioner's requirement is to be made by notice in writing.
- (3) A copy of the notice must be served on the taxpayer.
- (4) The amount of money required to be paid to the Chief Commissioner is:
  - (a) if the amount of the money so held or due or authorised to be paid does not exceed the amount payable by the taxpayer to the Chief Commissioner—all the money, or
  - (b) if the amount of the money exceeds the amount so payable—sufficient money to pay the amount so payable.
- (5) The money must be paid to the Chief Commissioner on receipt of the notice, or when the money is held by the person and becomes due to the taxpayer, or after such period (if any) as may be specified by the Chief Commissioner, whichever is the later.
- (6) A person subject to a requirement of the Chief Commissioner under this section must comply with the requirement.

Maximum penalty: 100 penalty units.
- (7) A person who makes a payment in accordance with this section is taken to be acting under the authority of the taxpayer and of all other persons concerned and is indemnified by this section in respect of the payment.
- (8) If, after a person is given a notice under this section by the Chief Commissioner, the whole or a part of the amount is paid by another person, the Chief Commissioner must promptly notify the person to whom the notice is given of the payment and the notice is taken to be amended accordingly.
- (9) In this section, *tax* includes a judgment debt and costs in respect of such an amount.

#### **47 Arrangements for payment of tax**

- (1) The Chief Commissioner may extend the time for payment of tax by a taxpayer and may accept the payment of tax by instalments.
- (2) A decision of the Chief Commissioner under this section may be made subject to such conditions (for example, as to the payment of interest) as the Chief Commissioner may determine.

## **Part 8 Record keeping and general offences**

### **48 Requirement to keep proper records**

- (1) A person must keep, or cause to be kept, such records as are necessary to enable the person's tax liability under a taxation law to be properly assessed.

Maximum penalty: 100 penalty units.

- (2) This section does not affect a provision of any other taxation law concerning the keeping of records.

**Note.** A person who is required by a taxation law to keep a record may include other information in the record for the person's own use.

### **49 Additional records**

- (1) The Chief Commissioner may, by written notice given to a person who is required by a taxation law to keep a record or cause a record to be kept, require the person to keep, or cause to be kept, such additional records as are specified in the notice.
- (2) A person who fails to comply with such a notice is guilty of an offence.

Maximum penalty: 100 penalty units.

### **50 Inclusion of false or misleading information**

A person must not:

- (a) make a record required to be made by a taxation law that comprises or contains matter that the person knows is false or misleading in a material particular, or
- (b) include in a record required to be made or kept by a taxation law matter that the person knows is false or misleading in a material particular.

Maximum penalty: 100 penalty units.

### **51 Accessibility**

A person who is required by a taxation law to keep a record must keep the record so that it is able to be readily produced to the Chief Commissioner if the Chief Commissioner requires its production.

Maximum penalty: 100 penalty units.

**52 Form of record—English language**

A person who is required by a taxation law to keep a record must keep the record in English or in a form that can be readily converted or translated into English.

Maximum penalty: 100 penalty units.

**53 Period of retention**

(1) A person who is required by a taxation law to keep a record must retain the record for not less than 5 years after:

- (a) the date it was made or obtained, or
- (b) the date of completion of the transaction or act to which it relates,

whichever is the later.

Maximum penalty: 100 penalty units.

(2) A person may, with the written approval of the Chief Commissioner, destroy a record within the 5-year period unless another law requires the record to be retained for not less than 5 years.

**54 Wilfully destroying records**

A person must not wilfully damage or destroy a record required to be kept by a taxation law.

Maximum penalty: 100 penalty units.

**55 Knowingly giving false or misleading information**

A person must not:

- (a) make a statement, orally or in writing, to a tax officer, or
- (b) give information, orally or in writing, to a tax officer, knowing that it is false or misleading in a material particular.

Maximum penalty: 100 penalty units.

**56 Deliberately omitting information**

A person must not omit from a statement made to a tax officer any matter or thing without which the statement is, to the person's knowledge, false or misleading in a material particular.

Maximum penalty: 100 penalty units.



### **57 Failure to lodge documents**

A person must not fail or refuse to lodge a document, statement or return that is required to be lodged by a taxation law.

Maximum penalty: 100 penalty units.

### **58 Falsifying or concealing identity**

A taxpayer who:

- (a) falsifies or conceals the identity, or the address or location of a place of residence or business, of the taxpayer or of another person, or
- (b) does, by act or omission, anything that facilitates the falsification or concealment of the identity, or the address or location of a place of residence or business, of the taxpayer or another person,

is guilty of an offence.

Maximum penalty: 100 penalty units.

### **59 General defence under Part 8**

A person is not guilty of an offence against a requirement of this Part if the person proves that:

- (a) the person took reasonable care to comply with the requirement, or
- (b) the contravention of the requirement was caused solely because of circumstances beyond the person's control.

## **Part 9 Tax officers, investigation and secrecy provisions**

### **Division 1 Tax officers**

#### **60 The Chief Commissioner**

- (1) There is to be a Chief Commissioner of State Revenue.
- (2) The person for the time being holding office or acting as Executive Director, Office of State Revenue, is also to hold office as Chief Commissioner.

