

Revenue Ruling

Ruling Number	: PUB-GEN-2011-1
Title	: Interest and Penalty Tax
Tax Line	: Duties, Land Tax, Payroll Tax
Legislative Reference	: <i>Taxation Administration Act 1997</i>
Previous Ruling	: PUB-GEN-2006-1
Related Ruling(s)	: PTA036 (version 2) PUB-GEN-2011-2
Date of Ruling	: 1 July 2011

Preamble

1. The *Taxation Administration Act 1997* (TAA) was introduced on 1 July 1998 to ensure consistency in the administration of taxation laws. The TAA provides an overarching framework for the administration of taxation, including the role of the Commissioner of State Revenue (the Commissioner), assessments, refunds, objections, reviews and appeals, debt recovery, investigation powers and the imposition of interest and penalty tax.
2. Interest and penalty tax provisions play an integral role in tax administration and each has a distinct purpose.
3. Interest is imposed:
 - a) to compensate the Tasmanian Government for being denied the use of revenue; and
 - b) to promote equity among taxpayers by ensuring that those who meet their obligations are not disadvantaged compared with those who do not.
4. Penalty tax is imposed to provide an incentive for taxpayers to comply with their obligations under the taxation laws.
5. Tasmanian taxation legislation is, in most cases, based on the principle of self-assessment, which places the onus on taxpayers to exercise reasonable care in the calculation and timely payment of their tax liabilities. In the case of the penalty tax provisions, the policy intent is to:
 - a) encourage taxpayers to voluntarily declare any tax liabilities as soon as they become aware of them; and
 - b) match the level of penalty to the degree of culpability (that is, the extent to which the taxpayer has contributed to the tax default).

6. The Commissioner will exercise the discretionary powers contained in the interest and penalty tax provisions to meet contemporary standards of ethical, fair and sensible tax administration. In accordance with the State Revenue Office (SRO) Taxpayer Charter, the Commissioner will start from the presumption that taxpayers have dealt with their tax affairs openly and honestly and, as a consequence, any error made would be due to ignorance or mistake rather than deliberate non-compliance.
7. Once a tax default occurs, interest and 25 per cent penalty tax is automatically imposed under the TAA. However, as described below, in certain circumstances the Commissioner has discretion to remit interest and increase or reduce the rate of penalty tax.
8. Authorised officers and delegates of the Commissioner will impose or remit interest and penalty tax in accordance with this Ruling. They will also be responsible for identifying situations where strict application of the Ruling would produce outcomes that would be unreasonable and inconsistent with the stated policy objectives. In such cases, it may be necessary to vary the practices stated in this Ruling.
9. A separate Ruling, PTA036 (version 2), provides more information about the specific application of interest and penalty tax to tax defaults relating to payroll tax. If there is an inconsistency between PTA036 (version 2) and this ruling, PTA036 (version 2) prevails to the extent of the inconsistency.
10. Additionally, another Ruling, PUB-GEN-2011-2, explains the application of penalty tax to duty instruments processed by TRO Agents. If there is an inconsistency between PUB-GEN-2011-2 and this ruling, PUB-GEN-2011-2 prevails to the extent of the inconsistency.
11. The TAA does not apply to the *First Home Owner Grant Act 2000* as that Act is not a taxation law and has its own administrative interest and penalty provisions.

Ruling

Definition of terms used in this Revenue Ruling

Commencement of an investigation

12. An investigation begins on the date the SRO informs a taxpayer that an investigation has commenced to examine the taxpayer's compliance with one or more taxation laws.

Completion of an investigation

13. An investigation is completed on the date the SRO writes to a taxpayer advising that the investigation has been completed.

Concealment or hindrance of an investigation

14. Concealment or hindrance of an investigation means an act or omission by a taxpayer, occurring during the course of an investigation, which hinders the Commissioner from finding the existence, nature or extent of a tax default.

Continuing tax default

15. A continuing tax default occurs in relation to a late payment tax default where the Commissioner takes further action to recover the outstanding tax (for example, by issuing reminder notices) after the taxpayer fails to pay the amount owing by the due date.

Disclosure

16. A disclosure is a letter, email or facsimile received from a taxpayer **after commencement of an investigation** which provides sufficient information to enable the Commissioner to determine the nature and extent of the tax default and assess the correct tax payable.

