

SOUTH AUSTRALIA



RevenueSA

General

Circular No. 194

**COMMONWEALTH PLACES (MIRROR TAXES
ADMINISTRATION) ACT 1999**

Your attention is drawn to the *Commonwealth Places (Mirror Taxes Administration) Act 1999* ("the Act"), that was assented to on 25 November 1999 and came into operation on the same date (Gazette, 25 November 1999, page 2434). The information set out below is of necessity brief and the precise nature and scope of the new legislation must be taken from a reading of the provisions, as set out in full in the Act and related legislation.

Specifically, this Circular provides an overview of the Act which implements essential elements of the safety net arrangements agreed between South Australia and the Commonwealth in order to ensure the continuation of appropriate taxation arrangements in respect of Commonwealth places situated in South Australia.

NOTE: The information contained in this Circular is provided only as a guide to the effect of the safety net legislation and is not intended to be a statement of legal intent.

BACKGROUND

The requirement for the safety net taxation arrangements arose from the High Court's ("the Court"), decision in the case of *Alders International Pty Ltd v Commissioner of State Revenue* (Vic) (1996). The Court decided that a lease of a shop at Tullamarine Airport was not subject to stamp duty imposed under Victorian stamp duty legislation because of the operation of section 52(i) of the Commonwealth Constitution, that provides that the Commonwealth Parliament has exclusive power to make laws for the peace, order and good government of the Commonwealth for public purposes.

The Court determined the effect of section 52(i) was that any State law, including a taxation law, that could be characterised as a law with respect to a Commonwealth place was, to that extent, inapplicable in Commonwealth places in a State.

The decision has important ramifications for State revenue as, in addition to stamp duty on leases of the type considered by the Court in the Alders case, it was considered possible that other taxes imposed by a State might similarly be inapplicable to the extent that the taxes affected persons, property or things, done at Commonwealth places.

COMMONWEALTH SAFETY NET TAXATION ARRANGEMENTS

In order to provide for the continued application of State taxes to Commonwealth places within the State, the Commonwealth Treasurer announced on 6 October 1997 that safety net legislation would be enacted to protect States' revenue bases at risk because of the High Court decision.

The *Commonwealth Places (Mirror Taxes) Act 1998* (the "Commonwealth Act"), was subsequently enacted and it applies the laws of South Australia concerning stamp duties, pay-roll tax, financial institutions duty and debits tax to Commonwealth places situated in this State.

In addition to preserving the revenue bases of the States, the Commonwealth Act has had the effect of negating potential tax havens within Commonwealth places sited in all States as a consequence of the Court's decision.

Further, competitive neutrality has been preserved between private businesses operating in Commonwealth places, and private businesses operating outside those places.

The outcome of the Commonwealth Act is that South Australian taxing laws are applied and operate in Commonwealth places as laws of the Commonwealth, from 6 October 1997.

PURPOSE OF THE SOUTH AUSTRALIAN ACT

The Act complements the Commonwealth Act, and provides a number of important objectives, which include provision for:

- ◆ An arrangement to be entered into by the State Governor with the Governor-General to provide for the administration of the Commonwealth mirror tax laws by State authorities;
- ◆ The empowerment of State authorities to exercise or perform all necessary powers and functions for the Commonwealth when administering the Commonwealth mirror tax laws;
- ◆ The situation where a place ceases to be a Commonwealth place;
- ◆ Other validation and saving provisions; and
- ◆ A general modification of State taxing laws to enable them to operate effectively in conjunction with the Commonwealth mirror tax laws and to provide for any adjustments that may be required where a taxpayer has a liability under both a State taxing law and the corresponding Commonwealth mirror tax law.

IMPLICATIONS FOR TAXPAYERS

The liability of taxpayers who are associated with Commonwealth places situated in South Australia and any compliance costs faced by taxpayers, are not intended to differ from those which would have been incurred had they not been associated with Commonwealth places, and were not subject to the Commonwealth mirror tax laws.

RevenueSA will collect the Commonwealth imposed mirror taxes, and credit the taxes collected to the Commonwealth, which will then return an equivalent amount to the State in the form of a statutory payment provided for under the Commonwealth Act.

The South Australian Act will operate in a transparent manner, so that no additional administrative burden is imposed on taxpayers as a consequence of the introduction of the safety net arrangements.

In addition to this legislation, windfall tax legislation has also been enacted by the Commonwealth to tax refunds of State taxes paid prior to 6 October 1997, where the refund is sought after that date on the basis of the constitutional invalidity of the State taxing law. Details of these arrangements may be found in the *Commonwealth Places Windfall Tax (Collection) Act 1998* and the *Commonwealth Places Windfall Tax (Imposition) Act 1998* of the Commonwealth.

DATE OF COMMENCEMENT OF SAFETY NET PROVISIONS

- The Act adopts the provisions of the Commonwealth Act that came in to operation on 17 April 1998.
- Pursuant to section 7(3) of the Commonwealth Act, any State law applying to Commonwealth places situated in South Australia will operate with effect from 6 October 1997 once the relevant arrangement is entered into between the Governor-General and the Governor. Notification will be provided once this arrangement is in place.

FURTHER INFORMATION

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COMMISSIONER OF STATE TAXATION

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