

**Authorised Version No. 058**  
**Taxation Administration Act 1997**  
**No. 40 of 1997**

Authorised Version incorporating amendments as at  
17 June 2015

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**Authorised Version No. 058**  
**Taxation Administration Act 1997**  
**No. 40 of 1997**

Authorised Version incorporating amendments as at  
17 June 2015

**The Parliament of Victoria enacts as follows:**

**PART 1—PRELIMINARY**

**1 Purpose**

The purpose of this Act is to make general provision for the administration and enforcement of taxation laws and the reciprocal enforcement of recognised laws.

S. 1  
amended by  
No. 83/2009  
s. 23.

**2 Commencement**

- (1) Part 1 comes into operation on the day on which this Act receives the Royal Assent.
- (2) Subject to subsection (3), the remaining provisions of this Act come into operation on a day or days to be proclaimed.
- (3) If a provision referred to in subsection (2) does not come into operation before 1 July 1998, it comes into operation on that day.

**3 Definitions**

- (1) In this Act—

*assessment* means an assessment made by the Commissioner under Part 3 of the tax liability of a person, and includes a reassessment, a compromise assessment and a deemed assessment;

S. 3  
amended by  
No. 83/2009  
s. 24(2) (ILA  
s. 39B(1)).

S. 3(1) def. of  
*assessment*  
amended by  
No. 28/2011  
s. 40(a).

*authorised officer* means the Commissioner or a person appointed as an authorised officer under section 70(2);

*business day* means a day other than a Saturday, a Sunday or a public holiday appointed under the **Public Holidays Act 1993**;

*Commissioner* means Commissioner of State Revenue referred to in section 62;

*compromise assessment* means an assessment made under section 12;

S. 3(1) def. of *contribution* inserted by No. 23/2010 s. 21(a).

*contribution* means a growth areas infrastructure contribution imposed under Part 9B of the **Planning and Environment Act 1987**;

S. 3(1) def. of *corresponding Commissioner* inserted by No. 83/2009 s. 24(1).

*corresponding Commissioner*, in relation to a recognised jurisdiction, means the person who is responsible for the general administration of the law that corresponds with this Act;

S. 3(1) def. of *deemed assessment* inserted by No. 28/2011 s. 40(b).

*deemed assessment* means a deemed assessment under section 12A;

*exercise a function* includes perform a duty;

S. 3(1) def. of *feasibility study* inserted by No. 86/2009 s. 4.

*feasibility study* means an examination and analysis conducted for the purpose of—

- (a) evaluating an existing tax, duty, levy or impost; or
- (b) developing and evaluating policies and proposals for a new or existing tax, duty, levy or impost;

*function* includes a power, an authority or a duty;



*investigation* means an investigation under  
Division 2 of Part 9;

*non-reviewable decision* has the meaning given  
by section 5;

*notification default* means—

- (a) a failure to lodge a notice under  
section 46K of the **Land Tax Act  
2005**; or
- (b) a failure to notify the Commissioner of  
an error or omission in accordance with  
section 104A of the **Land Tax Act  
2005**;

S. 3(1) def. of  
*notification  
default*  
inserted by  
No. 83/2009  
s. 30.

*on-line duty payment system* has the same  
meaning as in section 3(1) of the **Duties Act  
2000**;

S. 3(1) def. of  
*on-line duty  
payment  
system*  
inserted by  
No. 28/2011  
s. 40(b).

*person* includes an unincorporated association and  
a partnership;

*police officer* has the same meaning as in the  
**Victoria Police Act 2013**;

S. 3(1) def. of  
*police officer*  
inserted by  
No. 37/2014  
s. 10(Sch.  
item 165.1).

*premises* includes land, a vehicle, a vessel and an  
aircraft;

*reassessment* means reassessment of tax liability  
under section 9;

*recognised jurisdiction* means the  
Commonwealth, another State or a Territory;

S. 3(1) def. of  
*recognised  
jurisdiction*  
inserted by  
No. 83/2009  
s. 24(1).

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S. 3(1) def. of  
*recognised  
law*  
inserted by  
No. 83/2009  
s. 24(1).

***recognised law*** means a law administered by a corresponding Commissioner that is—

- (a) a law relating to the imposition of a tax, duty or levy; or
- (b) a law declared by the Governor in Council under subsection (2) to be a recognised law;

***record*** means—

- (a) a documentary record;
- (b) a record made by an electronic, electromagnetic, photographic or optical process;
- (c) any other kind of record;

***retention period***, in relation to a document or thing, means the period of 60 days after it was provided, produced or seized;

***return*** means a return, statement, certificate, application, report or other record that—

- (a) is required or authorised under a taxation law to be lodged by a person with the Commissioner or a specified person; and
- (b) is liable to tax or records matters in respect of which there is or may be a tax liability;

S. 3(1) def. of  
*tax*  
amended by  
Nos 74/2005  
s. 36(1),  
23/2010  
s. 21(b).

***tax*** means a tax, levy, contribution or duty under a taxation law, and includes—

- (a) interest and penalty tax under Part 5;
- (b) any other amount paid or payable by a taxpayer to the Commissioner under a taxation law;

***taxation law*** has the meaning given by section 4;

***tax default*** means a failure by a taxpayer to pay, in accordance with a taxation law, the whole or part of tax that the taxpayer is liable to pay;

***tax liability*** means a liability to pay tax;

***tax officer*** means—

- (a) an authorised officer;
- (b) any other person engaged (whether as an officer or employee or otherwise) in the administration or execution of a taxation law;

***taxpayer*** means a person who has been assessed as liable to pay an amount of tax, who has paid an amount as tax or who is liable or may be liable to pay tax;

***Tribunal*** means Victorian Civil and Administrative Tribunal established by the **Victorian Civil and Administrative Tribunal Act 1998**;

S. 3(1) def. of ***Tribunal*** substituted by No. 52/1998 s. 311(Sch. 1 item 89.1).

***trustee*** includes—

- (a) a person who is a trustee under an implied or constructive trust;
- (b) in relation to a deceased person, an executor of the will, or an administrator of the estate, of the deceased person;
- (c) a receiver or manager of the property of a company, or a liquidator of a company for the purpose of its winding up;
- (d) a receiver, guardian, committee or manager of the property of a person under a legal or other disability;
- (e) a person having possession, control or management of a business or property

S. 3(1) def. of ***trustee*** amended by No. 69/2011 s. 37(1).

of a person who is under a legal or other disability;

(f) any person acting in a fiduciary capacity;

S. 3(1) def. of *valuation authority* inserted by No. 69/2011 s. 37(2).

*valuation authority* has the same meaning as in section 2(1) of the **Valuation of Land Act 1960**.

S. 3(2) inserted by No. 83/2009 s. 24(2).

(2) The Governor in Council may, by Order published in the Government Gazette, declare a law of the Commonwealth, another State or a Territory to be a recognised law for the purposes of this Act.

S. 4 amended by No. 69/2011 s. 38 (ILA s. 39B(1)).

#### 4 Meaning of taxation laws

(1) The following are taxation laws for the purposes of this Act—

(a) this Act and regulations made under this Act;

(ab) **Congestion Levy Act 2005** and regulations made under that Act;

S. 4(ab) inserted by No. 74/2005 s. 36(2).

S. 4(b) repealed by No. 36/2010 s. 19(1).

\* \* \* \* \*

S. 4(ba) inserted by No. 79/2000 s. 285(Sch. 1 item 6.1).

(ba) **Duties Act 2000** and regulations made under that Act;

S. 4(c) repealed by No. 36/2010 s. 19(1).

\* \* \* \* \*

S. 4(ca) inserted by No. 88/2005 s. 108.

(ca) **Land Tax Act 2005** and regulations made under that Act;

- (cb) Part 9B of the **Planning and Environment Act 1987** and any regulations made under that Act for the purposes of that Part; S. 4(cb) inserted by No. 23/2010 s. 22.
- (d) **Payroll Tax Act 2007** and regulations made under that Act. S. 4(d) substituted by No. 26/2007 s. 104, amended by No. 83/2009 s. 25(a).
- \* \* \* \* \*
- (2) Part 6 of the **Livestock Disease Control Act 1994** and any regulations made under that Act for the purposes of that Part is a taxation law for the purposes of this Act in respect of the application of Chapter 10 of the **Duties Act 2000** and any regulations made under that Act for the purposes of that Chapter. S. 4(2) inserted by No. 69/2011 s. 38.

## 5 Meaning of non-reviewable in relation to certain decisions

If a provision of this Act provides that a decision is a non-reviewable decision no court or administrative review body, including the Tribunal, has jurisdiction or power to entertain any question as to the validity or correctness of the decision.

## 6 Act binds the Crown

- (1) This Act binds the Crown in right of Victoria and, so far as the legislative power of the Parliament permits, the Crown in all its other capacities.
- (2) This section does not affect the liability of the Crown to tax under another taxation law.

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(3) Nothing in this Act makes the Crown in any of its capacities liable to be prosecuted for an offence.

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**PART 2—RELATIONSHIP WITH OTHER TAXATION LAWS**

**7 Relationship with other taxation laws**

(1) This Act includes general provisions with respect to—

- (a) assessment and reassessment of tax liability;
- (b) obtaining refunds of tax;
- (c) imposition of interest and penalty tax;
- (d) approval of special tax return arrangements;
- (e) collection of tax;
- (ea) reciprocal enforcement of recognised laws;

S. 7(1)(ea)  
inserted by  
No. 83/2009  
s. 26.

- (f) record keeping obligations of taxpayers and general offences;
- (g) tax officers and their investigative powers and secrecy obligations;
- (h) objections, reviews and appeals;
- (ha) the conduct of feasibility studies;

S. 7(1)(ha)  
inserted by  
No. 86/2009  
s. 5.

- (i) miscellaneous matters such as service of documents, corporate criminal liability and evidence.

(2) The taxation laws, other than this Act and the regulations, include provisions with respect to—

- (a) the imposition of tax and its payment;
- (b) exceptions to and exemptions from liability to the tax;
- (c) entitlements to refunds.

### **PART 3—ASSESSMENT OF TAX LIABILITY**

#### **8 General power to make assessment**

- (1) The Commissioner may make an assessment of a tax liability of a taxpayer.
- (2) An assessment of a tax liability may consist of or include a determination that there is not a particular tax liability.

#### **9 Reassessment**

- (1) The Commissioner may make one or more reassessments of a tax liability of a taxpayer.
- (2) Nothing prevents the Commissioner—
  - (a) from making a reassessment of a tax liability of a taxpayer after an amount previously assessed as being payable by the taxpayer has been paid; or
  - (b) from making a reassessment of a tax liability under which the taxpayer is assessed as having liabilities that are additional to or greater than those under the previous assessment.
- (3) The Commissioner cannot make a reassessment of a tax liability more than 5 years after the initial assessment of the liability, unless—
  - (a) the reassessment is to adjust tax to give effect to a decision on an objection, review or appeal as to the initial assessment; or
  - (b) at the time the initial assessment or a reassessment was made, all the facts and circumstances affecting the tax liability under the relevant taxation law of the person in respect of whom the assessment or reassessment was made were not fully and truly disclosed to the Commissioner; or

S. 9(3)  
amended by  
No. 26/2007  
s. 105(a).

S. 9(3)(b)  
amended by  
No. 79/2000  
s. 285(Sch. 1  
item 6.2).



(c) the reassessment is authorised to be made more than 5 years after the initial assessment by another taxation law.

