

South Australia

## **Taxation Administration Act 1996**

An Act to make general provision for the administration and enforcement of taxation laws; and for other purposes.

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## Legislative history

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**The Parliament of South Australia enacts as follows:**

## **Part 1—Preliminary**

### **1—Short title**

This Act may be cited as the *Taxation Administration Act 1996*.

### **3—Interpretation**

(1) In this Act, unless the contrary intention appears—

**assessment** means an assessment by the 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 Minister or the Supreme Court on an objection or appeal under Part 10,

and *assessed* has a corresponding meaning;

*authorised officer* means a person appointed as an authorised officer under Part 9, and includes the Commissioner;

*Commissioner* means the person appointed or acting as the Commissioner of State Taxation, and includes a person appointed or acting as a Deputy Commissioner of State Taxation (see Part 9 and the *Public Sector Management Act 1995*);

*contravention* includes failure to comply with, and *contravene* has a corresponding meaning;

*corresponding Commissioner*, in relation to a recognised jurisdiction in which a corresponding law is in force, means the person responsible for administering the corresponding law or a person holding a position in the administration of that corresponding law which corresponds to the position of the Commissioner of State Taxation;

*corresponding law* means a law of a recognised jurisdiction that—

- (a) corresponds to a taxation law; or
- (b) is declared by the Governor under subsection (2) to be a law corresponding to a taxation law;

*decision* includes a refusal to make a decision;

*deliberate tax default* means a tax default that wholly or partly consists of or results from a deliberate act or omission by the taxpayer or a person acting on behalf of the taxpayer, and includes a tax default where the taxpayer, or a person acting on behalf of the taxpayer, deliberately failed to provide information to the Commissioner, or deliberately misinformed or misled the Commissioner, in relation to the tax liability in contravention of a taxation law;

*instrument* includes any written document;

*non-reviewable decision* see section 5;

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

*recognised jurisdiction* means the Commonwealth, another State or a Territory;

*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 Commissioner or a specified person; and
- (b) is liable to tax or records matters in respect of which there is or may be a tax liability;

**tax** means a tax or duty 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 Commissioner under a taxation law;

**taxation law** see section 4;

**tax default** means 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 Commissioner; or
- (b) an authorised officer; or
- (c) 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 as tax, who has paid an amount as tax or who is liable or may be liable to pay tax;

**this jurisdiction** means South Australia;

**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) The Governor may, by proclamation—
- (a) declare a law of a recognised jurisdiction to be a law corresponding to a taxation law; and
  - (b) vary or revoke a proclamation made under this section.

#### 4—Meaning of taxation laws

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

- (a) this Act and the regulations under this Act;
- (b) the *Debits Tax Act 1994* and the regulations under that Act;
- (c) the *Financial Institutions Duty Act 1983* and the regulations under that Act;
- (d) the *Land Tax Act 1936* and the regulations under that Act;
- (e) the *Pay-roll Tax Act 1971* and the regulations under that Act;

- (f) the *Stamp Duties Act 1923* and the regulations under that Act.

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

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

## **6—Crown bound**

- (1) This Act binds the Crown in right of this jurisdiction, and so far as the legislative power of the legislature of this jurisdiction permits, the Crown in all its other capacities.
- (2) Subsection (1) 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 provisions 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;
  - (b) exceptions to and exemptions from liability to the tax;
  - (c) entitlement to refunds.
- (3) This Act includes general provisions with respect to—
  - (a) assessment and reassessment of tax liability;
  - (b) obtaining refunds of tax;
  - (c) imposition of interest and penalty tax;
  - (d) approval of special tax return arrangements;
  - (e) collection of tax;
  - (f) record keeping obligations of taxpayers and general offences;
  - (g) tax officers and their investigative powers and secrecy obligations;
  - (h) objections and appeals;
  - (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 Commissioner may make an assessment of a tax liability of a taxpayer.

- (2) An assessment of a tax liability may consist of or include a determination that there is not a particular tax liability.

### **9—Taxpayer may request assessment**

- (1) The Commissioner must, if requested to do so by a taxpayer, make an assessment of a tax liability (but not a prospective liability) of the taxpayer.
- (2) A request for an assessment cannot be made if—
  - (a) the Commissioner has previously made an assessment of the tax liability; or
  - (b) the request is—
    - (i) for an assessment of the liability of the taxpayer in respect of a matter in respect of which the taxpayer has paid an amount to the Commissioner as tax; and
    - (ii) made more than six months after payment of the amount to the Commissioner.
- (3) A request for an assessment must be made in a form approved by the Commissioner.
- (4) If the Commissioner has made any requirements of the taxpayer under Division 2 of Part 9 for the purposes of the assessment, the Commissioner may refuse to make the assessment until the taxpayer complies with the requirements.
- (5) A refusal under subsection (4) is a non-reviewable decision.

### **10—Reassessment**

- (1) The 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 Commissioner in relation to matters of that kind at the time of the initial assessment of the liability except to the extent that any departure from those interpretations and practices is required by legislative change made after the initial assessment.
- (3) Nothing prevents the Commissioner—
  - (a) from making a reassessment of a tax liability of a taxpayer after an amount previously assessed as being payable by the taxpayer has been paid; or
  - (b) from making a reassessment of a tax liability under which the taxpayer is assessed as having liabilities that are additional to or greater than those under the previous assessment.
- (4) Despite the other provisions of this section, the Commissioner cannot make a reassessment of a tax liability more than five years after the initial assessment of the liability except—
  - (a) with the agreement of the taxpayer; or
  - (b) where there has been a deliberate tax default.
- (5) A decision not to make reassessment is a non-reviewable decision.



## 11—Instruments and returns to include all relevant information

- (1) A taxpayer and any tax agent of the taxpayer must ensure that there is included in an instrument that is liable to tax, or in a statement that is produced to the Commissioner together with the instrument prior to payment of tax, all information necessary for a proper assessment of the tax liability of the taxpayer in respect of the instrument.  
Maximum penalty: \$10 000.
- (2) A taxpayer and any tax agent of the taxpayer must ensure that there is included in a return required to be lodged with the Commissioner under a taxation law, in addition to the information required under that taxation law, any further information necessary for a proper assessment of the tax liability of the taxpayer in respect of the return or the matters to which the return relates.  
Maximum penalty: \$10 000.
- (3) It is a defence to a charge of an offence against this section if it is proved—
  - (a) that the defendant, being a taxpayer, reasonably relied on—
    - (i) another person who was liable or required with the defendant to pay the tax or lodge the return; or
    - (ii) a tax agent (whether engaged by the defendant or any such other person),  
to ensure that the requirements of this section are satisfied; or
  - (b) that the defendant, being a tax agent, reasonably relied on information supplied by the taxpayer or by another person who was liable or required with the taxpayer to pay the tax or lodge the return.
- (4) In this section—

*tax agent*, in relation to a taxpayer, means a person engaged by the taxpayer for fee or reward (otherwise than as an employee) who prepares, or assists in the final preparation of, the instrument, statement or return on behalf of the taxpayer.

## 12—Information on which assessment is made

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

## 13—Compromise assessment

- (1) The Commissioner may, if the Commissioner considers it appropriate to do so to settle a dispute or to avoid undue delay or expense or for some other reason, make an assessment of a tax liability in accordance with a written agreement between the Commissioner and the taxpayer.
- (2) If the Commissioner has made an assessment of a tax liability of a taxpayer under this section, the Commissioner cannot make a reassessment of the taxpayer's liability except—
  - (a) with the agreement of the taxpayer; or

- (b) where the assessment under this section was procured by fraud or there was a deliberate failure to disclose material information.
- (3) An assessment or reassessment made under this section with the agreement of a taxpayer (a *compromise assessment*) is a non-reviewable decision.

