

Queensland



# TAXATION ADMINISTRATION ACT 2001

**Reprinted as in force on 1 March 2002  
(Act not amended up to this date)**

**Reprint No. 1**

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# Information about this reprint

This Act is reprinted as at 1 March 2002.

Minor editorial changes allowed under the provisions of the Reprints Act 1992 mentioned in the following list have been made to—

- omit provisions that are no longer required (s 40)
- omit the enacting words (s 42A).

**also see endnotes for information about—**

- **when provisions commenced**
- **editorial changes made in the reprint.**

# Queensland



# TAXATION ADMINISTRATION ACT 2001

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# TAXATION ADMINISTRATION ACT 2001

[reprinted as in force on 1 March 2002]

## **An Act about the administration and enforcement of revenue laws**

### **PART 1—PRELIMINARY**

#### *Division 1—Introductory provisions*

##### **1 Short title**

This Act may be cited as the *Taxation Administration Act 2001*.

##### **2 Commencement**

This Act commences on a day to be fixed by proclamation.

#### *Division 2—Purpose and application of Act*

##### **3 Purpose of Act and relationship with revenue laws**

(1) The purpose of this Act is to make general provision about the administration and enforcement of revenue laws.

(2) Nothing in this Act prevents a revenue law making specific provision about the administration and enforcement of that law.

(3) Each revenue law must be read together with this Act as if they together formed a single Act.

#### **4 Act binds all persons**

(1) This Act binds all persons, including the State and, as far as the legislative power of the Parliament permits, the Commonwealth and the other States.

(2) Nothing in this Act makes the State liable to be prosecuted for an offence.

### *Division 3—Interpretation*

#### **5 Definitions**

The dictionary in schedule 2 defines particular words used in this Act.

#### **6 Revenue laws**

The *Duties Act 2001* is a revenue law on and from the day this section commences.

## **PART 2—COMMISSIONER OF STATE REVENUE**

#### **7 Appointment of commissioner**

(1) There is to be a Commissioner of State Revenue.

(2) The Governor in Council must, by gazette notice, appoint a senior executive of the department to be the commissioner.

#### **8 Commissioner's functions**

(1) The commissioner is responsible for the administration and enforcement of the tax laws.

(2) Also, the commissioner may perform the functions of a State taxation officer under the *Taxation Administration Act 1953* (Cwlth), part IIIA.<sup>1</sup>

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<sup>1</sup> *Taxation Administration Act 1953* (Cwlth), part IIIA (Co-operation between Commonwealth and State taxation authorities)

## **9 Commissioner's powers**

(1) The commissioner has the powers given under the tax laws.

(2) In addition, the commissioner has the power to do all things necessary or convenient to be done for performing the commissioner's functions.

(3) Without limiting subsection (2), the commissioner may engage the consultants and contractors the commissioner considers necessary for the performance of the commissioner's functions.

## **10 Delegations**

(1) The commissioner may delegate the commissioner's powers under a tax law to an appropriately qualified public service employee.

(2) A delegation of a power may permit the subdelegation of the power to an appropriately qualified public service employee.

# **PART 3—ASSESSMENTS OF TAX**

## *Division 1—Assessments made by the commissioner*

### **11 When commissioner makes an assessment**

(1) The commissioner must make an assessment if—

- (a) the commissioner is satisfied a taxpayer has a liability for tax; and
- (b) the taxpayer's liability is not required or permitted, under a revenue law, to be made by self assessment.

(2) Also, the commissioner may make an assessment—

- (a) if the taxpayer's liability for tax is required or permitted to be made by self assessment under the revenue law; or
- (b) even if the taxpayer's liability for tax is nil.

(3) If the commissioner does not make an assessment under subsection (2), the commissioner's decision not to make the assessment is a non-reviewable decision.

## 12 Compromise assessments

(1) This section applies if, in assessing a taxpayer's liability for tax, it is difficult or impracticable for the commissioner to properly determine the amount of the taxpayer's liability because of a complexity or uncertainty or for another reason.

(2) The commissioner may make an assessment of the taxpayer's liability under a written agreement with the taxpayer (a **"compromise assessment"**).

(3) The compromise assessment is a non-reviewable decision.

(4) Nothing in this part requires the commissioner to make a compromise assessment for a taxpayer.

## 13 Default assessments

(1) This section applies in each of the following circumstances—

- (a) a taxpayer does not comply with an information or lodgment requirement under a tax law;
- (b) the commissioner is not satisfied about the accuracy or completeness of a document lodged, or information given, for the assessment of a taxpayer's liability for tax under a tax law;
- (c) the commissioner does not have enough information to properly assess a taxpayer's liability for tax under a tax law, including, for example, if the commissioner reasonably believes—
  - (i) it is necessary to make an immediate assessment; and
  - (ii) the time for complying with an information or lodgment requirement has not ended.

*Example for subsection (1)(c)—*

The commissioner reasonably believes a taxpayer is going to leave the State before documents that will disclose a liability for tax are required to be lodged.

(2) The commissioner may make an assessment under this section (a **"default assessment"**) for the amount the commissioner reasonably believes to be the taxpayer's liability.

(3) If this section applies because a lodgment requirement has not been complied with (whether or not the time for compliance has ended), the commissioner may make the default assessment as if the document were in existence and in the commissioner's possession.

### *Division 2—Self assessments*

#### **14 Making self assessment by lodging return**

The following provisions apply if, under a revenue law, a self assessor lodges a return—

- (a) an assessment (a “**self assessment**”) is taken to have been made for the amount of each taxpayer's liability for tax stated in the return;
- (b) the assessment under paragraph (a) is taken to have been made by the commissioner;
- (c) the liability for tax for each assessment is the amount stated in the return for the liability;
- (d) despite section 26(2), the return is taken to be an assessment notice for each assessment;
- (e) the assessment notice is taken to have been given under section 26 to the taxpayers for whom each assessment is made.

#### **15 Matters to which self assessor must have regard**

For assessing a taxpayer's liability for tax, a self assessor must have regard to directions given by the commissioner, whether generally or specifically for the liability, about the assessment of the liability.

#### **16 Effect of commissioner making an assessment for self assessor**

(1) This section applies if—

- (a) under a revenue law, a self assessor is required or permitted to make a self assessment of a taxpayer's liability for tax under the law; and
- (b) under section 11(2)(a), the commissioner decides to make an assessment of the liability.

(2) The assessment must be made as if the liability were not required or permitted to be self assessed.

(3) This section does not apply for a default assessment.

### ***Division 3—Reassessments***

#### **17 Commissioner’s general power to make reassessments**

(1) Subject to sections 21 and 22, the commissioner may, at any time, make a reassessment of a taxpayer’s liability for tax.

(2) Subsection (1) applies even if an objection or appeal started against the assessment of the taxpayer’s liability for tax has not been decided.

(3) However, the commissioner may make a reassessment under subsection (1) of a taxpayer’s liability assessed under a compromise assessment only—

(a) with the taxpayer’s written agreement; or

(b) if the commissioner reasonably believes the compromise assessment was—

(i) obtained by fraud; or

(ii) made on the basis of a false or misleading statement or there was a failure to give material information.

(4) The commissioner can not be compelled to make a reassessment under subsection (1) decreasing a taxpayer’s liability for tax.

(5) The commissioner’s decision not to make a reassessment of a taxpayer’s liability for tax is a non-reviewable decision.

#### **18 When commissioner must make reassessment—general**

Subject to sections 21 and 22, the commissioner must make a reassessment of a taxpayer’s liability for tax if the circumstances mentioned in—

(a) section 59(3) or (4)<sup>2</sup> apply to require the reassessment; or

(b) a provision of a revenue law applies to require the reassessment.

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2 Section 59 (Penalty tax not payable if proceeding for offence started)



## **19 When commissioner must make reassessment—objections or court decisions**

(1) If the commissioner decides to allow an objection to an assessment in whole or part, or a court makes a decision about a taxpayer's tax law liability, the commissioner must make any reassessment necessary to give effect to the decision.

(2) However, the commissioner does not have to make a reassessment to give effect to a court's decision until—

- (a) the end of the period allowed for an appeal against the decision; or
- (b) if an appeal is started against the decision—the appeal ends.

## **20 Legal interpretations and practices applying to particular reassessments**

(1) Subject to subsections (2) and (5), a reassessment of a taxpayer's liability for tax must be made in accordance with the legal interpretations and assessment practices applied by the commissioner for assessing liability for tax in similar circumstances when the original assessment of the taxpayer's liability for tax was made.

(2) If any legislative change made after an original assessment is made affects the legal interpretations and assessment practices to be applied under subsection (1), the reassessment must, to the extent that the interpretations and practices are changed because of the legislative change, be made in accordance with the changed interpretations and practices.

(3) The commissioner's decision about what constituted the commissioner's legal interpretations and assessment practices is a non-reviewable decision.

(4) Subsection (5) applies if—

- (a) a court makes a decision (the “**original decision**”) affecting the legal interpretations applied by the commissioner for assessing a taxpayer's liability for tax; and
- (b) on appeal, the original decision is changed in whole or part.

(5) For any assessment made after the original decision but before the appeal is decided, the commissioner may make a reassessment to increase a taxpayer's liability for tax in accordance with the appeal decision.

**21 Time for reassessment decreasing liability for tax**

(1) A reassessment decreasing a taxpayer's liability for tax must be made in the limitation period.

(2) However, if, within the limitation period, the taxpayer asks for a reassessment to decrease the taxpayer's liability, the reassessment may be made after the limitation period.

**22 Time for reassessment increasing liability for tax**

(1) A reassessment increasing a taxpayer's liability for tax must be made in the limitation period.

(2) Despite subsection (1), a reassessment increasing a taxpayer's liability for tax may be made at any time—

- (a) if the commissioner reasonably believes there has been a deliberate tax default; or
- (b) if, within the limitation period, the commissioner has given written notice to the taxpayer informing the taxpayer an investigation under part 7 into the taxpayer's liability for tax has started.

(3) For subsection (2)(a), a deliberate tax default arises if—

- (a) there has been fraud or evasion of tax; or
- (b) a taxpayer or person acting for a taxpayer knowingly misleads the commissioner, or causes the commissioner to be misled, about the taxpayer's liability for tax, including, for example, by giving, omitting or changing information or documents.

**23 Limitation period does not apply to particular reassessments**

Despite sections 21(1) and 22(1)—

- (a) if an appeal is started or is being heard against an assessment, the commissioner may, under section 17, make a reassessment after the limitation period and before a decision is made on the appeal if the taxpayer agrees; and
- (b) the limitation period does not apply to a reassessment made—
  - (i) under section 18(a) or 19; or

- (ii) under section 18(b) if a provision of the revenue law for which the reassessment is made declares the limitation period does not apply.

## **24 Reassessment by self assessors**

A self assessor may make a reassessment only if required or permitted under a revenue law.

## **25 Reassessment does not replace previous assessment**

A reassessment does not replace the previous assessment but merely varies it by—

- (a) decreasing or increasing the taxpayer's liability for tax; or
- (b) changing the basis on which the taxpayer's liability for tax is assessed.

### *Division 4—Assessment notices*

## **26 Assessment notice to be given to taxpayer**

(1) The commissioner must give notice of the making of an assessment (an “**assessment notice**”) to the taxpayer.