S. 9(3)(c)  
inserted by  
No. 79/2000  
s. 285(Sch. 1  
item 6.2),  
amended by  
No. 26/2007  
s. 105(a).

(4) The time limited by subsection (3) applies even if the initial assessment is withdrawn.

## **10 Instruments and returns to include all relevant information**

(1) A taxpayer and any tax agent of a taxpayer must ensure that there is included in an instrument that is liable to tax, or in a statement that is produced to the Commissioner together with the instrument prior to the payment of tax, all information necessary for a proper assessment of the tax liability of the taxpayer in respect of the instrument.

Penalty: 100 penalty units in the case of a body corporate;

20 penalty units in any other case.

(2) A taxpayer and any tax agent of a taxpayer must ensure that there is included in a return required to be lodged with the Commissioner under a taxation law, in addition to the information required under that taxation law, any further information necessary for a proper assessment of the tax liability of the taxpayer in respect of the return or the matters to which the return relates.

Penalty: 100 penalty units in the case of a body corporate;

20 penalty units in any other case.

- (3) A person is not guilty of an offence under this section if the court hearing the charge is satisfied—
- (a) that the person, being a taxpayer, reasonably relied on—
    - (i) another person who was liable or required with the taxpayer to pay the tax or lodge the return; or
    - (ii) a tax agent (whether engaged by the taxpayer or any such other person)—  
to ensure that the requirements of this section are satisfied; or
  - (b) that the person, being a tax agent, reasonably relied on information supplied by the taxpayer or by another person who was liable or required with the taxpayer to pay the tax or lodge the return.

S. 10(3A)  
inserted by  
No. 79/2000  
s. 285(Sch. 1  
item 6.3).

- (3A) The Commissioner may, if he or she thinks fit, permit any error in an instrument or statement to be corrected.

- (4) In this section—

**tax agent**, of a taxpayer, means a person engaged by the taxpayer for fee or reward (otherwise than as an employee) who prepares, or assists in the final preparation of, the instrument, statement or return on behalf of the taxpayer.

Note to s. 10  
inserted by  
No. 13/2013  
s. 46(1).

**Note**

Section 130B applies to an offence against subsection (1) or (2).

## **11 Information on which assessment is made**

- (1) The Commissioner may make an assessment on the information that the Commissioner has from any source at the time the assessment is made.
- (2) If the Commissioner has insufficient information to make an exact assessment of a tax liability, the Commissioner may make an assessment by way of estimate.

## **12 Compromise assessment**

- (1) If it is difficult or impracticable for the Commissioner to determine a person's tax liability under a taxation law without undue delay or expense because of the complexity or uncertainty of the case or for any other reason, the Commissioner may make an assessment in accordance with this section.
- (2) The Commissioner, with the agreement of the taxpayer, may assess liability in an amount specified in, or determined in accordance with, the agreement.
- (3) Despite section 9, the Commissioner cannot make a reassessment of a tax liability assessed in accordance with this section—
  - (a) except with the agreement of the taxpayer; or
  - (b) unless, in the opinion of the Commissioner—
    - (i) the assessment under this section was procured by fraud; or
    - (ii) there was a deliberate failure to disclose material information.
- (4) An assessment or reassessment made under this section with the agreement of a taxpayer is a non-reviewable decision.

- (5) This section does not limit the power of the Commissioner to make an assessment by way of estimate under section 11.

S. 12A  
inserted by  
No. 28/2011  
s. 41.

#### **12A Deemed assessment**

- (1) If the on-line duty payment system is used in respect of a dutiable transaction under the **Duties Act 2000**, the Commissioner is taken to have made an assessment of the duty liability of a taxpayer if the Commissioner validates the information submitted in relation to the dutiable transaction by the user of the on-line duty payment system for the purpose of payment (including a nil payment) of the duty calculated by the on-line duty payment system.
- (2) A deemed assessment of a tax liability under subsection (1) may consist of or include a determination that there is not a particular tax liability.

S. 13  
amended by  
No. 26/2007  
s. 105(b).

#### **13 Withdrawal of assessment**

The Commissioner may withdraw an assessment at any time within 5 years after the date of service of the notice of assessment, whether or not the amount of tax specified in the notice of assessment has been paid.

#### **14 Notice of assessment or withdrawal of assessment**

- (1) If the Commissioner makes or withdraws an assessment, the Commissioner must serve a notice of assessment or withdrawal on the taxpayer.
- (1A) In the case of a deemed assessment, the Commissioner is deemed to have served a notice of assessment for the purposes of subsection (1).

S. 14(1A)  
inserted by  
No. 28/2011  
s. 42.

- (2) A notice of assessment must—
- (a) be expressed to be an assessment of liability to the tax; and
  - (b) show the amount of tax assessed.
- (3) An amount of tax assessed in a notice of assessment is payable on or before the day specified by the Commissioner in the notice of assessment.

S. 14(3)  
inserted by  
No. 10/2001  
s. 9.

#### **14A Notice of certain joint assessments**

S. 14A  
inserted by  
No. 84/2006  
s. 16.

- (1) This section has effect for the purposes of the following taxation laws only—
- (a) **Congestion Levy Act 2005;**
  - (b) **Land Tax Act 2005;**
  - (c) Part 9B of the **Planning and Environment Act 1987.**
- (2) If the Commissioner makes or withdraws a joint assessment, or an assessment of persons who are jointly and severally liable under a taxation law referred to in subsection (1), the Commissioner may serve notice of assessment or withdrawal under section 14—
- (a) on each of the persons assessed or jointly and severally liable; or
  - (b) if all of those persons have given notice to the Commissioner in a form approved by the Commissioner nominating one of them as the person on whom the notice may be served—on the person nominated; or

S. 14A(1)(b)  
amended by  
No. 23/2010  
s. 23(a).

S. 14A(1)(c)  
inserted by  
No. 23/2010  
s. 23(b).

(c) subject to subsection (3), on one of those persons.

(3) Service of notice of an assessment or withdrawal under subsection (2)(c) is not valid unless the Commissioner causes notice of the service to be served on the other person, or each of the other persons, who were jointly assessed or jointly and severally liable.

#### **15 Inclusion of interest and penalty tax in notice of assessment**

A notice of assessment of a taxpayer's tax liability served following a tax default by the taxpayer must specify any interest or penalty tax payable by the taxpayer under Part 5 or section 105 in respect of the default.

#### **16 Receipt of tax is not an assessment**

The receipt by the Commissioner of a return or an amount as payment of a tax does not constitute the making of an assessment of tax liability.

#### **17 Validity of assessment**

The validity of an assessment is not affected because a provision of a taxation law has not been complied with.

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## PART 4—REFUNDS OF TAX

### 18 Application of Part

- (1) Proceedings for the refund or recovery of tax paid or purportedly paid under a taxation law, whether before or after the commencement of this section, must not be brought, whether against the Commissioner or otherwise, except as provided in this Part.
- (2) This Part has effect despite the provisions of another taxation law.
- (3) Subsection (1) and section 19 do not apply to a taxpayer if the taxpayer claims to be entitled to receive a refund or to recover tax paid or purportedly paid under a taxation law by reason of the invalidity of a provision of that law.
- (4) In this Part, *proceedings* includes—
  - (a) seeking the grant of any relief or remedy in the nature of certiorari, prohibition, mandamus or quo warranto, or the grant of a declaration of right or an injunction; or
  - (b) seeking any order under the **Administrative Law Act 1978**.
- (5) For the avoidance of doubt, it is declared that an amount by which tax is overpaid is taken to be tax for the purposes of this Part.

S. 18(5)  
inserted by  
No. 10/2001  
s. 10(1).

### 19 Application for refunds

- (1) If a taxpayer claims to be entitled to receive a refund of or to recover tax paid or purportedly paid under a taxation law, the taxpayer must lodge with the Commissioner within 5 years after the payment was made an application for the refund of the payment.

S. 19(1)  
amended by  
No. 26/2007  
s. 105(c).

S. 19(2A)  
inserted by  
No. 88/2005  
s. 109,  
amended by  
No. 23/2010  
s. 24(1).

(2) An application for a refund cannot be made if the Commissioner has previously served a notice of assessment of the tax liability of the taxpayer in respect of the matter in respect of which the payment was made to the Commissioner.

(2A) Subsection (2) does not apply to an application for a refund of tax paid or purportedly paid under the **Land Tax Act 2005** or a refund of a contribution paid or purportedly paid under Part 9B of the **Planning and Environment Act 1987**.

(3) An application under subsection (1) must be in a form approved by the Commissioner.

S. 20  
amended by  
No. 23/2010  
s. 24(2) (ILA  
s. 39B(1)).

## 20 When must Commissioner make a refund?

(1) If—

(a) an application for a refund is lodged with the Commissioner in accordance with section 19; and

(b) the Commissioner finds that an amount has been overpaid by the applicant—

the Commissioner—

(c) must refund the overpaid amount; or

(d) must—

(i) apply the overpaid amount against any liability of the applicant to the State, being a liability arising under, or by reason of, a taxation law or another Act of which the Commissioner has the general administration; and

(ii) refund any part of the overpayment that is not so applied.

(2) Subsection (1)(d) does not apply in respect of a refund of a contribution paid under Part 9B of the **Planning and Environment Act 1987**.

S. 20(2)  
inserted by  
No. 23/2010  
s. 24(2).



## 21 What happens if Commissioner refuses a refund?

- (1) If—
- (a) a taxpayer has lodged an application for the refund of an amount in accordance with section 19; and
  - (b) within the period of 3 months after the application was lodged—
    - (i) the Commissioner has not—
      - (A) refunded the amount; or
      - (B) applied the amount in accordance with section 20(d)(i); or
      - (C) refunded part of the amount and applied the remainder in accordance with section 20(d)(i); or
    - (ii) the Commissioner has, in writing given to the taxpayer within that period, refused to make a refund—

the taxpayer, within 3 months after the end of that period or after that refusal, whichever first occurs, may bring proceedings for the recovery of the amount or, if the Commissioner has refunded or applied part, the remainder of the amount.

- (2) Subsection (1) applies whether or not the period for bringing proceedings for the refund or recovery of the amount prescribed by section 20A(1) of the **Limitation of Actions Act 1958** has expired.