#### **14—Form of assessment and service on taxpayer**

- (1) The Commissioner may make an assessment only by a written notice that is—
  - (a) expressed to be an assessment of liability to the tax; and
  - (b) in a form approved by the Commissioner.
- (2) The assessment must be served on the taxpayer concerned.
- (3) However, neither the validity of an assessment nor the recovery of an amount to which it relates is affected by failure to serve the assessment on the taxpayer.
- (4) The receipt by the Commissioner of a return or an amount as payment of a tax does not constitute the making of an assessment of tax liability.

#### **15—Inclusion of interest and penalty tax in assessments**

If there has been a tax default by a taxpayer, an assessment of the taxpayer's tax liability must specify any interest accrued and penalty tax payable by the taxpayer under Part 5 in respect of the default.

#### **16—Refund resulting from assessment**

If the result of an assessment of a taxpayer's tax liability is that the taxpayer has overpaid tax, the Commissioner must, subject to Part 4, refund the amount of the tax overpaid.

#### **17—Cancellation of assessment**

If the Commissioner is satisfied that—

- (a) an assessment has been made in error; and
  - (b) no amount has been paid as required under the assessment,
- the Commissioner may cancel the assessment.

### **Part 4—Refunds of tax**

#### **18—General right to apply for refund**

- (1) A taxpayer may make application for a refund of tax that has been overpaid by the taxpayer.
- (2) An application for a refund cannot be made under this section—
  - (a) more than five years after the taxpayer made the payment to the Commissioner in respect of which the refund is sought; or
  - (b) if the Commissioner has previously made an assessment of the tax liability of the taxpayer in respect of the matter in respect of which the payment was made to the Commissioner.

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- (3) A determination under this section as to whether there has been an overpayment, or as to the amount of an overpayment, is to be made in accordance with the legal interpretations and assessment practices generally applied by the Commissioner in relation to matters of the kind in question at the time the taxpayer made the payment in respect of which the refund is sought except to the extent that any departure from those interpretations and practices is required by legislative change made after the payment.
  - (4) If the result of determination of an application under this section is that the taxpayer has overpaid tax, the Commissioner must, subject to the other provisions of this Part, refund the amount overpaid.
  - (5) This section has effect in addition to a provision of another taxation law authorising an application for a refund or requiring the making of a refund.

### **19—Application of remaining provisions of Part**

The remaining provisions of this Part apply to refunds or refund applications whether under this Act or another taxation law.

### **20—Form of application for refund**

An application for a refund must be made to the Commissioner in a form approved by the Commissioner.

### **21—Commissioner may refuse to determine application until information etc provided**

- (1) If the Commissioner has, under Division 2 of Part 9, made any requirements of an applicant for a refund for the purposes of determining the application, the Commissioner may refuse to determine the application until the applicant complies with the requirements.
- (2) A refusal under subsection (1) is a non-reviewable decision.

### **22—Offset of refund against other liability**

- (1) The Commissioner may apply the whole or part of an amount that would otherwise be required to be refunded to meet any amount payable by the taxpayer under a taxation law (whether or not being the law in respect of which the refund became payable).
- (2) The whole or part of an amount that would otherwise be required to be refunded may be credited towards a taxpayer's future liability under a taxation law, but only with the taxpayer's consent.
- (3) A decision under this section is a non-reviewable decision.

### **23—Windfalls—refusal of refund**

- (1) The Commissioner may refuse to make a refund if—
  - (a) the relevant taxation law did not prevent the passing on of the tax to another person; and
  - (b) the tax to be refunded has been passed on to another person; and
  - (c) the taxpayer has not reimbursed that other person in an amount equivalent to the amount of tax passed on to that other person.

- (2) A decision under subsection (1) is a non-reviewable decision.

## **24—Refunds paid out of Consolidated Account**

A refund required to be paid by the Commissioner is to be paid out of the Consolidated Account which is appropriated to the necessary extent.

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

### **Division 1—Interest**

#### **25—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 subsection (1) 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.

#### **26—Interest rate**

- (1) The interest rate that applies under this Division is the sum of—
- (a) the market rate; and
  - (b) 8 per cent per annum.
- (2) The *market rate* is—
- (a) unless an order is in force under paragraph (b), in relation to interest accruing at any time during a particular financial year, the average rate of the daily 90-day Bank Accepted Bill Rate prescribed by the Reserve Bank of Australia for the month of May preceding the financial year (rounding up 0.005 to 2 decimal places); or
  - (b) the rate specified from time to time by order of the Minister published in the Gazette.

#### **27—Minimum amount of interest**

If the amount of interest payable for the time being in respect of a tax default would, apart from this section, be less than \$20, no interest is payable in respect of the tax default.

#### **28—Interest rate to prevail over interest otherwise payable on judgment debt**

If judgment is given by or entered in a court for an amount that represents or includes unpaid tax, the interest rate applying under this Division continues to apply in relation to the tax unpaid, while it remains unpaid, to the exclusion of any other interest rate.

#### **29—Remission of interest**

- (1) The Commissioner may, at the Commissioner's discretion, remit interest payable by a taxpayer under this Division by any amount.
- (2) A decision under subsection (1) is a non-reviewable decision.

## Division 2—Penalty tax

### 30—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 the tax unpaid.
- (2) Penalty tax is not payable in respect of a tax default if the Commissioner is satisfied that the tax default was not a deliberate tax default and did not result, wholly or partly, from any failure by the taxpayer, or a person acting on the taxpayer's behalf, to take reasonable care to comply with the requirements of a taxation law.
- (3) Penalty tax imposed under this Division is in addition to interest.
- (4) Penalty tax is not payable in respect of a tax default that consists of a failure to pay interest under Division 1 or a failure to pay penalty tax previously imposed under this Division.

### 31—Amount of penalty tax

- (1) The amount of the penalty tax payable in respect of a tax default is—
  - (a) in the case of a deliberate tax default—75 per cent of the amount of tax unpaid; or
  - (b) in any other case—25 per cent of the amount of tax unpaid.
- (2) The penalty tax payable in respect of a tax default is subject to adjustment according to the conduct of the taxpayer as follows:
  - (a) if the taxpayer made a sufficient disclosure of the tax default while not subject to a tax audit—the penalty tax is to be reduced by 80 per cent;
  - (b) if the taxpayer made a sufficient disclosure of the tax default while subject to a tax audit—the penalty tax is to be reduced by 20 per cent;
  - (c) if the taxpayer engaged in obstructive conduct while subject to a tax audit—the penalty tax may be increased by the Commissioner by 20 per cent.
- (3) For the purposes of subsection (2)—
  - (a) a taxpayer becomes subject to a tax audit in relation to a tax default under a taxation law when the Commissioner serves written notice on the taxpayer advising that the Commissioner is to investigate the tax liability of the taxpayer under that taxation law, and the taxpayer remains subject to the tax audit for 28 days after service of the notice on the taxpayer or such longer period as the Commissioner may specify by written notice;
  - (b) a taxpayer makes a sufficient disclosure of a tax default if disclosure is made in writing and the nature and amount of the tax default are as a result of the disclosure apparent to or readily ascertainable by the Commissioner;
  - (c) a taxpayer does not make a sufficient disclosure of a tax default if the tax default has been or is about to be discovered by the Commissioner;

- (d) if a taxpayer has previously been subject to a tax audit in relation to a taxation law, the taxpayer may only make a sufficient disclosure of a tax default under that taxation law that has occurred after the taxpayer ceased to be subject to the previous tax audit;
  - (e) a taxpayer engages in obstructive conduct if the taxpayer or a person acting on behalf of the taxpayer—
    - (i) refuses or fails (without reasonable excuse) to comply with a requirement made by the Commissioner under Division 2 of Part 9 for the purposes of determining the taxpayer's tax liability; or
    - (ii) hinders or obstructs an authorised officer exercising powers under that Division for that purpose; or
    - (iii) deliberately damages or destroys records required to be kept under the taxation law to which the tax audit relates.
- (4) Nothing in this section requires that notice be given of an investigation or in any way restricts the exercise of a power of investigation under this Act.