Instrument

17. An instrument includes a written document and a written statement.

Intentional disregard of a taxation law

18. Intentional disregard of a taxation law means a deliberate act or omission by the taxpayer which causes a tax default.

Reasonable care

19. Reasonable care can be defined as the level at which a taxpayer would have been considered to have given appropriate and serious attention to complying with the obligations imposed under a taxation law.

Tax

20. Tax is defined in Section 3 of the TAA to mean a tax, levy, duty and any other amount payable under a **taxation law**. Tax also includes interest and penalty tax under Part 5 of the TAA.

Taxation law

21. A taxation law is defined in Section 4 of the TAA to include the:
- Duties Act 2001;*
 - Debits Duties Act 2001;*
 - Land Tax Act 2000;*
 - Land Tax Rating Act 2000*
 - Pay-roll Tax Act 1971;*
 - Taxation Administration Act 1997;*and
 - Payroll Tax Act 2008.*

Tax default

22. A tax default occurs when a taxpayer fails to pay tax in accordance with a taxation law. The Commissioner classifies tax defaults into two categories:
- Late Payment Tax Default** which occurs when the taxpayer pays the full amount of tax **after the due date**.
 - Tax Shortfall Tax Default** which occurs when **SRO action** identifies that:
 - tax has not been paid; or
 - the incorrect amount of tax has been paid.

Taxpayer

23. A taxpayer is a person who pays tax or is subject to taxation. The taxpayer may or may not have received a notice of assessment of the tax liability.

Unpaid tax

24. Unpaid tax refers to a tax liability under a **taxation law** which has not been paid.

Voluntary disclosure

25. A voluntary disclosure is an **unprompted** letter, email, or facsimile received by the Commissioner from a taxpayer **before an investigation commences** which provides sufficient information to enable the Commissioner to determine the nature and extent of the tax default and assess the correct tax payable.

Interest

Interest – Section 34 (of the TAA)

26. If a tax default occurs, interest is calculated on the amount of unpaid tax on a daily basis from the day following the due date for payment until (and including) the earlier of, the date the unpaid tax was paid, or a date agreed with the Commissioner.
27. Interest is payable on unpaid tax and unpaid penalty tax but is not payable on any unpaid interest. Interest is also payable where judgment has been given by or entered in a Court for a debt that is, or includes, an amount of unpaid tax.

Interest – Section 34A

28. Interest may also be imposed, if the Commissioner is of the opinion that the actions of the taxpayer or the person acting on behalf of the taxpayer unnecessarily delayed the making of a duty assessment.
29. In these instances, interest may be imposed from the end of the last day for payment (that is, the last day of the period of three months after the liability for duty arises) until the day on which the duty is paid.

Interest rate – Section 35

30. The interest rate consists of two components:
- a) *A market rate component.* The market rate of interest is imposed to compensate the Tasmanian Government for being denied the use of revenue. This rate equals the 90 Day Bank Accepted Bill rate, unless there is a current order specifying a different rate, made by the Treasurer and published in the Government Gazette. On 1 July each year, a new rate of interest is set automatically for the remainder of the financial year. The rate is calculated as the average of the daily yields for 90-Day Bank Accepted Bills published by the Reserve Bank of Australia for the month of May in the financial year preceding the start of each new financial year.
 - b) *A premium rate component of 8 per cent per annum.* The premium rate of interest is applied as a disincentive for taxpayers to pay other debts in preference to taxation debts and to encourage them to seek business finance to pay their tax liabilities when they fall due. It also discourages taxpayers from late payment of tax and deters similar non-compliance by other taxpayers. The premium rate is usually charged for late payments of tax and instalment payments made under approved arrangements to pay arrears of tax.

Minimum amount of interest – Section 36

31. Interest is not imposed if it amounts to less than \$20.

Remission of interest – Section 38

32. The Commissioner may remit the market rate and premium rate components of interest by any amount considered appropriate to circumstances of the case at hand.

Remission of market rate

33. Given that the purpose of the market rate of interest is to reimburse the Government for financing costs due to the late payment of tax, it will be remitted only in exceptional circumstances. In determining whether to do so, the Commissioner will consider:

- a) whether there is any reason that the Tasmanian Government should bear the financing costs of revenue forgone as a result of the tax default; and
- b) the exposure to the risks and uncertainty of revenue loss.

