

SOUTH AUSTRALIA



STATE TAXATION OFFICE

Taxation Administration

Circular No. 143

TAXATION ADMINISTRATION ACT 1996

The purpose of this Circular is to provide a general guide to the provisions of the *Taxation Administration Act 1996*.

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

BACKGROUND

In 1994, as part of the Government's commitment to microeconomic reform, the South Australian State Taxation Office commenced a cooperative venture with the tax offices of New South Wales, Victoria, Tasmania and the Australian Capital Territory, to rewrite the Stamp Duties Acts.

As part of the Stamp Duties Rewrite project, it was recognised that each participating jurisdiction's taxation legislation offered differing administrative procedures both in substance and in form. These variations resulted in administrative difficulties and uncertainty in the business community, particularly when transactions involved a number of jurisdictions. For example, the record keeping requirements in the Pay-roll Tax Act varied from those in the Stamp Duties Act, and furthermore were not consistent between jurisdictions.

As a means of addressing this uncertainty and difficulty it was decided to rationalise the administrative procedures embodied in a variety of forms in five taxing Acts and present them under one Act, a Taxation Administration Act ("the TAA"). In so doing, it has been possible to provide consistency across the tax heads and to a large extent, consistency among the jurisdictions involved. As a result, duplication and uncertainty has been reduced and processes have been streamlined.

The TAA standardises administrative provisions relating to Pay-roll Tax, Stamp Duties, Land Tax, Financial Institutions Duty and Debits Tax. These administrative provisions deal with the matters of Assessments, Refunds, Interest on Unpaid Tax, Penalties, Special Tax Arrangements, Recovery, Record Keeping and General Offences, Tax Officers, Objections and Appeals, and Miscellaneous issues.

While much of the legislation in the TAA broadly reflects the current administrative provisions, the preparation of the Act has provided the opportunity to make significant reforms which provide for the legislation to reflect modern business practice. A consultation phase allowed for valuable input from members of industry groups.

The TAA provides some significant reforms for Taxpayers and these include:—

- The establishment of all administrative and machinery provisions within one concise structure dealing with the State's taxation legislation. Much of the structure and content will be consistent across those jurisdictions enacting this legislation.
- Extending the time for lodgement of objections against an assessment of the Commissioner from (in some cases) 14 days to 60 days and including a discretion for the Minister to extend that time limit if appropriate.
- Extending the time for lodgement of Appeals against an unsuccessful objection from 21 days to 60 days.
- Removing the requirement for a "case stated" approach which will allow both the Taxpayer and the Commissioner to bring forward additional information for consideration by the Court.
- Extending the time within which the Commissioner may refund overpaid tax from three to five years. This approach is consistent with the Commissioner's power to reassess retrospectively for five years. (no time limit applies where deliberate evasion occurred)
- Providing a more rational approach to the payment of interest, not only by the Taxpayer in instances of late payment of tax, but also to the Taxpayer, in certain refund situations.
- Providing a standard set of penalties that will apply for non payment or avoidance of tax.
- Standardising the record keeping requirement at five years. This approach is broadly consistent with the existing Australia Taxation Office requirements.

A more detailed summary follows.

DATES OF OPERATION

The Act will operate:—

- **from 1 January 1997 in relation to the:**—

Debits Tax Act 1994

Financial Institutions Duty Act 1983

- **from 1 July 1997 in relation to the:—**

Pay-roll Tax Act 1971

Stamp Duties Act 1923

Land Tax Act 1936

This is in keeping with a timetable for an orderly and efficient introduction of the legislative and administrative changes, and will allow for a comprehensive education program by the State Taxation Office. It also takes into account that Land Tax and Pay-roll Tax operate on a July to June financial cycle.

PROVISIONS WHICH HAVE BEEN STANDARDISED

Assessments (Sections 8 to 17)

The new provisions are similar to those found in the existing five Acts but provide standardisation across those Acts.

In broad terms the provisions allow the Commissioner to make an assessment on the basis of the information before the Commissioner at the time, and provides an option to assess tax outstanding by way of an estimate where it is considered that there is insufficient information available to make an exact assessment of a tax liability. Subject to specific requirements, taxpayers may request that an assessment be made.

The Commissioner also has the power to make a reassessment of a tax liability but this is restricted to a period of five years following the original assessment except by agreement or where deliberate tax default has occurred.

A new feature allows the Commissioner, with the agreement of a taxpayer, to make a “compromise assessment”. This option may be used by the Commissioner as a means of settling a dispute or avoiding undue delay or expense.

Refunds of Tax (Sections 18 to 24)

Refund requests may now be made up to five years following a payment. The Commissioner has the power to use a refund amount to offset an existing tax debt due under a taxation law. Taxpayers may, as an alternative to seeking a refund, allow the Commissioner to offset a refund against a future tax liability. For example, an overpayment of Pay-roll Tax in month 1 could be offset against the tax due in month 2.

The Commissioner is also empowered to refuse to refund an amount if it would result in a “windfall” for the applicant. An example of a “windfall” is where a taxpayer may obtain a financial gain from a refund which originated from duty passed on to a client. For example, Financial Institutions pass FID

onto clients although the Financial Institutions are primarily responsible for paying the duty. The Commissioner may refuse to refund FID to a Financial Institution if the Commissioner was not satisfied that the duty has been passed back to the client(s) who had been “on charged” by the Financial Institution.