## 22 Windfalls—refusal of refund

- (1) The Commissioner must not make a refund of tax unless satisfied that the person to whom the refund is payable (in this section called *the applicant*)—

- (a) has not charged to, or recovered from, and will not charge to, or recover from, any other person any amount in respect of the whole or any part of that tax; or
  - (b) if the applicant has so charged or recovered any such amount, will reimburse, or will take all reasonable steps to reimburse, each other person for the amount charged or recovered.
- (2) If a refund is made to an applicant to whom subsection (1)(b) applies—
- (a) the applicant must—
    - (i) within 90 days after receiving the refund, reimburse each other person for the amount charged to or recovered from that person; and
    - (ii) notify the Commissioner in writing within 7 days after the end of that period that all amounts charged or recovered have been reimbursed; or
  - (b) if any such amount is not reimbursed within that period, the applicant, within 7 days after the end of that period, must—
    - (i) notify the Commissioner in writing of the amounts not reimbursed; and
    - (ii) pay those amounts to the Commissioner, together with interest at the specified rate from the date the refund was made to the date of payment.

Penalty: 50 penalty units.

**Note**

Section 130A applies to an offence against this subsection.

**Note to  
s. 22(2)  
inserted by  
No. 13/2013  
s. 46(2).**

- (3) An amount payable under subsection (2)(b)(ii) is a debt due from the applicant to the State.
- (4) In this section—
- specified rate* means the percentage, not exceeding 20% per annum, that the Commissioner specifies when the refund is made;
- charge* includes pass on.
- (5) For the avoidance of doubt, this section prevails over anything to the contrary in section 20 or 21.

### **23 Application of section 22 to proceedings**

Section 22 applies in respect of proceedings for the refund or recovery of tax paid or purportedly paid under a taxation law as if—

- (a) a reference in section 22 to the Commissioner (except in subsection (2)(b)(ii)) were a reference to the court; and
- (b) a reference in section 22 to the making of a refund were a reference to the making of an order or decision that a refund be made.
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## PART 5—INTEREST AND PENALTY TAX

### Division 1—Interest

#### 24 Interest in respect of tax defaults

- (1) If a tax default occurs, the taxpayer is liable to pay interest on the amount of tax unpaid calculated on a daily basis from the end of the last day for payment until the day it is paid at the interest rate from time to time applying under this Division.
- (2) Interest is payable under subsection (1) in respect of a tax default that consists of a failure to pay penalty tax under Division 2 but is not payable in respect of any failure to pay interest under this Division.

#### 25 Interest rate

- (1) The interest rate is the sum of—
  - (a) the market rate, being—
    - (i) unless an order is in force under subparagraph (ii), the Bank Accepted Bills rate; or
    - (ii) the rate specified for the time being by order of the Minister published in the Government Gazette; and
  - (b) the premium rate, being 8% per annum.
- (2) The ***Bank Accepted Bills rate*** in respect of any day is the average of the daily yields for 90 day Bank Accepted Bills published by the Reserve Bank of Australia for the month of May in the financial year preceding the financial year in which the day occurs.

S. 25  
amended by  
No. 47/1999  
s. 23(2) (ILA  
s. 39B(1)).

S. 25(1)(a)(i)  
substituted by  
No. 47/1999  
s. 23(1),  
amended by  
No. 36/2005  
s. 35(1).

S. 25(2)  
inserted by  
No. 47/1999  
s. 23(2),  
substituted by  
No. 36/2005  
s. 35(2).

- (3) The Bank Accepted Bills rate must be rounded to the second decimal place (rounding 0.005 upwards).

S. 25(3)  
inserted by  
No. 47/1999  
s. 23(2),  
amended by  
No. 36/2005  
s. 35(3).

## **26 Minimum amount of interest**

There is no liability imposed by a taxation law to pay an amount of interest if the amount is less than \$20.

## **27 Interest rate to prevail over interest otherwise payable on a judgment debt**

If judgment is given by, or entered in, a court for an amount of unpaid tax (or an amount that includes an amount of unpaid tax), the interest rate determined in accordance with this Division continues to apply, to the exclusion of any other interest rate, until the tax is paid.

## **28 Remission of interest**

The Commissioner, in such circumstances as the Commissioner considers appropriate, may remit interest payable by a taxpayer under this Division by any amount.

### **Division 2—Penalty tax**

## **29 Penalty tax in respect of certain defaults**

S. 29  
(Heading)  
inserted by  
No. 83/2009  
s. 31(1).

- (1) If a tax default occurs, the taxpayer is liable to pay penalty tax.

S. 29(1)  
amended by  
No. 83/2009  
s. 31(2).

- (1A) If a notification default occurs, the taxpayer is liable to pay penalty tax.

S. 29(1A)  
inserted by  
No. 83/2009  
s. 31(3).

S. 29(2)  
amended by  
No. 83/2009  
s. 31(4).

- (2) Penalty tax imposed under this Division is in addition to interest and any amount of tax unpaid.
- (3) Penalty tax is not payable in respect of a tax default that consists of a failure to pay—
  - (a) interest under Division 1; or
  - (b) penalty tax previously imposed under this Division.

### **30 Amount of penalty tax<sup>1</sup>**

S. 30(1A)  
inserted by  
No. 83/2009  
s. 32(1).

- (1) The amount of penalty tax payable in respect of a tax default is 25% of the amount of tax unpaid, subject to this Division.
- (1A) The amount of penalty tax payable in respect of a notification default is 25% of the additional amount of tax that the taxpayer would have been assessed as liable to pay had the notification default not occurred, subject to this Division.
- (2) The Commissioner may increase the amount of penalty tax payable in respect of a tax default to 75% of the amount of tax unpaid if the Commissioner is satisfied that the tax default was caused wholly or partly by the intentional disregard by the taxpayer (or a person acting on behalf of the taxpayer) of a taxation law.

S. 30(2A)  
inserted by  
No. 83/2009  
s. 32(2).

- (2A) The Commissioner may increase the amount of penalty tax payable in respect of a notification default to 75% of the additional amount of tax that the taxpayer would have been assessed as liable to pay had the notification default not occurred if the Commissioner is satisfied that the notification default was caused wholly or partly by the intentional disregard by the taxpayer (or a person acting on behalf of the taxpayer) of section 46K or 104A of the **Land Tax Act 2005** (as the case requires).

- (3) The Commissioner may determine that no penalty tax is payable in respect of a tax default or notification default if the Commissioner is satisfied that—
- (a) the taxpayer (or a person acting on behalf of the taxpayer) took reasonable care to comply with the taxation law; or
- (b) the default occurred solely because of circumstances beyond the taxpayer's control (or, if a person acted on behalf of the taxpayer, because of circumstances beyond either the person's or the taxpayer's control) but not amounting to financial incapacity.

S. 30(3)  
amended by  
No. 83/2009  
s. 32(3)(a).

S. 30(3)(b)  
amended by  
No. 83/2009  
s. 32(3)(b).

**31 Reduction in penalty tax for disclosure before or during investigation<sup>2</sup>**

- (1) The amount of penalty tax determined under section 30 is to be reduced by 80% if, before the Commissioner commences an investigation into a known or suspected tax default or notification default by the taxpayer, the taxpayer voluntarily discloses to the Commissioner, in writing, sufficient information to enable the nature and extent of the default to be determined.
- (2) The amount of penalty tax determined under section 30 is to be reduced by 20% if, after the Commissioner commences an investigation into a known or suspected tax default or notification default by the taxpayer and before it is completed, the taxpayer voluntarily discloses to the Commissioner, in writing, sufficient information to enable the nature and extent of the default to be determined.
- (3) Subsection (1) or (2) (as the case requires) does not apply in respect of information disclosed by a taxpayer if the taxpayer is registered by the Commissioner under a taxation law and—

S. 31(1)  
amended by  
Nos 36/2005  
s. 36(1),  
33/2007  
s. 9(1),  
83/2009  
s. 33(1).

S. 31(2)  
amended by  
Nos 36/2005  
s. 36(1),  
33/2007  
s. 9(1),  
83/2009  
s. 33(2).

S. 31(3)  
inserted by  
No. 36/2005  
s. 36(2),  
substituted by  
No. 33/2007  
s. 9(2).

- (a) the tax default involved the failure to lodge a return and pay tax by the date required under that taxation law; or
- (b) in the case of a taxpayer who lodged a return by the due date that disclosed a liability to pay tax, the tax default involved the failure to pay that tax by the date required under the taxation law.

### **32 Increase in penalty tax for concealment<sup>3</sup>**

S. 32(1)  
amended by  
Nos 36/2005  
s. 36(3),  
83/2009 s. 34.

- (1) The amount of penalty tax determined under section 30 is to be increased by 20% if, after the Commissioner commences an investigation into a known or suspected tax default or notification default by the taxpayer and before the investigation is completed, the taxpayer took steps to prevent or hinder the Commissioner from becoming aware of the nature and extent of the default in whole or part.
- (2) For the purposes of this section, a taxpayer takes steps to prevent or hinder the Commissioner if the taxpayer—
  - (a) deliberately damages or destroys records required to be kept under the taxation law to which the investigation relates; or
  - (b) without reasonable excuse, refuses or fails to comply with a requirement made by the Commissioner under Division 2 of Part 9 for the purposes of determining the taxpayer's tax liability; or
  - (c) hinders or obstructs an authorised officer exercising functions under that Division for that purpose.

### **33 Minimum amount of penalty tax**

Penalty tax is not to be imposed if the amount of the penalty tax is less than \$20.



**34 Time for payment of penalty tax**

Penalty tax must be paid by a taxpayer within the period specified for that purpose in a notice of assessment of the tax liability of the taxpayer.

**35 Remission of penalty tax**

The Commissioner, in such circumstances as the Commissioner considers appropriate, may remit penalty tax by any amount.

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## **PART 6—RETURNS**

### **Division 1—General**

#### **36 Form of returns**

A return is to be in a form approved by the Commissioner.

#### **37 Time of lodgment**

A return is taken to have been lodged by a person at the time the return is received by the Commissioner.

#### **38 Extending time or period for lodgment**

The Commissioner may extend the time or period for lodgment of a return by a person.

### **Division 2—Approval of special tax return arrangements**

#### **39 Approval of special tax return arrangements**

- (1) Despite the provisions of another taxation law, the Commissioner, by written notice, may give approval for a special arrangement for the lodging of returns and payment of tax under the taxation law to—
  - (a) a specified taxpayer or taxpayers of a specified class; or
  - (b) a specified agent on behalf of a specified taxpayer or taxpayers of a specified class.
- (2) An approval, among other things—
  - (a) may provide an exemption (or a partial exemption) for the taxpayer or taxpayers from specified provisions of the taxation law to which it applies;
  - (b) may authorise the lodging of returns and payments of tax by electronic means.

- (3) An approval may be given on the initiative of the Commissioner or on application.
- (4) The Commissioner may vary or cancel an approval by written notice.

#### **40 Application for approval**

- (1) An application for an approval under this Division must be made to the Commissioner in a form approved by the Commissioner.
- (2) The Commissioner may grant or refuse an application for an approval under this Division.