#### **61 General administration of the taxation laws**

The Chief Commissioner has the general administration of this Act and the other taxation laws and may do all such things as are necessary or convenient to give effect to this Act and the other taxation laws.

#### **62 Legal proceedings in Chief Commissioner's name**

- (1) Legal proceedings may be taken by or against the Chief Commissioner in the name "Chief Commissioner of State Revenue".
- (2) A person who takes legal proceedings in the name of the Chief Commissioner is taken to be authorised to take those proceedings, in the absence of evidence to the contrary.

#### **63 Chief Commissioner may perform functions under Commonwealth Act**

The Chief Commissioner may exercise the functions of a State taxation officer under Part IIIA of the Commonwealth *Taxation Administration Act 1953*.

#### **64 The Commissioner**

- (1) There is to be a Commissioner of State Revenue.

- (2) The person for the time being holding office or acting as Director, Revenue Advisory Services, Office of State Revenue, is also to hold office as Commissioner.
- (3) While there is no person holding office as Chief Commissioner, the Commissioner of State Revenue has the same functions as the Chief Commissioner under a taxation law.

#### **65 Other staff**

Such other staff as may be necessary for the administration of the taxation laws may be appointed under Part 2 of the *Public Sector Management Act 1988*.

#### **66 Use of consultants and contractors**

The Chief Commissioner may engage such consultants and contractors as may be necessary or convenient to exercise the Chief Commissioner's functions.

#### **67 Delegation by Chief Commissioner**

The Chief Commissioner may delegate to any person any function of the Chief Commissioner under a taxation law, other than this power of delegation.

#### **68 Authorised officers**

- (1) The Chief Commissioner and the Commissioner are authorised officers for the purposes of the taxation laws.
- (2) The Chief Commissioner may appoint persons to be authorised officers for the purposes of the taxation laws.
- (3) A tax officer to whom the Chief Commissioner delegates functions under Division 2 is an authorised officer for the purposes of the taxation laws.

#### **69 Identity cards for authorised officers**

An authorised officer must be issued with an identity card in a form approved by the Chief Commissioner:

- (a) containing the person's name and a photograph of the person, and
- (b) stating that the person is an authorised officer for the purposes of the taxation laws.

## **70 Personal liability**

A matter or thing done or omitted by the Chief Commissioner or a tax officer does not, if the matter or thing was done or omitted in good faith for the purpose of executing a taxation law, subject the Chief Commissioner or the tax officer so acting personally to any action, liability, claim or demand.

## **Division 2 Investigation**

### **71 Circumstances in which investigative powers may be exercised**

A function conferred under this Division may be exercised only for the purposes of a taxation law.

### **72 Power to require information, instruments and records, and attendance**

- (1) The Chief Commissioner may require a person, by written notice, to do any one or more of the following:
  - (a) to provide to the Chief Commissioner (either orally or in writing) information that is described in the notice,
  - (b) to attend and give evidence before the Chief Commissioner or an authorised officer,
  - (c) to produce to the Chief Commissioner an instrument or record in the person's custody or control that is described in the notice.
- (2) The Chief Commissioner must, if the requirement is made of a person to determine that person's tax liability, indicate in the notice that the requirement is made for that purpose, but the Chief Commissioner is not otherwise required to identify a person in relation to whom any information, evidence, instrument or record is required under this section.

- (3) The Chief Commissioner may require information or evidence that is not given orally to be provided in the form of or verified by statutory declaration.
- (4) The Chief Commissioner may require evidence that is given orally to be given on oath or by affirmation and for that purpose the Chief Commissioner or an authorised officer may administer an oath or affirmation.
- (5) A person who is required to attend and give evidence orally is to be paid expenses in accordance with the scale of allowances to witnesses in force for the time being under the rules of the District Court.
- (6) Subsection (5) does not apply to a person, or a representative of a person, whose liability under a taxation law is being investigated by the Chief Commissioner.
- (7) The Chief Commissioner may make a recording, by such means as the Chief Commissioner determines, of the evidence given orally by a person.
- (8) The person to whom the notice is given must comply with the notice within such period as is specified in the notice or such extended period as the Chief Commissioner may allow.

Maximum penalty (subsection (8)): 100 penalty units.

### **73 Access to public records without fee**

The Chief Commissioner is entitled to inspect and take copies of any public record kept under an Act or law of this jurisdiction without payment of any fee that would be payable but for this section.

### **74 Use and inspection of documents and records provided to Chief Commissioner or authorised officer**

- (1) This section applies to a document or record that is provided or produced to the Chief Commissioner or an authorised officer.
- (2) The Chief Commissioner or the authorised officer may take and retain possession of the document or record solely for the purpose of enabling the document or record to be inspected and for copies of, or extracts or notes from, the document or record to be made or taken by or on behalf of the Chief Commissioner or authorised officer.

