

# Taxation Administration Act 1996 No 97

[1996-97]



New South Wales

## Status Information

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### Notes—

- **Does not include amendments by**  
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### Authorisation

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# Taxation Administration Act 1996 No 97



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# Taxation Administration Act 1996 No 97



New South Wales

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

## 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 or the Administrative Decisions Tribunal on an application for a review.

**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.

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

**recognised revenue law** has the meaning given by section 80A.

**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.

**review** means a review by the Supreme Court or the Administrative Decisions Tribunal on an application made under Division 2 of Part 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.

**Note—**

See also section 5 (Application of Act to State tax-equivalent regime).

**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

*Betting Tax Act 2001*

*Duties Act 1997*

*Gaming Machine Tax Act 2001*

*Health Insurance Levies Act 1982*

*Insurance Protection Tax Act 2001*

*Land Tax Act 1956*

*Land Tax Management Act 1956*

*Parking Space Levy Act 2009*

*Payroll Tax Act 2007*

a regulation under any of those Acts.

#### **5 Application of Act to State tax-equivalent regime**

- (1) For the purpose of the administration and enforcement of the State tax-equivalent regime, the provisions of Part 4A of the *Public Finance and Audit Act 1983*, and any other provisions of that Act or the regulations under that Act, insofar as they relate to

the State tax-equivalent regime, are taken to be a taxation law.

- (2) To avoid doubt, amounts payable as tax-equivalents under the State tax-equivalent regime in accordance with Part 4A of the *Public Finance and Audit Act 1983* are taxes for the purposes of this Act.
- (3) Part 10 (Objections and reviews) does not apply in respect of an assessment of liability under the State tax-equivalent regime or any other decision of the Chief Commissioner under Part 4A of the *Public Finance and Audit Act 1983*.
- (4) In this section:

**State tax-equivalent regime** has the meaning given by Part 4A of the *Public Finance and Audit Act 1983*.

#### **5A Application of Act to community development levy**

- (1) For the purpose of the administration and enforcement of the scheme for the levying and payment of the community development levy under the *Aboriginal Land Rights Act 1983*, Division 4A of Part 2 of that Act and any regulations made under that Division, are taken to be a taxation law.
- (2) To avoid doubt, amounts payable for the community development levy under that Act are taxes for the purposes of this Act (other than Part 4).

#### **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 reviews, 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 review 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 and, as a result, the tax liability was

assessed at a lower amount than the Chief Commissioner would otherwise have assessed it, or

- (c) the reassessment is authorised to be made more than 5 years after the initial assessment by another taxation law, or
- (d) the reassessment is made as a consequence of an application by a taxpayer, being an application made within 5 years after the initial assessment of the liability, and the reassessment reduces the tax liability.

- (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) The Chief Commissioner may make an assessment in accordance with this section:
  - (a) 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, or
  - (b) for the purpose of settling a dispute between the Chief Commissioner and a person concerning the person's tax liability (whether or not a previous assessment has been made).
- (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) (Repealed)
- (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.

### **16 Validity of assessment**

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

### **16A Land tax assessments—special provisions**

The validity of a land tax assessment for a land tax year (within the meaning of the *Land*

*Tax Management Act 1956*) is not affected by an objection or appeal under the *Valuation of Land Act 1916* in relation to a land tax assessment for a subsequent land tax year, even if the objection or appeal results in a change to a land valuation on which the earlier land tax assessment was partly based.

**Note—**

Under the *Land Tax Management Act 1956* land tax assessments are based on an average value of land, being an average of the land value of the land in respect of the most recent 3 land tax years. This section prevents an objection to a land tax assessment from affecting the validity of previous land tax assessments that were based on one or 2 of the same land values.

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

The acceptance of money by the Chief Commissioner paid in connection with the lodging of a return or other document, or the acceptance 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, 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.



## 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 Bank Accepted Bill rate rounded to the second decimal place (rounding 0.005 upwards), 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.
- (4) In this section, the Bank Accepted Bill rate in respect of any day within a period specified in Column 1 of the Table to this subsection is the monthly average yield of 90-day Bank Accepted Bills published by the Reserve Bank for the month specified in Column 2 of that Table opposite that period.

#### Table

Column 1	Column 2
Period	Monthly average yield
1 January to 31 March	the preceding November
1 April to 30 June	the preceding February
1 July to 30 September	the preceding May
1 October to 31 December	the preceding August

- (5) If the monthly average yield of 90-day Bank Accepted Bills for a particular month is not published by the Reserve Bank before the beginning of the relevant period, it is taken to be the same as the last monthly average yield of 90-day Bank Accepted Bills published by the Reserve Bank before that month.

### **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.

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

- (1) 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.
- (2) This section does not apply in respect of information disclosed by a taxpayer if the taxpayer is registered under a taxation law and:
  - (a) the tax default involved a failure to lodge a return as required under that taxation law, or
  - (b) the tax default involved a failure to pay tax by the date required under that taxation law.