#### **41 Conditions of approval**

- (1) An approval under this Division is subject to any conditions specified by the Commissioner in the notice of approval or by subsequent written notice.
- (2) The conditions of an approval may include—
  - (a) conditions limiting the approval to matters of a specified class;
  - (b) conditions limiting the approval to transactions effected by instruments of a specified class;
  - (c) conditions requiring the lodging of returns at specified times and conditions as to the contents of the returns;
  - (d) conditions requiring payments of tax at specified times;
  - (e) conditions as to the means by which returns are to be lodged or payments of tax are to be made;
  - (f) if the approval provides an exemption from a requirement for the stamping of instruments, conditions as to the endorsement of the instruments;

S. 41(2)(h)  
inserted by  
No. 103/1998  
s. 27.

- (g) conditions requiring the taxpayer or agent to whom the approval was given to keep specified records;
- (h) conditions requiring the payment of interest, calculated at the interest rate determined in accordance with section 25, on any amounts of tax that are not paid at the times they are required to be paid in accordance with the approval.

#### **42 Gazettal or service of notices**

A written notice under this Division may be given by—

- (a) publishing it in the Government Gazette; or
- (b) serving it on the taxpayer or agent to whom it relates.

#### **43 Effect of approval**

- (1) If an approval is given under this Division to a specified taxpayer or taxpayers of a specified class, the conditions of the approval are binding on that taxpayer or the taxpayers of that class and that taxpayer or a taxpayer of that class is guilty of an offence if any of the conditions is contravened.

Penalty: 100 penalty units in the case of a body corporate;

20 penalty units in any other case.

- (2) If—
  - (a) an approval is given under this Division to a specified agent on behalf of a specified taxpayer or taxpayers of a specified class; and

- (b) the agent acts on behalf of that taxpayer or a taxpayer of that class in relation to a matter to which the approval applies—

the conditions of the approval are binding on the agent and the taxpayer and the agent and the taxpayer are each guilty of an offence if any of the conditions is contravened in relation to that matter.

Penalty: 100 penalty units in the case of a body corporate;

20 penalty units in any other case.

- (3) However, if the provisions of a taxation law from which a taxpayer is exempted by an approval under this Division are complied with in relation to a matter, subsections (1) and (2) do not apply to the taxpayer or an agent of the taxpayer in relation to that matter.

**Note**

Section 130B applies to an offence against subsection (1) or (2).

**Note to s. 43**  
inserted by  
No. 13/2013  
s. 46(1).

**43A Stamping of instruments**

If—

- (a) an approval under this Part provides for an exemption from a requirement for the stamping of an instrument; and
- (b) the instrument is endorsed in accordance with the conditions of the approval—

the instrument is taken to be duly stamped but without affecting liability for the payment of tax in relation to the instrument under the relevant taxation law.

**S. 43A**  
inserted by  
No. 79/2000  
s. 285(Sch. 1  
item 6.4).

**PART 7—COLLECTION OF TAX**

**44 Tax payable to the Commissioner**

Tax that is payable is a debt due to the State and payable to the Commissioner.

**45 Recovery of tax**

If the whole or part of tax payable by a taxpayer has not been paid to the Commissioner as required, the Commissioner may recover the amount unpaid—

- (a) in the Magistrates' Court irrespective of the amount; or
- (b) in any other court of competent jurisdiction.

**46 Contributions from joint taxpayers**

Nothing in this Act prevents a person who is jointly and severally liable to pay an amount of tax and who pays the amount to the Commissioner from recovering a contribution from any other person who is liable to pay the whole or part of that amount.

**47 Collection of tax from third parties**

- (1) The Commissioner may require any of the following persons instead of the taxpayer to pay tax that is payable but remains unpaid—
  - (a) a person by whom any money is due or accruing or may become due to the taxpayer;
  - (b) a person who holds or may subsequently hold money for or on account of the taxpayer;
  - (c) a person who holds or may subsequently hold money on account of some other person for payment to the taxpayer;
  - (d) a person having authority from some other persons to pay money to the taxpayer.

- (2) The Commissioner's requirement is to be made by notice in writing.
- (3) A copy of the notice must be served on the taxpayer.
- (4) The amount of money required to be paid to the Commissioner is—
  - (a) if the amount of the money held or due or authorised to be paid does not exceed the amount payable by the taxpayer to the Commissioner, all the money; or
  - (b) if the amount of the money exceeds the amount payable, sufficient money to pay the amount payable.
- (5) The money must be paid to the Commissioner on receipt of the notice, or when the money is held by the person, or after such period (if any) as may be specified by the Commissioner, whichever is the later.
- (6) A person subject to a requirement of the Commissioner under this section must comply with the requirement.

Penalty: 100 penalty units in the case of a body corporate;  
20 penalty units in any other case.

**Note**

Section 130A applies to an offence against this subsection.

**Note to  
s. 47(6)  
inserted by  
No. 13/2013  
s. 46(2).**

- (7) If, after a person is given a notice under this section by the Commissioner, the whole or a part of the amount is paid by another person, the Commissioner must promptly notify the person to whom the notice is given of the payment and the notice is taken to be amended accordingly.

- (8) In this section, *tax* includes a judgment debt and costs in respect of such an amount.

#### **48 Indemnification of third party**

A person who makes a payment in accordance with section 47 is to be taken to be acting under the authority of the taxpayer and of all other persons concerned and is indemnified by this section in respect of the payment.

#### **49 Arrangements for payment of tax**

- (1) The Commissioner may extend the time for payment of tax by a taxpayer and may accept the payment of tax by instalments.
- (2) A decision of the Commissioner under this section may be made subject to such conditions (for example, as to the payment of interest) as the Commissioner may determine.

S. 49(3)  
inserted by  
No. 79/2000  
s. 285(Sch. 1  
item 6.5).

- (3) If—
- (a) the Commissioner extends the time for the payment of tax, being duty payable on an instrument; and
- (b) the instrument is not stamped before the end of the extension period—

the instrument may be stamped on payment of the unpaid duty and any applicable interest and penalty tax.

S. 49(4)  
inserted by  
No. 79/2000  
s. 285(Sch. 1  
item 6.5).

- (4) If the Commissioner accepts the payment of duty on an instrument by instalments, the instrument is not taken to be duly stamped until the total duty payable on the instrument has been paid.

S. 49(5)  
inserted by  
No. 79/2000  
s. 285(Sch. 1  
item 6.5).

- (5) In this section, a reference to an instrument includes a reference to a statement or return that records matters in respect of which duty is chargeable.



- (6) This section does not apply in respect of the payment of a contribution imposed under Part 9B of the **Planning and Environment Act 1987**.

S. 49(6)  
inserted by  
No. 23/2010  
s. 25.

**49A Order for tax agent to account for tax**

S. 49A  
inserted by  
No. 79/2001  
s. 15.

- (1) If an agent of the Commissioner does not account to the Commissioner for any tax collected by the agent on the Commissioner's behalf, the Commissioner may apply to the Supreme Court for an order under this section.
- (2) An application must be accompanied by an affidavit in support.
- (3) On the application of the Commissioner, the Supreme Court may order that an agent show cause—
- (a) why the agent should not deliver to the Commissioner an account on oath of all tax received by the agent; and
  - (b) why that tax should not be paid to the Commissioner forthwith.
- (4) The Supreme Court may make the order absolute and enforce by attachment or otherwise the payment of any such tax that appears to be payable and the costs of the proceeding.
- (5) In this section, a reference to an agent includes a reference to the executor or administrator of an agent.
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## **PART 8—RECORD KEEPING AND GENERAL OFFENCES**

### **50 Requirement to keep proper records**

- (1) A person must keep, or cause to be kept, all records that are necessary to enable the person's tax liability under a taxation law to be properly assessed.

Penalty: 500 penalty units in the case of a body corporate;

100 penalty units in any other case.

**Note to s. 50(1) inserted by No. 13/2013 s. 46(3).**

#### **Note**

Section 130B applies to an offence against this subsection.

- (2) This section does not affect a provision of any other taxation law concerning the keeping of records.

### **51 Additional records**

- (1) The Commissioner, by written notice given to a person who is required by a taxation law to keep a record or cause a record to be kept, may require the person to keep, or cause to be kept, additional records specified in the notice.

- (2) A person must comply with a notice under subsection (1).

Penalty: 500 penalty units in the case of a body corporate;

100 penalty units in any other case.

**Note to s. 51(2) inserted by No. 13/2013 s. 46(3).**

#### **Note**

Section 130B applies to an offence against this subsection.

## **52 Inclusion of false or misleading information in records**

- (1) A person must not—
- (a) make a record required to be made by a taxation law that comprises or contains matter that is false or misleading in a material particular; or
  - (b) include in a record required to be made or kept by a taxation law matter that is false or misleading in a material particular.

Penalty: 500 penalty units in the case of a body corporate;  
100 penalty units in any other case.

### **Note**

Section 130B applies to an offence against this subsection.

**Note to s. 52(1) inserted by No. 13/2013 s. 46(3).**

- (2) A person is not guilty of an offence against subsection (1) if the court hearing the charge is satisfied that the person did not know that the matter was false or misleading in a material particular.

## **53 Accessibility**

A person who is required by a taxation law to keep a record must keep the record so that it is able to be readily produced to the Commissioner if the Commissioner requires its production.

Penalty: 200 penalty units in the case of a body corporate;  
40 penalty units in any other case.

### **Note**

Section 130B applies to an offence against this section.

**Note to s. 53 inserted by No. 13/2013 s. 46(4).**

#### **54 Form of record—English language**

- (1) A person who is required by a taxation law to keep a record must keep the record in English or in a form that can be readily converted or translated into English.

Penalty: 200 penalty units in the case of a body corporate;

40 penalty units in any other case.

Note to  
s. 54(1)  
inserted by  
No. 13/2013  
s. 46(2).

#### **Note**

Section 130A applies to an offence against this subsection.

- (2) The Commissioner may recover from a person referred to in subsection (1) the costs reasonably incurred by the Commissioner in converting or translating a record into English—

(a) in the Magistrates' Court irrespective of the amount; or

(b) in any other court of competent jurisdiction.

#### **55 Period of retention**

- (1) A person who is required by a taxation law to keep a record must retain the record for not less than 5 years after—

(a) the date it was made or obtained; or

(b) the date of completion of the transaction or act to which it relates—

whichever is the later.

Penalty: 500 penalty units in the case of a body corporate;

100 penalty units in any other case.

Note to  
s. 55(1)  
inserted by  
No. 13/2013  
s. 46(3).

#### **Note**

Section 130B applies to an offence against this subsection.

- (2) Subsection (1) does not apply to a person if the Commissioner authorises them in writing to destroy the record before the end of the 5-year period.
- (3) In this section the *date of completion of the transaction or act* in relation to a contribution imposed under Part 9B of the **Planning and Environment Act 1987**, means the later of the following—
- (a) the date of occurrence of the first GAIC event (within the meaning of that Part) that results in liability to pay the contribution;
  - (b) the date for final payment of the contribution if the person has been granted an approval for the staged payment of the contribution or the payment of the whole or part of the contribution has been deferred under that Part.

