

# Guideline

## Taxation Administration

### *Taxation Administration Act 1997*

#### **Introduction**

The Tasmanian [Taxation Administration Act 1997](#) (the TAA) commenced on 1 July 1998 and provides a consistent, equitable approach to the administration of the State taxation Acts.

This guideline sets out the key features of the TAA and how they may affect your dealings with the State Revenue Office.

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## **Which state taxation Acts use the provisions of the TAA?**

The following State taxation Acts are subject to the administrative provisions of the TAA:

- *Pay-roll Tax Act 1971* (TAA applied from 1 July 1998 until 30 June 2008);
- [Payroll Tax Act 2008](#) (TAA applied from 1 July 2008);
- [Land Tax Act 2000](#) (TAA applied from 1 January 2000); and
- [Duties Act 2001](#) (TAA applied from 1 July 2001).

## **What are the key features of the TAA?**

The TAA contains administrative provisions providing for:

- the appointment of a Commissioner of State Revenue (the Commissioner) to administer taxation laws;
- the making of assessments, compromise assessments and reassessments;
- the process for administering refunds;
- interest and penalty tax to be applied for late or under-payment of taxes;
- the payment of interest where tax has been overpaid (applies to refund applications made on and after 18 November 2008);
- the process for approving agents to lodge returns and pay tax by special tax return arrangements (that is, the returns and duty instruments submitted through Tasmanian Revenue Online);
- powers to assist with the collection of tax;
- record-keeping requirements;
- investigative powers and secrecy provisions restricting the release of taxpayer information; and
- processes for the lodgement of objections, requests for reviews, and the making of an appeal about tax assessments or decisions made by the Commissioner.

Additionally, the TAA contains a General Anti-Avoidance Provision (GAAP). The GAAP applies to schemes where the sole or dominant purpose was to obtain a tax benefit and which were either entered into after or carried out after 18 December 2006.

The GAAP provides the Commissioner with the power to reassess the tax liability of a person or persons who entered into or carried out a scheme to include the amount of the tax benefit that was obtained or that would have been obtained in any tax assessment.

## **The Commissioner of State Revenue**

The Commissioner has the following functions:

- the general administration of the taxation laws; and
- any other function imposed on him or her by any other Act.

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## **Assessment of tax liability, and the types of assessment**

The Commissioner has the power to make an assessment of a taxpayer's tax liability. The Commissioner may include in an assessment a determination that there is not a particular tax liability.

The Commissioner may make an assessment on the information that has come from any source at the time the assessment is made. If insufficient information is available, the Commissioner may make an assessment by way of estimate.

A 'compromise' assessment may be made with the agreement of the taxpayer in circumstances where it is difficult or impracticable for the Commissioner to determine a taxpayer's tax liability without undue delay or expense. A compromise assessment (or re-assessment) is a non-reviewable decision.

Compromise assessments can only be re-assessed:

- with the taxpayer's agreement; or
- in cases where, in the Commissioner's opinion, the original assessment was procured by fraud or deliberate failure to disclose material information.

## **Re-assessment of tax liability**

The Commissioner may make one or more re-assessments of a tax liability even after the previous amount has been paid.

The Commissioner must not make a re-assessment of a tax liability more than five (5) years after the initial assessment of liability unless:

- it is to adjust a decision on an objection, review or appeal; or
- at the time of the initial assessment all information affecting the tax liability was not fully and truly disclosed; or
- the initial assessment was an assessment by way of estimate.

The five-year time limit applies even if the initial assessment is withdrawn.

## **Withdrawal of assessment**

The Commissioner may withdraw an assessment within three (3) years of the date of the original assessment.

## **Interest, penalty tax, objections, reviews, appeals and refunds**

### ***Interest***

Interest may be charged where there is a late or under-payment of taxes. Interest accumulates on a daily basis where a tax default occurs.

For more details about the charging or paying of interest, please read the [Interest and Penalty Tax Revenue Ruling \(PUB-GEN-2021-1\)](#), available at [sro.tas.gov.au/resources/rulings](http://sro.tas.gov.au/resources/rulings).

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## **Penalty tax**

Penalty tax may be applied in addition to interest where a tax default has occurred.

For more details in relation to the imposition of penalty tax refer to the [Interest and Penalty Tax Revenue Ruling \(PUB-GEN-2021-1\)](#), available at [sro.tas.gov.au/resources/rulings](http://sro.tas.gov.au/resources/rulings).

## **Objections**

If a taxpayer is dissatisfied with the Commissioner's assessment or decision, they may object to it.

Objections must be in writing, setting out all the grounds of objection relied upon. Objections must be lodged within 60 days after the date of service of the notice of the assessment or decision on the taxpayer.

A taxpayer who is dissatisfied with the determination of their objection is able to seek a review of that determination in the Magistrates Court or they may appeal directly to the Supreme Court.

**Important:** The Commissioner does not have authority to determine objections about land values. Determining land values or objections about land values is the responsibility of the Valuer-General under the *Valuation of Land Act 2001*. Where the Valuer-General notifies the Commissioner of a change in a property's land value, the Commissioner will automatically use that value to reassess the property for land tax.