(2) The assessment notice must state—

- (a) the amount of the tax assessed; and
- (b) the date by which the tax must be paid; and
- (c) the taxpayer's right to object to the assessment; and
- (d) the basis on which unpaid tax interest may accrue; and
- (e) if assessed interest or penalty tax is payable under the notice—enough information to enable the taxpayer to ascertain the basis for the assessment of the interest or penalty tax; and
- (f) for a compromise or default assessment—it is a compromise or default assessment; and
- (g) for a reassessment—the amount of the liability for tax under the previous assessment.

(3) For subsection (2)(c), the assessment notice must state—

- (a) that the taxpayer may, within 60 days after the notice is given, object to the assessment; and
- (b) how to object.

(4) The assessment notice may include information that does not form part of the assessment, including, for example, information about other amounts payable by the taxpayer.

(5) More than 1 assessment may be included in the assessment notice.

### *Division 5—Other provisions*

#### **27 Assessments made on available relevant information**

The commissioner may make an assessment on the available information the commissioner considers relevant.

#### **28 Taxpayer to advise commissioner if liability for tax under assessed**

(1) A taxpayer must advise the commissioner if the taxpayer becomes aware that—

- (a) an assessment of the taxpayer's liability for tax was not, or is no longer, correct; and
- (b) the correct liability for tax is more than the amount stated in the assessment.

(2) The taxpayer must comply with subsection (1) within 30 days after becoming aware of the matters mentioned in the subsection.

## **PART 4—PAYMENTS AND REFUNDS OF TAX AND OTHER AMOUNTS**

### *Division 1—Payments of tax and other amounts*

#### **29 Methods of payment**

An amount payable under a tax law must be paid to the commissioner—

- (a) by cash or cheque; or
- (b) as prescribed under a regulation.

#### **30 Time for payment of tax**

(1) Tax payable under a tax law must be paid—

- (a) for a self assessment—on the date the return for the self assessment is required to be lodged; or
- (b) for a default assessment made because of a failure to make a self assessment—on the date the assessment notice for the default assessment is given to the taxpayer; or
- (c) otherwise—by the date stated in the assessment notice as the date by which the tax must be paid.

(2) For subsection (1)(c), the stated date must be at least 30 days after the assessment notice for the tax is given to the taxpayer.

#### **31 Time for payment of late payment interest**

Late payment interest is payable on the date it accrues.

#### **32 Time for payment of other amounts**

(1) This section applies if—

- (a) an amount, other than tax or late payment interest is payable under a tax law; and
- (b) no time for payment is otherwise stated in the tax law.

(2) The amount must be paid—

- (a) if the amount relates to tax payable under a default assessment mentioned in section 30(1)(b)—immediately after the assessment notice for the default assessment is given to the taxpayer; or
- (b) otherwise—by the date stated in a written notice given by the commissioner to the taxpayer for the amount.

(3) For subsection (2)(b), the stated date must be at least 30 days after the notice is given.

### **33 Earlier time for payment of tax and other amounts**

(1) This section applies despite sections 30 and 32.

(2) The commissioner may, in an assessment notice or notice given under this section, state an earlier date than the date stated in section 30 or 32 as the date the tax or amount is payable if the commissioner reasonably believes the tax or amount may not be recoverable if the date for payment under the section otherwise were to apply.

(3) The date stated in the notice mentioned in subsection (2) must not be a date before the notice is given.

### **34 Payment arrangements**

(1) If the commissioner is satisfied payment of a taxpayer's tax law liability would cause the taxpayer significant financial hardship, the commissioner may, on the taxpayer's written application, extend the time for paying an amount under a tax law.

(2) Without limiting subsection (1), the commissioner may approve an arrangement for paying the amount by way of instalments (a "**payment arrangement**").

(3) The payment arrangement must be in writing and state the conditions applying to it.

(4) The commissioner may, at any time, by written notice given to the taxpayer, terminate the arrangement.

(5) If the commissioner terminates the arrangement, amounts outstanding under the arrangement are immediately payable by the taxpayer to the commissioner.

(6) The commissioner's decision about extending the time for paying a tax law liability or to terminate a payment arrangement is a non-reviewable decision.

### **35 Payments by tax agents**

If a tax agent receives an amount to pay a tax law liability for a taxpayer, the tax agent must pay the amount to the commissioner—

- (a) when lodging the return for the liability; or
- (b) if the amount is received after the return is lodged—immediately after receiving the amount.

Maximum penalty—100 penalty units.

## *Division 2—Refunds of tax and other amounts*

### **36 Refunds made only under this division**

A person is not entitled to a refund of any amount paid, or purportedly paid, under a tax law other than under this division.

### **37 Commissioner to refund tax and other amounts**

(1) An entitlement to a refund of an amount paid under a tax law arises if—

- (a) under a reassessment, a taxpayer's liability for tax is decreased; or
- (b) the amount paid by a person is more than the amount stated in any notice as payable by the person under the tax law.

(2) Subject to sections 38 and 39, the commissioner must refund the overpaid amount.

(3) However, the commissioner must not make a refund under subsection (1)(b) more than 5 years after the payment of the amount.

### **38 Applying amounts to current and future tax liabilities**

(1) This section applies if a taxpayer is entitled to a refund of an amount under section 37.

(2) The commissioner may apply the whole or part of the amount as payment for—

- (a) any tax law liability of the taxpayer; or
- (b) any tax law liability of the taxpayer that the commissioner reasonably believes will become payable within 60 days after the entitlement to the refund arises.

(3) If the commissioner does not apply all of the amount held under subsection (2)(b) to any tax law liability of the taxpayer within the 60 day period, the commissioner must immediately refund to the taxpayer the amount not applied.

(4) This section has effect subject to section 39.

### **39 General provision about refunds**

(1) The commissioner may refund an amount to a taxpayer or, under section 38, apply an amount as a payment for a taxpayer only if the commissioner is satisfied—

- (a) the taxpayer has not received, and will not receive, an amount as tax from another person for all or part of the tax paid; or
- (b) if the taxpayer has received an amount as tax (the “**amount received**”) from another person for all or part of the tax paid—the taxpayer will reimburse the other person for the amount received.

(2) If subsection (1)(b) applies, the taxpayer must—

- (a) within 90 days after receiving the refund (the “**relevant period**”), reimburse the other person for the amount received; and
- (b) within 7 days after the relevant period, give the commissioner written notice that the other person has been reimbursed for the amount received.

(3) Also, if subsection (1)(b) applies and the taxpayer does not, within the relevant period, reimburse the other person for the amount received, the taxpayer must, within 7 days after the relevant period—

- (a) give the commissioner written notice that the other person was not reimbursed for the amount received; and



- (b) pay the commissioner the amount received plus interest at the prescribed rate calculated, on the balance payable from time to time, from the date the refund was made to the date the amount received is paid to the commissioner.

Maximum penalty—100 penalty units.

(4) In this section—

“**tax**” means tax paid, or purportedly paid, under a tax law, whether or not the tax is paid under a mistake of law or fact.

“**taxpayer**” includes a person who, under section 37(1)(b), is entitled to a refund.

### *Division 3—How payments for tax and other amounts are allocated and applied*

#### **40 When payments are received**

(1) A payment is taken to be received by the commissioner—

- (a) if the payment is made by cash or cheque—when the payment is made to the commissioner by or for a taxpayer for the taxpayer’s tax law liability; or
- (b) if the payment is made as prescribed under a regulation under section 29(b)—at the time prescribed under the regulation; or
- (c) if an amount becomes available for application by the commissioner under section 38 for a taxpayer’s tax law liability—when the amount becomes available.

(2) If an amount is tendered to the commissioner after 5 p.m. on a business day, payment of the amount is taken to have been made the next business day.

#### **41 Allocating payments if more than 1 assessment liability**

(1) If a taxpayer has an assessment liability under more than 1 assessment, the commissioner must decide the assessment liabilities to which a payment received by the commissioner is to be applied under section 42.

(2) In making the decision, the commissioner may, but is not required to, have regard to a request by the taxpayer for the allocation of the payment.

#### **42 Application of payments to assessment liability**

A payment received by the commissioner for an assessment liability must be applied in the following order—

- (a) first, an amount payable under a tax law, other than late payment interest or tax;
- (b) second, another amount payable under a tax law, other than primary tax;
- (c) last, primary tax.

#### ***Division 4—Power to waive or write off liability***

#### **43 Waiver of tax law liability**

(1) The commissioner may waive payment of a taxpayer's tax law liability up to the amount prescribed under a regulation.

(2) The liability to pay the amount waived is extinguished.

#### **44 Effect of writing off tax law liability**

If all or part of a taxpayer's tax law liability is written off under the *Financial Administration and Audit Act 1977*, section 106, the writing off does not extinguish the taxpayer's liability or prevent a later proceeding against the taxpayer to recover the amount of the liability.

#### ***Division 5—Recovery of tax and other amounts***

#### ***Subdivision 1—Recovery from taxpayers***

#### **45 Unpaid amount under tax law is debt**

(1) An amount payable under a tax law must be paid to the commissioner.

(2) If the whole or part of an amount payable under a tax law is not paid as required—

- (a) the unpaid amount is a debt payable to the State; and
- (b) the commissioner may recover the unpaid amount for the State in a court of competent jurisdiction.

#### **46 Recovery proceedings not affected by reassessment**

A reassessment does not affect a proceeding for the recovery of an amount payable under a tax law but an appropriate adjustment must be made to the amount sought to be recovered in the proceeding to accord with the reassessment.

#### **47 Joint and several liability**

(1) If 2 or more taxpayers are liable under a tax law to pay an amount, the commissioner may recover the whole or part of the amount from any 1 or more of them.

(2) Subsection (1) does not affect the right of a taxpayer who pays an amount to recover a contribution from another person jointly or severally liable for the whole or part of the amount.

#### *Subdivision 2—Obligations of administrators and garnishees*

#### **48 Particular administrators to notify commissioner of appointment**

(1) A person who is appointed as administrator for the property of a taxpayer who has a tax law liability must, before the required date, give written notice to the commissioner of the appointment.

Maximum penalty—40 penalty units.

(2) For subsection (1), the required date is—

- (a) 14 days after the administrator becomes aware, or should reasonably have become aware, the taxpayer has a tax law liability even if the extent of the liability is not then ascertainable; or
- (b) the later date allowed by the commissioner.

(3) However, notice is not required in the circumstances prescribed under a regulation.

#### **49 Administrator's liability for payment of tax**

(1) The commissioner has the same powers and remedies in relation to the administrator for the property of a taxpayer as the commissioner would have in relation to the taxpayer.

(2) However, an administrator is liable for payment of a tax law liability of a taxpayer only to the extent of the realised value of all property that—

- (a) the administrator has taken possession as administrator; and
- (b) was, at any time, available to the administrator for the payment of the tax.

#### **50 Collection of amounts from a garnishee**

(1) This section applies if—

- (a) under a tax law, a debt is payable by a taxpayer; and
- (b) the commissioner reasonably believes a person (the “**garnishee**”)—
  - (i) holds or may receive an amount for or on account of the taxpayer; or
  - (ii) is liable or may become liable to pay an amount to the taxpayer; or
  - (iii) has authority to pay an amount to the taxpayer.

(2) Subsection (1)(b) applies even though the taxpayer's entitlement to the amount may be subject to unfulfilled conditions.

(3) The commissioner may, by written notice given to the garnishee (the “**garnishee notice**”), require the garnishee to pay to the commissioner by a stated date a stated amount (the “**garnishee amount**”).

(4) Without limiting subsection (3), the garnishee notice may require the garnishee to pay to the commissioner an amount out of each payment the garnishee is or becomes liable, from time to time, to make to the taxpayer.