### **32—Minimum amount of penalty tax**

If the amount of penalty tax payable in respect of a tax default would, apart from this section, be less than \$20, no penalty tax is payable in respect of the tax default.

### **33—Time for payment of penalty tax**

Penalty tax must be paid by a taxpayer within the period specified for that purpose in an assessment of the tax liability of the taxpayer.

### **34—Remission of penalty tax**

- (1) The Commissioner may, at the Commissioner's discretion, remit penalty tax payable by a taxpayer under this Division by any amount.
- (2) A decision under subsection (1) is a non-reviewable decision.

## **Part 6—Approval of special tax return arrangements**

### **35—Approval of special tax return arrangements**

- (1) Despite the provisions of another taxation law, the 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 taxpayers of a specified class; or
  - (b) a specified agent on behalf of a specified taxpayer or taxpayers of a specified class.
- (2) An approval—
  - (a) may provide an exemption (or a partial exemption) for the taxpayer or taxpayers from specified provisions of the taxation law to which it applies; and
  - (b) may, amongst other things, if the Commissioner thinks fit, authorise the lodging of returns and payments of tax by electronic means.

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

### **36—Application for approval**

- (1) An application for an approval under this Part must be made to the Commissioner in a form approved by the Commissioner.
- (2) The Commissioner may, at the Commissioner's discretion, grant or refuse an application for an approval under this Part.
- (3) A refusal under subsection (2) is a non-reviewable decision.

### **37—Conditions of approval**

- (1) An approval under this Part is subject to conditions specified by the 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 matters of a specified class; and
  - (b) conditions requiring the lodging of returns at specified times and conditions as to the contents of the returns; and
  - (c) conditions requiring payments of tax at specified times; and
  - (d) conditions as to the means by which returns are to be lodged or payments of tax are to be made; and
  - (e) if the approval provides an exemption from a requirement for the stamping of instruments, conditions as to the endorsement of the instruments; and
  - (f) conditions requiring the taxpayer or agent to whom the approval was given to keep specified records.
- (3) A decision of the Commissioner as to the terms and conditions of an approval is a non-reviewable decision.

### **38—Variation and cancellation of approvals**

- (1) The Commissioner may, at the Commissioner's discretion, vary or cancel an approval under this Part by written notice.
- (2) A decision under subsection (1) is a non-reviewable decision.

### **38A—Gazettal or service of notices**

A written notice under this Part may be given by—

- (a) publishing it in the Gazette; or
- (b) serving it on the taxpayer or agent to whom it relates.

### **39—Effect of approval**

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

Maximum penalty: \$10 000.

- (2) If—
- (a) an approval is given under this Part 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 matter 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 matter.

Maximum penalty: \$10 000.

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

#### **40—Stamping of instruments**

- (1) If—
- (a) an approval under this Part provides for an exemption from a requirement for the stamping of an instrument; and
  - (b) instead of being stamped in accordance with that requirement, the instrument is endorsed in accordance with the conditions of the approval,

the instrument is to be 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 Part so as to suggest or imply that the instrument is properly so endorsed and as a result duly stamped is guilty of an offence.

Maximum penalty: \$10 000.

### **Part 7—Collection of tax**

#### **41—Recovery of tax as debt**

- (1) If the whole or a part of an amount assessed as being payable by a taxpayer as tax has not been paid to the Commissioner as required, the Commissioner may recover the amount unpaid as a debt from the taxpayer.
- (2) The Commissioner may also recover as a debt interest accrued under Part 5 since the date of the assessment on the amount unpaid.

#### **42—Joint and several liability**

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



### 43—Collection of tax from third parties

- (1) The Commissioner may require any of the following persons instead of the taxpayer to pay tax that is payable but remains unpaid:
  - (a) a person from whom 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 Commissioner's requirement is to be made by written notice served on the person.
- (3) A copy of the notice must also be served on the taxpayer.
- (4) The amount that the person is required by the notice to pay to the Commissioner is so much of the money referred to in subsection (1) as is sufficient to pay the tax remaining unpaid, or, if the money is insufficient, all of it.
- (5) The money must be paid to the Commissioner on receipt of the notice, or when the money is held by the person, or after such period (if any) as may be specified by the Commissioner, whichever is the later or latest.
- (6) A person subject to a requirement of the Commissioner under this section must comply with the requirement.  
Maximum penalty: \$10 000.
- (7) A person who makes a payment in accordance with this section is to be taken to be acting under the authority of the taxpayer and of all other persons concerned and is entitled to indemnity from the taxpayer in respect of the payment.
- (8) If, after a person is given a notice under this section by the Commissioner, the whole or a part of the tax is paid by another person, the Commissioner must, by written notice, advise the person of the payment and cancel the prior notice or amend it accordingly.
- (9) An amount that is required to be paid by a person under this section but remains unpaid may be recovered by the Commissioner from the person as a debt.
- (10) In this section—  
*tax* means an amount that is assessed as being payable as tax, and includes a judgement debt and costs in respect of such an amount.

### 44—Duties of agents, trustees etc

- (1) If—
  - (a) a person has possession, control or management of a business or property of a taxpayer as an agent or trustee or in any other capacity; and
  - (b) obligations under a taxation law (whether as to the payment of tax or otherwise) remain undischarged by the taxpayer or will arise in relation to the business or property,

the following provisions apply:

- (c) the person must, as soon as and so far as is practicable, ensure that the obligations of the taxpayer under a taxation law that remain undischarged are discharged;
  - (d) the person must, as soon as and so far as is practicable, ensure that all further obligations that arise under a taxation law in relation to the business or property are discharged while the person continues to have possession, control or management of the business or property;
  - (e) for those purposes the person must set aside (and, so far as necessary, liquidate) assets of the taxpayer (or the taxpayer's estate) to the value of any tax that has become or becomes payable and employ those assets in payment of the tax;
  - (f) if the person fails, without the Commissioner's written permission, to set aside, liquidate and employ sufficient assets for that purpose, the Commissioner may recover from the person as a debt the whole or a part of an amount that is assessed as being payable as tax in relation to the business or property and remains unpaid, but the person will not otherwise be personally liable for the payment of the tax;
  - (g) the person is entitled to be indemnified by the taxpayer (or out of the taxpayer's estate) in respect of payments made or action taken in pursuance of this section;
  - (h) nothing prevents the making of a payment to the person out of the assets, in priority to tax, of any reasonable remuneration, charges and expenses to which the person would, apart from this section, be entitled in respect of the performance of the person's functions.
- (2) A person who contravenes a provision of subsection (1) is guilty of an offence.  
Maximum penalty: \$10 000.

#### **45—Arrangements for payment of tax**

- (1) The Commissioner may extend the time for payment of tax by a taxpayer and may accept the payment of tax by instalments.
- (2) When the Commissioner extends the time for payment of tax by a taxpayer, the Commissioner may also extend the time for lodging a return relating to the matters in respect of which the tax is payable.
- (3) A decision of the Commissioner under this section may be made subject to conditions (for example, as to the payment of interest) determined by the Commissioner.