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

- (1) 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.
- (2) This section does not apply in respect of information disclosed by a taxpayer if the taxpayer is registered under a taxation law and:
  - (a) the tax default involved a failure to lodge a return as required under that taxation law, or
  - (b) the tax default involved a failure to pay tax by the date required under that taxation law.

### **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.

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.
- (4) The calculation of tax by a person other than the Chief Commissioner in accordance with a special arrangement approved under this section is not an assessment.

#### **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.

- (3) Despite subsection (1), the endorsing of an instrument as referred to in subsection (1) (b) is not evidence of an assessment of the duty payable under the *Duties Act 1997* in respect of the instrument.

## **Part 7 Collection of tax**

### **Division 1 General**

#### **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 review 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) If under a taxation law two or more persons are jointly and severally liable to pay an amount of tax that is payable by any one of them, each person is also jointly and severally liable to pay any related charges, being:
  - (a) any amount payable to the Chief Commissioner under a taxation law in relation to that amount, including any interest and penalty tax under Part 5, and
  - (b) any costs and expenses incurred in relation to the recovery of that amount that the Chief Commissioner is entitled to recover from any such person.
- (2A) The Chief Commissioner may issue a notice of assessment of the liability of a person to pay any tax and related charges for which the person is jointly and severally liable with another person under a taxation law, even if a notice of assessment has already been issued to the other person.
- (3) A person who pays an amount of tax in accordance with the liability imposed by this section has such rights of contribution or indemnity from the other person or persons as are just.

#### **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.

(3) The Chief Commissioner may, in such circumstances as the Chief Commissioner considers appropriate, remit the payment of interest required to be paid by a condition imposed under subsection (2) by any amount.

## **Division 2 Recovery of tax from directors and former directors of corporations**

### **47A Definitions**

In this Division:

**assessment amount** means the amount of tax that a corporation has been assessed as being liable to pay, as set out in a notice of assessment, including any interest or penalty tax specified in the notice of assessment as being payable by the corporation.

**special arrangement** for the payment of an assessment amount means an arrangement for the payment of tax made by the Chief Commissioner under section 47.

**47B Liability of directors and former directors of corporation for failure to pay tax**

- (1) If a corporation fails to pay an assessment amount in accordance with a notice of assessment issued by the Chief Commissioner, the Chief Commissioner may serve a compliance notice on one or more of the following persons:
  - (a) a person who is a director of the corporation,
  - (b) a person who was a director of the corporation at the time the corporation first became liable to pay the tax, or any part of the tax, that is included in the assessment amount or at any time afterwards (referred to in this Division as a **former director**), subject to subsection (5).
- (2) A **compliance notice** is a notice that advises the director or former director on whom it is served that if the failure to pay the assessment amount is not rectified within the period specified in the notice, being a period of not less than 21 days, the director or former director will be liable to pay the assessment amount.
- (3) For the purposes of this Division, a failure to pay an assessment amount is rectified if:
  - (a) the assessment amount is paid, or
  - (b) the Chief Commissioner makes a special arrangement with the corporation for the payment of the assessment amount, or
  - (c) the Board of Review waives or defers payment of some or all of the assessment amount, or
  - (d) an administrator of the corporation is appointed under Part 5.3A of the [Corporations Act 2001](#) of the Commonwealth, or
  - (e) the corporation begins to be wound up within the meaning of the [Corporations Act 2001](#) of the Commonwealth.
- (4) If the failure to pay the assessment amount is not rectified within the period specified in the compliance notice, the director or former director on whom the compliance notice was served is jointly and severally liable with the corporation to pay the assessment amount.
- (5) A person does not cease to be liable to pay an assessment amount because the person ceases to be a director of the corporation, but a former director of a corporation is not liable for any tax for which the corporation first became liable after the director ceased to be a director of the corporation.

#### **47C Failure to comply with special arrangements**

If:

- (a) a failure by a corporation to pay an assessment amount is rectified because of a special arrangement for the payment of the assessment amount, or because payment of part or all of the assessment amount is deferred by the Board of Review, and
- (b) the corporation fails to pay the assessment amount in accordance with the terms of the special arrangement or deferral,

the Chief Commissioner may serve a further compliance notice on the director or former director in respect of the assessment amount, or so much of the assessment amount as remains unpaid, and this Division applies accordingly.

#### **47D Right of indemnity and contribution**

If a director or former director of a corporation is liable to pay an assessment amount under this Division and an amount is paid by the director or former director in discharge of that liability, the director or former director is entitled:

- (a) to be indemnified for payment of that amount by the corporation, and
- (b) to recover a contribution from any other director or former director of the corporation who is liable to pay the assessment amount under this Division, as if the directors and former directors who are liable to pay the assessment amount had jointly guaranteed payment of the assessment amount.