(5) However, if, on the date for payment under the garnishee notice, the garnishee amount is not held for, or is not liable to be paid to, the taxpayer by the garnishee, the notice has effect as if the date for payment were

immediately after the date the amount is held for, or is liable to be paid to, the taxpayer by the garnishee.

(6) The garnishee amount must not be more than the taxpayer's debt.

(7) The garnishee must comply with the garnishee notice unless the garnishee has a reasonable excuse.

Maximum penalty—40 penalty units.

(8) The commissioner must give to the taxpayer—

- (a) a copy of the garnishee notice; and
- (b) details in writing of the taxpayer's debt to which the notice relates.

## **51 Duration of garnishee notice**

The garnishee notice has effect until the garnishee amount is paid or the commissioner, by written notice given to the garnishee, withdraws the notice.

## **52 Effect of discharge of debt on garnishee notice**

(1) This section applies if—

- (a) the taxpayer's debt to which the garnishee notice relates is discharged, whether completely or partly, before the date for payment of the garnishee amount; and
- (b) the discharge affects the amount to be recovered from the garnishee.

(2) The commissioner must give written notice to the garnishee and the taxpayer—

- (a) informing them of the extent of the discharge of the debt; and
- (b) stating the amount payable under the garnishee notice is reduced accordingly; and
- (c) if the taxpayer's debt is fully discharged—withdrawing the garnishee notice.

**53 Effect of payment by garnishee**

If the garnishee pays an amount to the commissioner under a garnishee notice, the garnishee—

- (a) is taken to have acted under the authority of the taxpayer and all other persons concerned; and
- (b) if the garnishee is under an obligation to pay an amount to the taxpayer—is to be taken to have satisfied the obligation to the extent of the payment.

**PART 5—INTEREST AND PENALTY TAX***Division 1—Interest payable to commissioner and penalty tax**Subdivision 1—Interest***54 Unpaid tax interest**

(1) A taxpayer must pay interest (“**unpaid tax interest**”) on the amount of primary tax payable by the taxpayer and unpaid from time to time (“**unpaid primary tax**”).

(2) Unpaid tax interest accrues daily at the prescribed rate on the unpaid primary tax for the period starting on the start date and ending on the date the primary tax is paid in full, both dates inclusive.

(3) Any unpaid tax interest that has accrued when an assessment is made (“**assessed interest**”) must be included in the assessment.

(4) For subsection (2), the start date is the day after—

- (a) for a self assessment—the date the return is required to be lodged under the revenue law for the self assessment; or
- (b) for a default assessment of a taxpayer’s liability for tax required or permitted to be made by a self assessment—the date the return is required to be lodged under the revenue law for the self assessment; or
- (c) for another original assessment—

- (i) the due date for the assessment; or
- (ii) if the taxpayer has not complied with 1 or more information or lodgment requirements for the assessment—the date that is the same number of days before the due date for the assessment as the number of days in the periods of non-compliance with the information or lodgment requirements; or
- (d) for a reassessment of a self assessment—the date mentioned in paragraph (a) for the assessment; or
- (e) for a reassessment of another original assessment—the date mentioned in paragraph (b) or (c) for the assessment.

*Example for subsection (4)(c)(ii)—*

If a taxpayer who is required to comply with a lodgment requirement by 10 March does not comply with the requirement until 15 March, the period of non-compliance under subsection (5) is 5 days. If the due date for the assessment made is 17 April, the start date is 13 April.

**(5)** For subsection (4)(c)(ii)—

- (a) a period of non-compliance ends on the date the commissioner issues a default assessment for the non-compliance; and
- (b) the date on which the requirement is complied with is included in calculating a period of non-compliance.

**(6)** For a reassessment—

- (a) the unpaid primary tax is the amount of the reassessed primary tax that is unpaid; and
- (b) any assessed interest included in the reassessment replaces any previously accrued unpaid tax interest.

*Example for subsection (6)—*

The assessment for the example for subsection (4)(c)(ii) is issued for \$10 000 primary tax and before any payment under the original assessment is made. A reassessment is issued on 24 April for \$12 000 primary tax.

If the prescribed rate for late payment interest is 10% per year, the late payment interest that has accrued on the \$10 000 when the reassessment is made (namely on and from 13 April to and including 24 April) is \$32.87. When the reassessment is made, assessed interest is calculated on the \$12 000 unpaid reassessed primary tax on and from 13 April to and including 24 April. This replaces the \$32.87 interest previously accrued.

If a payment of \$10 000 is made on 12 April, the assessed interest for the reassessment would be calculated on the unpaid reassessed primary tax of \$2 000 on and from 13 April to and including 24 April.

## **55 When particular taxpayers liable for unpaid tax interest**

A taxpayer to whom a regulation under section 147(2) applies is liable for unpaid tax interest in relation to an assessment only from the due date in the assessment notice given to the taxpayer.

## **56 Unpaid tax interest unaffected by extensions of time**

(1) The making of a payment arrangement must be disregarded for determining late payment interest accruing under section 54.

(2) Any extension of time allowed by the commissioner for complying with an information or lodgment requirement must be disregarded in determining the start date under section 54(4).

## **57 Application of payments for unpaid tax interest**

(1) The order of application of a payment under section 42<sup>3</sup> applies to determine the amount of unpaid primary tax on which unpaid tax interest accrues.

(2) For a reassessment, subsection (1) applies as if there had been no previous application of payments.

### *Subdivision 2—Penalty tax*

## **58 Liability for penalty tax**

(1) A taxpayer is liable for an amount (“**penalty tax**”) if—

(a) the commissioner makes a default assessment because—

(i) for a self assessment—the assessment is not made; or

(ii) for another assessment—the taxpayer does not give information required to be given under an information

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3 Section 42 (Application of payments to assessment liability)



requirement or lodge a document required to be lodged under a lodgment requirement; or

- (b) the commissioner makes a reassessment and the original assessment was a default assessment mentioned in paragraph (a); or
- (c) the primary tax assessed on a reassessment, other than under a reassessment mentioned in paragraph (b), is more than the primary tax assessed on the original assessment.

**(2)** Penalty tax must be assessed as follows—

- (a) if subsection (1)(a) applies—an amount equal to 75% of the primary tax assessed;
- (b) if subsection (1)(b) applies—an amount equal to 75% of the reassessed primary tax;
- (c) if subsection (1)(c) applies—an amount equal to 75% of the increase in primary tax.

**(3)** The commissioner may increase the amount of the penalty tax by not more than 20% of the penalty tax under subsection (2) if the commissioner is satisfied the taxpayer—

- (a) has not complied with section 28;<sup>4</sup> or
- (b) has hindered or prevented the commissioner from becoming aware of the nature and extent of the taxpayer's liability for tax.

**(4)** If penalty tax was payable under the previous assessment and a reassessment of primary tax is made—

- (a) penalty tax must be recalculated on the reassessed primary tax on the basis for assessing the penalty tax on the previous assessment; and
- (b) penalty tax included in the reassessment replaces any previously assessed penalty tax.

*Example for subsection (4)—*

A reassessment is made increasing the tax payable by a taxpayer from \$1 000 to \$1 700. Penalty tax of \$525, being 75% of \$700, is payable for the reassessment under subsection (1)(c). A further reassessment is made, decreasing the tax payable to \$1 200. The penalty tax imposed under the previous reassessment must be recalculated on the reassessed primary tax on the basis for assessing the penalty tax on the previous

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4 Section 28 (Taxpayer to advise commissioner if liability for tax under assessed)

assessment. Accordingly, penalty tax of \$150, being 75% of \$200, is assessed on the reassessment, replacing the penalty tax of \$525 previously assessed.

### **59 Penalty tax not payable if proceeding for offence started**

(1) This section applies if a taxpayer is liable to pay penalty tax because of an act or omission of the person.

(2) If a proceeding is started against the taxpayer for an offence against a tax law that is constituted by the act or omission and the penalty tax has not been paid to the commissioner, the penalty tax is payable only if the commissioner withdraws the proceeding.

(3) If the penalty tax has been paid to the commissioner, but a proceeding is started against the person for an offence against a tax law that is constituted by the act or omission, the commissioner must make a reassessment remitting the amount of penalty tax to nil.<sup>5</sup>

(4) Despite subsection (3), if the commissioner withdraws the proceeding for the offence, the commissioner must make a reassessment to reinstate the penalty tax remitted under the subsection.

(5) In this section—

“**penalty tax**” includes an amount declared under a revenue law to be a penalty tax for this section.

### *Division 2—Remission of interest and penalty tax*

### **60 When commissioner may remit unpaid tax interest and penalty tax**

(1) The commissioner may remit the whole or part of unpaid tax interest or penalty tax.

(2) The remission of assessed interest or penalty tax must be made by assessment.

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5 See section 18 (When commissioner must make reassessment—general).

***Division 3—Interest payable by commissioner*****61 Interest on particular overpayments following court’s decision**

(1) This section applies if a taxpayer is entitled to a refund of tax or late payment interest (the “**overpaid amount**”) because of—

- (a) a reassessment giving effect to a decision of the Supreme Court under section 74 on an appeal by the taxpayer; or
- (b) an order of the Supreme Court on an application, under the *Judicial Review Act 1991*, by the taxpayer for a decision under a tax law.

(2) The court may order the commissioner to pay interest on the overpaid amount.

(3) The interest must be calculated on a daily basis at the prescribed rate from the date the overpaid amount was paid to the commissioner to the date the refund is made by the commissioner.

**62 Interest only payable under this division**

A person is not entitled to interest on any amount the commissioner is required to refund to the person other than under this division.<sup>6</sup>

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<sup>6</sup> See section 36 (Refunds made only under this division).

## **PART 6—OBJECTIONS AND APPEALS AGAINST ASSESSMENTS**

### *Division 1—Objections*

#### **63 Right to object**

(1) A taxpayer who is dissatisfied with an original assessment, other than a compromise assessment, may object to the assessment.

(2) Also, a taxpayer who is dissatisfied with a reassessment increasing a taxpayer's liability for tax, or a reassessment under section 18(b)<sup>7</sup> decreasing a taxpayer's liability for tax, may object to the reassessment.

(3) However, the right of objection to the reassessment is limited to the changes for the particular matters for which the reassessment is made.

(4) A decision or conduct leading up to or forming part of the process of making an assessment is subject to objection only as part of an objection to the assessment.

#### **64 Grounds of objection**

(1) An objection against an assessment may be made on any grounds.

(2) However, for an objection to a decision to which this part is declared to apply under a provision of a revenue law, the grounds of objection are limited to whether the particular circumstances apply for the instrument or transaction to which the decision relates.<sup>8</sup>

#### **65 Making objection**

(1) An objection must—

(a) be in writing; and

(b) state in detail the grounds on which the objection is made; and

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<sup>7</sup> Section 18 (When commissioner must make reassessment—general)

<sup>8</sup> See the *Duties Act 2001*, section 500 (Application of administration Act, pt 6, to particular decisions).

- (c) be accompanied by copies of all material relevant to decide the objection; and
- (d) be lodged within 60 days after the assessment notice for the assessment to which the objection relates is given to the taxpayer.

(2) The commissioner may extend the time for lodging an objection if the commissioner is satisfied it would be unreasonable in particular circumstances for the objection to be lodged within the 60 days.

(3) The commissioner's decision to refuse to extend the time for lodging an objection is a non-reviewable decision.

## **66 Onus of proof on objection**

The objector has the onus of proving the objector's case.