- (3) However, if the record was provided or produced to the Chief Commissioner or an authorised officer on the premises where it is normally kept, the Chief Commissioner or authorised officer may remove it from those premises for the purposes referred to in subsection (2) only:
- (a) with the consent of the owner or occupier of the premises, or
  - (b) if it is not practicable to inspect or copy or take extracts or notes from the record on the premises.
- (4) The Chief Commissioner or authorised officer may retain possession of the document or record:
- (a) except in the case of a document impounded under section 76 (1) (d), for a reasonable period, but not exceeding 28 days without the consent of the person entitled to it, or
  - (b) in the case of a document impounded under section 76 (1) (d), until the tax payable in respect of the instrument has been paid.
- (5) The Chief Commissioner or the authorised officer must permit a person who would be entitled to inspect the document or record if it were not in the possession of the Chief Commissioner or authorised officer to inspect the document or record at any reasonable time.
- (6) Nothing in this section prejudices a lien a person has on the document or record.
- (7) Nothing in this section limits or affects section 76.

## **75 Power of entry on premises**

- (1) The Chief Commissioner may enter and remain on premises if the Chief Commissioner has reason to believe or suspect that there are records at the premises that are relevant to the administration of a taxation law.
- (2) Entry may be made at any reasonable time.
- (3) The power of an authorised officer to enter premises may not be exercised unless the authorised officer has the written delegation issued by the Chief Commissioner and produces it if requested to do so by the owner or occupier of the premises, or a person in physical occupation of the premises.

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- (4) Before the Chief Commissioner or an authorised officer enters premises under this Act, the Chief Commissioner or authorised officer must give the owner or occupier of the premises, or a person in physical occupation of the premises, reasonable notice of the intention to enter unless:
- (a) entry is made with the consent of the owner, occupier or person, or
  - (b) the giving of notice would, in the opinion of the Chief Commissioner or authorised officer, defeat the purpose for which it is intended to enter the premises.
- (5) The powers of entry and inspection conferred by this Part are not exercisable in relation to premises or a part of premises used for residential purposes except:
- (a) with the consent of the owner or occupier of the premises or part, or a person in physical occupation of the premises or part, or
  - (b) under the authority conferred by a search warrant.

## **76 Functions exercisable on entry**

- (1) The Chief Commissioner or an authorised officer who has entered premises in accordance with this Division may:
- (a) require any person at those premises to produce any records in the custody or possession or under the control of the person (including a written record that reproduces in an understandable form information stored by computer, microfilm or other means or process), and
  - (b) require any person at those premises to answer questions or otherwise furnish information, and
  - (c) require the owner or occupier of the premises, or any person physically in occupation of the premises, to provide the Chief Commissioner or authorised officer with such assistance and facilities as is or are reasonably necessary to enable the Chief Commissioner or authorised officer to exercise the functions of the Chief Commissioner or an authorised officer under this Part, and
  - (d) impound an instrument that ought to be but is not stamped or is insufficiently stamped.

- (2) A receipt is to be issued for anything removed.
- (3) Any material seized and removed may be destroyed by the Chief Commissioner if:
  - (a) the taxpayer refuses to accept the return of the material, or
  - (b) the taxpayer cannot be located or ceases to exist.
- (4) Nothing in this section limits or affects section 74.

### **77 Search warrant**

- (1) The Chief Commissioner or an authorised officer may apply to an authorised justice for a warrant to search any premises if the Chief Commissioner or the authorised officer has reasonable grounds to believe that any records are to be found there, being records to which the Chief Commissioner or authorised officer would have access if they were kept on premises to which the Chief Commissioner or authorised officer has access.
- (2) An authorised justice to whom the application is made may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising the Chief Commissioner or authorised officer to enter and search the premises.
- (3) Nothing in this section limits or restricts any power conferred on the Chief Commissioner or an authorised officer under this Part.
- (4) In this section, *authorised justice* has the same meaning as in the *Search Warrants Act 1985*.

### **78 Obstructing Chief Commissioner or authorised officer**

- (1) A person who:
  - (a) prevents the Chief Commissioner or an authorised officer from exercising a function under this Division, or
  - (b) hinders or obstructs the Chief Commissioner or an authorised officer in the exercise of such a function, or
  - (c) without reasonable excuse, refuses or fails to comply with a requirement made or to answer a question of the Chief Commissioner or an authorised officer asked in accordance with section 76,

is guilty of an offence.

Maximum penalty: 100 penalty units.



- (2) A person is not guilty of an offence under this section arising from the entry of the Chief Commissioner or an authorised officer onto premises unless it is established that, at the material time, the Chief Commissioner or the authorised officer:
- (a) identified himself or herself as the Chief Commissioner or an authorised officer, and
  - (b) warned the person that a failure or refusal to comply with the requirement may constitute an offence.

### **79 Impersonating Chief Commissioner or authorised officer**

A person who impersonates or falsely represents that he or she is the Chief Commissioner or an authorised officer is guilty of an offence.

Maximum penalty: 100 penalty units.

### **80 Defence of reasonable compliance**

A person is not guilty of an offence under this Division if the court hearing the charge is satisfied:

- (a) that the defendant could not, by the exercise of reasonable diligence, have complied with the requirement to which the charge relates, or
- (b) that the defendant complied with the requirement to the extent of his or her ability to do so.

## **Division 3 Secrecy**

### **81 Prohibition on certain disclosures of information by tax officers**

A person who is or was a tax officer must not disclose any information obtained under or in relation to the administration of a taxation law, except as permitted by this Division.

Maximum penalty: 100 penalty units.