#### **47E Defences**

In proceedings for the recovery of an assessment amount from a director or former director of a corporation under this Division, it is a defence to the recovery of that amount if the director or former director establishes that:

- (a) the director or former director took all reasonable steps that were possible in the circumstances to ensure that the corporation rectified the failure to pay the assessment amount, or
- (b) the director or former director was unable, because of illness or for some other similar good reason, to take steps to ensure that the corporation rectified the failure to pay the assessment amount.

### **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, Technical and 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.

**Note—**

Section 80A provides that the powers may also be exercised for the purposes of a recognised revenue law in some circumstances.

### **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.
- (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 person from whom the material was obtained refuses to accept the return of the material, or
  - (b) the person from whom the material was obtained 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 under this Act may apply to an authorised officer within the meaning of the *Law Enforcement (Powers and Responsibilities) Act 2002* for a warrant to search any premises if the Chief Commissioner or the authorised officer under this Act has reasonable grounds to believe that any records are to be found there, being records to which the Chief Commissioner or authorised officer under this Act would have access if they were kept on premises to which the Chief Commissioner or authorised officer under this Act has access.
- (2) An authorised officer within the meaning of the *Law Enforcement (Powers and Responsibilities) Act 2002* 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 under this Act 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) (Repealed)

#### **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 2A Investigations under other laws**

#### **80A Investigations for the purposes of recognised revenue laws**

- (1) The Chief Commissioner may, by agreement with the corresponding Commissioner of a recognised jurisdiction:
  - (a) authorise the corresponding Commissioner to exercise a function under Division 2 for the purposes of a recognised revenue law in force in that jurisdiction, or
  - (b) exercise a function under Division 2 on behalf of the corresponding Commissioner for the purposes of a recognised revenue law in force in that jurisdiction.

- (2) (Repealed)
- (3) For the purposes of exercising a function under Division 2 for the purposes of a recognised revenue law:
- (a) a reference in this Part to tax is to be read as a reference to tax payable under the recognised revenue law, and
  - (b) a reference in this Part to a tax liability is to be read as a reference to a tax liability under the recognised revenue law, and
  - (c) a reference in this Part to a taxation law is to be read as a reference to the recognised revenue law, and
  - (d) a reference in this Part to a contravention of a taxation law is to be read as a reference to a contravention of the recognised revenue law.
- (4) If the Chief Commissioner authorises a corresponding Commissioner of a recognised jurisdiction to exercise a function under Division 2:
- (a) a reference in this Part to the Chief Commissioner is to be read as a reference to the corresponding Commissioner, and
  - (b) a reference in this Part to an authorised officer is to be read as a reference to a person authorised to exercise the function under a recognised revenue law in force in a recognised jurisdiction, and
  - (c) a reference in this Part to an authorised officer's identity card, in relation to a person authorised to exercise the function under a recognised revenue law in force in the recognised jurisdiction, is to be read as a reference to an identification card or certificate issued to the person under the recognised revenue law.
- (5) In this section:
- corresponding Commissioner**, in relation to a recognised jurisdiction in which a recognised revenue law is in force, means the person responsible for administering the recognised revenue law or a person holding a position in the administration of that law that corresponds to the position of Chief Commissioner.
- recognised jurisdiction** means the Commonwealth, another State or a Territory.
- recognised revenue law** means a law of the Commonwealth, another State or a Territory that:
- (a) corresponds to a taxation law, or
  - (b) is listed in Schedule 2.
- (6) The Governor may, by proclamation published on the NSW legislation website, amend

Schedule 2 by inserting, omitting or amending any matter.

**80AA Investigations in other jurisdictions for the purposes of taxation laws**

- (1) The Chief Commissioner may:
  - (a) enter into an agreement or arrangement with a corresponding Commissioner of a recognised jurisdiction to enable the exercise, by or on behalf of the Chief Commissioner, of investigative functions conferred or imposed under a recognised revenue law for the purposes of a taxation law, and
  - (b) authorise any person who is authorised to exercise a function under Division 2 to exercise such investigative functions as may be conferred or imposed on the person by the recognised revenue law for the purposes of a taxation law.
- (2) In this section, **corresponding Commissioner, recognised jurisdiction** and **recognised revenue law** have the same meanings as they have in section 80A.
- (3) In this section, **investigative function** includes any function that corresponds to a function conferred or imposed by Division 2.

**80B Arrangements for exercise of functions under non-taxation laws**

- (1) Nothing in this Act, any other Act or any other law prevents the Chief Commissioner or an authorised officer:
  - (a) from exercising any investigative function conferred or imposed by or under the provisions of a non-taxation law for the purposes of that law, or
  - (b) from exercising any such investigative function in conjunction with a function exercised under this Part for the purposes of a taxation law.
- (2) Subsection (1) is subject to any express provision to the contrary in the non-taxation law concerned.
- (3) The Chief Commissioner may enter into an arrangement with a public authority in connection with the exercise of investigative functions by the Chief Commissioner or by authorised officers under a non-taxation law, for the payment of a fee or otherwise, subject to the provisions of the non-taxation law concerned.
- (4) In this section:

**investigative function** means a function conferred or imposed by or under a non-taxation law in connection with any investigation or audit that may be carried out for the purposes of that law.