#### **46—Decisions non-reviewable**

A decision under this Part is a non-reviewable decision.

#### **47—No statute of limitation to apply**

No statute of limitation bars or affects any action or remedy for recovery by the Commissioner of an amount assessed as being payable as tax.

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

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

- (1) A person must keep all records necessary for an accurate assessment of the person's tax liability.  
Maximum penalty: \$10 000.
- (2) The regulations may limit the application of subsection (1) to taxes and persons of a specified class.
- (3) This section does not affect a requirement under another taxation law as to the keeping of records.

### **49—Commissioner may require specified records to be kept**

- (1) The Commissioner may, for the purposes of a taxation law, by written notice served on a person required to keep records under a taxation law, require the person to keep additional records specified in the notice.
- (2) A person who fails to comply with such a notice is guilty of an offence.  
Maximum penalty: \$10 000.
- (3) A decision under subsection (1) is a non-reviewable decision.

### **50—False or misleading information in records**

A person must not—

- (a) keep a record under a taxation law that the person knows is false or misleading in a material particular; or
- (b) include in a record under a taxation law information that the person knows is false or misleading in a material particular.

Maximum penalty: \$10 000.

### **51—Accessibility of records**

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

Maximum penalty: \$10 000.

### **52—Form of record—English language**

- (1) A person must keep a record under a taxation law in English or in a form that can be readily converted or translated into English.  
Maximum penalty: \$10 000.
- (2) Costs reasonably incurred by the Commissioner in converting or translating into English a record kept by a person under a taxation law are payable to the Commissioner and may be recovered by the Commissioner from the person as a debt.

### **53—Period of retention**

- (1) A person required to keep a record under a taxation law must keep the record for not less than five years after—

(a) the date it was made by the person or, if it was not made by the person, the date it was obtained by the person; or

(b) if it relates to a transaction, the date of completion of the transaction,

whichever is the later.

Maximum penalty: \$10 000.

- (2) A person may, with the written approval of the Commissioner, destroy a record within the 5-year period.
- (3) A decision to refuse approval under subsection (2) is a non-reviewable decision.
- (4) This section is subject to the provisions of any other law concerning the retention or destruction of records.

### **54—Damaging or destroying records**

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

Maximum penalty: \$10 000.

### **55—Giving false or misleading information**

A person must not (whether or not in response to a requirement under a taxation law)—

(a) make a statement, orally or in writing, to a tax officer; or

(b) give information, orally or in writing, to a tax officer,

that the person knows is false or misleading in a material particular.

Maximum penalty: \$10 000.

### **56—Omissions from records, statements or information**

For the purposes of this Part, a record, statement or information may be false or misleading because of its contents or because of matter omitted from it.

### **57—Failure to lodge returns or records**

A person must not fail or refuse to lodge a return or record as required under a taxation law.

Maximum penalty: \$10 000.

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

A person must not, with the intention of impeding the administration or enforcement of a taxation law—

(a) falsify or conceal the identity, or the address or location of a place of residence or business, of the person or another person; or

- (b) do anything or make any omission that facilitates the falsification or concealment of the identity, or the address or location of a place of residence or business, of the person or another person.

Maximum penalty: \$10 000.

### **59—Deliberate tax evasion**

A person must not, by a deliberate act or omission, evade or attempt to evade tax.

Maximum penalty: \$10 000 or imprisonment for two years.

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

### **Division 1—Tax officers**

#### **60—Commissioner of State Taxation**

- (1) There is to be a *Commissioner of State Taxation*.
- (2) The Commissioner is to be a Public Service employee.

#### **61—Commissioner has general administration of taxation laws**

The Commissioner has the general administration of this Act and the other taxation laws.

#### **62—Legal proceedings in name of Commissioner**

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

#### **63—Commissioner may perform functions under laws of other jurisdictions**

- (1) The Commissioner may perform the functions of a State taxation officer under Part IIIA of the *Taxation Administration Act 1953* of the Commonwealth, as amended from time to time, or under provisions enacted by the Commonwealth in substitution of that Part.
- (2) The Commissioner may perform functions on behalf of a corresponding Commissioner—see Division 2A.

#### **64—Deputy Commissioners**

- (1) There are to be one or more *Deputy Commissioners of State Taxation*.
- (2) The Deputy Commissioners of State Taxation are to be Public Service employees.
- (3) A Deputy Commissioner of State Taxation has the same powers and functions as the Commissioner under a taxation law.

#### **65—Other staff**

There is to be such other staff (comprised of Public Service employees) as is necessary for the administration and enforcement of the taxation laws.

## **66—Delegation by Commissioner**

- (1) The Commissioner may delegate any of the Commissioner's powers or functions under a taxation law to another person.
- (2) A power or function delegated under this section may, if the instrument of delegation so provides, be further delegated.
- (3) A delegation under this section—
  - (a) must be by instrument in writing; and
  - (b) may be absolute or conditional; and
  - (c) does not derogate from the power of the delegator to act in any matter; and
  - (d) is revocable at will by the delegator.
- (4) Without limiting a preceding subsection—
  - (a) the Commissioner may delegate any of the Commissioner's powers or functions under this Act to a corresponding Commissioner for the purposes of a corresponding law; and
  - (b) a corresponding Commissioner may make a further delegation if the instrument of delegation so provides.

## **67—Authorised officers**

- (1) The Commissioner is an authorised officer for the purposes of the taxation laws.
- (2) The Commissioner may appoint Public Service employees to be authorised officers for the purposes of the taxation laws.

## **68—Identity cards for authorised officers**

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

## **Division 2—Investigation**

### **70—Power to require information, instruments or records or attendance for examination**

- (1) The Commissioner may, for a purpose related to the administration or enforcement of a taxation law, by written notice served on a person, require the person—
  - (a) to provide to the Commissioner (either orally or in writing) information that is described in the notice; or
  - (b) to attend and give evidence before the Commissioner or an authorised officer; or
  - (c) to produce to the Commissioner an instrument or record in the person's custody or control that is described in the notice.

- (2) The 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 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 Commissioner may require that information or evidence be provided or given under this section on oath, or in the form of, or verified by, a statutory declaration.
- (4) If a person, without reasonable excuse, refuses or fails—
  - (a) to comply with the requirements of a notice under this section within the period specified in the notice or any further period allowed by the Commissioner; or
  - (b) to comply with any other requirement of the Commissioner as to the giving of evidence or the manner in which information or evidence is to be provided or given under this section,the person is guilty of an offence.  
Maximum penalty: \$10 000.
- (5) A requirement under this section is a non-reviewable decision.

## **71—Powers of entry and inspection**

- (1) An authorised officer may, for a purpose related to the administration or enforcement of a taxation law—
  - (a) enter and remain on premises; and
  - (b) require any person on the premises to answer questions or otherwise furnish information; and
  - (c) require any person on the premises to produce any instrument or record in the person's custody or control (including a written record that reproduces in an understandable form information stored by computer, microfilm or other means or process); and
  - (d) require the owner or occupier of the premises to provide the authorised officer with such assistance and facilities as is or are reasonably necessary to enable the authorised officer to exercise powers under this Part; and
  - (e) seize and remove any instrument or record on behalf of the Commissioner.
- (2) Entry may be made at any reasonable time.
- (3) An authorised officer must, at the request of a person in relation to whom the authorised officer intends to exercise any powers under this section, produce the officer's identity card for the inspection of the person.