## **67 Deciding objection**

(1) The commissioner must allow the objection completely or partly or disallow it.

(2) If the assessment to which the objection is lodged is made by a delegate of the commissioner, the delegate must not decide the objection.

## **68 Notice of decision**

(1) The commissioner must give written notice to the objector of the commissioner's decision on the objection.

(2) If the objection is allowed in part or disallowed, the notice must state the following—

- (a) the reasons for the decision;
- (b) that the objector may, within 60 days after receiving the notice, appeal against the decision;
- (c) how to appeal.

## ***Division 2—Appeals***

### **69 Right of appeal**

(1) A taxpayer may appeal to the Supreme Court if the taxpayer is dissatisfied with the commissioner's decision on the taxpayer's objection.

(2) However, a taxpayer does not have a right of appeal unless the whole of the amount of the tax and late payment interest payable under the assessment to which the appeal relates has been paid.

### **70 How to start appeal and grounds of appeal**

(1) The appeal is started by giving written notice of the appeal to the commissioner within 7 days after the notice of appeal is filed.

(2) The notice of appeal must be filed within 60 days after notice is given to the taxpayer of the commissioner's decision on the objection.

(3) The Supreme Court must not extend the time for filing the notice.

(4) The notice of appeal must state fully the grounds of the appeal and the facts relied on.

(5) The grounds of the appeal are limited to the grounds of objection unless the court otherwise orders.

### **71 Effect of making reassessment after appeal started**

(1) This section applies if the commissioner makes a reassessment after an appeal against the assessment is started.

(2) On receiving the assessment notice for the reassessment, the taxpayer may—

- (a) continue or withdraw the existing appeal; or
- (b) instead of objecting to the reassessment, change the grounds of the appeal, by filing notice of the change with the registrar of the Supreme Court.

(3) However, the taxpayer may change the grounds of the appeal only to the extent that the taxpayer would have a right of objection to the reassessment.

## 72 Onus on appeal

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

## 73 Admissibility of new evidence

(1) Subsection (2) applies if—

- (a) the Supreme Court is satisfied evidence material to the objection was not before the commissioner when the objection was decided; and
- (b) subject to section 70(5), the court admits the evidence.

(2) The court must—

- (a) adjourn the hearing of the appeal; and
- (b) direct the commissioner to reconsider the objection having regard to the evidence and any other evidence obtained by the commissioner.

(3) However, subsection (2) does not apply if the commissioner asks the court to continue the hearing without the commissioner reconsidering the objection.

(4) For reconsidering the objection, the commissioner has all the powers conferred under this Act.

## 74 Deciding appeal

The Supreme Court must allow the appeal completely or partly or disallow it.

### *Division 3—Decisions and determinations not subject to objection, appeal or review*

## 75 What is a “non-reviewable decision”

(1) A “**non-reviewable decision**” is a decision or determination that, under a provision of this Act, is declared to be a non-reviewable decision.

(2) In this section—

“**decision**” includes a decision or conduct leading up to or forming part of the process of making a decision or determination.

**76 Effect of non-reviewable decisions**

A non-reviewable decision—

- (a) is final and conclusive; and
- (b) is not subject to objection or appeal under this part; and
- (c) can not be challenged, appealed against, reviewed, quashed, set aside, or called in question in another way, under the *Judicial Review Act 1991* or otherwise (whether by the Supreme Court, another court, a tribunal or another entity); and
- (d) is not subject to any writ or order of the Supreme Court, another court, a tribunal or another entity on any ground.

**77 Application of Judicial Review Act**

The *Judicial Review Act 1991*, parts 3 and 5,<sup>9</sup> does not apply to—

- (a) an assessment; or
- (b) a decision or conduct leading up to or forming part of the process of making an assessment; or
- (c) a decision disallowing, in whole or in part, an objection against an assessment.

**PART 7—INVESTIGATIONS*****Division 1—Preliminary*****78 Declaration of recognised law and corresponding commissioner**

(1) A regulation may declare a law of the Commonwealth or another State that provides for any of the following to be a recognised law for this Act—

- (a) the levying or collection of a tax, fee, duty or other impost;

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<sup>9</sup> *Judicial Review Act 1991*, part 3 (Statutory orders of review) or 5 (Prerogative orders and injunctions)



(b) the payment of a subsidy for goods.

(2) However, a law may be declared to be a recognised law only if the law or another law of the relevant jurisdiction provides or will provide for the conduct of investigations for a tax law or another law administered by the commissioner that corresponds to a recognised law.

(3) The regulation must declare a person to be the corresponding commissioner for the recognised law.

## **79 Exercise of powers only for tax law or recognised law**

A power conferred under this part may be exercised only for the administration or enforcement of a tax law or recognised law.<sup>10</sup>

### *Division 2—Investigations under tax laws*

#### *Subdivision 1—Investigators*

## **80 Appointment**

(1) The commissioner may appoint a public service employee as an investigator.

(2) The commissioner may appoint a person as an investigator only if the commissioner is satisfied the person is qualified for appointment because the person has the necessary expertise or experience.

## **81 Appointment conditions and limit on powers**

(1) An investigator holds office on any conditions stated in—

- (a) the investigator's instrument of appointment; or
- (b) a signed notice given to the investigator; or
- (c) a regulation.

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<sup>10</sup> For reciprocal investigations, see section 110 (Application of Act to reciprocal investigations).

(2) The instrument of appointment, a signed notice given to the investigator or a regulation may limit the investigator's powers under this Act.

(3) In this section—

“**signed notice**” means a notice signed by the commissioner.

## **82 Issue of identity card**

(1) The commissioner must issue an identity card to each investigator.

(2) The identity card must—

- (a) contain a recent photo of the investigator; and
- (b) contain a copy of the investigator's signature; and
- (c) identify the person as an investigator under this Act; and
- (d) state an expiry date for the card.

(3) This section does not prevent the issue of a single identity card to a person for this Act and other purposes.

## **83 Production of identity card**

(1) In exercising a power under subdivision 3 or 4 in relation to a person, an investigator must—

- (a) first produce his or her identity card for the person's inspection before exercising the power; or
- (b) have the identity card displayed so it is clearly visible to the person when exercising the power.

(2) However, if it is not practicable to comply with subsection (1), the investigator must produce the identity card for the person's inspection at the first reasonable opportunity.

(3) For subsection (1), an investigator does not exercise a power in relation to a person only because the investigator has entered a place as mentioned in section 90(1)(b) or (2).

## **84 When investigator ceases to hold office**

(1) An investigator ceases to hold office if any of the following happens—

- (a) the term of office stated in a condition of office ends;
- (b) under another condition of office, the investigator ceases to hold office;
- (c) the investigator's resignation under section 85 takes effect.

(2) Subsection (1) does not limit the ways an investigator may cease to hold office.

(3) In this section—

“**condition of office**” means a condition on which the investigator holds office.

## **85 Resignation**

(1) An investigator may resign by signed notice given to the commissioner.

(2) However, if holding office as an investigator is a condition of the investigator holding another office, the investigator may not resign as an investigator without resigning from the other office.

## **86 Return of identity card**

A person who ceases to be an investigator must return the person's identity card to the commissioner within 21 days after ceasing to be an investigator unless the person has a reasonable excuse.

Maximum penalty—40 penalty units.

### ***Subdivision 2—Provisions about requiring information, documents and attendance***

## **87 Power to require information or documents**

The commissioner or an investigator may, by written notice given to a person, require the person to—

- (a) give to the commissioner or an investigator, either orally or in writing, information in the person's knowledge about a stated matter within a stated reasonable time and in a stated reasonable way; or

- (b) give to the commissioner or an investigator a document about a stated matter in the person's possession or control within a stated reasonable time and in a stated reasonable way.<sup>11</sup>

## **88 Power to require attendance**

(1) The commissioner or an investigator may, by written notice given to a person, require the person to attend before the commissioner or an investigator to do either or both of the following—

- (a) give to the commissioner or investigator, either orally or in writing, information in the person's knowledge about a stated matter; or
- (b) give to the commissioner or investigator, a document about a stated matter in the person's possession or control.

(2) The notice must state a reasonable time and place for the person's attendance.

(3) The commissioner or an investigator may require—

- (a) information to be given on oath; or
- (b) information or a document given to be verified by statutory declaration.

(4) When making a requirement under this section, the commissioner or investigator must warn the person it is an offence to fail to comply with the requirement, unless the person has a reasonable excuse.

(5) For subsection (3)(a), the commissioner or investigator may administer an oath.

(6) The person must not fail, without reasonable excuse, to—

- (a) attend as required by the notice; or
- (b) give information the person is required to give by the commissioner or an investigator in the way required; or
- (c) give a document the person is required to give by the notice; or
- (d) comply with a requirement under subsection (3).

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<sup>11</sup> For offence to fail to comply with an information or lodgment requirement, see section 121.

Maximum penalty—100 penalty units.

(7) A person, other than a taxpayer or the taxpayer's representative, who is required under a notice under this section to attend a place is entitled to be paid the expenses prescribed under a regulation.

### **89 Power to record giving of information**

(1) This section applies if a person is giving information to the commissioner or an investigator under a requirement under section 88.

(2) With the person's knowledge, a recording may be made, in the way the commissioner or investigator considers appropriate, of questions asked by the commissioner or investigator and information given by the person.

(3) If asked to do so by the person, the commissioner or investigator must give the person a copy of the recording.

### *Subdivision 3—Entry of places*

### **90 Investigator's power to enter places for investigations**

(1) An investigator may enter a place if—

- (a) its occupier consents to the entry; or
- (b) it is a public place and the entry is made when it is open to the public; or
- (c) it is a place used for conducting an enterprise and the entry is made when—
  - (i) the enterprise is being conducted; or
  - (ii) the place is otherwise open for entry; or
- (d) the entry is authorised by warrant.

(2) For the purpose of asking the occupier of a place for consent to enter, an investigator may, without the occupier's consent or a warrant—

- (a) enter land around premises at the place to an extent that is reasonable to contact the occupier; or
- (b) enter part of the place the investigator reasonably considers members of the public ordinarily are allowed to enter when they wish to contact the occupier.

(3) For subsection (1)(c), a place used for conducting an enterprise does not include a part of the place where a person resides.

## **91 Entry with consent**

(1) This section applies if an investigator intends to ask an occupier of a place to consent to the investigator or another investigator entering the place under section 90(1)(a).

(2) Before asking for the consent, the investigator must tell the occupier—

- (a) the purpose of the entry; and
- (b) that the occupier is not required to consent.

(3) If the consent is given, the investigator may ask the occupier to sign an acknowledgment of the consent.

(4) The acknowledgment must state—

- (a) the occupier has been told—
  - (i) the purpose of the entry; and
  - (ii) that the occupier is not required to consent; and
- (b) the purpose of the entry; and
- (c) the occupier gives the investigator consent to enter the place and exercise powers under this division; and
- (d) the time and date the consent was given.

(5) If the occupier signs the acknowledgment, the investigator must immediately give a copy to the occupier.

(6) If—

- (a) an issue arises in a proceeding about whether the occupier consented to the entry; and
- (b) an acknowledgment complying with subsection (4) for the entry is not produced in evidence;

the onus of proof is on the person relying on the lawfulness of the entry to prove the occupier consented.

## 92 Application for warrant

(1) An investigator may apply to a magistrate for a warrant for a place.

(2) The application must be sworn and state the grounds on which the warrant is sought.

(3) The magistrate may refuse to consider the application until the investigator gives the magistrate all the information the magistrate requires about the application in the way the magistrate requires.