**non-taxation law** means any law of this State that is not a taxation law.

**public authority** means:

- (a) a Government department or administrative office, or
- (b) a statutory body representing the Crown, or
- (c) any other public or local authority (including any State owned corporation) constituted by or under an Act.

## **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 the following laws (including for the purpose of any legal proceedings arising out of any of those laws or a report of any such proceedings):
  - (i) a taxation law,
  - (ii) the *First Home Owner Grant Act 2000* or a corresponding law of another State or a Territory,
  - (iii) the *Unclaimed Money Act 1995*,
  - (iv) a recognised revenue law,
  - (v) the *Fines Act 1996*,
  - (vi) the *Regional Relocation (Home Buyers Grant) Act 2011*, or
- (c) (Repealed)
- (d) in accordance with a requirement imposed, or authorisation conferred, by or under an Act, or
- (e) to the Commissioner for the New South Wales Crime Commission or a person authorised by the Commissioner, or
- (f) to the Australian Securities and Investments Commission, or a person authorised by

the Australian Securities and Investment Commission, for the purposes of the administration or execution of the *Corporations Act 2001* of the Commonwealth or Part 3 of the *Australian Securities and Investments Commission Act 2001* of the Commonwealth (or regulations in force under that Act or Part), or

- (g) to the Australian Crime Commission, or a person authorised by that Commission, for the purposes of the administration or execution of:
  - (i) the *Australian Crime Commission Act 2002* of the Commonwealth, or
  - (ii) a law of a State or Territory that makes provision for the operation of that Commission in that State or Territory, or
- (h) to the Commissioner of the Australian Federal Police, or a member of the Australian Federal Police designated by the Commissioner, for the purpose of enforcing a law of the Commonwealth that creates an offence, or
- (i) to the Official Receiver in Bankruptcy for the purposes of the administration or execution of the *Bankruptcy Act 1966* of the Commonwealth, or
- (j) to the Chief Executive Officer of the Australian Customs Service for the purposes of the *Customs Act 1901* of the Commonwealth, or
- (k) to any of the following persons or a person authorised by any of the following persons:
  - (i) the Ombudsman,
  - (ii) the State Records Authority of New South Wales,
  - (iii) the Australian Statistician,
  - (iv) the Auditor-General,
  - (v) the Valuer-General,
  - (vi) a member of the Public Service acting in the execution or administration of the *Regional Development Act 2004*, or
  - (vii) the WorkCover Authority,
  - (viii) the Legal Services Commissioner, a member of the Law Society Council, an investigator appointed under section 267 of the *Legal Profession Act 2004* or an external examiner appointed under Division 4 of Part 3.1 of that Act,
  - (ix) the Head of a Department of the Public Service or the holder of a statutory office if the information relates to land, including its description, ownership and value,
  - (x) the Hardship Review Board constituted under Division 5 of Part 10 or a member of that Board,



- (xi) the Director-General of the Department of Education and Communities,
- (xia) the Director-General of the Department of Trade and Investment, Regional Infrastructure and Services,
- (xii) (Repealed)
- (xiii) the Director-General of the Department of Transport, for the purposes of administration of the *Parking Space Levy Act 2009*,
- (xiv) the Commissioner of Police,
- (xv) the Commissioner for Vocational Training,
- (xvi) the Independent Commission Against Corruption,
- (xvii) the Commissioner of Fire and Rescue NSW or the Commissioner of the NSW Rural Fire Service, or

(l) to a person prescribed by the regulations, or a person authorised by any such person.

### **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 this Part 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**

- (1) 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
  - (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.

(2) In this section:

**authorised recipient** means a person to whom information may be disclosed under section 82.

### **85A Disclosures under other laws**

(1) This Division does not prevent the disclosure of information obtained under or in relation to the administration of a non-taxation law, in the exercise of functions conferred or imposed by or under that law, even if those functions are exercised in conjunction with functions exercised under a taxation law.

**Note—**

Section 80B makes it clear that functions exercised by authorised officers under a taxation law may be exercised in conjunction with functions exercised by them under non-taxation laws.

(2) However, this section does not authorise the disclosure of any such information in contravention of the non-taxation law under which the functions are exercised.

(3) In this section:

**non-taxation law** means any law of this State that is not a taxation law.

## **Part 10 Objections and reviews**

### **Division 1 Objections**

#### **86 Objections**

(1) A taxpayer who is dissatisfied with:

- (a) an assessment that is shown in a notice of assessment served on the taxpayer, or
  - (b) any other decision (within the meaning of section 6 of the *Administrative Decisions Tribunal Act 1997*) of the Chief Commissioner under a taxation law,
- may lodge a written objection with the Chief Commissioner.