## **72—Search warrant**

- (1) If a magistrate is satisfied, on the application of the Commissioner (which must be supported by an affidavit or other sworn evidence), that there is a reasonable ground for suspecting that an instrument or record relevant to the assessment or payment of tax may be found in certain premises, the magistrate may issue a warrant authorising an authorised officer together with any assistants named or described in the warrant—
  - (a) to enter those premises (using such force as is necessary for the purpose); and
  - (b) to search the premises and to break open and search anything in the premises in which an instrument or record may be stored or concealed; and
  - (c) to seize and remove, on behalf of the Commissioner, any instrument or record that appears to be relevant to the assessment or payment of tax.
- (2) The powers conferred by this section are in addition to, and not in derogation of, any other powers conferred by law.

## **73—Use and inspection of instruments or records produced or seized**

- (1) This section applies to an instrument or record that has been produced to the Commissioner or seized and removed by an authorised officer.
- (2) An instrument or record to which this section applies may be retained for the purpose of enabling the instrument or record to be inspected and enabling copies of, or extracts or notes from, the instrument or record to be made or taken by or on behalf of the Commissioner.
- (3) However, if the instrument or record is liable to tax or is required by the Commissioner as evidence for the purposes of legal proceedings, the instrument or record may be retained until the tax is paid or the proceedings are finally determined.
- (4) The Commissioner must permit a person who would be entitled to inspect the instrument or record if it were not in the possession of the Commissioner to inspect the instrument or record at any reasonable time.
- (5) Nothing in this section prejudices a lien a person has on the instrument or record.
- (6) A decision under subsection (2) or (3) is a non-reviewable decision.

## **74—Self-incrimination**

- (1) A person is not excused from answering a question, providing information or producing an instrument or record, when required to do so under this Act, on the ground that to do so might tend to incriminate the person or make the person liable to a penalty.
- (2) However, if the person objects to answering the question, providing the information or producing the instrument or record on that ground, the answer, information, instrument or record is not admissible against the person in any criminal proceedings other than—
  - (a) proceedings for an offence with respect to false or misleading statements, information or records; or
  - (b) proceedings for an offence in the nature of perjury.



## **75—Hindering or obstructing authorised officers etc**

- (1) A person who—
  - (a) hinders or obstructs an authorised officer in the exercise of a power under this Division; or
  - (b) without reasonable excuse, refuses or fails to comply with a requirement of an authorised officer under this Division,is guilty of an offence.  
Maximum penalty: \$10 000.
- (2) A person is not guilty of an offence under this section arising from the entry of an authorised officer onto premises unless it is established that, at the material time, the authorised officer—
  - (a) identified himself or herself as an authorised officer; and
  - (b) warned the person that a refusal or failure to comply with the requirement constituted an offence.

## **76—Impersonating authorised officer**

A person who impersonates or falsely claims to be an authorised officer is guilty of an offence.

Maximum penalty: \$10 000.

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

### **76A—Investigations for the purposes of corresponding laws**

- (1) The Commissioner may, by agreement with a corresponding Commissioner of a recognised jurisdiction—
  - (a) authorise the corresponding Commissioner to perform or exercise a function or power under Division 2 for the purposes of a corresponding law in force in that jurisdiction; or
  - (b) perform or exercise a function or power under Division 2 on behalf of a corresponding Commissioner for the purposes of a corresponding law in force in that jurisdiction.
- (2) For the purposes of performing or exercising a function or power under Division 2 for the purposes of a corresponding law—
  - (a) a reference in this Part to a taxation law is to be read as a reference to the corresponding 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 corresponding law; and
  - (c) a reference in this Part to tax is to be read as a reference to tax payable under the corresponding law; and
  - (d) a reference in this Part to a liability to tax is to be read as a reference to a liability to tax under the corresponding law.

- (3) If the Commissioner authorises a corresponding Commissioner of a recognised jurisdiction to perform or exercise a function or power under Division 2—
- (a) a reference in this Part to the 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 perform or exercise the function or power under a corresponding 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 perform or exercise the function or power under a corresponding 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 a corresponding law.

### **76B—Investigations in other jurisdictions for the purposes of taxation laws**

- (1) The Commissioner may—
- (a) enter into an agreement or arrangement with a corresponding Commissioner of a recognised jurisdiction to enable the performance or exercise, by or on behalf of the Commissioner, of investigative functions and powers conferred under a corresponding law for the purposes of a taxation law; and
  - (b) authorise any person who is authorised to perform or exercise a function or power under Division 2 to perform or exercise such investigative functions or powers as may be conferred on the person by a corresponding law for the purposes of a taxation law.
- (2) In this section, an investigative function or power includes any function or power that corresponds to a function or power under Division 2.

### **76C—Instrument of delegation to be produced**

A person exercising a power under this Division under delegation must, if requested to do so, produce to a person in relation to whom he or she proposes to exercise the power, a copy of the instrument of delegation.

## **Division 3—Secrecy**

### **76D—Application of Division to corresponding laws**

A reference in this Division to a *taxation law* will be taken to include a reference to a *corresponding law*.

### **77—Prohibition of certain disclosures by tax officers**

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

Maximum penalty: \$10 000.

## **78—Permitted disclosure in particular circumstances or to particular persons**

A tax officer may disclose information obtained under or in relation to the administration or enforcement 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 enforcement of a taxation law, the *Petroleum Products Regulation Act 1995* or a law of a recognised jurisdiction relating to taxation; or
- (c) for the purposes of legal proceedings under a law referred to in paragraph (b) or reports of such proceedings; or
- (d) to the holder of a prescribed office or a prescribed body established under a law of this jurisdiction or a recognised jurisdiction; or
- (e) as authorised under the regulations.

## **79—Permitted disclosures of general nature**

The Commissioner may disclose information obtained under or in relation to the administration or enforcement of a taxation law that does not directly or indirectly identify a particular taxpayer.

## **80—Prohibition of disclosures by other persons**

A person other than a person who is or has been a tax officer must not disclose information that—

- (a) has been obtained (whether properly or improperly and whether directly or indirectly) from another person who is or has been a tax officer; and
- (b) the other person obtained under or in relation to a taxation law,

unless—

- (c) the disclosure is of a kind that a tax officer would be permitted to make under this Division; or
- (d) if the person is the holder of an office or a body prescribed for the purposes of section 78(d)—the disclosure is made in connection with the performance of functions conferred or imposed on the person under a law of this jurisdiction or another Australian jurisdiction (including for the purposes of legal proceedings connected with the performance of such functions); or
- (e) the disclosure is made with the consent of the Commissioner.

Maximum penalty: \$10 000.

## **81—Restriction on power of courts to require disclosure**

A court does not have power to require a disclosure of information contrary to this Division.

## **Part 10—Objections and appeals**

### **Division 1—Objections**

#### **82—Objections**

A person who is dissatisfied with—

- (a) an assessment (other than a compromise assessment); or
- (b) a decision under Part 4 concerning a refund or an application for a refund of tax; or
- (c) any other decision of the Commissioner under a taxation law that is not declared to be a non-reviewable decision,

may lodge a written notice of objection with the Minister.

#### **83—Grounds of objection**

The grounds of an objection must be stated fully and in detail in the notice of objection.

#### **84—Objection to reassessment**

In the case of an objection to a reassessment, the objection may only relate to tax liabilities specified in the reassessment to the extent that they are additional to or greater than those under the previous assessment.

#### **85—Onus on objection**

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

#### **86—Time for lodging objection**

An objection must be lodged with the Minister not later than 60 days after—

- (a) in the case of an objection to an assessment—the date of service of the assessment on the taxpayer; or
- (b) in the case of an objection to some other decision—the date on which the taxpayer was notified of the decision.