### **82 Permitted disclosures—to particular persons**

A tax officer may disclose information obtained under or in relation to the administration of a taxation law:

- (a) with the consent of the person to whom the information relates or at the request of a person acting on behalf of the person to whom the information relates, or

- (b) in connection with the administration or execution of a taxation law (including for the purpose of any legal proceedings arising out of a taxation law or a report of any such proceedings), or
- (c) in connection with the administration or execution of a law of another Australian jurisdiction that is prescribed by the regulations to be a reciprocal taxation law for the purposes of this section, or
- (d) in accordance with a requirement imposed under an Act, or
- (e) to an authorised recipient, being any of the following persons or a person authorised to be an authorised recipient by any of the following persons:
  - (i) the Ombudsman, or
  - (ii) the Commissioner of Police, or
  - (iii) the Archives Authority, or
  - (iv) the Australian Statistician, or
  - (v) the Auditor-General, or
  - (vi) an authorised revenue officer, or a New South Wales revenue officer, within the meaning of the *Revenue Laws (Reciprocal Powers) Act 1987*, or
  - (vii) a member of the Public Service acting in the execution or administration of the *Country Industries (Pay-roll Tax Rebates) Act 1977*, or
  - (viii) the Workcover Authority, or
  - (ix) a person prescribed by the regulations to be an authorised recipient for the purposes of this section.

### **83 Permitted disclosures—of a general nature**

The Chief Commissioner may disclose information obtained under or in relation to the administration of a taxation law unless that information will or is likely to:

- (a) directly or indirectly identify a particular taxpayer, or
- (b) disclose matters concerning the personal affairs of a particular taxpayer.

#### **84 Prohibition on secondary disclosures of information**

A person must not disclose any information obtained from a tax officer in accordance with Division 2 unless the disclosure is made with the consent of the Chief Commissioner or so as to enable the person to exercise a function conferred on the person by law for the purpose of the enforcement of a law or protecting the public revenue.

Maximum penalty: 100 penalty units.

#### **85 Further restrictions on disclosure**

A person who is or was a tax officer is not required to disclose or produce in any court any information obtained under or in relation to the administration of a taxation law except:

- (a) if it is necessary to do so for the purposes of the administration or execution of a taxation law or the *Revenue Laws (Reciprocal Powers) Act 1987*, or
- (b) if the requirement is made for the purposes of enabling a person who is specified for the time being to be an authorised recipient to exercise a function conferred or imposed on the person by law.

## Part 10 Objections and appeals

### Division 1 Objections

#### 86 Objection

- (1) A taxpayer who is dissatisfied with:
  - (a) an assessment that is shown in a notice of assessment served on the taxpayer, or
  - (b) a decision of the Chief Commissioner under a taxation law, unless the taxation law states that the decision is a non-reviewable decision,may lodge a written objection with the Chief Commissioner.
- (2) No court or administrative review body has jurisdiction or power to consider any question concerning an assessment or decision of the Chief Commissioner to which this section applies, except as provided by this Part.
- (3) Subsection (2) does not apply to a decision of the Chief Commissioner under Part 4, 7, 8, 9 or 11.
- (4) This section does not affect the right of any person to make an objection under the *Land Tax Management Act 1956*.

#### 87 Grounds for objection

- (1) The grounds for the objection must be stated fully and in detail, and must be in writing.
- (2) The grounds for the objection, in the case of a reassessment, are limited to the extent of the reassessment.

#### 88 Onus of proof and evidence on objection

On an objection, the objector has the onus of proving the objector's case.

#### 89 Time for lodging objection

- (1) An objection must be lodged with the Chief Commissioner not later than 60 days after the date of service of the notice of the assessment or the date on which the decision referred to in section 86 (1) (b) is served on the taxpayer, except as provided by section 90.

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- (2) An objection is taken to have been lodged with the Chief Commissioner when it is served on the Chief Commissioner.

## 90 Objections lodged out of time

- (1) The Chief Commissioner may permit a person to lodge an objection after the 60-day period.
- (2) The person seeking to so lodge the objection must state fully and in detail, and in writing, the circumstances concerning and the reasons for the failure to lodge the objection within the 60-day period.
- (3) The Chief Commissioner may grant permission unconditionally or subject to conditions or may refuse permission.
- (4) The Chief Commissioner must give notice to the person of the Chief Commissioner's decision and include in the notice the reasons for refusing to grant permission or for imposing conditions of the permission.
- (5) The notice is to be in a form approved by the Chief Commissioner.

## 91 Determination of objection

- (1) The Chief Commissioner must consider an objection and either allow the objection in whole or in part or disallow the objection.

**Note.** The Chief Commissioner should endeavour to determine the objection within 90 days after it is received. Failure to make a determination within the 90-day period is a ground for appeal under section 96 (1) (b).

- (2) The Chief Commissioner may determine an objection that is subject to an appeal under section 96 (1) (b) at any time before the hearing of the appeal proceedings commences.
- (3) If the Chief Commissioner delegates the functions conferred by this section, the delegate who considers the objection must be a different person from, and not subordinate to, the person who made the assessment or decision against which the objection is lodged.

## **92 Suspension of determination**

- (1) The Chief Commissioner may suspend the determination of an objection for any period during which the objector, or another person having information relevant to the objection, fails to provide information relevant to the objection that the Chief Commissioner has requested under a taxation law.
- (2) The Chief Commissioner must give the objector written notice of a suspension under subsection (1).
- (3) The Chief Commissioner, at the request of the objector, may suspend the determination of an objection pending the outcome of legal proceedings relating to a tax liability of the same kind as the tax liability the subject of the objection.