(2) However, a taxpayer may not lodge such an objection in respect of the following:

- (a) an assessment made under section 12 (Compromise assessment) with the agreement of the taxpayer,
- (ab) a decision not to make an assessment under section 12,
- (b) the determination of an objection under this Part (including such part of any reassessment that gives effect to the determination of an objection that is allowed in whole or in part),

- (c) a decision to reassess the taxpayer's tax liability that does not have the effect of increasing that liability where the taxpayer seeks to lodge the objection more than 60 days after the date of service of the notice of the initial assessment,
- (d) a decision not to reassess the taxpayer's tax liability where the taxpayer seeks to lodge the objection more than 60 days after the date of service of the notice of the initial assessment.

- (3) The provisions of subsection (2) (c) and (d) do not preclude the lodgment of an objection that is sought to be lodged more than 60 days after the date of service of the notice of the initial assessment if the Chief Commissioner permits its lodgment. The provisions of section 90 (2)–(5) apply to any such objection in the same way as they apply to an objection referred to in section 90 (1).

### **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.
- (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 review under Division 2.

(2) The Chief Commissioner may determine an objection that is the subject of an application for review under Division 2 at any time before the hearing of the application for review 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.

(2A) The reasons for a determination of an objection in respect of an assessment or other decision that the Administrative Decisions Tribunal has jurisdiction under Division 2 to review must set out the matters referred to in section 49 (3) of the *Administrative Decisions Tribunal Act 1997* in respect of the determination.

(2B) The notice must also inform the objector of the objector's right to make an application for review under Division 2 in the case of a determination to disallow the objection or to allow the objection in part only.

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

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

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

#### **96 Review by Administrative Decisions Tribunal**

- (1) A taxpayer may apply to the Administrative Decisions Tribunal for a review of a decision of the Chief Commissioner that has been the subject of an objection under Division 1 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) However, a taxpayer cannot apply to the Administrative Decisions Tribunal for review under this section in respect of:
  - (a) a decision of a kind prescribed by the regulations as an exempt decision for the purposes of this section, or
  - (b) (Repealed)
- (3) A taxpayer who has applied to the Supreme Court for a review under section 97 of a decision cannot apply to the Administrative Decisions Tribunal under this section in respect of the same decision. However, the taxpayer may do so if the earlier application is withdrawn with the approval of the Supreme Court for the purpose of enabling the Administrative Decisions Tribunal to deal with the matter.
- (4) The following provisions of the *Administrative Decisions Tribunal Act 1997* do not apply to an application made under this section (or any assessment or other decision to which it relates):

- (a) Part 2 of Chapter 5,
  - (b) section 55 (1) (b) and (d).
- (5) For the purposes of section 58 (1) (a) of the *Administrative Decisions Tribunal Act 1997*:
- (a) the obligation of the Chief Commissioner under that paragraph to lodge a statement of reasons with the Tribunal in respect of an application is limited to providing the Tribunal with a statement of reasons only in respect of the matters arising from the grounds specified in the application, and
  - (b) if one of the grounds specified in the application relates to a matter raised in an objection determined by the Chief Commissioner—the Chief Commissioner may rely on reasons previously given to the taxpayer by the Chief Commissioner under section 93 for the determination of the objection in explanation of that part of the assessment or decision to which the objection related.

**Note—**

Section 58 of the *Administrative Decisions Tribunal Act 1997* requires an administrator whose reviewable decision is the subject of an application for review to the Tribunal to lodge with the Tribunal certain relevant documents relating to the decision, including statements of reasons.

- (6) A regulation prescribing a kind of decision for the purposes of subsection (2) cannot be made without the concurrence of the Minister administering the *Administrative Decisions Tribunal Act 1997*.

## **97 Review by Supreme Court**

- (1) A taxpayer may apply to the Supreme Court for a review of a decision of the Chief Commissioner that has been the subject of an objection under Division 1 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) A taxpayer who has applied to the Administrative Decisions Tribunal for a review under section 96 in respect of a decision cannot apply to the Supreme Court under this section in respect of the same decision. However, the taxpayer may do so if the earlier application is withdrawn with the approval of the Administrative Decisions Tribunal for the purposes of enabling the Supreme Court to deal with the matter.
- (3) (Repealed)
- (4) A review by the Supreme Court is taken to be an appeal for the purposes of the

*Supreme Court Act 1970* and the regulations and rules made under that Act, except as otherwise provided by that Act or those regulations or rules.

**98 (Repealed)**

**99 Time for making application for review**

- (1) An application for review following a determination by the Chief Commissioner of an objection 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. The court or tribunal to which the application is to be made may allow a person to apply for a review after that 60-day period.
- (2) An application for review following a failure of the Chief Commissioner to determine an objection within the relevant 90-day period may be made at any time after the end of that period.