34. The market rate of interest may be fully remitted if the SRO has contributed to a tax default by a taxpayer. For example, remission of the market rate may be appropriate if the SRO has been unable to provide a taxpayer with a decision in a timely manner or has provided advice which has been shown subsequently to be incorrect.

35. In most cases, taxpayers with a tax shortfall tax default did not know they had a liability and, therefore, could not knowingly be using the Government as a financier. Imposition of the market rate of interest is still appropriate in these instances to compensate the Government for the costs relating to funds it has not had the benefit of receiving by the due date.

Remission of premium rate

36. All or part of the premium rate of interest may be remitted where:

- a) the market rate component of interest is partially or fully remitted;
- b) the tax default is due to unforeseen circumstances beyond the control of the taxpayer;
- c) the SRO contributed substantially to the taxpayer's error;
- d) there has been a tax shortfall tax default and penalty tax has been imposed in accordance with the taxpayer's culpability for the default.

Penalty tax

Penalty tax – Section 39

37. Penalty tax is imposed, in addition to interest, on the amount of unpaid tax when a tax default occurs. Penalty tax is not payable in respect of a tax default which consists of a failure to pay interest or penalty tax previously imposed.

Penalty tax rates – Section 40

38. The rates of penalty tax to be applied to unpaid tax are:

- a) 25 per cent;
- b) 75 per cent if the Commissioner is satisfied that the taxpayer or their representative intentionally disregarded a taxation law which contributed to the tax default, or
- c) zero per cent at the Commissioner's discretion, if the Commissioner is satisfied that:
 - i. the taxpayer or their representative took reasonable care to comply with the taxation law; or

- ii. the tax default occurred solely because of circumstances beyond the control of the taxpayer or their representative; or
- iii. the tax default occurred due to the SRO contributing to the taxpayer's error; or
- iv. other circumstances that the Commissioner is prepared to accept or considers appropriate.

39. The Commissioner will not be satisfied that there were circumstances outside the control of the taxpayer or their representative unless the taxpayer or their representative took all reasonable steps to avoid or mitigate the tax default including contacting the SRO before the due date for payment.

40. Ignorance is not an excuse for a taxpayer to be unaware of their tax liability.

Reduction in penalty tax – Section 41

41. A taxpayer is entitled to a reduction in the rate of penalty tax specified under Section 41 if the taxpayer makes a disclosure or a voluntary disclosure which enables the Commissioner to determine the nature and extent of the tax default.

42. The reduction in the rate of penalty tax is intended to provide an incentive to taxpayers to voluntarily provide full details of tax defaults and co-operate with the Commissioner in establishing the exact amount of tax outstanding. The rate of penalty tax is reduced by:

- a) 80 per cent if a voluntary disclosure is made **before the Commissioner commences an investigation** into a known or suspected tax default by the taxpayer; or
- b) 20 per cent if a disclosure is made **during the Commissioner's investigation** into a known or suspected tax default by the taxpayer.

43. The penalty tax reduction for a voluntary disclosure before an investigation has commenced is a concession for taxpayers who co-operate fully in providing the Commissioner with information and thereby avoid the need for a formal investigation. An investigation of a member of a payroll tax or land tax group does not mean that the other members of the group are also subject to the same investigation.

44. A disclosure during an investigation occurs when a taxpayer actively assists the investigation by obtaining, compiling and providing the information necessary to determine the nature and extent of a tax default. A taxpayer's response to the commencement of an investigation will not be considered to be a voluntary disclosure if the taxpayer does no more than respond to requests for information and allow investigators access to books and records. The reduction in penalty tax for a disclosure during an investigation provides an incentive for taxpayers. This reduces the time and effort required by investigators to complete an investigation once it has commenced.

Increase in penalty tax for concealment – Section 42

45. The penalty tax rates specified under Section 40 will be increased by a further 20 per cent if the taxpayer hinders or conceals information during an investigation into a known or suspected tax default by the taxpayer.