S. 55(3)  
inserted by  
No. 23/2010  
s. 26.

## 56 Wilfully destroying records

A person must not wilfully damage or destroy a record required to be kept by a taxation law.

Penalty: 500 penalty units in the case of a body corporate;

100 penalty units in any other case.

### Note

Section 130B applies to an offence against this section.

Note to s. 56  
inserted by  
No. 13/2013  
s. 46(4).

## 57 Giving false or misleading information to tax officers

- (1) A person must not—
- (a) make a statement, orally or in writing, to a tax officer; or

(b) give information, orally or in writing, to a tax officer—

that is false or misleading in a material particular.

Penalty: 500 penalty units in the case of a body corporate;

100 penalty units in any other case.

**Note to s. 57(1) inserted by No. 13/2013 s. 46(5).**

**Note**

Section 130C applies to an offence against this subsection.

- (2) A person is not guilty of an offence against subsection (1) if the court hearing the charge is satisfied that the person did not know that the statement or information was false or misleading in a material particular.

**58 Deliberately omitting information**

A person must not omit from a statement made to a tax officer any matter or thing without which the statement is, to the person's knowledge, false or misleading in a material particular.

Penalty: 500 penalty units in the case of a body corporate;

100 penalty units in any other case.

**Note to s. 58 inserted by No. 13/2013 s. 46(4).**

**Note**

Section 130B applies to an offence against this section.

## **59 Failure to lodge documents**

A person must not fail or refuse to lodge a document, statement or return that is required to be lodged by a taxation law.

Penalty: 200 penalty units in the case of a body corporate;  
40 penalty units in any other case.

### **Note**

Section 130B applies to an offence against this section.

**Note to s. 59**  
inserted by  
No. 13/2013  
s. 46(4).

## **60 Falsifying or concealing identity**

A taxpayer must not—

- (a) falsify or conceal the identity, or the address or location of a place of residence or business, of the taxpayer or of another person; or
- (b) do, by act or omission, anything that facilitates the falsification or concealment of the identity, or the address or location of a place of residence or business, of the taxpayer or another person.

Penalty: 500 penalty units in the case of a body corporate;  
100 penalty units in any other case.

### **Note**

Section 130A applies to an offence against this section.

**Note to s. 60**  
inserted by  
No. 13/2013  
s. 46(6).

## **61 Tax evasion**

A person must not, by a deliberate act or omission, evade or attempt to evade tax.

Penalty: 1000 penalty units in the case of a body corporate;

200 penalty units or imprisonment for 2 years or both in any other case.

**Note to s. 61**  
inserted by  
**No. 13/2013**  
s. 46(7).

### **Note**

Section 130C applies to an offence against this section.

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**PART 9—TAX OFFICERS, INVESTIGATION AND SECRECY PROVISIONS**

**Division 1—Tax officers**

**62 The Commissioner**

There is to be a Commissioner of State Revenue employed under Part 3 of the **Public Administration Act 2004**.

S. 62  
amended by  
Nos 46/1998  
s. 7(Sch. 1),  
108/2004  
s. 117(1)  
(Sch. 3  
item 200).

**63 General administration of the taxation laws**

- (1) The Commissioner has the general administration of the taxation laws and may do all things that are necessary or convenient to give effect to the taxation laws.
- (2) The Commissioner also has the functions conferred on him or her by or under any other Act.

**64 Legal proceedings in Commissioner's name**

- (1) Legal proceedings may be taken by or against the Commissioner in the name "Commissioner of State Revenue".
- (2) A person who takes legal proceedings in the name of the Commissioner is taken to be authorised to take those proceedings, in the absence of evidence to the contrary.

**65 Commissioner may perform functions under Commonwealth Act**

The Commissioner may exercise the functions of a State taxation officer under Part IIIA of the Taxation Administration Act 1953 of the Commonwealth.

S. 66  
amended by  
Nos 46/1998  
s. 7(Sch. 1),  
108/2004  
s. 117(1)  
(Sch. 3  
item 200),  
substituted by  
No. 41/2013  
s. 46.

## 66 Deputy and Assistant Commissioners

- (1) Any Deputy or Assistant Commissioners of State Revenue may be employed under Part 3 of the **Public Administration Act 2004** who are necessary for—
  - (a) the administration and execution of taxation laws and other laws under the general administration of the Commissioner; or
  - (b) the performance of other functions of the Commissioner.
- (2) A Deputy or an Assistant Commissioner has the same functions as the Commissioner under a taxation law or any other law.

S. 67  
substituted by  
No. 46/1998  
s. 7(Sch. 1),  
amended by  
No. 108/2004  
s. 117(1)  
(Sch. 3  
item 200),  
substituted by  
No. 41/2013  
s. 47.

## 67 Other staff

- Any other employees may be employed under Part 3 of the **Public Administration Act 2004** who are necessary for—
- (a) the administration and execution of taxation laws and other laws under the general administration of the Commissioner; or
  - (b) the performance of other functions of the Commissioner.

## 68 Use of consultants and contractors

The Commissioner may engage any consultants and contractors that may be necessary or convenient to exercise the Commissioner's functions.

S. 69  
substituted by  
No. 41/2013  
s. 48.

## 69 Delegation by the Commissioner

The Commissioner, by instrument, may delegate any function of the Commissioner, other than this power of delegation, to—

- (a) an employee referred to in section 67; or
- (b) a consultant or contractor engaged under section 68.

#### **70 Authorised officers**

- (1) The Commissioner is an authorised officer for the purposes of the taxation laws.
- (2) The Commissioner may appoint persons to be authorised officers for the purposes of the taxation laws.

#### **71 Identity cards for authorised officers**

An authorised officer must be issued with an identity card in a form approved by the Commissioner—

- (a) containing the person's name, signature and photograph; and
- (b) stating that the person is an authorised officer for the purposes of the taxation laws.

#### **Division 2—Investigation**

#### **72 Circumstances in which investigative powers may be exercised**

A function conferred under this Division may be exercised only for the purposes of a taxation law.

#### **73 Power to require information, documents and things, and attendance**

- (1) The Commissioner, by written notice, may require a person to do any one or more of the following—
  - (a) to provide to the Commissioner (either orally or in writing) information that is described in the notice;
  - (b) to attend and give evidence before the Commissioner or another authorised officer;

- (c) to produce to the Commissioner a document or thing in the person's custody or control that is described in the notice.
- (2) If the requirement is made of a person to determine that person's tax liability, the Commissioner must indicate in the notice that the requirement is made for that purpose, but the Commissioner is not otherwise required to identify a person in relation to whom any information, evidence, document or thing is required under this section.
- (3) The Commissioner may require information or evidence that is not given orally to be provided in the form of or verified by a statutory declaration.
- (4) The Commissioner may require evidence that is given orally to be given on oath and for that purpose the Commissioner or an authorised officer may administer an oath.
- (5) Subject to subsection (6), a person who is required to attend and give evidence orally is to be paid expenses in accordance with the prescribed scale of expenses.
- (6) Subsection (5) does not apply to a person, or a representative of a person, whose liability under a taxation law is being investigated by the Commissioner.
- (7) The Commissioner may make a recording, by such means as the Commissioner determines, of the evidence given orally by a person.

- (8) The person to whom the notice is given must comply with the notice within the period specified in the notice or any extended period allowed by the Commissioner.

Penalty: 500 penalty units in the case of a body corporate;

100 penalty units in any other case.

**Note**

Section 130B applies to an offence against this subsection.

**Note to  
s. 73(8)  
inserted by  
No. 13/2013  
s. 46(3).**

- (9) If a person is convicted of an offence against subsection (8) the court, in addition to imposing a penalty under that subsection and whether or not the period for complying with the notice has expired, may order the person to comply with—

- (a) the requirement contained in the notice; and
- (b) any other requirement that could be made in relation to the person under a taxation law that the court considers necessary to ensure the effectiveness of the requirement referred to in paragraph (a)—

within the period specified by the court.

- (10) A person cannot be charged with an offence against subsection (8) in respect of a failure to comply with a requirement of a notice if the Commissioner has certified the failure to the Supreme Court under section 73A, unless the Supreme Court declines to inquire into the matter.

**S. 73(10)  
inserted by  
No. 79/2001  
s. 16.**

S. 73A  
inserted by  
No. 79/2001  
s. 17.

**73A Powers of Supreme Court if non-compliance with section 73**

- (1) If the Commissioner is satisfied that a person has, without reasonable excuse, failed to comply with a requirement of a notice under section 73, the Commissioner may certify the failure to the Supreme Court.
- (2) If the Commissioner so certifies, the Supreme Court may inquire into the case and may order the person to comply with the requirement within the period specified by the Court.
- (3) The Commissioner cannot certify a failure to the Supreme Court under this section if the person to whom the failure relates has been charged with an offence against section 73(8) in respect of the failure.
- (4) A person who, without reasonable excuse, fails to comply with an order under subsection (2) is guilty of an offence and liable to a term of imprisonment not exceeding 3 months.
- (5) Nothing in subsection (4) affects the power of the Supreme Court to deal with a person for contempt of that court, but a person is not liable to be punished more than once for failing to comply with an order under subsection (2).

**74 Access to public records without fee**

The Commissioner is entitled to inspect and take copies of any public record relevant to the assessment or collection of tax kept under an Act or law of Victoria without payment of any fee that would be payable but for this section.

**75 Use and inspection of documents and things provided to the Commissioner or an authorised officer**

- (1) This section applies to a document or thing that is provided or produced to the Commissioner or another authorised officer.
- (2) The Commissioner or authorised officer may take and retain possession of the document or thing<sup>4</sup>—
  - (a) for the purpose of enabling it to be inspected; or
  - (b) in the case of a document, for the purpose of enabling it to be copied, or for extracts or notes from it to be taken, by or on behalf of the Commissioner or authorised officer; or
  - (c) if the Commissioner or authorised officer believes on reasonable grounds that it is necessary to do so in order to prevent its concealment, loss, destruction or alteration.
- (3) The Commissioner or authorised officer must permit a person who would be entitled to inspect the document or thing if it were not in the possession of the Commissioner or authorised officer to inspect it at any reasonable time.
- (4) Nothing in this section—
  - (a) prejudices a lien a person has on the document or thing;
  - (b) limits or affects section 76.

**76 Powers of entry**

- (1) An authorised officer may exercise powers under this section only if he or she believes on reasonable grounds that there are documents or things on any premises that are relevant to the administration or execution of a taxation law.