*Example for subsection (3)—*

The magistrate may require additional information supporting the application to be given by statutory declaration.

## 93 Issue of warrant

(1) The magistrate may issue a warrant only if the magistrate is satisfied—

- (a) there are reasonable grounds for suspecting—
  - (i) there is a particular thing or activity (the “**evidence**”) that may provide evidence of a contravention of a tax law; and
  - (ii) the evidence is at the place, or within the next 7 days, may be at the place; or
- (b) the warrant is needed to allow an investigator to enter the place for monitoring or enforcing compliance with a tax law.

(2) The warrant must state the following—

- (a) that an investigator may, with necessary and reasonable help and force—
  - (i) enter the place and any other place necessary for entry; and
  - (ii) exercise the investigator’s powers under this part;
- (b) the hours of the day or night when the place may be entered;
- (c) the date, within 14 days after the warrant’s issue, the warrant ends;
- (d) the purpose for which the warrant is issued.

## 94 Special warrants

(1) An investigator may apply for a warrant (a “**special warrant**”) by phone, fax, radio or another form of communication if the investigator considers it necessary because of—

- (a) urgent circumstances; or
- (b) other special circumstances, including, for example, the investigator’s remote location.

(2) Before applying for the special warrant, the investigator must prepare an application stating the grounds on which the warrant is sought.

(3) The investigator may apply for the warrant before the application is sworn.

(4) After issuing the special warrant, the magistrate must immediately fax a copy to the investigator if it is reasonably practicable to fax the copy.

(5) If it is not reasonably practicable to fax a copy to the investigator—

- (a) the magistrate must tell the investigator—
  - (i) what the terms of the warrant are; and
  - (ii) the date and time the warrant is issued; and
- (b) the investigator must complete a form of warrant (a “**warrant form**”) and write on it—
  - (i) the magistrate’s name; and
  - (ii) the date and time the magistrate issued the warrant; and
  - (iii) the terms of the special warrant.

(6) The facsimile warrant, or the warrant form properly completed by the investigator, authorises the entry and the exercise of the other powers stated in the warrant issued by the magistrate.

(7) The investigator must, at the first reasonable opportunity, send to the magistrate—

- (a) the sworn application; and
- (b) if the investigator completed a warrant form—the completed warrant form.

(8) On receiving the documents, the magistrate must attach them to the warrant.

(9) If—



- (a) an issue arises in a proceeding about whether an exercise of a power was authorised by a special warrant; and
- (b) the warrant is not produced in evidence;

the onus of proof is on the person relying on the lawfulness of the exercise of the power to prove a special warrant authorised the exercise of the power.

### **95 Warrants—procedure before entry**

(1) This section applies if an investigator named in a warrant issued under this subdivision for a place is intending to enter the place under the warrant.

(2) Before entering the place, the investigator must do or make a reasonable attempt to do the following things—

- (a) identify himself or herself, and anyone else helping the investigator, to a person present at the place who is an occupier of the place by producing the investigator's identity card;
- (b) give the person a copy of the warrant or, if the entry is authorised by a facsimile warrant or warrant form mentioned in section 94(6), a copy of the facsimile warrant or warrant form;
- (c) tell the person the investigator is permitted by the warrant to enter the place;
- (d) give the person an opportunity to allow the investigator immediate entry to the place without using force.

(3) However, the investigator need not comply with subsection (2) if the investigator believes on reasonable grounds that immediate entry to the place is required to ensure the effective execution of the warrant is not frustrated.

#### *Subdivision 4—General powers of investigators on entry to places*

### **96 General powers for places**

(1) An investigator who enters a place under subdivision 3 may exercise any of the following powers—

- (a) search any part of the place;

- (b) inspect, examine, photograph or film anything in the place;
- (c) take extracts from, and make copies of, any document in the place;
- (d) secure a thing, or require the occupier of the place to secure a thing, for a reasonable time, at the place to prevent its concealment, interference, loss or destruction;
- (e) access, electronically or in another way, a system used at the place;
- (f) take into the place any persons, equipment and materials the investigator reasonably requires for exercising a power under this division or for performing a function under a tax law;
- (g) require a person in the place to give the investigator reasonable information or help and provide reasonable facilities to exercise the powers mentioned in paragraphs (a) to (f).

*Examples for paragraph (g)—*

1. Giving information about how to access electronic systems at the place.
2. Provision of a photocopier for copying a document.

(2) If an investigator secures a thing, a person must not tamper, or attempt to tamper, with the thing, or something restricting access to the thing, without the investigator's approval.

Maximum penalty—100 penalty units.

(3) When making a requirement mentioned in subsection (1)(g), the investigator must warn the person it is an offence to fail to comply with the requirement, unless the person has a reasonable excuse.

(4) The person must not fail, without reasonable excuse, to comply with the requirement.

Maximum penalty for subsection (4)—100 penalty units.

### ***Subdivision 5—Provisions about seizing and retaining things***

## **97 Power to seize and retain things**

- (1) This section applies if—

- (a) under section 87(b) or 88(1)(b), a document is given to the commissioner or an investigator; or
- (b) under subdivision 3, an investigator enters a place.

(2) The commissioner or investigator may retain the document or the investigator may seize and retain a thing—

- (a) with the consent of the person who gave the document, or the owner, or person who appears to be in possession or control, of the thing; or
- (b) to inspect or copy the document or thing if the commissioner or the investigator reasonably believes it is not reasonably practicable to inspect or copy the document or thing when or where it is given or seized; or
- (c) if the commissioner or investigator reasonably believes—
  - (i) the document or thing is evidence of a contravention of a tax law; or
  - (ii) it is necessary to prevent the document or thing being concealed, interfered with, lost or destroyed; or
- (d) if the commissioner or investigator reasonably believes it is necessary to produce a written document in the English language stating the information or content of the document or thing.

(3) Nothing in this section affects a lien or other security over the retained document or thing (the “**retained thing**”).

## **98 Receipt for retained thing**

(1) The commissioner or investigator must, as soon as practicable, give a receipt for the retained thing to the person from whom it was received or seized.

(2) However, if, under section 97(2), the retained thing is seized by the investigator and for any reason it is not practicable for the investigator to comply with subsection (1), the investigator must leave the receipt at the place of seizure in a conspicuous position and in a reasonably secure way.

(3) A receipt must—

- (a) state the date the thing is given to, or seized by, the commissioner or investigator; and
- (b) describe generally the thing given or seized and its condition.

(4) This section does not apply to a retained thing if it is impracticable or would be unreasonable to give the receipt because of the thing's nature, condition or value.

## **99 Return of retained thing**

(1) The commissioner must ensure the retained thing is returned to its owner—

- (a) at the end of 6 months after the date mentioned in section 98(3)(a); or
- (b) if a proceeding under a tax law involving the thing is started within the 6 months—at the end of the proceeding and any appeal from the proceeding.

(2) However, the commissioner may retain a document for which tax is payable under a tax law until the tax is paid in full.

## **100 Access to retained thing**

(1) Until the retained thing is forfeited or returned, the commissioner must allow the owner of the retained thing, or a person who would be entitled to inspect it if it were not in the commissioner's possession, at any reasonable time to inspect it and, if it is a document, to copy it.

(2) Subsection (1) does not apply if it is impracticable or would be unreasonable to allow the inspection or copying.

## **101 Forfeiture of retained thing**

(1) A retained thing is forfeited to the State if the commissioner—

- (a) can not find its owner, after making reasonable inquiries; or
- (b) can not return it to its owner, after making reasonable efforts.

(2) In applying subsection (1)—

- (a) subsection (1)(a) does not require the commissioner to make inquiries if it would be unreasonable to make inquiries to find the owner; and
- (b) subsection (1)(b) does not require the commissioner to make efforts if it would be unreasonable to make efforts to return the thing to its owner.

*Example for paragraph (b)—*

The owner of the thing has migrated to a foreign country.

(3) Regard must be had to a thing's nature, condition and value in deciding—

- (a) whether it is reasonable to make inquiries or efforts; and
- (b) if making inquiries or efforts—what inquiries or efforts, including the period over which they are made, are reasonable.

### **102 Dealing with forfeited thing**

(1) On the forfeiture of a retained thing to the State, it becomes the State's property and may be dealt with by the commissioner as the commissioner considers appropriate.

(2) Without limiting subsection (1), the commissioner may destroy or dispose of the thing.

### ***Subdivision 6—Miscellaneous provisions***

### **103 Investigators may use help and force in exercise of powers**

(1) An investigator may exercise a power under this division with the help that is reasonable in the circumstances.

(2) Without limiting subsection (1), a person engaged by the commissioner may help the investigator exercise powers under this division.

*Examples of persons who may help an investigator—*

- 1. Locksmith.
- 2. Computer technician.

(3) Also, an investigator may exercise a power under this division using the force that is reasonable in the circumstances.

### **104 Access to public records without fee**

The commissioner or an investigator is not required to pay any fee for inspecting or taking copies of a record that ordinarily is open to inspection by members of the public.

## 105 Notice of damage

(1) This section applies if—

- (a) an investigator damages property when exercising or purporting to exercise a power under this division; or
- (b) a person (the “**other person**”) acting under the direction of an investigator damages property.

(2) The investigator must promptly give written notice of particulars of the damage to the person who appears to the investigator to be the owner of the property.

(3) If the investigator believes the damage was caused by a latent defect in the property or circumstances beyond the control of the investigator or other person, the investigator may state it in the notice.

(4) If, for any reason, it is impracticable to give the notice to the person mentioned in subsection (2), the investigator must leave the notice in a conspicuous position and in a reasonably secure way where the damage happened.

(5) This section does not apply to damage the investigator reasonably believes is trivial.

(6) In this section—

“**owner**”, of property, includes the person in possession or control of it.

## 106 Compensation

(1) A person may claim from the commissioner the cost of repairing or replacing property damaged because of the exercise or purported exercise of a power under this division.

(2) The cost may be claimed and ordered to be paid in a proceeding—

- (a) brought in a court with jurisdiction for the recovery of the amount claimed; or
- (b) for an offence against this Act brought against the person claiming the amount.

(3) A court may order an amount be paid only if it is satisfied it is just to make the order in the circumstances of the particular case.

(4) A regulation may prescribe matters that may, or must, be taken into account by the court when considering whether it is just to make the order.

***Division 3—Investigations for recognised laws*****107 Commissioner may make reciprocal investigation arrangement**

(1) The commissioner may make an arrangement with a corresponding commissioner for a recognised law to conduct an investigation under this part into any matter connected with the administration or enforcement of the recognised law.

(2) The commissioner may make the arrangement only on the written application of the corresponding commissioner.

(3) The application must state the reasons for the investigation.

(4) The arrangement must—

- (a) be in writing; and
- (b) state the conditions applying to the conduct of the investigation and the application of this part to it; and
- (c) state whether the investigation is to be conducted by an investigator, reciprocal investigator or an investigator and reciprocal investigator; and
- (d) if the investigation is to be conducted by a reciprocal investigator—identify the reciprocal investigator.

**108 Conduct of particular reciprocal investigations subject to commissioner**

If a reciprocal investigation is to be conducted by a reciprocal investigator—

- (a) the investigation is subject to the supervision and direction of the commissioner; and
- (b) the reciprocal investigator must report to the commissioner on the investigation—
  - (i) when required by the commissioner during the investigation; and
  - (ii) at the end of the investigation.