**100 Provisions relating to applications for review**

- (1) An application for review following a failure of the Chief Commissioner to determine an objection cannot be made unless the applicant has given written notice of the proposed application to the Chief Commissioner not less than 14 days before it is made.
- (2) The applicant's and respondent's cases on an application for review are not limited to the grounds of the objection.
- (3) The applicant has the onus of proving the applicant's case in an application for review.
- (4) If the applicant or respondent appeals against a decision of the Administrative Decisions Tribunal in an application for review to an Appeal Panel of the Tribunal, the applicant in the application for review continues to bear the onus of proving the applicant's case in the appeal if the Appeal Panel grants leave for the appeal to extend to a review of the merits of the decision.

**101 Powers of court or tribunal on review**

- (1) The court or tribunal dealing with the application for review may do any one or more of the following:
  - (a) confirm or revoke the assessment or other decision to which the application relates,
  - (b) make an assessment or other decision in place of the assessment or other decision to which the application 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 its finding or decision,

(e) make any further order as to costs or otherwise as it thinks fit.

(2) Nothing in this section limits the application of the following provisions of the *Administrative Decisions Tribunal Act 1997* in respect of an application for review before the Administrative Decisions Tribunal:

(a) Division 3 of Part 3 of Chapter 5,

(b) section 88.

### **102 Giving effect to decision on review**

(1) Within 60 days after the decision on the review becomes final, the Chief Commissioner must take any action that is necessary to give effect to that decision. That action may include amending any relevant assessment.

(2) If no appeal against the decision on the review is made within 30 days after the day on which the decision is made, the decision on the review is taken, for the purposes of this section, to have become final at the end of the 30-day period.

### **103 Recovery of tax pending review**

(1) The fact that an application for a review is pending does not in the meantime affect the assessment or other decision to which the application for review relates and tax may be recovered as if no review were pending.

(2) Nothing in this section affects any power of a court or tribunal to which an application for review under this Part is made (or can be made) to grant a stay under any other law of any such assessment or decision.

### **103A Review or appeal by other courts or tribunals**

(1) No court or tribunal (or other body or person) has jurisdiction or power to consider any question concerning an assessment or other decision of the Chief Commissioner under a taxation law (including the determination of an objection under Division 1) except as provided by this Part.

(2) Subsection (1) does not apply to a decision of the Chief Commissioner under Part 4, 7, 8, 9 or 11 (not being an assessment).

#### **Note—**

This subsection preserves the inherent jurisdiction of the Supreme Court to entertain an application for judicial review of any such decision of the Chief Commissioner.

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



#### **104 Refund of amount**

If a taxpayer's objection is allowed in whole or in part or a taxpayer's application for review is successful, the Chief Commissioner must, subject to section 19, 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, subject to section 19, 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.

#### **105A Objections to land valuations**

If an objection to a valuation made under the *Valuation of Land Act 1916* is allowed by the Valuer-General under that Act (in whole or in part), and the valuation was used as the basis of an assessment of the tax liability of a taxpayer, sections 104 and 105 apply in relation to the objection in the same way as they apply to an objection under that Act.

### **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.

### **Division 5 Hardship Review Board**

#### **106A Constitution of Hardship Review Board**

- (1) There is to be a Hardship Review Board consisting of:
  - (a) the Chief Commissioner, and
  - (b) the Auditor-General, and
  - (c) the Secretary of the Treasury.
- (2) A member of the Hardship Review Board may appoint a person to act in the place of the member at meetings of the Board.
- (3) An acting member, while so acting, has the functions of, and is taken to be, a member of the Hardship Review Board.

### **106B Waiver of tax**

- (1) The Hardship Review Board may, if authorised by a taxation law to do so, waive the payment of tax, either wholly or in part, if it is satisfied that:
  - (a) the person liable to pay it is in such circumstances that the exaction of the full amount of tax would result in serious hardship for the person or the person's dependants, or
  - (b) the person liable to pay it has died and that person's dependants are in such circumstances that the exaction of the full amount of tax would result in serious hardship for them.
- (2) The Chief Commissioner may exercise the functions of the Hardship Review Board under this section if the amount of the unpaid tax is less than \$2,000 in any particular case for any financial year.
- (3) In this section, **tax** includes:
  - (a) any amount payable to the Chief Commissioner under a taxation law in relation to tax, including any interest and penalty tax under Part 5, and
  - (b) any costs and expenses incurred in relation to the recovery of the tax or any other amount that the Chief Commissioner is entitled to recover from any such person.

### **106C Deferral and writing off of tax**

The Hardship Review Board may direct the Chief Commissioner:

- (a) to extend the time for payment of tax under section 47, or
- (b) to write off tax under section 110.

### **106CA Refunds of tax**

The Chief Commissioner is to make such refund of tax already paid as is necessary to give effect to a decision of the Hardship Review Board under this Division.

### **106D Disclosure of information**

The Hardship Review Board, a member of that Board, or a person otherwise engaged in the administration of this Division, may disclose to a tax officer information obtained under or in relation to the administration of this Division.