S. 76  
(Heading)  
inserted by  
No. 83/2009  
s. 27.

- (2) Subject to this section, an authorised officer with any assistants and equipment the authorised officer considers necessary may enter, at any reasonable time, any premises and may do any one or more of the following—
  - (a) search the premises and any thing found at the premises;
  - (b) inspect and take photographs (including video recordings), or make sketches, of the premises or any thing at the premises;
  - (c) inspect, and make copies of, or take extracts from, any document kept at the premises;
  - (d) seize any document or thing at the premises if the authorised officer has reason to believe or suspect that it is necessary to do so in order to prevent its concealment, loss, destruction or alteration.
- (3) An authorised officer may not seize a document or thing apparently in the possession or custody of a person unless the authorised officer makes out and tenders to the person a receipt in the prescribed form for the document or thing seized.
- (4) If an authorised officer is unable to ascertain the identity of the owner or custodian of anything seized, the authorised officer must leave the receipt in a prominent place at the premises.
- (5) An authorised officer may not exercise any powers under this section if the authorised officer fails to produce, on request, his or her identity card for inspection by the occupier of the premises.
- (6) The power of entry and search under this section is not exercisable in relation to premises or a part of premises used for residential purposes except with the written consent of the occupier.



- (7) An occupier who consents in writing to entry and search of his or her premises under this section must be given a copy of the signed consent immediately.

## **77 Search warrant**

- (1) An authorised officer may apply to a magistrate for the issue of a search warrant in relation to particular premises if the authorised officer believes on reasonable grounds that there is, or may be within the next 72 hours, on the premises a particular thing that may be relevant to the administration or execution of a taxation law.
- (2) If a magistrate is satisfied by the evidence on oath, whether oral or by affidavit, that there are reasonable grounds for suspecting that there is, or may be within the next 72 hours, on the premises a particular thing that may be relevant to the administration or execution of a taxation law, the magistrate may issue a search warrant authorising an authorised officer named in the warrant and any assistants the authorised officer considers necessary—
- (a) to enter the premises, or the part of premises, named or described in the warrant; and
  - (b) to search for and seize, or secure against interference, a thing named or described in the warrant; and
  - (c) if reasonably necessary for the purposes referred to in paragraph (b), to break open any receptacle in or on the premises.
- (3) In addition to any other requirement, a search warrant issued under this section must state—
- (a) the premises to be searched; and

- (b) a description of the thing for which the search is to be made and the taxation law to which the thing relates; and
  - (c) any conditions to which the warrant is subject; and
  - (d) whether entry is authorised to be made at any time or during stated hours; and
  - (e) a day, not later than 7 days after the issue of the warrant, on which the warrant ceases to have effect.
- (4) A search warrant must be issued in accordance with the **Magistrates' Court Act 1989** and in the form prescribed under that Act.
- (5) The rules to be observed with respect to search warrants mentioned in the **Magistrates' Court Act 1989** extend and apply to warrants under this section.

### **78 Announcement before entry**

- (1) Before executing a search warrant, the authorised officer named in the warrant or a person assisting the authorised officer must announce that he or she is authorised by the warrant to enter the premises and give any person at the premises an opportunity to allow entry to the premises.
- (2) The authorised officer or a person assisting the authorised officer need not comply with subsection (1) if he or she believes on reasonable grounds that immediate entry to the premises is required to ensure—
- (a) the safety of any person; or
  - (b) that the effective execution of the search warrant is not frustrated.

### **79 Copy of warrant to be given to occupier**

If the occupier or another person who apparently represents the occupier is present at premises when a search warrant is being executed, the authorised officer must—

- (a) identify himself or herself to that person by producing his or her identity card for inspection by that person; and
- (b) give to that person a copy of the execution copy of the warrant.

### **80 Use of equipment to examine or process things**

(1) An authorised officer or assistant of the authorised officer who enters premises under section 76 may operate equipment already at the premises to carry out the examination or processing of a thing found at the premises in order to determine whether it is a thing that may be seized under section 76, if the authorised officer or assistant believes on reasonable grounds that—

- (a) the equipment is suitable for the examination or processing; and
- (b) the examination or processing can be carried out without damage to the equipment or the thing.

(2) If—

- (a) it is not practicable to examine or process the thing at the premises; or
- (b) the occupier of the premises consents in writing—

the thing may be moved to another place so that the examination or processing can be carried out in order to determine whether it may be seized under section 76.

## **81 Use or seizure of electronic equipment at premises**

(1) If—

- (a) a thing found at premises that an authorised officer has entered under section 76 is or includes a disk, tape or other device for storage of information; and
- (b) equipment at the premises may be used with the disk, tape or other storage device; and
- (c) the authorised officer believes on reasonable grounds that the information stored on the disk, tape or other storage device is relevant to the administration of a taxation law—

the authorised officer or an assistant of the authorised officer may operate, or may require the occupier or an employee of the occupier to operate, the equipment to access the information.

(2) If the authorised officer or assistant finds that a disk, tape or other storage device at the premises contains information of the kind referred to in subsection (1)(c), he or she may—

- (a) put the information in documentary form and seize the documents so produced; or
- (b) copy the information to another disk, tape or other storage device and remove that storage device from the premises; or
- (c) if it is not practicable to put the information in documentary form nor to copy the information, seize the disk, tape or other storage device and the equipment that enables the information to be accessed.

- (3) An authorised officer or assistant must not operate or seize equipment for the purpose mentioned in this section unless the authorised officer or assistant believes on reasonable grounds that the operation or seizure of the equipment can be carried out without damage to the equipment.

## **82 Compensation for damage to electronic equipment**

- (1) If equipment is damaged because of being operated or seized by an authorised officer or assistant of an authorised officer under section 80 or 81 and the damage is caused by insufficient care being exercised—

- (a) in selecting the person who is to operate or seize the equipment; or  
(b) by the person operating or seizing the equipment—

the Commissioner must pay compensation for the damage to the owner of the equipment.

- (2) In determining the amount of compensation payable, regard is to be had to whether the occupier of the premises and the employees and agents of the occupier, if they were available at the time, had provided any warning or guidance as to the operation of the equipment that was appropriate in the circumstances.

## **83 Copies to be given**

If an authorised officer seizes, other than under section 81(2)(a) or (b)—

- (a) a document (including a disk or tape) or other thing that can be readily copied; or

(b) a storage device the information in which  
can be readily copied—

the authorised officer, on request by the occupier,  
must give a copy of the thing or information to the  
occupier as soon as practicable after the seizure.

#### **84 Return of documents and things**

- (1) This section applies to—
  - (a) a document or thing provided or produced to the Commissioner or an authorised officer;
  - (b) a document or thing seized by an authorised officer under section 76;
  - (c) anything else seized by an authorised officer under this Division (other than under a search warrant).
- (2) The Commissioner or an authorised officer must take reasonable steps to return a document or thing to which this section applies to the person who provided or produced it, or from whom it was seized, if the reason for its provision, production or seizure no longer exists.
- (3) If the document or thing has not been returned before the end of the retention period, the Commissioner or authorised officer must take reasonable steps to return it unless—
  - (a) proceedings have commenced within the retention period and those proceedings (including any appeal) have not been completed; or
  - (b) a court makes an order under section 85 extending the retention period.
- (4) If, after taking reasonable steps, the Commissioner or authorised officer is unable to return the document or thing, he or she may dispose of or destroy it.

- (5) This section does not apply to a document that is a copy of another document unless the person from whom it was obtained requests its return in writing before or at the time it is provided, produced or seized.

**85 Magistrates' Court may extend period**

- (1) An authorised officer may apply to the Magistrates' Court within the retention period in relation to a document or thing, or within a period extended by the Court under this section, for an extension of that period.
- (2) The Magistrates' Court may order such an extension if satisfied that retention of the document or thing is necessary—
- (a) for the purposes of an investigation into whether an offence has been committed; or
  - (b) to enable evidence of an offence to be obtained for the purposes of a prosecution.
- (3) The Court may adjourn an application to enable notice of the application to be given to any person.

**86 Power of authorised officer to require information or documents**

An authorised officer who—

- (a) exercises a power of entry under this Division; and
- (b) produces his or her identity card for inspection by a person—

may, to the extent that it is reasonably necessary to do so for the administration or execution of a taxation law, require the person to answer a question, to give information to the authorised officer, to produce or provide documents or things to the authorised officer and to give reasonable assistance to the authorised officer.

## **87 Self-incrimination**

- (1) A person is not excused from answering a question, providing information or producing a document or thing, when required to do so under this Act, on the ground that to do so might tend to incriminate the person or make the person liable to a penalty.
- (2) However, if the person objects to answering the question, providing the information or producing the document or thing on that ground, the answer, information, document or thing is not admissible against the person in any criminal proceedings other than—
  - (a) proceedings for an offence against a taxation law; or
  - (b) proceedings for an offence in the nature of perjury.

S. 87(2)  
amended by  
No. 86/1997  
s. 28(1).

## **88 Obstruction of Commissioner or an authorised officer**

- (1) A person must not—
  - (a) prevent the Commissioner or an authorised officer from exercising a function under this Division; or
  - (b) hinder or obstruct the Commissioner or an authorised officer in the exercise of that function; or



- (c) without reasonable excuse, refuse or fail to comply with a requirement made or to answer a question of an authorised officer asked in accordance with section 81(1) or 86.

Penalty: 500 penalty units in the case of a body corporate;  
100 penalty units in any other case.

**Note**

Section 130B applies to an offence against this subsection.

**Note to s. 88(1) inserted by No. 13/2013 s. 46(3).**

- (2) A person is not guilty of an offence under this section arising from the entry of an authorised officer onto premises unless the court hearing the charge is satisfied that, at the material time, the authorised officer—
- (a) identified himself or herself as an authorised officer; and
- (b) warned the person that a failure or refusal to comply with the requirement may constitute an offence.

**89 Impersonating Commissioner or authorised officer**

A person must not impersonate or falsely represent that he or she is the Commissioner or an authorised officer.

Penalty: 100 penalty units.

**Note**

Section 130A applies to an offence against this section.

**Note to s. 89 inserted by No. 13/2013 s. 46(6).**

## **90 Defence of reasonable compliance**

A person is not guilty of an offence under this Part if the court hearing the charge is satisfied—

- (a) that the person could not, by the exercise of reasonable diligence, have complied with the requirement to which the charge relates; or
- (b) that the person complied with the requirement to the extent of their ability to do so.

Pt 9 Div. 2A  
(Heading and  
ss 90A–90E)  
inserted by  
No. 83/2009  
s. 28.

## **Division 2A—Investigations for the purposes of recognised laws**

S. 90A  
inserted by  
No. 83/2009  
s. 28.

### **90A Investigations by and on behalf of corresponding Commissioner**

- (1) The Commissioner may, by agreement with a corresponding Commissioner of a recognised jurisdiction—
  - (a) authorise the corresponding Commissioner to exercise a function under Division 2 for the purposes of a recognised law in force in that jurisdiction; or
  - (b) exercise on behalf of the corresponding Commissioner a function under Division 2 for the purposes of a recognised law in force in that jurisdiction.
- (2) An agreement under subsection (1) may be subject to any conditions imposed at the time the agreement is entered into or at a later time by—
  - (a) the Commissioner; or
  - (b) the corresponding Commissioner.