**109 Identity certificates for reciprocal investigators**

If a reciprocal investigation is to be conducted by a reciprocal investigator, the commissioner must issue to the investigator a certificate stating the investigator is a reciprocal investigator authorised to exercise powers under this part for conducting the investigation.

**110 Application of Act to reciprocal investigations**

(1) This section prescribes changes for the application of this Act, other than this division, for conducting a reciprocal investigation.

(2) For a reciprocal investigator conducting a reciprocal investigation—

- (a) a reference to an investigator is taken to be a reference to the reciprocal investigator; and
- (b) a reference to an investigator's identity card is taken to be a reference to the identity card issued under the relevant recognised law identifying the investigator as a reciprocal investigator, and includes the identification certificate issued to the investigator by the commissioner.

(3) However, subsection (2)(a) does not apply to sections 80 to 82, 84 to 86 and 150.<sup>12</sup>

(4) A reference to a tax law, or a tax law liability, is taken to be a reference to the relevant recognised law or a liability under the relevant recognised law.

**PART 8—CONFIDENTIALITY****111 Disclosure of confidential information**

(1) An official must not disclose confidential information acquired by the official in the official's capacity to anyone else other than under this part.

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12 Sections 80 (Appointment), 81 (Appointment conditions and limit on powers), 82 (Issue of identity card), 84 (When investigator ceases to hold office), 85 (Resignation), 86 (Return of identity card) and 150 (Protection from liability)



Maximum penalty—100 penalty units.

(2) The commissioner may disclose personal confidential information—

- (a) to the person to whom the information relates or, if either of the following apply, to someone else—
  - (i) with the consent, express or implied, of the person to whom the information relates;
  - (ii) the commissioner reasonably believes is acting for the person to whom the information relates; or
- (b) if the disclosure is expressly permitted or required under another Act; or
- (c) to the extent necessary to perform the commissioner's functions under or in relation to the administration or enforcement of a tax law or another law administered by the commissioner; or
- (d) to a person for the administration or enforcement of a recognised law or another law about taxation revenue; or
- (e) in relation to any legal proceeding under a tax law; or
- (f) to the Treasurer or an officer of the department for—
  - (i) developing or monitoring taxation policies; or
  - (ii) administering the *Financial Administration and Audit Act 1977*, section 106; or
- (g) to the chief executive of a department or a local government for keeping a record relating to the ownership, sale or value of interests in property.

(3) Also, the commissioner may disclose other confidential information to any person, or for any purpose, the commissioner is satisfied is appropriate in the circumstances.

(4) The commissioner's decision not to disclose confidential information is a non-reviewable decision.

(5) This section does not create a right in any person to be given confidential information.

**112 Other obligations about disclosure and use of confidential information**

(1) If—

- (a) a person knowingly acquires confidential information without lawful authority; or
- (b) a person receives confidential information that the person knows, or ought reasonably to know, is confidential information;

the person must not disclose the information to anyone else unless the disclosure is permitted under this part.

Maximum penalty—100 penalty units.

*Example for subsection (1)(a)—*

A person employed by a contractor engaged by the State to clean the department's offices reads a document in the commissioner's office containing confidential information.

*Examples for subsection (1)(b)—*

1. A person, other than the addressee of a fax, receives the fax that states the information in it is confidential and is intended for the addressee's purposes only.
2. Under section 111 a reciprocal investigator is given confidential information for conducting a reciprocal investigation.

(2) If, under section 111, the commissioner discloses confidential information to a person, the person may disclose the information—

- (a) to the extent necessary to enable the person to exercise a power or perform a function conferred on the person under a law for the administration or enforcement of the law; or
- (b) for the purpose for which it was disclosed under the section; or
- (c) to anyone else or for any purpose if the information relates to the person.

**113 Refusal of disclosure of particular information**

(1) A person engaged in the administration or enforcement of a tax law can not be compelled to disclose to a court in a proceeding, or to a party to the proceeding—

- (a) confidential information; or
- (b) whether or not the person has received particular confidential information; or

(c) the identity of the source of particular confidential information.

(2) Subsection (1) does not apply to a proceeding for the administration or enforcement of a tax law.

## **PART 9—RECORD KEEPING**

### **114 Requirement to keep proper records**

(1) A person must keep the records necessary to enable the person's tax law liability to be ascertained.

Maximum penalty—100 penalty units.

(2) For subsection (1), the commissioner may, by written notice given to a person, require the person to keep a particular record stated in the notice for a stated revenue law.

(3) The person must not fail, without reasonable excuse, to comply with the notice.

Maximum penalty—100 penalty units.

(4) A person who, under a notice given under a revenue law, is required to keep a stated record must comply with the requirement.

Maximum penalty—100 penalty units.

### **115 Accessibility of records**

A person who is required under a tax law to keep a record must keep the record in a way that it is able to be readily produced to the commissioner if required by the commissioner.

Maximum penalty—100 penalty units.

### **116 Form of records**

A person who is required under a tax law to keep a record must keep the record—

(a) in the form of a document written in English with information about amounts expressed in Australian currency; or

- (b) in a form that can be readily converted or translated into the form mentioned in paragraph (a).

Maximum penalty—100 penalty units.

### **117 Commissioner may require translation or conversion of document or information**

(1) The commissioner may, by written notice given to a person, require the person to translate or convert into a written document in the English language and Australian currency any document or information the commissioner reasonably believes is relevant to the administration or enforcement of a tax law.

(2) The notice must state the reasonable time for compliance with the requirement.

(3) The person must not fail, without reasonable excuse, to comply with the requirement.

Maximum penalty—100 penalty units.

(4) If the person does not comply with the requirement, the commissioner may have the document or information translated or converted.

(5) The costs and expenses incurred under subsection (4) are a debt payable to the State by the person and may be recovered by the commissioner by action in a court of competent jurisdiction.

### **118 Period for keeping records**

A person who is required under a tax law to keep a record must keep it until the later of the following—

- (a) 5 years has elapsed after it was made or obtained;
- (b) 5 years has elapsed after the completion of the transaction or matter to which it relates;
- (c) if the person's liability under a revenue law depends on the continued satisfaction of conditions for a period stated in the revenue law after the making of an assessment to which the record relates—2 years has elapsed after the end of the period.

Maximum penalty—100 penalty units.

**119 Wilfully damaging records**

(1) A person must not wilfully damage a record that is required to be kept under a tax law.

Maximum penalty—100 penalty units.

(2) In this section—

“**damage**” includes destroy.

**PART 10—ENFORCEMENT AND LEGAL PROCEEDINGS***Division 1—Offences and related provisions***120 Failure to give notice**

If, under a tax law, a person is required to give to the commissioner a notice about a matter, the person must not fail, without reasonable excuse, to comply with the requirement.

Maximum penalty—100 penalty units.

**121 Failure to comply with information or lodgment requirement**

A person must not fail, without reasonable excuse, to comply with an information or lodgment requirement.

Maximum penalty—100 penalty units.

**122 False or misleading documents**

(1) A person must not give to the commissioner or an investigator a document containing information that the person knows, or should reasonably know, is false or misleading in a material particular.

Maximum penalty—100 penalty units.

(2) Subsection (1) does not apply to a person who, when giving the document—

- (a) tells the commissioner or investigator of the extent to which the document is false or misleading; and
- (b) to the extent the person has, or can reasonably get, the correct information—gives the correct information to the commissioner or investigator.

(3) It is enough for a complaint against a person for an offence against subsection (1) to state the document was, without specifying which, ‘false or misleading’.

### **123 False or misleading information**

(1) A person must not state anything to the commissioner or an investigator that the person knows is false or misleading in a material particular.

Maximum penalty—100 penalty units.

(2) It is enough for a complaint for an offence against subsection (1), to state the statement made was ‘false or misleading’ to the person’s knowledge, without specifying which.

### **124 Self-incrimination not a reasonable excuse for failure to comply with particular information or lodgment requirement**

(1) This section applies if, under a tax law, a person is required by written notice given to the person to—

- (a) give information or a document to the commissioner or an investigator; or
- (b) lodge a document.

(2) It is not a reasonable excuse for the person to fail to comply with the requirement because complying with the requirement might tend to incriminate the person.

(3) However, evidence of, or evidence directly or indirectly derived from, information or a document given or lodged in compliance with the requirement, by the person that might tend to incriminate the person is not admissible in evidence against the person in a criminal proceeding, other than a proceeding in which the falsity or misleading nature of the information or document is relevant.

**125 Use in legal proceedings of document or information obtained under a recognised law**

(1) This section applies if, under a recognised law—

- (a) a person is required to give information or a document in relation to a matter under a tax law; and
- (b) the information or document given in compliance with the requirement might tend to incriminate the person.

(2) Evidence of, or evidence directly or indirectly derived from, the information or document that might tend to incriminate the person is not admissible in evidence against the person in a criminal proceeding, other than a proceeding in which the falsity or misleading nature of the information or document is relevant.

**126 Obstruction of person exercising power under tax law**

A person must not, without reasonable excuse, obstruct—

- (a) the commissioner or an investigator exercising a power under a tax law; or
- (b) a person properly helping the commissioner or an investigator exercising a power under a tax law.

Maximum penalty—100 penalty units.

**127 Impersonation of investigator**

A person must not pretend to be an investigator.

Maximum penalty—40 penalty units.

***Division 2—Evidence*****128 Application of div 2**

This division applies to a proceeding under or in relation to a tax law.

**129 Commissioner's office and signature**

(1) Judicial notice must be taken of the name and signature of a person who is or was the commissioner.

(2) A document is taken to be signed by the commissioner if it bears the written, printed or stamped signature or name of the commissioner instead of the commissioner's signature.

(3) Subsection (2) does not apply if the name of the commissioner was written, printed or stamped on the document without the commissioner's authority.

(4) A document bearing the written, printed or stamped name of the commissioner is presumed to have been made with the commissioner's authority unless the contrary is proved.

**130 Statement in complaint**

A statement made by or for the commissioner in a complaint starting a proceeding is evidence of the matter stated.

**131 Evidentiary certificates**

A certificate purporting to be signed by the commissioner stating any of the following matters is evidence of the matter—

- (a) on a stated date—
  - (i) a stated person was liable to pay, or paid, a stated amount; or
  - (ii) a stated notice was published in a stated way; or
  - (iii) a stated person made, gave or executed a stated document; or
  - (iv) an assessment was made and the details of the assessment; or
  - (v) a stated document was given to a stated person in a stated way; or
  - (vi) a stated document or information was not received by a stated person; or
  - (vii) a stated person had or had not done a stated thing required to be done under a tax law; or



- (viii) a stated person was or was not registered or approved under a tax law; or
- (ix) a stated person was an investigator;
- (b) a stated person is authorised to conduct a stated proceeding for the commissioner;
- (c) a stated document is a copy of, or part of, another document.

### **132 Evidentiary provisions for assessments**

(1) Production of a document signed by the commissioner purporting to be a copy of an assessment notice—

- (a) is conclusive evidence of the proper making of the assessment; and
- (b) for—
  - (i) a proceeding on an appeal against a decision on an objection—is evidence that the amount and all particulars of the assessment are correct; or
  - (ii) another proceeding—is conclusive evidence that the amount and all particulars of the assessment are correct.

(2) The validity of an assessment is not affected merely because a provision of a tax law has not been complied with.

### **133 Production of copies of documents**

A copy of a document made or issued by the commissioner or in the commissioner's possession—

- (a) is admissible in the same way as the original document; and
- (b) has the same evidentiary value as the original document.