Interest (Sections 25 to 29)

Under the TAA, an interest charge will apply in all cases of late payment of tax, and will comprise two components; a “market rate” and a premium component. The “market rate” will mirror the rate set out in Section 214A(8) of the *Income Tax Assessment Act 1936* or, a rate specified by the Minister. The “market rate” for the half year to June 1997 is 10.5% per annum. This “market rate” component is designed to reflect the “opportunity cost” to the Government of not having the use of the revenue for the period that it remains unpaid. The second component of the interest charge will be an 8% per annum charge as a disincentive to taxpayers not meeting their tax obligations in a timely manner. Thus the effective rate of interest on amounts of unpaid tax is to be 18.5% initially.

Penalty Tax (Sections 30 to 34)

In addition to interest, the Act imposes a penalty in circumstances where the Commissioner believes that the non-payment was deliberate or was a result of the taxpayer (or a person acting on behalf of the taxpayer) failing to take reasonable care to comply with the requirements of a taxation law. The Act sets a flat 75% of the unpaid tax in instances of deliberate non payment, or 25% for any other situation. Provision is made for reduction of these penalties subject to the conduct of the taxpayer in making voluntary disclosures in relation to non payment, either before (80% reduction) or during (20% reduction) a tax audit. Provision is made for increasing the penalty if a taxpayer engages in obstructive behaviour while subject to a tax audit. (20% increase)

No penalty tax will be payable where the Commissioner is satisfied that the non payment was not deliberate and did not result from a failure of the taxpayer to take reasonable care to comply.

The rates for both interest and penalty, adopt a realistic approach to ensuring timely compliance with taxation laws. These new penalties substantially reduce many current more severe imposts, (eg payroll tax which can be up to 300%) while reflecting a balance between cost recoupment, and encouraging taxpayers to meet their obligations. The Commissioner has discretionary powers to remit both interest and penalty.

Special Tax Return Arrangements (Sections 35 to 40)

The TAA, at Part 6, also provides for the Commissioner of State Taxation to approve special tax return arrangements. This will provide the Government and business with greater flexibility in complying with tax legislation, and take into account future developments in electronic communications. It is envisaged that in the future, many taxpayers and/or their agents will satisfy tax requirements by transferring information and money from a computer in their own office, direct to the State Taxation Office and Reserve Bank respectively. This legislation will ensure that South Australia will continue to be well placed to take advantage of current and emerging technology.

Collection of Tax (Sections 41 to 47)

The provisions broadly reflect the current provisions within the five taxing Acts.

Record Keeping and General Offences (Sections 48 to 59)

The provisions broadly reflect the current provisions within the five taxing Acts, but set five years as the period of retention of records.

Tax Officers, Investigation and Secrecy Provisions (Sections 60 to 82)

The provisions broadly reflect the current provisions within the five taxing Acts.

Objections and Appeals (Sections 82 to 99)

The time allowed to lodge an objection or appeal, has been standardised at 60 days, as currently allowed under the Pay-roll Tax Act and Debits Tax Act. This means, for example, there is a very significant extension of the period currently allowed under the Stamp Duties Act, thus providing a more realistic timeframe within which objections and appeals can be formulated.

Under the TAA, all objections will have to be lodged with the Minister, and all Appeals are considered by the Supreme Court. This will mean for example, that objections that commence after 1 July 1997, will no longer be considered by the Pay-roll Tax Appeal Tribunal. Appeals will not be restricted to the grounds of the original objection, again taking a more realistic approach to the process. The former case stated procedure has been discontinued.

Miscellaneous Provisions (Sections 101 to 116)

The provisions cover such matters as methods of payment of tax; valuation of foreign currency; service of notices both on, and by, the Commissioner; general criminal defence for a taxpayer; evidence; and Regulations. The Act should be consulted in relation to the detail contained in these provisions.

AMENDMENTS TO THE FIVE EXISTING TAXATION ACTS

A consequence of this legislation is that the Pay-roll Tax Act, Stamp Duties Act, Land Tax Act, Financial Institutions Duty Act and Debits Tax Act, have been amended to remove those provisions now covered by the TAA. *The Statutes Amendment (Taxation Administration) Amendment Act 1996* makes the necessary consequential amendments to these Acts.

TRANSITIONAL ARRANGEMENTS

Transitional provisions contained in the TAA cover Assessments, Refunds, Interest and Penalty, Special Tax Return Arrangements, Collection of Tax, Records, Commissioners and Authorised Officers, Objections and Appeals, and Evidence. These provisions set out methods of resolving situations which straddle the existing and new legislation.

FURTHER INFORMATION

Over the next six months, this Office will be reviewing all current Commissioner's Circulars with the intention of modifying them (where necessary) to reflect the changes in legislation.

Enquiries in relation to the *Taxation Administration Act 1996* and the *Statutes Amendment (Taxation Administration) Act 1996* should be directed to the State Taxation Office on telephone (08) 8226 3733 or to the Taxpayer Services Section, Ground Floor, State Administration Centre, Victoria Square East, Adelaide 5000.

20 December 1996

COMMISSIONER OF STATE TAXATION

Historical Use Only