**90B Exercise of functions under Division 2**

**S. 90B  
inserted by  
No. 83/2009  
s. 28.**

- (1) For the purposes of exercising a function under Division 2 in respect of a recognised law—
  - (a) a reference in this Part to tax is to be read as a reference to tax under the recognised law; and
  - (b) a reference in this Part to a tax liability is to be read as a reference to a tax liability under the recognised law; and
  - (c) a reference in this Part to a taxation law is to be read as a reference to the recognised law; and
  - (d) a reference in this Part to an offence against a taxation law is to be read as a reference to an offence against, or contravention of, the recognised law.
- (2) If the Commissioner authorises a corresponding Commissioner of a recognised jurisdiction to exercise a function under Division 2 in respect of a recognised law—
  - (a) a reference in this Part to the Commissioner is to be read as a reference to the corresponding Commissioner; and
  - (b) a reference in this Part to an authorised officer is to be read as a reference to a person authorised to exercise the same function, or an equivalent function, under the recognised law; and
  - (c) a reference in this Part to an authorised officer's identity card, in relation to a person authorised to exercise the same function, or an equivalent function, under the recognised law, is to be read as a reference to an identification card issued to that person under the recognised law.

S. 90C  
inserted by  
No. 83/2009  
s. 28.

**90C Transfer of documents or things seized under investigations for recognised jurisdiction**

An authorised officer who seizes any document or thing under section 77(2)(b) for the purpose of a recognised law in force in a recognised jurisdiction may, for the purposes of the recognised law, transfer the document or thing to—

- (a) the corresponding Commissioner of the recognised jurisdiction; or
- (b) an authorised person acting on behalf of the corresponding Commissioner of the recognised jurisdiction.

S. 90D  
inserted by  
No. 83/2009  
s. 28.

**90D Investigations by Commissioner in another jurisdiction**

- (1) The Commissioner may enter into an agreement with a corresponding Commissioner of a recognised jurisdiction under which—
  - (a) the Commissioner is authorised to exercise the investigative functions conferred or imposed by a recognised law in force in the recognised jurisdiction for the purposes of a taxation law; or
  - (b) the corresponding Commissioner is to exercise on behalf of the Commissioner the investigative functions conferred or imposed by a recognised law in force in the recognised jurisdiction for the purposes of a taxation law.
- (2) The Commissioner may authorise any person who is authorised to exercise a function under Division 2 for the purposes of a taxation law to exercise on behalf of the Commissioner the investigative functions that are conferred or imposed under section 90D(1)(a).

- (3) In this section, *investigative function* includes any function that corresponds to a function conferred or imposed under Division 2.

**90E Certificate of authority**

S. 90E  
inserted by  
No. 83/2009  
s. 28.

- (1) The Commissioner must issue a certificate of authority to any person authorised by a corresponding Commissioner to carry out a function under Division 2 for the purposes of a recognised law.
- (2) Any person who exercises or purports to exercise a function under Division 2 on behalf of a corresponding Commissioner for the purposes of a recognised law must produce a certificate of authority.

**Division 3—Secrecy**

**91 Prohibition on certain disclosures of information by tax officers**

- (1) A person who is or was a tax officer must not disclose any information obtained under or in relation to the administration or execution of a taxation law, except as permitted by this Part.

Penalty: 100 penalty units.

**Note**

Section 130A applies to an offence against this subsection.

Note to  
s. 91(1)  
inserted by  
No. 13/2013  
s. 46(2).

- (2) For the purposes of the **Freedom of Information Act 1982**, information referred to in subsection (1) is information of a kind to which section 38 of that Act applies.

S. 92  
(Heading)  
inserted by  
No. 41/2013  
s. 49.  
S. 92  
amended by  
No. 88/2005  
s. 110(2) (ILA  
s. 39B(1)).

## 92 Permitted disclosures to particular persons or for particular purposes

- (1) A tax officer may disclose information obtained under or in relation to the administration of a taxation law—
- (a) with the consent of the person to whom the information relates or at the request of a person acting on behalf of that person; or
  - (b) in connection with the administration or execution of—
    - (i) a taxation law; or
    - (ii) the **First Home Owner Grant Act 2000** or a corresponding law of another State or Territory; or
    - (iii) the **Unclaimed Money Act 2008**—  
including for the purpose of any legal proceeding arising out of that taxation law, Act or corresponding law, or a report of those proceedings; or
  - (c) in connection with the administration or execution of a recognised law (including for the purpose of any legal proceedings arising out of a recognised law or a report of those proceedings); or
  - (d) in accordance with a requirement imposed under an Act; or
  - (e) to an authorised recipient, being—
    - (i) the Ombudsman; or
    - (ii) a police officer of or above the rank of Inspector; or

S. 92(1)(b)  
substituted by  
No. 83/2009  
s. 36(a),  
amended by  
No. 40/2014  
s. 39(1)(a)(ii).

S. 92(1)(b)(ii)  
amended by  
No. 40/2014  
s. 39(1)(a)(i).

S. 92(1)(c)  
substituted by  
No. 83/2009  
s. 29(1).

S. 92(1)(e)(ii)  
amended by  
Nos 103/1998  
s. 28, 37/2014  
s. 10(Sch.  
item 165.2).

Taxation Administration Act 1997  
No. 40 of 1997

Part 9—Tax officers, investigation and secrecy provisions

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|---|--|
| (ia) the Growth Areas Authority established under Part 3AAB of the <b>Planning and Environment Act 1987</b> for the purpose of administering Part 9B of that Act; or  | S. 92(1)(e)(ia) inserted by No. 23/2010 s. 27.   |
| (ib) the Secretary to the Department of Planning and Community Development for the purpose of administering Part 9B of the <b>Planning and Environment Act 1987</b> ; or  | S. 92(1)(e)(ib) inserted by No. 23/2010 s. 27.   |
| (ii) the Public Record Office Victoria; or  | S. 92(1)(e)(ii) amended by No. 83/2009 s. 36(b).   |
| (iv) the Australian Statistician; or  |  |
| (v) the Auditor-General; or   | S. 92(1)(e)(v) substituted by Nos 93/1997 s. 28(Sch. item 30), 53/1999 s. 26(Sch. item 23), amended by No. 113/2003 s. 7(a). |
| (vaa) the Business Licensing Authority (established by section 4 of the <b>Business Licensing Authority Act 1998</b> ) for the purpose of administering the <b>Motor Car Traders Act 1986</b> and regulations made under that Act; or | S. 92(1)(e)(vaa) inserted by No. 84/2008 s. 37(a).   |
| (va) the Director of Consumer Affairs Victoria; or  | S. 92(1)(e)(va) inserted by No. 113/2003 s. 7(b), substituted by No. 88/2005 s. 110(1)(a).                                   |
| (vab) the Registrar of Titles; or   | S. 92(1)(e)(vab) inserted by No. 76/2012 s. 21.  |

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- S. 92(1)(e)(vb)  
inserted by  
No. 113/2003  
s. 7(b).
- (vb) a member of the Australian Federal Police; or
- S. 92(1)(e)(vc)  
inserted by  
No. 36/2005  
s. 37.
- (vc) the Country Fire Authority; or
- S. 92(1)(e)(vd)  
inserted by  
No. 36/2005  
s. 37.
- (vd) the Metropolitan Fire and Emergency Services Board; or
- S. 92(1)(e)(ve)  
inserted by  
No. 84/2008  
s. 37(b),  
amended by  
No. 6/2010  
s. 203(1)(Sch. 6  
item 45) (as  
amended by  
No. 45/2010  
s. 22).
- (ve) the Roads Corporation (within the meaning of section 3 of the **Transport Integration Act 2010**) for the purpose of administering the **Road Safety Act 1986** and regulations made under that Act; or
- S. 92(1)(e)(vf)  
inserted by  
No. 84/2008  
s. 37(b).
- (vf) the Secretary to the Department of Primary Industries for the purpose of administering the **Livestock Disease Control Act 1994** and the **Duties Act 2000** and regulations made under those Acts; or
- S. 92(1)(e)(vg)  
inserted by  
No. 83/2009  
s. 29(2).
- (vg) the Australian Crime Commission; or
- S. 92(1)(e)(vh)  
inserted by  
No. 83/2009  
s. 29(2).
- (vh) the Australian Securities and Investments Commission; or
- S. 92(1)(e)  
(vha)  
inserted by  
No. 83/2009  
s. 29(2).
- (vha) the Australian Taxation Office; or



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(vi) the Victorian WorkCover Authority; or

S. 92(1)(e)(vi)  
amended by  
Nos 36/2010  
s. 14(1),  
41/2013  
s. 51(1).

(vii) the Legal Services Board; or

S. 92(1)(e)(vii)  
amended by  
No. 88/2005  
s. 110(1)(b),  
repealed by  
No. 36/2010  
s. 14(2), new  
s. 92(1)(e)(vii)  
inserted by  
No. 41/2013  
s. 51(2).

(viii) the Legal Services Commissioner; or

S. 92(1)(e)(viii)  
inserted by  
No. 41/2013  
s. 51(2).

(ix) the Chief Executive Centrelink for the purposes of administering the social security law within the meaning of the Social Security Act 1991 of the Commonwealth or any regulations made under that law; or

S. 92(1)(e)(ix)  
inserted by  
No. 40/2014  
s. 39(1)(b).

**Note**

See section 23(17) of the Social Security Act 1991 of the Commonwealth.

(x) the Child Support Registrar for the purposes of administering the Child Support (Registration and Collection) Act 1988 of the Commonwealth or the Child Support (Assessment) Act 1989 of the Commonwealth or any regulations made under those Acts; or

S. 92(1)(e)(x)  
inserted by  
No. 40/2014  
s. 39(1)(b).

(xi) the Commonwealth Treasurer in relation to a decision that the Commonwealth Treasurer may make

S. 92(1)(e)(xi)  
inserted by  
No. 40/2014  
s. 39(1)(b).

under the Foreign Acquisitions and Takeovers Act 1975 of the Commonwealth or any regulations made under that Act or in accordance with Australia's Foreign Investment Policy; or

S. 92(1)(e)(xii)  
inserted by  
No. 40/2014  
s. 39(1)(b).

- (xii) a member of the Foreign Investment Review Board for the purposes of briefing the Commonwealth Treasurer in relation to a decision that the Commonwealth Treasurer may make under the Foreign Acquisitions and Takeovers Act 1975 of the Commonwealth or any regulations made under that Act or in accordance with Australia's Foreign Investment Policy; or

S. 92(1)(e)(xiii)  
inserted by  
No. 40/2014  
s. 39(1)(b).

- (xiii) the Secretary of the Department of the Treasury of the Commonwealth for the purposes of briefing the Commonwealth Treasurer in relation to a decision that the Commonwealth Treasurer may make under the Foreign Acquisitions and Takeovers Act 1975 of the Commonwealth or any regulations made under that Act or in accordance with Australia's Foreign Investment Policy; or

S. 92(1)(e)(xiv)  
inserted by  
No. 40/2014  
s. 39(1)(b).

- (xiv) the IBAC Commissioner for the purposes of administering the **Independent Broad-based Anti-corruption Commission Act 2011** or any regulations made under that Act.