Statutory rates of penalty tax

46. The rates of penalty tax resulting from the application of sections 40, 41 and 42 of the TAA are as follows:

Penalty Category	Rate %	Voluntary Disclosure Before Investigation %	Disclosure During Investigation %	Concealment or Hindrance during Investigation %
a) Reasonable care or circumstances beyond the control of the taxpayer	0	0	0	0
b) Failure to take reasonable care but no intentional disregard of a taxation law	25	0	20	30
c) Intentional disregard of a taxation law	75	0	60	90

Minimum amount of penalty tax – Section 43

47. Penalty tax is not imposed if it amounts to less than \$20.

Remission of penalty tax – Section 45

48. The Commissioner has an unrestricted discretion to remit all or part of any penalty tax imposed in whatever circumstances the Commissioner considers appropriate. It is this discretion which enables penalty tax to be imposed at rates other than those set out in Sections 40, 41 and 42 of the TAA (as set out above in paragraph 46).

49. The Commissioner's discretion under Section 48 may be applied to reduce the rate of penalty tax to 0 per cent where a taxpayer makes a voluntary disclosure **before an investigation commences**. The remission of penalty tax may not affect the charging or remission of interest, as interest serves a different purpose.

Classification of tax defaults

50. In the Commissioner's opinion, the application of interest and penalty tax should vary according to the nature of the tax default.

Late Payment Tax Default

51. A late payment tax default occurs when a:

- registered taxpayer pays the correct tax for a return period after the due date for payment, but before the Commissioner has issued an assessment for that period;
- taxpayer lodges an instrument after the time permitted by legislation and pays the correct tax at the time of lodgement;
- taxpayer pays an assessment after the due date shown on the notice of assessment; or
- taxpayer pays an instalment after the due date agreed to under an arrangement to pay tax by instalments.

52. A late payment tax default may not be charged penalty tax in the first instance but both market and premium rates interest will be charged.
53. The Commissioner will exercise discretion to impose penalty tax for late payment tax defaults if there is a continuing tax default or if the same registered taxpayer pays a given tax late more than twice within a financial year. The rate of penalty tax will depend on whether the Commissioner determines that the taxpayer has failed to take reasonable care or has shown intentional disregard of a taxation law.
54. Late annual adjustment return payments for payroll tax will be charged penalty tax because the Commissioner already provides a concession in the form of extra time for payment. Refer to PTA036 (version 2) for further information on the specific application of interest and penalty tax to payroll tax.
55. Penalty tax may also be charged on the late payment of successive land tax instalments or where land tax has been consistently paid late over more than one year.
56. Interest is not imposed on an interim assessment where the relevant instrument is lodged within the time permitted by legislation.

Tax Shortfall Tax Default

57. A tax shortfall tax default includes:
 - a) a failure to register and pay tax as required under a taxation law;
 - b) a failure to lodge an instrument with the SRO for assessment as required under a taxation law;
 - c) the understatement of a liability and the associated underpayment of tax;
 - d) the incorrect application of an exemption resulting in an underpayment of tax;
 - e) a failure to notify the Commissioner that an exemption or concession no longer applies resulting in an underpayment of tax;
 - f) provision of incorrect or false information in support of a claim for a concession or exemption;
 - g) a failure to notify the Commissioner of a breach of the conditions attached to advice provided by the SRO;
 - h) a continuing tax default; and
 - i) a failure to resubmit an instrument for final assessment of dutiable value by the later of a date allowed by the Commissioner and three months from the date of an interim assessment (Sections 31(7) and 31(8) respectively of the Duties Act).
58. Penalty tax may be imposed on a tax default originally treated as a late payment tax default where the Commissioner takes further action to recover the outstanding tax and it is determined that the taxpayer has failed to take reasonable care in carrying out their obligations under a taxation law. In these instances, a continuing tax default arises and the default is treated as a tax shortfall tax default.
59. Penalty tax will be imposed depending on the taxpayer's culpability for the tax default. If penalty tax is imposed, interest will be generally charged at the market rate of interest only.
60. If the Commissioner is satisfied that penalty tax is not payable because the tax default occurred because of circumstances outside the control of the taxpayer, interest may be charged at the market rate only (see paragraph 64(c)(i)).
61. If the Commissioner is satisfied that penalty tax should not be imposed because the taxpayer took reasonable care to comply with a taxation law, interest will be charged at the sum of the market rate of interest plus the premium rate of interest of 8 per cent (see paragraph 64(c)(ii)).

62. If the Commissioner finds that the taxpayer failed to take reasonable care but did not intentionally disregard a taxation law, penalty tax may be imposed at a rate between 0 per cent and 30 per cent. Under these circumstances, interest will also be charged at the market rate only (see paragraph 64(c)(iii)).