## **93 Notice of determination**

- (1) The Chief Commissioner must give notice to the objector of the determination of the objection.
- (2) The Chief Commissioner must, in the notice, give the reasons for disallowing an objection or for allowing an objection in part only.
- (3) The notice is to be in a form approved by the Chief Commissioner.

## **94 Recovery of tax pending objection or appeal**

The fact that an objection or appeal is pending does not in the meantime affect the assessment or decision to which the objection or appeal relates and tax may be recovered as if no objection or appeal were pending.

## **95 Payment of interest following unsuccessful objection**

Division 1 of Part 5 applies to an amount of tax required to be paid following the determination of an objection.

## **Division 2 Appeals**

### **96 Right of appeal**

- (1) A taxpayer may appeal to the Supreme Court if:
  - (a) the taxpayer is dissatisfied with the Chief Commissioner's determination of the taxpayer's objection, or

- (b) 90 days (not including any period of suspension under section 92) have passed since the taxpayer's objection was served on the Chief Commissioner and the Chief Commissioner has not determined the objection.
- (2) No person or body has jurisdiction or power to conduct a review or hear an appeal in respect of the determination of an objection except as provided by this section.

**Note.** The right of appeal conferred by this section may be exercised in accordance with Part 51A of the *Supreme Court Rules 1970*.

### **97 Time for appeal**

An appeal:

- (a) must be made not later than 60 days after the date of issue of the notice of the Chief Commissioner's determination of the objection, or
- (b) may be made at any time after the 90-day period referred to in section 96 (1) (b) (not including any period of suspension under section 92).

### **98 Appeals made out of time**

The Supreme Court may allow a person to appeal after the 60-day period.

### **99 Notice to Chief Commissioner of appeal**

- (1) An appellant must give written notice to the Chief Commissioner of the making of an appeal under section 97 (b) not less than 14 days before the appeal is made.
- (2) If the notice is not given as required by this section, the appeal cannot be made.

### **100 Grounds of appeal**

The appellant's and respondent's cases on an appeal are not limited to the grounds of the objection.

### **101 Onus on appeal**

On an appeal, the appellant has the onus of proving the appellant's case.

### **102 Powers of Supreme Court on appeal**

On an appeal, the Supreme Court may do any one or more of the following:

- (a) confirm or revoke the assessment or decision to which the appeal relates,
- (b) make an assessment or decision in place of the assessment or decision to which the appeal relates,
- (c) make an order for payment to the Chief Commissioner of any amount of tax that is assessed as being payable but has not been paid,
- (d) remit the matter to the Chief Commissioner for determination in accordance with the Court's finding or decision,
- (e) make any further order as to costs or otherwise as it thinks fit.

### **103 Giving effect to decision on appeal**

- (1) Within 60 days after the decision on appeal becomes final, the Chief Commissioner must take any action that is necessary to give effect to the decision. That action may include amending any relevant assessment.
- (2) If no appeal from a decision of the Supreme Court is instituted within 30 days after the day on which the decision is made, the decision of the Supreme Court is taken, for the purposes of this section, to have become final at the end of the 30-day period.

## **Division 3 Refund of amounts and payment of interest following successful objection or appeal**

### **104 Refund of amount**

If a taxpayer's objection is allowed in whole or in part or a taxpayer's appeal is upheld, the Chief Commissioner must refund any amount paid in excess of a requirement for payment under the relevant taxation law.



### **105 Payment of interest**

In addition to an amount refunded under this Division, the Chief Commissioner is required to pay interest on the amount calculated on a daily basis from the date of its payment by the taxpayer until the date of the refund at the market rate component under section 22.

## **Division 4 Chief Commissioner may state case**

### **106 Chief Commissioner may state case**

- (1) The Chief Commissioner may, if the Chief Commissioner thinks fit, state a case on any question of law concerning the assessment or refund of tax and forward the case to the Supreme Court for its opinion.
- (2) The Supreme Court is to give its opinion on any case forwarded to it and cause the Chief Commissioner to be notified of that opinion.

## **Part 11 Miscellaneous provisions**

### **107 Means and time of payment**

- (1) Tax may be paid to the Chief Commissioner:
  - (a) by a cash payment made at, or a bank cheque or postal money order delivered to, an office of the Chief Commissioner, or
  - (b) by any other means approved by the Chief Commissioner.
- (2) An approval of the Chief Commissioner may be:
  - (a) general or limited to particular taxes, persons or payments, and
  - (b) unconditional or subject to conditions.
- (3) If the Chief Commissioner approves payment by a personal cheque:
  - (a) payment will be taken to be effected when the cheque is received by the Chief Commissioner provided that payment occurs when the Chief Commissioner first presents the cheque to the bank for payment, or
  - (b) in any other case, payment will be taken to be effected when payment occurs under the cheque following presentation by the Chief Commissioner (however, the Chief Commissioner is under no obligation to present a cheque for payment more than once).
- (4) An approval of a means of payment (other than by personal cheque) may include a stipulation as to when payment by that means will be taken to be effected and any such stipulation will have effect according to its terms.
- (5) The Chief Commissioner may vary or cancel an approval under this section.