#### **87—Objections lodged out of time**

- (1) The Minister has a discretion to permit a person to lodge an objection after the end of the 60-day period but not to do so later than 12 months after—
  - (a) in the case of an objection to an assessment—the date of service of the assessment on the taxpayer; or
  - (b) in the case of an objection to some other decision—the date on which the taxpayer was notified of the decision.
- (2) The person seeking to so lodge the objection must state fully and in detail in the notice of objection the circumstances concerning and the reasons for the failure to lodge the objection within the 60-day period.

- (3) A failure or refusal of the Minister to grant permission under subsection (1) is a non-reviewable decision.

### **88—Determination of objection**

- (1) For the purposes of determining an objection, the Minister may—
- (a) refer any matter to the Crown Solicitor or any other person for advice or report; and
  - (b) by written notice, require the objector to provide (either orally or in writing) to the Minister, or any person nominated by the Minister, such information relevant to the objection as the Minister may require; and
  - (c) generally proceed to determine the objection in such manner as the Minister thinks fit.
- (2) The Minister may require that information be provided under this section on oath, or in the form of, or verified by, a statutory declaration.
- (3) The Minister may suspend the determination of the objection until the information is provided as required.
- (4) The Minister may, after consideration of the objection, do one or more of the following:
- (a) confirm or revoke the assessment or decision to which the objection relates;
  - (b) make an assessment or decision in place of the assessment or decision to which the objection relates.

### **89—Notice of determination**

- (1) The Minister must give written notice to the objector of the determination of the objection.
- (2) The Minister must include in the notice the reasons for the Minister's decision on the objection.

### **90—Interest to be included in refund resulting from objection**

- (1) If the result of an assessment or decision by the Minister on an objection is that the objector has overpaid tax, the amount of a refund of the tax overpaid must include interest on the amount overpaid calculated on a daily basis from the relevant date until the date it is refunded or otherwise applied under Part 4 at the market rate from time to time applying under Part 5.
- (2) In subsection (1)—
- relevant date* means—
- (a) the date of payment of the amount overpaid; or
  - (b) the date on which the Commissioner made the assessment or decision to which the objection relates,
- whichever is the later.

## **91—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.

## **Division 2—Appeals**

### **92—Right of appeal**

A person who has made an objection may appeal to the Supreme Court if—

- (a) the person is dissatisfied with the Minister's determination of the objection; or
- (b) 90 days (not including any period of suspension under section 88) have passed since the objection was lodged with the Minister and the Minister has not determined the objection and served notice of the determination on the person.

### **93—Appeal prohibited unless tax is paid**

- (1) A taxpayer cannot exercise a right of appeal unless the taxpayer has paid to the Commissioner the whole of the amount of any tax to which the appeal relates as assessed by the Commissioner or by the Minister on the objection.
- (2) However, the Minister has a discretion to permit the right of appeal to be exercised even though the tax has not been paid.
- (3) A failure or refusal of the Minister to grant permission under subsection (2) is a non-reviewable decision.

### **94—Time for appeal**

- (1) An appeal must be made by a person not later than 60 days after the date of service on the person of notice of the Minister's determination of the person's objection.
- (2) However, if—
  - (a) 90 days (not including any period of suspension under section 88) have passed since the person's objection was lodged with the Minister; and
  - (b) the Minister has not determined the objection and served notice of the determination on the person,

the person may appeal at any time provided that the Commissioner is given not less than 14 days written notice of the person's intention to make the appeal.

### **95—Appeals made out of time**

The Supreme Court has a discretion to allow a person to appeal after the end of the 60-day period but not to do so later than 12 months after the date of service on the person of notice of the Minister's determination of the person's objection.

### **96—Grounds of appeal**

- (1) The appellant's and respondent's cases on an appeal are not limited to the grounds of the objection or the reasons for the determination of the objection or the facts on which the determination was made.

- (2) However, if the objection was to a reassessment, any limitation of the matters to which the objection could relate under Division 1 applies also to the appeal.

### **97—Onus on appeal**

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

### **98—Determination of appeal**

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

- (a) confirm or revoke the assessment or decision to which the appeal relates;
- (b) make an assessment or decision in place of the assessment or decision to which the appeal relates;
- (c) make an order for payment to the Commissioner of any amount of tax that is assessed as being payable but has not been paid;
- (d) make any further order as to costs or otherwise as it thinks just.

### **99—Interest to be included in refund resulting from appeal**

- (1) If the result of an assessment or decision by the Supreme Court on an appeal is that the appellant has overpaid tax, the amount of a refund of the tax overpaid must include interest on the amount overpaid calculated on a daily basis from the relevant date until the date it is refunded or otherwise applied under Part 4 at the market rate from time to time applying under Part 5.
- (2) In subsection (1)—
- the relevant date* means—
- (a) the date of payment of the amount overpaid; or
  - (b) the date on which the Commissioner made the assessment or decision to which the objection and the appeal relates,

whichever is the later.

## **Division 3—Exclusion of other proceedings or disputes as to tax liability**

### **100—Exclusion of other proceedings or disputes as to tax liability**

- (1) The validity or correctness of an assessment or any other decision in respect of which rights of objection and appeal are conferred under this Part is not open to challenge in any proceedings other than proceedings by way of objection or appeal under this Part.
- (2) If an amount has been paid to the Commissioner as tax—
- (a) no proceedings may be brought for the recovery of the amount, or a part of the amount, unless the amount or part has been found to have been overpaid as a result of an assessment, or a decision on an application for a refund, made by the Commissioner, or by the Minister or the Supreme Court on an objection or appeal under this Part; and
  - (b) no question may be raised as to liability to pay the amount, or a part of the amount, as tax except through an application to the Commissioner for an assessment or a refund, or in proceedings by way of objection or appeal under this Part.

## Part 11—Miscellaneous

### 101—Means and time of payment

- (1) Tax may be paid to the Commissioner—
  - (a) by a cash payment made at, or a bank cheque or postal money order delivered to, an office of the Commissioner; or
  - (b) by any other means approved by the Commissioner.
- (2) An approval under subsection (1) may be—
  - (a) general or limited to particular taxes, persons or payments; and
  - (b) unconditional or subject to conditions.
- (3) If the Commissioner approves payment by a personal cheque—
  - (a) payment will be taken to be effected when the cheque is received by the Commissioner provided that payment occurs when the Commissioner first presents the cheque to the ADI 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 Commissioner (however, the Commissioner is under no obligation to present a cheque for payment more than once).
- (4) An approval of a means of payment (other than 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 Commissioner may, at the Commissioner's discretion vary, or cancel an approval under this section.
- (6) A decision of the Commissioner under this section is a non-reviewable decision.

### 102—Adjustments for fractions of dollar

If an amount calculated and payable in accordance with a tax law is not a multiple of a dollar, the Commissioner may decrease the amount but not lower than the nearest dollar.

### 103—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 reported by the Reserve Bank and current at the date on which the liability to pay the tax arose.
- (2) Subsection (1) applies 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.

### 104—Writing off of tax

- (1) The Commissioner is, despite the provisions of a taxation law or any other Act, authorised to write off the whole or a 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 Commissioner to recover it.

### **105—Public officer of corporation**

- (1) The 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 Commissioner.
- (3) If—
- (a) the Commissioner has required a corporation to appoint a public officer; and
  - (b) the corporation—
    - (i) does not make such an appointment as required; or
    - (ii) does not keep the office of public officer constantly filled as required,
- the 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 to be 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 to be taken to have been served on or made of the corporation.
- (8) Any criminal or civil proceedings brought under a taxation law against the public officer are to be 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.
- (9) A decision under subsection (1) is a non-reviewable decision.