## **Part 10A**

### **106E-106L (Repealed)**

## **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.

#### **111A Refusal by Chief Commissioner to exercise functions**

The Chief Commissioner may refuse to exercise any function under a taxation law concerning an instrument, transaction or return (including the stamping or marking of an instrument) if any information, evidence, instrument or record concerning the instrument, transaction or return is not provided to the Chief Commissioner in accordance with a requirement of a taxation law.

### **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.

### **113A Use of certain information—notice of sale or transfer of land**

The Chief Commissioner is entitled to receive, and to use in relation to the administration of a taxation law, information contained in a notice lodged with the Registrar-General as referred to in section 604 (4) of the [Local Government Act 1993](#).

### **114 Service of documents on Chief Commissioner**

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.

### **118A Actions for recovery of tax**

In any action for the recovery of any tax payable under this Act, a defendant cannot plead, and the court cannot take judicial notice of, any law relating to gaming which, but for this section, might be pleaded or noted judicially in answer to or avoidance of the claim in the action.

### **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 review 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 the Local Court 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 3 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 the Local Court, the maximum monetary penalty that the Court may impose is, despite any provision of a taxation law to the contrary, 100 penalty units or the maximum monetary 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.

## **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*

*Duties Act 1997*

*State Revenue Legislation Further Amendment Act 1999*

*State Revenue Legislation Amendment Act 2000*

*State Revenue Legislation Further Amendment Act 2000*

*State Revenue Legislation Amendment Act 2001*

*Betting Tax Act 2001*

*Gaming Machine Tax Act 2001*

*State Revenue Legislation Further Amendment (No 2) Act 2001* (to the extent that it amends this Act)

*State Revenue Legislation Amendment Act 2002*

*Pay-roll Tax Legislation Amendment (Avoidance) Act 2002*

[State Revenue Legislation Further Amendment Act 2003](#) (to the extent that it amends this Act)

[State Revenue Legislation Amendment Act 2005](#)

[State Revenue Legislation Further Amendment Act 2005](#)

[State Revenue Legislation Amendment Act 2008](#)

[Aboriginal Land Rights Amendment Act 2009](#)

[State Revenue Legislation Amendment Act 2010](#)

any Act that amends this Act

- (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.

## **Part 3 Provisions relating to Stamp Duties Act 1920 arising from enactment of Duties Act 1997**

### **19 Existing assessments under Stamp Duties Act 1920**

An assessment made under the *Stamp Duties Act 1920* before 1 July 1998 is taken to have been made under Part 3, except as provided by clause 28.

### **20 Assessments of existing liabilities under Stamp Duties Act 1920**

The power to make an assessment under Part 3 extends to a tax liability existing under the *Stamp Duties Act 1920* before 1 July 1998.

### **21 Refunds of tax paid under Stamp Duties Act 1920 before 1 July 1998**

Part 4 extends to tax paid under the *Stamp Duties Act 1920* before 1 July 1998.

### **22 Existing refund applications under the Stamp Duties Act 1920**

Part 4 extends to an application for a refund of tax that was made under the *Stamp Duties Act 1920* to the Chief Commissioner before 1 July 1998 and that had not been determined by the Chief Commissioner as at that date.

### **23 Form of returns**

Section 34 extends to an approval that was given under the *Stamp Duties Act 1920* before 1 July 1998 and that is in force immediately before that date.

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

Division 2 of Part 6 extends to an approval that was given under the *Stamp Duties Act 1920* before 1 July 1998 and that is in force immediately before that date.

### **25 Duty unpaid under the Stamp Duties Act 1920**

Part 7 extends to tax that is payable under the *Stamp Duties Act 1920* but remains unpaid immediately before 1 July 1998.

## 26 Records

Sections 51, 52, 53 and 54 extend to records required to be kept under the *Stamp Duties Act 1920* immediately before 1 July 1998.

## 27 Secrecy

Division 3 of Part 9 extends to information obtained under or in relation to the administration of the *Stamp Duties Act 1920* before 1 July 1998.

## 28 Objections and appeals

- (1) Part 10, in its application to the *Stamp Duties Act 1920*, applies only to a notice of assessment, or a notice of decision or determination of the Chief Commissioner, served on or after 1 July 1998.
- (2) The *Stamp Duties Act 1920*, as in force immediately before 1 July 1998, continues to apply to a notice of assessment, or a notice of decision or determination of a tax officer, served before 1 July 1998 as if the *Duties Act 1997* had not been enacted.
- (3) Sections 104 and 105 apply to an objection that is allowed, or an appeal that is upheld, on or after 1 July 1998, despite the other provisions of this clause.

## 29 Writing off of tax

Section 110 extends to tax under the *Stamp Duties Act 1920* that was unpaid before 1 July 1998.

## Part 4 Provisions arising from enactment of *State Revenue Legislation Further Amendment Act 1999*

### 30 Objections

Section 86 (1B), as inserted by the *State Revenue Legislation Further Amendment Act 1999*, is taken to extend to any refusal by the Chief Commissioner to refund tax paid by a taxpayer that was made by the Chief Commissioner before the commencement of that subsection.