### **108 Adjustments for fraction of a dollar**

- (1) If a single amount of tax payable by a taxpayer is not a multiple of a dollar, the Chief Commissioner may decrease the amount but not lower than the nearest dollar.

- (2) If the Chief Commissioner aggregates two or more amounts of tax that are payable by a taxpayer and the aggregated amount is not a multiple of a dollar, the Chief Commissioner may decrease the aggregated amount but not lower than the nearest dollar.

### **109 Valuation of foreign currency**

- (1) If an amount involved in the calculation of tax is not in Australian currency, the amount is to be converted to Australian currency at the rate of exchange last reported by the Reserve Bank before the liability to pay the tax arose.
- (2) This section is subject to a provision of another taxation law governing the calculation of tax where an amount involved in the calculation is not in Australian currency.

### **110 Writing off of tax**

- (1) The Chief Commissioner may write off the whole or any part of any unpaid tax if satisfied that action, or further action, to recover the tax is impracticable or unwarranted.
- (2) The writing off of tax does not affect the liability of the taxpayer to pay the tax or the power of the Chief Commissioner to recover it.
- (3) This section has effect despite the provisions of the *Public Finance and Audit Act 1983* or another taxation law.

### **111 Appropriation of Consolidated Fund**

If the Chief Commissioner is authorised or required to pay an amount under this Act, the amount is to be paid from the Consolidated Fund which is appropriated by this section to the necessary extent.

### **112 Public officer of corporation**

- (1) The Chief Commissioner may, by written notice served on a corporation, require the corporation to appoint, within a period specified in the notice, a natural person whose principal place of residence is in this jurisdiction as a public officer of the corporation for the purposes of the taxation laws, and to keep the office of public officer constantly filled by such a person.

- (2) An appointment of a public officer is not duly made until written notice of the appointment, specifying the name and residential address of the officer, has been lodged with the Chief Commissioner.
- (3) If:
  - (a) the Chief Commissioner has required a corporation to appoint a public officer, and
  - (b) the corporation does not make such an appointment as required or does not keep the office of public officer constantly filled as required,the Chief Commissioner may appoint a person as the public officer of the corporation by written notice served on the person and the corporation.
- (4) Service of a document on the public officer of the corporation is sufficient service on the corporation for the purposes of a taxation law, and, if at any time the corporation does not have a public officer as required under this section, then service on a person acting or appearing to act in the business of the corporation is sufficient.
- (5) The public officer is answerable for the discharge of all obligations imposed on the corporation under a taxation law, and, in case of default, is liable to the same penalties.
- (6) Everything that the public officer is required to do and does in his or her representative capacity is taken to have been done by the corporation, but the absence or non-appointment of a public officer does not excuse the corporation from the necessity of complying, or from a penalty for failure to comply, with a provision of a taxation law and the corporation is liable to comply with the taxation laws as if there were no requirement to appoint a public officer.
- (7) A document served on or requirement made of the public officer is taken to have been served on or made of the corporation.
- (8) Any civil or criminal proceedings brought under a taxation law against the public officer are taken to have been brought against the corporation, and the corporation is liable jointly with the public officer for any penalty imposed on the public officer, or for compliance with any order made against the public officer.

**113 Notice of liquidator's appointment**

A liquidator appointed to wind up a company must notify the Chief Commissioner of the appointment within 14 days after the date of the appointment.

Maximum penalty: 100 penalty units.

**114 Service of documents on Chief Commissioner**

- (1) A document authorised or required to be served on, given to or lodged with the Chief Commissioner for the purposes of a taxation law may be served, given or lodged:
  - (a) by delivering it at an office of the Chief Commissioner, or
  - (b) by post addressed to the Chief Commissioner at an office of the Chief Commissioner, or
  - (c) by a means indicated by the Chief Commissioner as being an available means of service (such as by facsimile transmission or by delivering it, addressed to the Chief Commissioner, to the facilities of a document exchange), or
  - (d) by leaving it with a person who has authority to accept documents on the Chief Commissioner's behalf.

**115 Day of service of document or payment of money**

If a document is served on the Chief Commissioner or a payment of money is tendered to the Chief Commissioner at a time on a day that is after the ordinary hours of business when the offices of the Chief Commissioner are open to the public on that day, the document or money is taken to have been served on or tendered to the Chief Commissioner on the following business day.

**116 Service of documents by Chief Commissioner**

- (1) A document authorised or required to be served on or given to a person by the Chief Commissioner for the purposes of a taxation law may be served on or given to the person:
  - (a) personally, or
  - (b) by leaving it at the last address of the person known to the Chief Commissioner (including, in the case of a corporation, the registered address or a business address of the corporation), or

- (c) by post addressed to the person at the last address of the person known to the Chief Commissioner (including, in the case of a corporation, the registered address or a business address of the corporation), or
  - (d) by a means indicated by the person as being an available means of service (such as by facsimile transmission or by delivering it, addressed to the person, to the facilities of a document exchange), or
  - (e) by any means provided for the service of the document by another Act or law.
- (2) If a person (*the agent*) has actual or apparent authority to accept service of a document on behalf of another, the Chief Commissioner may, for the purposes of a taxation law, serve the document on the agent as if the agent were that other person.
- (3) Service of a document on a member of a partnership, or on a member of the committee of management of an unincorporated association or other body of persons, is taken, for the purposes of a taxation law, to constitute service of the document on each member of the partnership, or on each member of the association or other body of persons.