## **Reviews**

A taxpayer may apply to the Administrative Appeals Division of the Magistrates Court for a review of the Commissioner's determination of a taxpayer's objection. Applications for review must be lodged with the Court within 60 days after the date of service of the Commissioner's notice of determination. An application for review may also be made where an objection is not determined within 90 days, provided the taxpayer gives written notice to the Commissioner of their intention to do so at least 14 days before the application for review is made.

## **Appeals**

An appeal may be lodged directly with the Supreme Court within 60 days after the date of service of the Commissioner's notice of determination of objection. An appeal to the Supreme Court may also be lodged where an objection is not determined within 90 days, provided the taxpayer gives written notice to the Commissioner of their intention to do so at least 14 days before the appeal is made.

For more information, refer to the [Objections, Reviews and Appeals Guideline](#), available at [sro.tas.gov.au/resources/guidelines](http://sro.tas.gov.au/resources/guidelines).

## **Refunds**

A taxpayer may apply to the Commissioner for a refund of overpaid tax within five (5) years of the date of overpayment. However, where the overpayment arises following the payment of land tax by instalments, the taxpayer has a period of four (4) years from the date of the last instalment payment relating to a financial year to apply for a refund in relation to that financial year. This ensures that refunds of land tax for full financial years can be made.

For refunds of payroll tax following the annual return process, the [Payroll Tax Act 2008](#) contains its own specific refund provision: section 83 and item 18 of Part 6 of Schedule 2. This requires an application for a refund to be made within 5 years after the most recent payment, in relation to a financial year.

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A refund must also be paid where a taxpayer's objection, review or appeal is allowed and which results in an overpayment of tax. From 18 November 2008 and in most circumstances, the Commissioner is required to pay interest at the market rate on tax refunded – however this does **not** apply to refunds of payroll tax made under section 83 of the [Payroll Tax Act 2008](#). In all situations, interest is not required to be paid unless it exceeds \$20.

**Important** A refund application cannot be made where the Commissioner has served a notice of assessment and the tax specified in that notice has been paid. This limitation does not apply for refunds of land tax (section 28(2A) of the TAA) or for refunds of payroll tax following the annual return process.

The Commissioner can apply a refund of tax payable or of interest required to be paid to offset an existing liability under a taxation law or another Act administered by the Commissioner.

The Commissioner must not refund tax unless there is a reasonable expectation that the money will be refunded to the person who paid the tax. This situation may occur where a representative of a client pays tax on behalf of the client and recovers that tax from their client. In these circumstances, the Commissioner must not refund the tax unless satisfied that the representative will refund the money to the client.

## Returns

Under Part 6 of the TAA, the Commissioner may make special arrangements with individual taxpayers or a class of taxpayers relating to the lodgement of returns, the time for the payment of tax and the methods by which tax can be paid.

## Collection of Tax

The TAA contains provisions that allow the Commissioner to recover money from a taxpayer who has failed to pay the whole or part of tax that is due. The Commissioner may:

- refer a debt to an external debt collection agency;
- take court action to recover unpaid taxes and any costs or expenses incurred in recovering, or attempting to recover, tax;
- collect the total amount owing from one of the parties where two or more people are jointly and severally liable for the payment of tax;
- collect unpaid tax from third parties in certain circumstances (for example, where a third party owes money to the taxpayer or is holding money on their behalf); and
- extend the time for payment of tax or accept payment by instalments subject to conditions.

## Record-keeping requirements

The TAA provides that records which enable the Commissioner to determine a person's tax liability must be kept for five (5) years after the transaction or activity has taken place.

All records that enable a person's tax liability to be properly assessed must be kept and readily produced upon request.

A person must keep a required record in English or in a form that can be readily converted or translated into English.

Court-imposed penalties may apply for failure to retain records.

## Investigation provisions

Under the TAA's investigation provisions:

- a person may be required to give information, produce documents and other items and give reasonable assistance to an Authorised Officer;
- authorised officers have general rights of entry onto business premises; entry to residential premises may happen only with the consent of the owner/occupier or under the authority of a search warrant;
- authorised officers may seize instruments or records in certain circumstances; a receipt will be provided detailing the items removed; and
- it is an offence to hinder or obstruct an authorised officer from carrying out their duties.

## Secrecy provisions

Under the TAA's secrecy provisions, tax officers are prohibited from disclosing information obtained under or in relation to the administration of a taxation law without a taxpayer's consent.

Exceptions to these provisions include:

- disclosures connected with the administration or enforcement of a taxation law. This also applies to a law of another Australian State or Territory, or the Commonwealth, about taxation; and
- general disclosures that do not identify a particular taxpayer.

In addition, secondary disclosure limitations prevent a person who lawfully obtains information from a tax officer (e.g. to enable the collection of outstanding debts) from disclosing that information to others. Authorised officers are issued with a photo identity card that can be presented if requested and/or during an investigation.

## Contacting the State Revenue Office

### Phone

(03) 6166 4400

(weekdays, 9:00am to 5:00pm)

### Email

[taxhelp@treasury.tas.gov.au](mailto:taxhelp@treasury.tas.gov.au)

### In person

Ground floor

Salamanca Building Parliament Square

4 Salamanca Place HOBART TAS 7000

(weekdays, 9:00am to 5:00pm)

### Fax

(03) 6173 0217

### Mail

The Commissioner of State Revenue

GPO Box 1374

Hobart Tas 7001