63. If the Commissioner is satisfied that the tax default was caused wholly or partly due to the taxpayer's intentional disregard of a taxation law, penalty tax may be imposed at a rate between 0 per cent and 90 per cent. Under these circumstances, interest will be charged at the market rate only (see paragraph 64(c)(iv)).

Table of interest and penalty tax charges

64. The application of interest and penalty tax for various tax defaults are summarised as follows:

Tax default	Taxpayer's culpability	Penalty Tax flat rate	Market rate p.a.	Premium rate p.a.
a) Late Payment	N/A	Nil	Yes	Yes
b) Repeated late payment	Treated as a tax shortfall tax default where it is found that the taxpayer has failed to take reasonable care	5% - 90%	Yes	No ¹
c) Tax shortfall	i. Circumstances outside taxpayer's control	Nil	Yes	No
	ii. Taxpayer took reasonable care to comply with a taxation law	Nil	Yes	Yes
	iii. Failure to take reasonable care but no intentional disregard of a taxation law	0% - 30%	Yes	No
	iv. Intentional disregard of a taxation law	0% - 90%	Yes	No

Taxpayer's culpability when taxpayer's representative has contributed to a tax default

65. If a taxpayer authorises a person to act as their representative or agent in the conduct of their taxation affairs, the Commissioner will consider any action of the taxpayer's representative to be an action of the taxpayer.

66. Accordingly, the taxpayer will be responsible for a tax default which arose from the action or failure of their representative. The standard of reasonable care will be judged according to the the taxpayer's representative circumstances and expertise. However, the liability for penalty tax remains with the taxpayer.

Taxpayer's culpability when a third party has contributed to a tax default

67. There may be circumstances where a tax default is the result of a failure of a third party, other than the taxpayer's representative, to provide timely or accurate information which is necessary to determine the taxpayer's liability for tax. The behaviour of a third party will not, of

¹ Premium interest previously applied would carry forward

itself, influence the Commissioner's determination of a taxpayer's culpability for a tax default. However, the Commissioner will take into account factors such as whether the taxpayer could reasonably have been expected to know about the accuracy of the information provided by a third party. The Commissioner will also consider whether the taxpayer did all that was possible and reasonable to assist the third party to provide the required information.

Overpayments of tax

68. If, at the time the tax default occurred, there is an overpayment of tax by the taxpayer, the overpayment can be offset against unpaid tax within the same or another tax line so that interest or penalty tax is payable on the net amount of unpaid tax. The offsetting of an overpayment against an underpayment of tax must not extend beyond the statutory time limit under the relevant refund provisions of a taxation law.

Reasonable care

69. The SRO recognises that a tax default may occur despite a taxpayer's good intentions and efforts to comply with taxation laws. It is not the SRO's policy to impose penalty tax for an occasional, honest mistake made by a taxpayer or a genuine one-off administrative error..

70. The standard of reasonable care requires taxpayers to keep complete and accurate records, make diligent efforts to understand and comply with the law, seek expert advice on uncertain or complex matters and be honest in their dealings with the SRO.

71. In deciding whether the taxpayer has taken reasonable care, it is necessary to consider the taxpayer's actions as a whole; that is, the decision should not be based on a consideration of a selection of the taxpayer's actions. Actions that may indicate that a taxpayer had taken reasonable care include but are not limited to:

- a) the taxpayer has maintained appropriate records and proper recording systems;
- b) the taxpayer has contacted the SRO before the due date where they are having difficulty paying their tax;
- c) the taxpayer has taken reasonable steps to be aware of their taxation obligations and has familiarised themselves with the relevant legislation, factsheet or guideline, so as not to overlook the legislative requirements;
- d) the taxpayer has applied any relevant Revenue Rulings in good faith;
- e) the taxpayer has sought professional advice or advice from the SRO for uncertain or complex matters where a Revenue Ruling does not apply or their circumstances differed from those described in a Revenue Ruling;
- f) the taxpayer has acted in good faith in applying any independent tax advice received;
- g) the taxpayer has observed any advice received from the SRO and has notified the Commissioner of any changes in the information on which the SRO's advice was provided;
- h) the taxpayer has acted promptly to seek advice or provide information once made aware, from any source, that they might have a tax liability;
- i) the taxpayer has voluntarily disclosed to the Commissioner a tax default that the Commissioner had either not known about or had not suspected; or
- j) the taxpayer has sought advice from the SRO before relying on any legislative exemption or concession which requires the exercise of a discretion or grant of an approval.