#### **117 Judicial notice of Chief Commissioner's name and signature**

Judicial notice is to be taken of:

- (a) the name of a person who holds or has held the office of Chief Commissioner, and
- (b) the signature of a person who holds or has held the office of Chief Commissioner.

#### **118 Presumption of regularity as to issue of documents**

A document or a copy of a document bearing the written, printed or stamped signature or name of the Chief Commissioner or a person described in the document as a delegate of the Chief Commissioner is, in the absence of evidence to the contrary, taken to have been lawfully issued by the Chief Commissioner.

#### **119 Evidence of assessment**

Production of a notice of assessment, or of a document signed by the Chief Commissioner purporting to be a copy of a notice of assessment, is:

- (a) conclusive evidence of the due making of the assessment, and
- (b) conclusive evidence that the amount and all particulars of the assessment are correct, except in objection or appeal proceedings when it is prima facie evidence only.

## **120 Certificate evidence**

A certificate signed by the Chief Commissioner that states any of the following matters is admissible in proceedings under a taxation law and, in the absence of evidence to the contrary, is proof of the matters stated in the certificate:

- (a) the person named in the certificate is liable to pay tax,
- (b) an assessment of tax has been made in relation to circumstances specified in the certificate,
- (c) notice of an assessment was issued to a person named in the certificate, or the person's agent, on the day specified in the certificate,
- (d) the amount of tax, a penalty or interest specified in the certificate is payable by a person named in the certificate or has been paid in whole or in part by or on behalf of a person so named,
- (e) a document specified in the certificate was posted to, delivered to, or served personally on, a person named in the certificate on a day specified in the certificate,
- (f) a person named in the certificate is, or is not, registered or licensed as required by the relevant taxation law,
- (g) a return or statement required by a taxation law has been, or has not been, lodged by or on behalf of a person named in the certificate on or as at a day specified in the certificate,
- (h) a person named in the certificate is, or was, an authorised officer on the date specified in the certificate.

## **121 Offences by persons involved in management of corporations**

- (1) If a corporation contravenes, by act or omission, a provision of a taxation law, a person who is concerned in, or takes part in, the management of the corporation is taken to have contravened the same provision.

- (2) A person is not to be taken to have contravened the provision if the person satisfies the court that:
  - (a) the corporation contravened the provision without the person's knowledge, or
  - (b) the person was not in a position to influence the conduct of the corporation in relation to its contravention of the provision, or
  - (c) the person, if in such a position, used all due diligence to prevent the contravention by the corporation.
- (3) A person may be convicted of a contravention of a provision of a taxation law whether or not the corporation has been convicted of its contravention.
- (4) This section does not affect a liability imposed on a corporation for an offence committed by it against a taxation law.
- (5) For the purposes of this section, the following persons are persons who are concerned in, or take part in, the management of a corporation:
  - (a) a director of the corporation,
  - (b) a secretary of the corporation,
  - (c) a receiver and manager of property of the corporation,
  - (d) an official manager or deputy official manager of the corporation,
  - (e) a liquidator of the corporation appointed in a voluntary winding up of the corporation,
  - (f) a trustee or other person administering a compromise or arrangement made between the corporation and another person or other persons.

## **122 Penalties for corporations**

The maximum penalty that a court may impose for an offence against a taxation law that is committed by a corporation is 5 times the maximum penalty that the court could, but for this section, impose as a penalty for the offence.



**123 Tax liability unaffected by payment of penalty**

The payment by a person of a penalty imposed by a court does not relieve the person from the payment of any other amount the person is liable to pay under a taxation law.

**124 Continuing offences**

- (1) A person may be convicted of a second or subsequent offence for a failure to do an act (where the failure constitutes an offence) if the failure continues beyond the period or date in respect of which the person is convicted for the failure.
- (2) The maximum penalty for the offence is the same whether it is a second or subsequent offence.

**125 Proceedings for offences**

- (1) Proceedings for an offence against a taxation law may be dealt with before a Local Court constituted by a Magistrate sitting alone or before the Supreme Court in its summary jurisdiction.
- (2) Proceedings for an offence against a taxation law may be commenced at any time within 2 years after the date on which it is alleged the offence was committed.
- (3) If proceedings for an offence against a taxation law are taken before a Local Court, the maximum penalty that the Court may impose is, despite any provision of a taxation law to the contrary, 100 penalty units or the maximum penalty provided by the taxation law for the offence, whichever amount is the smaller.
- (4) If proceedings for an offence against a taxation law are taken before the Supreme Court, the Court may impose a penalty not exceeding the maximum penalty provided by the taxation law for the offence.

**126 Regulations**

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

- (2) A regulation may create an offence punishable by a penalty not exceeding 20 penalty units.

## **127 Savings, transitional and other provisions**

Schedule 1 has effect.