### 106—Notice of liquidator's appointment

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

Maximum penalty: \$1 250.

### 107—Service of documents on Commissioner

A document required or authorised to be served on, given to or lodged with the Commissioner for the purposes of a taxation law may be served, given or lodged—

- (a) by delivering it to an office of the Commissioner; or
- (b) by post addressed to the Commissioner at an office of the Commissioner; or
- (c) by a means indicated by the Commissioner as being an available means of service (such as by facsimile transmission or by delivering it, addressed to the Commissioner, to the facilities of a document exchange); or
- (d) by leaving it with a person who has authority to accept documents on the Commissioner's behalf.

### 108—Service of documents by Commissioner

- (1) A document required or authorised to be served on or given to a person by the 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 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 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 ostensible authority to accept service of a document on behalf of another, the 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 to be 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, as the case may be.

### 109—General criminal defence

It is a defence to a charge of an offence against a taxation law if the defendant proves that the offence was not committed deliberately and did not result from any failure by the defendant to take reasonable care to avoid the commission of the offence.

### **110—Offences by persons involved in management of corporations**

- (1) If a corporation commits an offence against a taxation law, a person who is concerned in, or takes part in, the management of the corporation is also guilty of an offence and liable to the same penalty as may be imposed for the principal offence when committed by a natural person.
- (2) It is a defence to a charge of an offence against subsection (1) if the defendant proves that the principal offence did not result from any failure by the defendant to take reasonable care to prevent the commission of the principal offence.
- (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 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.

### **111—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 five times the maximum penalty that the court could, but for this section, impose as a penalty for the offence.

### **112—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 against a taxation law) 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.

### **113—Time for commencement of prosecutions**

- (1) A prosecution for an offence against a taxation law may be commenced at any time within five years after the date of the alleged commission of the offence or, with the authorisation of the Minister, at any later time.
- (2) An apparently genuine document purporting to be signed by the Minister and to authorise the commencement of proceedings for an offence against a taxation law is to be accepted in any legal proceedings, in the absence of proof to the contrary, as proof of the authorisation.

### **114—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.

### **115—Evidence**

- (1) Judicial notice is to be taken of the name and signature of a person who is or has been the Commissioner or the Minister.
- (2) In any legal proceedings, a document bearing a facsimile of the Commissioner's or the Minister's signature is to be taken to be duly signed by the Commissioner or the Minister in the absence of evidence that the document was made or issued without the authority of the Commissioner or the Minister.
- (3) In any legal proceedings, an apparently genuine document purporting to be an assessment by the Commissioner, or a copy, signed by the Commissioner, of such an assessment, is, in the absence of evidence to the contrary, to be accepted as proof of the making of such an assessment and the terms of the assessment.
- (4) In any legal proceedings, an apparently genuine document purporting to be a notice of determination by the Minister of an objection under Part 10, or a copy, signed by the Minister, of such a notice, is, in the absence of evidence to the contrary, to be accepted as proof of the making of such a determination and the terms of the determination.
- (5) A certificate signed by the Commissioner that states any of the following matters is admissible in any legal proceedings and, in the absence of evidence to the contrary, is proof of the matters stated in the certificate:
  - (a) that an amount specified in the certificate is payable to the Commissioner under a specified provision of a taxation law by a person named in the certificate or has been paid to the Commissioner in whole or in part by or on behalf of a person so named;
  - (b) that a notice or document specified in the certificate was issued by the Commissioner under a specified provision of a taxation law and served on a person named in the certificate on a day specified in the certificate;
  - (c) that an approval, exemption, delegation or other decision (including its conditions) specified in the certificate was or was not given or made by the Commissioner under a specified provision of a taxation law and was or was not in force on a day or for a period specified in the certificate;
  - (d) that a person named in the certificate was, or was not, registered or licensed as required under a specified provision of a taxation law on a day specified in the certificate;
  - (e) that a return, notice or document specified in the certificate was, or was not, lodged with or sent or given to the Commissioner under a specified provision of a taxation law by or on behalf of a person named in the certificate on or as at a day specified in the certificate;
  - (f) that a requirement specified in the certificate was made of a person named in the certificate under a specified provision of a taxation law and was not complied with as at a day specified in the certificate;
  - (g) that a person named in the certificate was, or was not, an authorised officer on a day specified in the certificate.

- (6) In any legal proceedings, production of a document, certified by the Commissioner as being a copy of, or extract from, a return, notice or document received by the Commissioner, is sufficient evidence of the matters set out in the return, notice or document without production of the original.

## **116—Regulations**

- (1) The Governor may make such regulations as are contemplated by, or as are necessary or expedient for the purposes of, this Act.
- (2) The regulations may prescribe a fine not exceeding \$2 500 for the contravention of a regulation.

## **Schedule—Transitional provisions**

### **1—Interpretation**

In this Schedule—

*Commissioner of Stamps* means the Commissioner as defined by the *Land Tax Act 1936*, or as defined by another taxation law, before the relevant commencement date;

*relevant commencement date*, in relation to a taxation law referred to in a paragraph of section 4, means the date on which that paragraph comes into force;

*repealed provision* means a provision of a taxation law repealed or struck out by the *Statutes Amendment (Taxation Administration) Act 1996*.

### **2—Assessment of tax liability**

- (1) Assessments may be made under Part 3, on or after the relevant commencement date, of liabilities under a taxation law whether arising before or on or after that commencement date.
- (2) An assessment made under a repealed provision is, on or after the relevant commencement date, to be taken to be an assessment for the purposes of Part 3 and the other provisions of this Act.
- (3) Section 11(1) applies in relation to instruments produced to the Commissioner on or after the relevant commencement date in relation to the *Stamp Duties Act 1923* whether the instruments were executed before or on or after that date.
- (4) Section 11(2) applies in relation to returns made or lodged under a taxation law on or after the relevant commencement date whether the returns relate to liabilities arising before or on or after that commencement date.

### **3—Refunds of tax**

The provisions of Part 4 apply in relation to refunds or refund applications relating to tax under a taxation law on or after the relevant commencement date whether the amount sought to be refunded was paid before or on or after that commencement date.

### **4—Interest and penalty tax**

- (1) Interest and penalty tax under Part 5 are payable in relation to a tax default occurring on or after the relevant commencement date whether the tax liability in respect of which the default occurs arose before or on or after that commencement date.

(2) If a tax default or other default occurred or commenced under a taxation law before the relevant commencement date, the Commissioner may make an assessment under this Act, on or after that commencement date, of any additional tax that would have been payable or assessable under that taxation law in relation to the default if the *Statutes Amendment (Taxation Administration) Act 1996* had not been enacted, and this Act will apply, subject to subclause (3), as if the additional tax were penalty tax under this Act.

(3) Interest will not be payable under Part 5 in respect of a tax default that consists of a failure to pay additional tax referred to in subclause (2).

(4) In this clause—

*additional tax* means additional, penal or penalty tax or duty, or any tax or duty payable by way of a fine or penalty, under a repealed provision.

## **5—Special tax return arrangements**

(1) Any special tax return arrangement in force under a repealed provision immediately before the relevant commencement date ceases to be in force on that commencement date.

(2) The reference in subclause (1) to a special tax return arrangement is a reference to a decision of the Commissioner of Stamps to vary, or authorise a departure from, or exempt a person from, requirements of a taxation law as to the lodging of returns, the stamping of instruments or the payment of tax.

## **6—Collection of tax**

(1) The provisions of Part 7 apply on or after the relevant commencement date in relation to all undischarged liabilities under a taxation law whether arising before or on or after that commencement date.