## ***Division 3—Legal proceedings***

### **134 Conducting proceeding for commissioner**

(1) The commissioner may, by signed writing, authorise a person to conduct—

- (a) a proceeding in the commissioner's name for—
    - (i) the recovery of tax or another amount payable under a tax law; or
    - (ii) an offence against a tax law; or
  - (b) another proceeding under a tax law to which the commissioner is a party.
- (2) Without limiting subsection (1), the person—
- (a) may appear for the commissioner before any court or tribunal in which the proceeding is conducted; and
  - (b) represents the commissioner in the proceeding; and
  - (c) is entitled to give evidence in the proceeding.

### **135 Summary proceedings for offences**

A proceeding for an offence against a tax law must be taken in a summary way under the *Justices Act 1886*.

### **136 When proceeding must start**

A proceeding for an offence against a tax law must start within 5 years after the commission of the offence.

### **137 Court may order compliance or payment**

(1) If a person is convicted of an offence against a provision of a tax law, the court may order the person to comply with the provision.

(2) Subsection (1) applies even if the time for complying with the provision has passed.

(3) If a court makes an order under subsection (1), the order must state a place where and a time or period by or within which the order is to be complied with.

(4) The person must comply with the order.

Maximum penalty—200 penalty units.

(5) Also, if a person is convicted of an offence against a provision of a tax law, the court may order the person pay the commissioner the amounts

payable by the person under the tax law that are outstanding on the conviction.

(6) In addition, if the court is satisfied the purpose of the act or omission constituting the offence was to avoid a tax law liability, the court may order the person pay twice the amount of the liability.

(7) This section does not limit the court's powers under the *Penalties and Sentences Act 1992* or any other law.

### **138 Second or subsequent offence**

(1) This section applies if—

- (a) a person is convicted of an offence against a provision of a tax law; and
- (b) within 5 years after the conviction, the person is convicted of a further offence against the provision.

(2) The maximum penalty for the further offence is twice the maximum penalty fixed in the tax law for the offence.

### **139 Responsibility for acts or omissions of representative**

(1) This section applies in a proceeding for an offence against a tax law.

(2) If it is relevant to prove a person's state of mind about a particular act or omission, it is enough to show—

- (a) the act was done or omitted to be done by a representative of the person within the scope of the representative's actual or apparent authority; and
- (b) the representative had the state of mind.

(3) An act done or omitted to be done for a person by a representative of the person within the scope of the representative's actual or apparent authority is taken to have been done or omitted to be done also by the person, unless the person proves the person could not, by the exercise of reasonable diligence, have prevented the act or omission.

(4) In this section—

**“representative”** means—

- (a) of a corporation—an executive officer, employee or agent of the corporation; or

- (b) of a partnership—a partner, employee or agent of the partnership; or
- (c) of an unincorporated body—a member of the body, or an employee or agent of the body; or
- (d) of an individual—an employee or agent of the individual.

“**state of mind**” of a person includes—

- (a) the person’s knowledge, intention, opinion, belief or purpose; and
- (b) the person’s reasons for the intention, opinion, belief or purpose.

#### **140 Executive officers must ensure corporation complies with tax laws**

(1) The executive officers of a corporation must ensure the corporation complies with the tax laws.

(2) If a corporation commits an offence against a provision of a tax law, each of the corporation’s executive officers also commits an offence, namely, the offence of failing to ensure that the corporation complies with the provision.

Maximum penalty—the penalty for the contravention of the provision by an individual.

(3) Evidence that the corporation has been convicted of an offence against a provision of a tax law is evidence that each of the executive officers committed the offence of failing to ensure that the corporation complies with the provision.

(4) However, it is a defence for an executive officer to prove—

- (a) if the officer was in a position to influence the conduct of the corporation in relation to the offence—the officer exercised reasonable diligence to ensure the corporation complied with the provision; or
- (b) the officer was not in a position to influence the conduct of the corporation in relation to the offence.

**141 Treatment of partnerships and unincorporated bodies**

(1) Subject to this section, the tax laws apply to a partnership or unincorporated body as if the partnership or unincorporated body were a person.

(2) An obligation or liability that, apart from this subsection, would be imposed by a tax law on a person that is a partnership or unincorporated body, is imposed on each partner or management member of the body, but may be discharged by any of the partners or management members.

(3) An amount that, apart from this subsection, would be payable under a tax law by a person that is a partnership or unincorporated body is jointly and severally payable by the partners or management members of the body.

(4) If, because of the operation of subsection (1), an offence against a provision of a tax law is taken to have been committed by a partnership or unincorporated body, the offence is taken to have been committed by each of the partners or management members of the body.

(5) However, it is a defence for a partner or management member to prove—

- (a) if the partner or management member was in a position to influence the conduct of the partnership or body in relation to the offence—the partner or management member exercised reasonable diligence to ensure the partnership or body complied with the provision; or
- (b) the partner or management member was not in a position to influence the conduct of the partnership or body in relation to the offence.

**PART 11—GIVING AND LODGING DOCUMENTS***Division 1—Preliminary***142 Application of pt 11**

This part applies if a tax law requires or permits a document to be given to a person, whether the expression ‘deliver’, ‘give’, ‘lodge’, ‘notify’, ‘send’ or ‘serve’ or another expression having a similar meaning is used.

***Division 2—Documents given to the commissioner*****143 Ways of giving document to commissioner**

A document is given to the commissioner only if—

- (a) it is left at the commissioner's office with the commissioner or a public service employee engaged in the administration of the tax laws; or
- (b) it is sent by post or facsimile to the commissioner at the commissioner's office; or
- (c) it is given to the commissioner in another way prescribed under a regulation.

**144 When document given to commissioner**

(1) A document is taken to be given to the commissioner—

- (a) if it is given to the commissioner in the way mentioned in section 143(a)—when it is actually received by the commissioner or employee with whom it is left; or
- (b) if it is sent by fax—the date the fax is sent; or
- (c) if it is given to the commissioner in the way mentioned in section 143(c)—at the time prescribed under a regulation.<sup>13</sup>

(2) However, if the document is given to the commissioner after the hours of business on a day when the office of the commissioner is open to the public, the document is taken to be given to the commissioner on the following business day.

**145 When lodgment requirement complied with**

A lodgment requirement is complied with only if—

- (a) all documents required to be lodged or given under the requirement have been lodged or given; and

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<sup>13</sup> For time of giving document by post, see *Acts Interpretation Act 1954*, section 39A(1)(b).

- (b) if, under the requirement, a document required to be lodged or given is an approved form—the form contains enough information for the purpose for which it is lodged or given.<sup>14</sup>

### *Division 3—Documents given by the commissioner*

#### **146 Giving document to agents of taxpayers, members of partnerships and unincorporated bodies**

(1) A document is taken to be given by the commissioner to a taxpayer if it is given to an agent of the taxpayer with apparent authority to be given the document.

(2) A document to be given by the commissioner to a partnership is taken to have been given to all members of the partnership if it is given to any member of the partnership.

(3) A document to be given by the commissioner to an unincorporated body is taken to have been given to all members of the body if it is given to any member of the committee of management of the body.

#### **147 Giving document if more than 1 taxpayer liable**

(1) A document is taken to be given to all taxpayers who are liable to pay tax for an instrument, transaction or matter, if it is given to 1 of the taxpayers who is liable to pay the tax.

(2) However, a regulation may declare that subsection (1) does not apply to a taxpayer in stated circumstances.

(3) A regulation may be made only if—

- (a) under a tax law, more than 1 taxpayer is liable to pay tax for an instrument, transaction or matter; and
- (b) in particular circumstances, it is not reasonable or practicable for the document to be taken to be given to a taxpayer.

(4) Subsections (2) and (3) do not prevent the commissioner from giving the document to the taxpayer to whom the regulation applies.

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14 Also, see the *Acts Interpretation Act 1954*, section 49(2) (Forms).

**148 Ways document given by commissioner**

A document to be given under a tax law to a person by the commissioner is properly given if it is—

- (a) given as provided under the *Acts Interpretation Act 1954*, part 10; or
- (b) left for collection by the person in a collection box kept at the commissioner's office for the person; or
- (c) addressed to the person and left in the person's exchange box at a document exchange; or
- (d) sent by email to the person's email address as given to the commissioner by the person; or
- (e) given in another way prescribed under a regulation.

**149 When document given by commissioner**

(1) A document is taken to be given by the commissioner to a person—

- (a) if it is sent by fax—the date the fax is sent; or
- (b) if it is left in a collection or exchange box—the date it is left in the box; or
- (c) if it is sent by email—the date the email is sent; or
- (d) if it is given in a way prescribed under a regulation—the date prescribed under the regulation.<sup>15</sup>

(2) However, if under subsection (1), the document is given after 5 p.m. on a particular day, the document is taken to be given to the person on the following business day.

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<sup>15</sup> For time of giving document by post, see *Acts Interpretation Act 1954*, section 39A(1)(b).



## **PART 12—MISCELLANEOUS PROVISIONS**

### **150 Protection from liability**

(1) An official is not civilly liable for an act done, or omission made, honestly and without negligence under a tax law.

(2) If subsection (1) prevents a civil liability attaching to an official, the liability attaches instead to the State.

(3) In this section—

“official” means—

- (a) the commissioner; or
- (b) an investigator; or
- (c) a public service employee to whom the commissioner has delegated a power under a tax law; or
- (d) a person acting under the direction of the commissioner or an investigator.

### **151 Extension of date for complying with information or lodgment requirement**

If, in particular circumstances, the commissioner considers it would be unreasonable to require compliance with an information or lodgment requirement by the date for complying with the requirement, the commissioner may extend the date for compliance.

### **152 Rounding down**

The commissioner may round down an amount required to be paid under a tax law to the nearest 5c.

### **153 Approved forms**

(1) The commissioner may approve forms for use under this Act.

(2) A form may be approved for use under this Act that is combined with, or is to be used together with, an approved form under another Act.

**154 Regulation-making power**

(1) The Governor in Council may make regulations under this Act.

(2) A regulation may provide for a maximum penalty of not more than 20 penalty units for a contravention of a regulation.

**PART 13—REPEAL, SAVINGS AND TRANSITIONAL PROVISIONS*****Division 1—Repeal of Revenue Laws (Reciprocal Powers) Act 1988*****155 Act repealed**

The *Revenue Laws (Reciprocal Powers) Act 1988* is repealed.

***Division 2—Savings and transitional provisions******Subdivision 1—Preliminary*****156 Definitions for div 2**

In this division—

**“commencement day”** means the day section 155 commences.

**“repealed Stamp Act”** means the repealed *Stamp Act 1894* as in force immediately before its repeal.

***Subdivision 2—Application of this Act and repealed Stamp Act*****157 Repealed Stamp Act is revenue law for particular provisions**

(1) Despite its repeal, the repealed Stamp Act is taken to be a revenue law under section 6.<sup>16</sup>

(2) However, the following provisions do not apply to the repealed Stamp Act as a revenue law—

- part 3 (Assessments of tax)
- part 4 (Payments and refunds of tax and other amounts), other than sections 29, 34 and 40 and part 4, divisions 4 and 5<sup>17</sup>
- part 5 (Interest and penalty tax)
- part 6 (Objections and appeals against assessments), other than sections 75 and 76<sup>18</sup> to the extent they relate to the other provisions of this Act for the repealed Stamp Act
- part 9 (Record keeping), other than sections 117 and 119<sup>19</sup>
- part 10 (Enforcement and legal proceedings), other than sections 122, 123, 126 and 134 to 138 and part 10, division 2.<sup>20</sup>

(3) For applying a provision of this Act to the repealed Stamp Act, the provision applies with all necessary changes to ensure the repealed Stamp Act can be read together with this Act as if they together formed a single Act.