## **128 Review of Act**

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

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## **Schedule 1 Savings, transitional and other provisions**

(Section 127)

### **Part 1 Preliminary**

#### **1 Regulations**

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:

this Act

*Taxation Administration (Consequential Amendments) Act 1996*

- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later day.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
  - (b) to impose liabilities on any person (other than the State or an authority of the State), in respect of anything done or omitted to be done before the date of its publication.

#### **2 Application of s 30 of Interpretation Act 1987**

Except to the extent otherwise provided by this Schedule, nothing in this Schedule affects the application of section 30 of the *Interpretation Act 1987*.

### **Part 2 Provisions arising from enactment of this Act**

#### **3 Existing assessments**

An assessment made under a taxation law before the commencement of Part 3 is taken to have been made under that Part, except as provided by clause 16 (2).

#### **4 Assessments of existing liabilities**

The power to make an assessment under Part 3 extends to a tax liability existing before the commencement of that Part.

#### **5 Inclusion of interest and penalties in notices of assessment**

Despite section 15, a notice of assessment in respect of a tax liability existing before the commencement of Part 3 must specify any interest accrued or fine, penalty or penalty tax payable in relation to the liability calculated in accordance with clauses 8 and 9.

#### **6 Refunds of tax paid before commencement of Part 4**

Part 4 extends to tax paid before the commencement of that Part.

#### **7 Existing refund applications**

Part 4 extends to an application for a refund of tax that was made to the Chief Commissioner before the commencement of that Part and that has not been determined by the Chief Commissioner on that commencement.

#### **8 Interest in respect of existing tax defaults**

- (1) If a tax default occurred before the commencement of Division 1 of Part 5, interest accrues in relation to that default on and from that commencement in accordance with that Division, subject to this clause.
- (2) The taxpayer concerned may elect that interest accrue under the law that applied to the tax default immediately before the commencement of Division 1 of Part 5.
- (3) An election is made by written notice served on the Chief Commissioner.
- (4) If the taxpayer makes an election under this clause, the relevant taxation law as in force immediately before the commencement of Division 1 of Part 5 continues to apply to the accrual of interest in relation to the tax default as if this Act and the *Taxation Administration (Consequential Amendments) Act 1996* had not been enacted.

## **9 Penalty tax**

- (1) Division 2 of Part 5 does not apply to a tax default that occurred before the commencement of that Division.
- (2) The relevant taxation law as in force immediately before the commencement of Division 2 of Part 5 continues to apply to the liability for, and calculation of, any fine or penalty payable in relation to a tax default that occurred before that commencement as if this Act and the *Taxation Administration (Consequential Amendments) Act 1996* had not been enacted.

## **10 Form of returns**

Section 34 extends to an approval that has been given under a relevant taxation law before the commencement of that section and that is in force on that commencement.

## **11 Approval of special tax return arrangements**

Division 2 of Part 6 extends to an approval that has been given under a relevant taxation law before the commencement of that Division and that is in force on that commencement.

## **12 Unpaid tax**

Part 7 extends to tax that is payable but remains unpaid immediately before the commencement of that Part.

## **13 Records**

Sections 51, 52, 53 and 54 extend to records required to be kept, before the commencement of those sections, under a taxation law.

## **14 References to tax officers**

On and from the commencement of Division 1 of Part 9, a reference (however expressed) in any other Act (whether assented to before, on or after that commencement), in any instrument made under an Act or in any other instrument of any kind:

- (a) to the Chief Commissioner of Stamp Duties, the Deputy Chief Commissioner of Stamp Duties, the Chief Commissioner of Health Insurance Levies, the Deputy Chief Commissioner of Health Insurance Levies, the Chief Commissioner of Land Tax, the Deputy Chief Commissioner of Land Tax, the Chief Commissioner of Pay-roll Tax or the Deputy Chief Commissioner of Pay-roll Tax—is to be read as a reference to the Chief Commissioner of State Revenue, or
- (b) to the Commissioner of Stamp Duties, the Commissioner of Health Insurance Levies, the Commissioner of Land Tax, an Assistant Commissioner of Land Tax or the Commissioner of Pay-roll Tax—is to be read as a reference to the Commissioner of State Revenue.

### **15 Secrecy**

Division 3 of Part 9 extends to information obtained under or in relation to the administration of a taxation law before the commencement of that Division.

### **16 Objection and appeals**

- (1) Part 10 applies only to a notice of assessment, or a notice of decision or determination of the Chief Commissioner, served after the commencement of that Part.
- (2) The provisions of the relevant taxation law as in force immediately before the commencement of Part 10 continue to apply to a notice of assessment, or a notice of decision or determination of a tax officer, served before the commencement of that Part as if this Act and the *Taxation Administration (Consequential Amendments) Act 1996* had not been enacted.
- (3) Sections 104 and 105 apply to an objection that is allowed, or an appeal that is upheld, after the commencement of those sections, despite the other provisions of this clause.

### **17 Writing off of tax**

Section 110 extends to tax that was unpaid before the commencement of that section.

### **18 Public officer of corporation**

The appointment of a public officer under section 41 of the *Pay-roll Tax Act 1971*, being an appointment that is in force immediately before the repeal of that section, is taken to be an appointment under section 112.

[Minister's second reading speech made in—  
Legislative Assembly on 30 October 1996  
Legislative Council on 13 November 1996]