72. Additional factors which the Commissioner will take into account when determining whether a taxpayer has demonstrated reasonable care include but are not limited to:

- a) the taxpayer's knowledge of tax legislation and the extent of information available on the taxation issue, particularly where the tax default relates to new legislative provisions which have been in place for less than 12 months;
- b) the taxpayer has sought expert advice;

- c) the complexity of the law relating to the tax default and whether the taxpayer had a reasonably arguable position (that is, a position which has legal merit and a substantial chance of acceptance by a court or tribunal);
- d) the extent of the taxpayer's commercial experience and whether the standard accounting or commercial practices in the taxpayer's field of business contributed to the taxpayer's misapplication of a taxation law;
- e) the taxpayer's familiarity with the English language;
- f) personal circumstances (for example, age, health and background);
- g) level of education, experience and skill;
- h) the Commissioner's satisfaction that the tax default was due to an isolated, honest, unintended mistake having regard to the taxpayer's compliance history; or
- i) whether the taxpayer or the person acting on behalf of the taxpayer relied on information provided by a third party (that is, was it reasonable for the taxpayer or their representative to rely on the information provided by the third party).

73. The existence of a tax default caused by a false or misleading statement does not necessarily or automatically point to a failure to take reasonable care; that is, the evidence must support the conclusion that the standard of care shown has fallen short of what would be reasonably expected in the circumstances.

Circumstances beyond a taxpayer's control

74. Circumstances beyond the control of the taxpayer may include, but are not limited to, the following:

- a) postal or delivery delays but not where the taxpayer could arrange for an alternative means of delivery because the taxpayer is aware of the likelihood of a delay;
- b) fires, flood or other natural disasters;
- c) key personnel not available due to sudden resignation, illness or death; and
- d) computer breakdowns including third party systems such as Electronic Funds Transfer systems.

75. A tax default that occurs because of the absence due to sudden resignation, illness or death of a key person in, for example, the taxpayer's representative's office, is not a circumstance outside the taxpayer's control if the office is a substantial one in terms of staffing numbers such that it is reasonable to expect that the firm would have been able to cover that person's absence. Conversely, if a key person in a small firm is unavailable, it is more likely to be accepted that a tax default that occurred because of that person's absence was caused by circumstances outside the taxpayer's control. It would reasonably be expected that a smaller firm would contact the SRO as one of their key stakeholders.

Intentional disregard of a taxation law

76. Intentional disregard of a taxation law may be determined based on direct evidence of a taxpayer's intention (for example, an admission by the taxpayer) or can be inferred from other intelligence evidence based on the surrounding circumstances and conduct of the taxpayer.

77. Examples of conduct which may demonstrate intentional disregard of a taxation law include but are not limited to:

- a) use of contrived or artificial avoidance schemes which prove to be legally flawed;
- b) tax evasion or fraud;
- c) knowingly making false or misleading records or statements;
- d) knowingly concealing relevant facts about a tax liability;
- e) ignoring advice or Revenue Ruling of which the taxpayer is aware, particularly on a matter where the law is clearly established;
- f) failing to process an instrument in accordance with well established principles of tax law;
- g) failing to meet a tax liability after being advised of its existence by the SRO or another person;

- h) repeatedly failing to respond, in a timely manner, to SRO requests; or
- i) repeating a tax default on a similar matter or a closely related matter.

Application of this Ruling

78. This Ruling applies from 1 July 2011.

79. *Rulings do not have the force of law.* Each decision made by the SRO is made on the merits of each individual case having regard to any relevant Ruling.

More information

For more information about this ruling, please contact the SRO's Legislative Review Section by e-mail: revenuereview@treasury.tas.gov.au or phone: (03) 6166 4400.

You can download a copy of this ruling from www.sro.tas.gov.au/rulings.

All Rulings must be read subject to Revenue Ruling PUB-GEN-2008-29, 'Explanation and Status of Revenue Rulings'.



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1 July 2011

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PUB-GEN-2011-1



Tasmania