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16 Also, see the *Duties Act 2001*, section 512.

17 Sections 29 (Methods of payment), 34 (Payment arrangements) and 40 (When payments are received) and part 4, divisions 4 (Power to waive or write off liability) and 5 (Recovery of tax and other amounts)

18 Sections 75 (What is a “non-reviewable decision”) and 76 (Effect of non-reviewable decisions)

19 Sections 117 (Commissioner may require translation or conversion of document or information) and 119 (Wilfully damaging records)

20 Sections 122 (False or misleading documents), 123 (False or misleading information), 126 (Obstruction of person exercising power under tax law), 134 (Conducting proceeding for commissioner), 135 (Summary proceedings for offences), 136 (When proceeding must start), 137 (Court may order compliance or payment), 138 (Second or subsequent offence) and part 10, division 2 (Evidence)

*Example for subsection (3)—*

A reference to a reassessment is taken to be a reference to an assessment amended under the repealed Stamp Act.<sup>21</sup>

(4) If, under this section, a provision of this Act relating to a particular matter applies to the repealed Stamp Act and the repealed Stamp Act contains provision about the same matter, the provision in the repealed Stamp Act does not apply to the matter.

(5) This section has effect subject to sections 159 and 160.

### **158 Confidential information**

To remove any doubt, it is declared that part 8 applies to—

- (a) confidential information acquired by an official performing functions under or in relation to the administration or enforcement of the repealed Stamp Act; and
- (b) confidential information acquired or received by another person before the commencement day.

### **159 Application of s 48 to particular administrators**

Section 48<sup>22</sup> applies to an administrator appointed before the commencement day as if the required date under the section were the later of the following—

- (a) 14 days after the commencement day; or
- (b) the required date under the section.

### **160 Second or subsequent offences**

(1) For applying section 138 to the repealed Stamp Act, the reference in subsection (1)(b) of that section to a further offence is a reference to an offence committed on or after the commencement day.

(2) If section 138(1)(a) applies for an offence against a provision of the repealed Stamp Act, the reference in subsection (1)(b) of that section to a further offence against the provision includes a reference to an offence

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21 See the repealed Stamp Act, section 80 (Amendment of assessments).

22 Section 48 (Particular administrators to notify commissioner of appointment)

against a provision of a tax law that corresponds to the provision of the repealed Stamp Act.

### *Subdivision 3—Miscellaneous provisions*

#### **161 Office of commissioner**

The person who, immediately before the commencement day, held the office of commissioner of stamp duties under the repealed Stamp Act, becomes the commissioner on that day.

#### **162 Reference in Act or document to particular officers**

In an Act or document—

- (a) a reference to the commissioner of stamp duties under the repealed Stamp Act is, if the context permits, taken to be a reference to the commissioner; and
- (b) a reference to an investigating officer under the repealed Stamp Act is, if the context permits, taken to be a reference to an investigator.

#### **163 Transitional regulation-making power**

(1) A regulation (a “**transitional regulation**”) may make provision about a matter for which—

- (a) it is necessary to make provision to allow or facilitate the doing of anything to achieve the transition from the operation of the repealed *Stamp Act 1894* to the operation of this Act and the *Duties Act 2001*; and
- (b) this Act does not make provision or sufficient provision.

(2) A transitional regulation may have retrospective operation to a day not earlier than the commencement day.

(3) A transitional regulation must declare it is a transitional regulation.

(4) This section and any transitional regulation expire 5 years after the commencement day.

**SCHEDULE 2****DICTIONARY**

section 5

**“administrator”**, for a taxpayer’s property, means a person who is—

- (a) a receiver or receiver and manager of the whole or part of the taxpayer’s property; or
- (b) for a taxpayer that is a corporation—a liquidator; or
- (c) for a taxpayer who is an individual—
  - (i) the taxpayer’s trustee in bankruptcy; or
  - (ii) the taxpayer’s personal representative.

**“appropriately qualified”**, for a public service employee to whom a power under a tax law may be delegated, includes having the qualifications, experience or standing appropriate to exercise the power.

*Example of ‘standing’—*

An employee’s classification level in the public service.

**“approved form”** means—

- (a) a form approved under section 153; or
- (b) a form approved by the commissioner under a revenue law.

**“assessed interest”** see section 54(3).

**“assessment”** means a determination, under part 3, of a taxpayer’s liability for tax for which an assessment notice is given, and includes a reassessment.

**“assessment liability”** means all amounts payable under an assessment, and includes amounts that have not been assessed but are payable in relation to the assessment.

**“assessment notice”** see section 26(1).

**“commissioner”** means the Commissioner of State Revenue appointed under section 7(2).

## SCHEDULE 2 (continued)

“**compromise assessment**” see section 12(2).

“**confidential information**” means information disclosed or obtained under or in relation to a tax law.

“**conviction**” includes a finding of guilt, and the acceptance of a plea of guilty, by a court, whether or not a conviction is recorded.

“**corresponding commissioner**”, for a recognised law, means a person declared under section 78(3) to be the corresponding commissioner for the recognised law.

“**default assessment**” see section 13.

“**due date**”, for an assessment, means the date by which tax under the assessment must be paid.

“**executive officer**”, of a corporation, means a person who is concerned in, or takes part in, the management of the corporation, regardless of the person’s designation and whether or not the person is a director of the corporation.

“**false or misleading**” includes false or misleading because of the omission of a statement.

“**garnishee**” see section 50(1)(b).

“**garnishee amount**” see section 50(3).

“**garnishee notice**” see section 50(3).

“**information requirement**” means a requirement under a tax law to give information to the commissioner or an investigator.

“**investigator**” means a person appointed as an investigator under section 80.

“**late payment interest**” means the part of unpaid tax interest that is not assessed interest.

“**limitation period**”, for a reassessment, means 5 years after the assessment notice for the original assessment was given.

“**lodge**” means lodge with the commissioner.

“**lodgment requirement**” means a requirement under a tax law to—

- (a) lodge a document; or
- (b) give a document to the commissioner or an investigator.

## SCHEDULE 2 (continued)

**“management member”**, of an unincorporated body, means—

- (a) if the body has a management committee—each member of the management committee; or
- (b) otherwise—each member who is concerned with, or takes part in, the body’s management, whatever name is given to the member’s position in the body.

**“non-reviewable decision”** see section 75(1).

**“objection”**, for an assessment, means an objection under part 6.

**“obstruct”** includes hinder, resist and attempt to obstruct.

**“occupier”**, of a place, includes the person apparently in charge of the place.

**“official”** means a person who is, or has been, a public service employee or other person, performing functions under or in relation to the administration or enforcement of a tax law.

**“original assessment”** means the first assessment of a taxpayer’s liability for tax for an instrument, transaction or other matter.

**“owner”**, of a retained thing, includes a person who would be entitled to possession of the thing had it not been retained under section 97(2).

**“payment arrangement”** see section 34(2).

**“penalty tax”** see section 58(1).

**“personal confidential information”**, for a person, means confidential information that—

- (a) identifies, or is likely to identify, the person; or
- (b) discloses matters about the person’s affairs.

**“place”** includes the following—

- (a) land;
- (b) premises.

**“premises”** includes the following—

- (a) a building or structure, or part of a building or structure, of any kind;
- (b) an aircraft;



## SCHEDULE 2 (continued)

- (c) a boat;
- (d) a caravan;
- (e) a vehicle.

**“prescribed rate”**, for interest, means the rate prescribed under a regulation.

**“primary tax”** means a tax or duty imposed under a revenue law.

**“public place”** means a place the public is entitled to use or is open to, or used by, the public (whether or not on payment of an admission fee).

**“reasonably believes”** means believes on grounds that are reasonable in the circumstances.

**“reassessment”** means a determination, under part 3, of a variation of a taxpayer’s liability for tax for which an assessment notice is given.

**“reciprocal investigation”** means an investigation into a matter connected with the administration or enforcement of a recognised law that is conducted under a reciprocal investigation arrangement.

**“reciprocal investigation arrangement”** means an arrangement made under section 107 for an investigation into a matter connected with the administration or enforcement of a recognised law.

**“reciprocal investigator”** means the corresponding commissioner or other person engaged in the administration or enforcement of a recognised law.

**“recognised law”** means a law declared under section 78(1) to be a recognised law.

**“retained thing”** see section 97(3).

**“return”** means a form of return approved under a revenue law for a lodgment requirement.

**“revenue law”** means a law declared under section 6 to be a revenue law.

**“self assessment”** see section 14(a).

**“self assessor”** means a taxpayer or tax agent required or permitted under a revenue law to lodge a return.

**“senior executive”** means an officer who is employed under the *Public Service Act 1996* as a senior executive.

## SCHEDULE 2 (continued)

**“tax”** means primary tax, assessed interest or penalty tax.

**“tax agent”** means a person who, as agent for a taxpayer, is required or permitted under a revenue law to lodge a return.

*Example of tax agent—*

A self assessor registered under the *Duties Act 2001*, chapter 12, part 3.

**“tax law”** means a revenue law or this Act.

**“tax law liability”** means a liability under a tax law for tax or another amount, and for sections 34, 38, 40, 43 and 44, includes a liability to pay court ordered costs.<sup>23</sup>

**“taxpayer”** means a person who, under a tax law—

- (a) has or had a tax law liability; or
- (b) may have a tax law liability.

**“thing”** includes a document.

**“unpaid primary tax”** see section 54(1).

**“unpaid tax interest”** see section 54(1).

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<sup>23</sup> For provision about assessed costs, see the *Uniform Civil Procedure Rules 1999*, chapter 17.

## ENDNOTES

### 1 Index to endnotes

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### 2 Date to which amendments incorporated

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). However, no amendments have commenced operation on or before that day. Future amendments of the Taxation Administration Act 2001 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

### 3 Key

#### Key to abbreviations in list of legislation and annotations

Key	Explanation	Key	Explanation
AIA	= Acts Interpretation Act 1954	prev	= previous
amd	= amended	(prev)	= previously
amdt	= amendment	proc	= proclamation
ch	= chapter	prov	= provision
def	= definition	pt	= part
div	= division	pubd	= published
exp	= expires/expired	R[X]	= Reprint No.[X]
gaz	= gazette	RA	= Reprints Act 1992
hdg	= heading	reloc	= relocated
ins	= inserted	renum	= renumbered
lap	= lapsed	rep	= repealed
notfd	= notified	s	= section
o in c	= order in council	sch	= schedule
om	= omitted	sdiv	= subdivision
orig	= original	SIA	= Statutory Instruments Act 1992
p	= page	SIR	= Statutory Instruments Regulation 1992
para	= paragraph	SL	= subordinate legislation
prec	= preceding	sub	= substituted
pres	= present	unnum	= unnumbered

## **4 List of legislation**

### **Taxation Administration Act 2001 No. 72**

date of assent 13 November 2001

ss 1–2 commenced on date of assent

remaining provisions commenced 1 March 2002 (2002 SL No. 12)

## **5 List of annotations**

### **Transitional regulation-making power**

s 163 exp 1 March 2007 (see s 163(4))

### **PART 14—CONSEQUENTIAL AMENDMENTS**

pt 14 (s 164) om R1 (see RA s 40)

### **SCHEDULE 1—AMENDMENT OF ACTS**

om R1 (see RA s 40)