

[Act 1996 No 97]



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 1954*

*Parking Space Levy Act 1992*

*Pay-roll Tax Act 1971*

*Revenue Laws (Reciprocal Powers) Act 1989*

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.

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## 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	
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 43–49**. 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.