## Part 5 Provisions arising from enactment of *State Revenue Legislation Amendment Act 2001*

### 31 Application of interest rate changes

- (1) The amendments made to section 22 by Schedule 4 [1] and [2] to the *State Revenue Legislation Amendment Act 2001* do not apply to the calculation of interest in respect of any day occurring before 1 July 2001.
- (2) Anything done or omitted to be done under this Act is validated to the extent that it

would have been valid under this Act if this clause had been in force at the time that it was done or omitted.

## **Part 6 Provisions arising from enactment of [State Revenue Legislation Further Amendment Act 2003](#)**

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

Section 82, as amended by the [State Revenue Legislation Further Amendment Act 2003](#), extends to information disclosed on or after 1 July 2003.

### **33 Secondary disclosures of information**

Section 84, as amended by the [State Revenue Legislation Further Amendment Act 2003](#), extends to information obtained before the commencement of the amendment.

## **Part 7 Provisions arising from enactment of [State Revenue Legislation Amendment Act 2008](#)**

### **34 Application of amendments**

- (1) The amendments made to section 82 by the [State Revenue Legislation Amendment Act 2008](#) extend to the disclosure, on or after the commencement of the amendments, of information obtained under or in relation to the administration of a taxation law before the commencement of those amendments.
- (2) The amendment made to section 125 by the [State Revenue Legislation Amendment Act 2008](#) does not apply in respect of an offence alleged to have been committed before the commencement of that amendment (and section 125, as in force immediately before that amendment, continues to apply in respect of such an offence).

### **35 Repeal of [Debits Tax Act 1990](#)**

The repeal of the [Debits Tax Act 1990](#) does not affect any liability for tax under that Act that arose before that repeal, and that Act, and this Act, as in force immediately before the repeal of the [Debits Tax Act 1990](#), continues to apply in respect of any such liability.

### **36 Repeal of [Stamp Duties Act 1920](#)**

This Act, as in force immediately before the repeal of the [Stamp Duties Act 1920](#), continues to apply in respect of any liability for tax under the [Stamp Duties Act 1920](#).

## **Part 8 Provisions arising from enactment of [State Revenue Legislation](#)**



## Amendment Act 2010

### 37 Repeal of petroleum subsidies legislation

- (1) Section 21 and Part 5A of the *Petroleum Products Subsidy Act 1997*, as in force immediately before their repeal by the amending Act, continue to apply in relation to any amount paid under that Act, or any other thing done or purported to have been done, before that repeal.

**Note—**

The above provisions enable investigations to be undertaken in connection with compliance with the *Petroleum Products Subsidy Act 1997* and amounts wrongly paid to be recovered.

- (2) Clause 9 (3) of the *Petroleum Products Subsidy Regulation 2004*, as in force immediately before its repeal by the amending Act, continues to apply in relation to records for a financial year that started before 1 July 2009.

**Note—**

Clause 9 (3) of the *Petroleum Products Subsidy Regulation 2004* requires records kept under the Regulation to be kept for 5 years after the financial year to which they relate.

- (3) This clause does not limit section 30 of the *Interpretation Act 1987*.

- (4) In this clause:

**amending Act** means the *State Revenue Legislation Amendment Act 2010*.

## Part 9 Provisions arising from enactment of State Revenue Legislation Further Amendment Act 2012

### 38 Compromise assessment

The amendment made to section 12 by the *State Revenue Legislation Further Amendment Act 2012* extends, and is taken to have always extended, to disputes arising, or a tax liability arising, before the commencement of that amendment.

## Schedule 2 Recognised revenue laws

(Section 80A)

### Australian Capital Territory

*Rates Act 2004*

*Utilities Act 2000*

*Utilities (Network Facilities Tax) Act 2006*

### Commonwealth

*A New Tax System (Goods and Services Tax) Act 1999*

*A New Tax System (Luxury Car Tax) Act 1999*

*A New Tax System (Wine Equalisation Tax) Act 1999*

*Fringe Benefits Tax Assessment Act 1986*  
*Fuel Tax Act 2006*  
*Income Tax Assessment Act 1936*  
*Income Tax Assessment Act 1997*  
*International Tax Agreements Act 1953*  
*Petroleum Resource Rent Tax Assessment Act 1987*  
*Product Grants and Benefits Administration Act 2000*  
*Superannuation Guarantee (Administration) Act 1992*  
*Taxation Administration Act 1953*  
*Trust Recoupment Tax Assessment Act 1985*

**Northern Territory**

*Fuel Subsidies Act*

**Queensland**

*Community Ambulance Cover Act 2003*  
*Fuel Subsidy Act 1997*  
*Tobacco Products (Licensing) Act 1988*

**South Australia**

*Petroleum Products Regulation Act 1995*

**Victoria**

*Business Franchise (Petroleum Products) Act 1979*