(2) Subclause (1) does not affect any action or legal proceeding for the recovery of an amount under a taxation law commenced before the relevant commencement date, and any such action or proceeding may be continued and completed as if the *Statutes Amendment (Taxation Administration) Act 1996* had not been enacted.

(3) Subclause (1) does not affect any decision of the Commissioner of Stamps of a kind referred to in section 45 made under a repealed provision.

## **7—Records**

The provisions of Part 8 relating to the keeping of records apply on or after the relevant commencement date in relation to records commenced to be kept under a taxation law before that commencement date as well as to such records commenced to be kept on or after that commencement date.

## **8—Commissioners and authorised officers**

(1) The persons holding appointments as Commissioner of Stamps and Deputy Commissioner of Stamps immediately before the commencement of this Act continue as Commissioner of State Taxation and Deputy Commissioner of State Taxation respectively under this Act.

- (2) A reference in any other Act or any instrument to the Commissioner of Stamps or the Commissioner of Land Tax is to be read as a reference to the Commissioner as defined by this Act.
- (3) The persons holding appointments as authorised officers for the purposes of the *Stamp Duties Act 1923* immediately before the commencement of this Act continue as authorised officers under this Act.

## 9—Objections and appeals

- (1) The provisions of Part 10—
  - (a) apply on or after the relevant commencement date in relation to assessments made under a repealed provision in the same way as to assessments made under this Act; and
  - (b) apply on or after the relevant commencement date in relation to decisions made by the Commissioner of Stamps that could have been the subject of objection under a taxation law as in force immediately before that commencement date in the same way as to decisions made by the Commissioner under a taxation law that are not declared to be non-reviewable decisions.
- (2) Subclause (1) does not apply to an assessment or decision if an objection has been lodged against the assessment or decision under a taxation law before the relevant commencement date.
- (3) Proceedings on an objection lodged under a taxation law before the relevant commencement date may be continued and completed as if the *Statutes Amendment (Taxation Administration) Act 1996* had not been enacted.
- (4) Appeal proceedings in relation to a decision on an objection lodged under a taxation law before the relevant commencement date may be commenced and completed, or continued and completed, as if the *Statutes Amendment (Taxation Administration) Act 1996* had not been enacted.

## 10—Evidence

Section 115 applies on or after the relevant commencement date in relation to proceedings relating to a taxation law commenced after that commencement date whether the proceedings relate to matters or things occurring before or on or after that commencement date.

## 11—Acts Interpretation Act

The *Acts Interpretation Act 1915* applies, except to the extent of any inconsistency with the provisions of this Schedule, to the amendments effected by the *Statutes Amendment (Taxation Administration) Act 1996*.

## Legislative history

### Notes

- Please note—References in the legislation to other legislation or instruments or to titles of bodies or offices are not automatically updated as part of the program for the revision and publication of legislation and therefore may be obsolete.
- Earlier versions of this Act (historical versions) are listed at the end of the legislative history.
- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or [www.legislation.sa.gov.au](http://www.legislation.sa.gov.au).

### Principal Act and amendments

New entries appear in bold.

Year	No	Title	Assent	Commencement
1996	80	<i>Taxation Administration Act 1996</i>	5.12.1996	1.1.1997 except s 4(d)—(f)—1.7.1997 ( <i>Gazette 12.12.1996 p1850</i> )
1997	34	<i>Statutes Amendment (Pay-roll Tax and Taxation Administration) Act 1997</i>	19.6.1997	Pt 3 (ss 6—11)—1.7.1997 ( <i>Gazette 26.6.1997 p3052</i> )
1999	33	<i>Financial Sector Reform (South Australia) Act 1999</i>	17.6.1999	Sch (item 58)—1.7.1999 being the date specified under s 3(16) of the <i>Financial Sector Reform (Amendments and Transitional Provisions) Act (No. 1) 1999</i> of the Commonwealth as the transfer date for the purposes of that Act: s 2(2)
2002	35	<i>Statutes Amendment (Stamp Duties and Other Measures) Act 2002</i>	28.11.2002	Pt 7 (ss 28—30)—28.11.2002: s 2(1)
2008	38	<i>Statutes Amendment and Repeal (Taxation Administration) Act 2008</i>	23.10.2008	Pt 6 (ss 45—53)—1.1.2009 ( <i>Gazette 11.12.2008 p5475</i> )
<b>2010</b>	<b>??</b>	<b><i>Payroll Tax (Nexus) Amendment Act 2010</i></b>	<b>1.7.2010</b>	<b>Sch 1 (cl 1)—1.7.2009: s 2</b>

### Provisions amended

New entries appear in bold.

Entries that relate to provisions that have been deleted appear in italics.

Provision	How varied	Commencement
Pt 1		
s 2	<i>omitted under Legislation Revision and Publication Act 2002</i>	
s 3		
s 3(1)	s 3 redesignated as s 3(1) by 38/2008 s 45(3)	1.1.2009
corresponding Commissioner	inserted by 38/2008 s 45(1)	1.1.2009



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corresponding law	inserted by 38/2008 s 45(1)	1.1.2009
recognised jurisdiction	inserted by 38/2008 s 45(2)	1.1.2009
s 3(2)	inserted by 38/2008 s 45(3)	1.1.2009
Pt 5		
s 26		
s 26(2)	amended by 38/2008 s 46	1.1.2009
Pt 6		
s 35		
s 35(1)	amended by 34/1997 s 6(a)	1.7.1997
s 35(2)	amended by 34/1997 s 6(b)	1.7.1997
s 38		
s 38(1)	amended by 34/1997 s 7	1.7.1997
s 38A	inserted by 34/1997 s 8	1.7.1997
s 39		
s 39(1)	amended by 34/1997 s 9	1.7.1997
Pt 9		
Pt 9 Div 1		
s 63		
s 63(1)	s 63 redesignated as s 63(1) by 38/2008 s 47	1.1.2009
s 63(2)	inserted by 38/2008 s 47	1.1.2009
s 66		
s 66(4)	inserted by 38/2008 s 48	1.1.2009
s 69	<i>deleted by 38/2008 s 49</i>	<i>1.1.2009</i>
Pt 9 Div 2A	inserted by 38/2008 s 50	1.1.2009
Pt 9 Div 3		
s 76D	inserted by 38/2008 s 51	1.1.2009
s 78	amended by 34/1997 s 10	1.7.1997
	amended by 38/2008 s 52(1)—(4)	1.1.2009
s 80	substituted by 34/1997 s 11	1.7.1997
	amended by 38/2008 s 53	1.1.2009
s 81	substituted by 34/1997 s 11	1.7.1997
Pt 10		
s 87		
s 87(1)	substituted by 35/2002 s 28	28.11.2002
s 95	amended by 35/2002 s 29	28.11.2002
Pt 11		
s 101		
s 101(3)	amended by 33/1999 Sch (item 58)	1.7.1999

## **Transitional etc provisions associated with Act or amendments**

### ***Statutes Amendment (Stamp Duties and Other Measures) Act 2002***

#### **30—Transitional provisions**

- (1) The amendments made to the principal Act by section 28 of this Act apply to any objection lodged after the commencement of that section whether the assessment or decision to which the objection relates was made before or after that commencement.
- (2) The amendments made to the principal Act by section 29 of this Act apply to any appeal made after the commencement of that section whether the initial objection, or the Minister's determination to which the appeal relates, was made before or after that commencement.

#### **Historical versions**

Reprint No 1—1.7.1997

Reprint No 2—1.7.1999

Reprint No 3—28.11.2002