S. 92(1)(f)  
inserted by  
No. 88/2005  
s. 110(1)(c),  
amended by  
No. 69/2013  
s. 17(1)(a).

- (f) in connection with the operation of Landata, in the case of information obtained under or in relation to the administration of the **Land Tax Act 2005**; or

(g) in connection with the provision, operation or use of an ELN, in the case of information obtained under or in relation to the administration of the **Duties Act 2000**.

S. 92(1)(g) inserted by No. 69/2013 s. 17(1)(b).

(2) In this section—

S. 92(2) inserted by No. 88/2005 s. 110(2).

*Australia's Foreign Investment Policy* means the document issued by the Commonwealth Treasurer known as Australia's Foreign Investment Policy as in force from time to time;

S. 92(2) def. of *Australia's Foreign Investment Policy* inserted by No. 40/2014 s. 39(2).

*Chief Executive Centrelink* has the same meaning as in the Human Services (Centrelink) Act 1997 of the Commonwealth;

S. 92(2) def. of *Chief Executive Centrelink* inserted by No. 40/2014 s. 39(2).

*Child Support Registrar* means the Registrar within the meaning of the Child Support (Registration and Collection) Act 1988 of the Commonwealth;

S. 92(2) def. of *Child Support Registrar* inserted by No. 40/2014 s. 39(2).

*ELN* means ELN within the meaning of the Electronic Conveyancing National Law (Victoria);

S. 92(2) def. of *ELN* inserted by No. 69/2013 s. 17(2).

*IBAC Commissioner* means the Commissioner appointed under section 20 of the **Independent Broad-based Anti-corruption Commission Act 2011**;

S. 92(2) def. of *IBAC Commissioner* inserted by No. 40/2014 s. 39(2).

*Landata* means the integrated computerised information retrieval and property enquiry service relating to information in respect of Victorian land, its ownership and use.

S. 92A  
inserted by  
No. 41/2013  
s. 50.

**92A Permitted disclosures—dutiabale transactions in relation to land**

- (1) Despite section 92, a tax officer may disclose the minimum information about a dutiable transaction under Chapter 2 of the **Duties Act 2000** that is necessary to enable a person to ascertain—
  - (a) whether duty has been paid or is payable on the dutiable transaction;
  - (b) the amount of duty that has been paid or is payable on the dutiable transaction;
  - (c) the basis on which duty was or was not paid, or is or is not payable.
- (2) Without limiting subsection (1), a tax officer may disclose the following information—
  - (a) a reference number allocated to a dutiable transaction by the Commissioner;
  - (b) the name of a party who lodged a written instrument or statement with the Commissioner in relation to a dutiable transaction;
  - (c) the date on which an amount of duty was paid;
  - (d) whether the Commissioner has estimated the amount of duty that is payable on a dutiable transaction;
  - (e) whether a taxpayer is entitled to a refund of tax in relation to a dutiable transaction;
  - (f) whether there has been a reassessment of a tax liability in relation to a dutiable transaction.

### **93 Permitted disclosures of a general nature**

The Commissioner may disclose information obtained under or in relation to the administration of a taxation law unless that information will or is likely to identify a particular taxpayer.

### **94 Prohibition on secondary disclosures of information**

- (1) A person must not disclose any information obtained from a tax officer in accordance with section 92 unless—
- (a) the disclosure is made to enable the person to exercise a function conferred on the person by law for the purpose of the enforcement of a law or protecting the public revenue; and
  - (b) the Commissioner consents to the disclosure.

Penalty: 500 penalty units in the case of a body corporate;

100 penalty units in any other case.

#### **Note**

Section 130B applies to an offence against this subsection.

**Note to  
s. 94(1)  
inserted by  
No. 13/2013  
s. 46(3).**

- (2) For the purposes of the **Freedom of Information Act 1982**, information referred to in subsection (1) is information of a kind to which section 38 of that Act applies.

### **95 Further restrictions on disclosure**

A person who is or was a tax officer is not required to disclose or produce in any court any information obtained under or in relation to the administration or execution of a taxation law except—

- (a) if it is necessary to do so for the purposes of the administration or execution of a taxation law; or

- (b) if the requirement is made for the purposes of enabling a person who is specified for the time being to be an authorised recipient to exercise a function conferred or imposed on the person by law.
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## PART 10—OBJECTIONS, REVIEWS AND APPEALS

### Division 1—Objections

#### 96 Objection

(1) A taxpayer may lodge a written objection with the Commissioner if the taxpayer is dissatisfied with—

(a) an assessment, other than a compromise assessment; or

\* \* \* \* \* S. 96(1)(b)(c)  
repealed by  
No. 36/2010  
s. 19(2).

(ca) a valuation made for or on behalf of the Commissioner under section 21(1)(b) of the **Land Tax Act 2005** by the Valuer-General or a valuer nominated by the Valuer-General that is used by the Commissioner in an assessment of land tax; or

S. 96(1)(ca)  
inserted by  
No. 88/2005  
s. 111(1),  
amended by  
Nos 84/2006  
s. 17(1),  
69/2011 s. 39.

(d) a decision of the Commissioner under the **Payroll Tax Act 2007**.

S. 96(1)(d)  
amended by  
No. 26/2007  
s. 106.

(1A) A reference in subsection (1)(d) to a decision does not include a refusal by the Commissioner to refund tax paid or purportedly paid by the taxpayer.

S. 96(1A)  
inserted by  
No. 10/2001  
s. 10(2).

(1B) For the avoidance of doubt, it is declared that an amount by which tax is overpaid is taken to be tax for the purposes of subsection (1A).

S. 96(1B)  
inserted by  
No. 10/2001  
s. 10(2).

(2) No court or administrative review body, including the Tribunal, has jurisdiction or power to consider any question concerning an assessment or decision referred to in subsection (1), except as provided by this Part.

S. 96(3)(4)  
inserted by  
No. 103/1998  
s. 29,  
repealed by  
No. 36/2010  
s. 19(3).

\* \* \* \* \*

## 97 Grounds for objection

S. 97(2)  
substituted by  
No. 113/2003  
s. 8.

- (1) The grounds for the objection must be stated fully and in detail, and must be in writing.
- (2) The grounds for the objection, in the case of a reassessment, may only relate to tax liabilities specified in the reassessment to the extent that they are additional to, or greater than, those under the previous assessment.

S. 97(3)  
inserted by  
No. 88/2005  
s. 111(2),  
substituted by  
No. 69/2011  
s. 40.

- (3) A taxpayer cannot object to an assessment of land tax on any ground relating to the value of the land if—
  - (a) the assessment is based on a valuation made by a valuation authority under the **Valuation of Land Act 1960**; and
  - (b) that valuation was not made for or on behalf of the Commissioner under section 21(1)(b) of the **Land Tax Act 2005**.

S. 97(4)  
inserted by  
No. 88/2005  
s. 111(2).

- (4) Nothing in subsection (3) limits or affects the right of any person to object to a valuation in accordance with Part III of the **Valuation of Land Act 1960**.

S. 97(5)  
inserted by  
No. 88/2005  
s. 111(2),  
repealed by  
No. 84/2006  
s. 17(2),  
new s. 97(5)  
inserted by  
No. 23/2010  
s. 28.

- (5) A taxpayer cannot object to an assessment of a contribution imposed in relation to a GAIC event in respect of land under Part 9B of the **Planning and Environment Act 1987** on any ground other than the following grounds—
  - (a) that the folio of the Register relating to that land was incorrectly recorded with a notification under section 201UD of that Act indicating that the land may be land in



- respect of which a contribution may be payable;
- (b) that the contribution should not have been imposed as—
- (i) the event was an excluded event within the meaning of section 201RB of that Act; or
  - (ii) the land was not subject to a contribution under section 201SA of that Act;
- (c) that the area of the land or the amount of the contribution has been calculated incorrectly;
- (d) in the case of a contribution imposed in respect of a dutiable transaction relating to land, that an exemption under Subdivision 2 of Division 3 of that Part applies to that transaction.

### **98 Onus of proof on objection**

On an objection, the objector has the onus of proving the objector's case.

### **99 Time for lodging objection**

- (1) An objection must be lodged with the Commissioner within 60 days after the date of service of the notice of the assessment or decision on the taxpayer, except as provided by section 100.
- (2) An objection is taken to have been lodged with the Commissioner when it is received by the Commissioner.

### **100 Objections lodged out of time**

- (1) The Commissioner may permit a person to lodge an objection after the 60-day period.
- (2) The person seeking to so lodge the objection must state fully and in detail, and in writing, the circumstances concerning and the reasons for the failure to lodge the objection within the 60-day period.
- (3) The Commissioner may grant permission unconditionally or subject to conditions or may refuse permission.
- (4) A decision by the Commissioner under this section to refuse permission or to impose conditions on permission is a non-reviewable decision.
- (5) This section does not apply to an objection referred to in section 96(1)(ca).

S. 100(5)  
inserted by  
No. 84/2006  
s. 17(3).

S. 100A  
(Heading)  
inserted by  
No. 76/2012  
s. 22(1).

S. 100A  
inserted by  
No. 79/2000  
s. 285(Sch. 1  
item 6.6) (as  
amended by  
No. 46/2001  
s. 27).

S. 100A(1)  
substituted by  
No. 46/2004  
s. 26(1),  
amended by  
No. 76/2012  
s. 22(2).

### **100A Objections concerning the value of property**

- (1) If an objection concerns the value of any property, the Commissioner may refer the matter to the Valuer-General or another competent valuer for valuation of the property.

(2) The objector must pay the cost of a valuation under subsection (1) if, at the time the objection was lodged—

S. 100A(2)  
amended by  
No. 46/2004  
s. 26(2),  
substituted by  
No. 76/2012  
s. 22(3).

(a) the objector had not provided any information to the Commissioner as to the value of the property; or

(b) the objector—

(i) had provided information to the Commissioner as to the value of the property; and

(ii) the valuation under subsection (1) exceeds the value provided by the objector by 15% or more; and

(iii) the valuation as determined on the objection, or on appeal or review, exceeds the value provided by the objector by 15% or more.

(3) Subsection (1) does not apply to an objection to an assessment of land tax or an objection referred to in section 96(1)(ca), however, the Commissioner must consult the Valuer-General before determining an objection referred to in section 96(1)(ca).

S. 100A(3)  
inserted by  
No. 88/2005  
s. 112.

### **100B Objections concerning assessments of growth areas infrastructure contributions**

S. 100B  
inserted by  
No. 23/2010  
s. 29.

If an objection concerns an assessment of a contribution imposed under Part 9B of the **Planning and Environment Act 1987**, the Commissioner must consult with the Growth Areas Authority before determining the objection.

### **101 Determination of objection**

(1) The Commissioner must consider an objection and either allow the objection in whole or in part or disallow the objection.

- (2) The Commissioner may determine an objection that is subject to a right of review or appeal at any time before the hearing of the review or appeal proceedings commences.

## **102 Suspension of determination**

S. 102(1)  
substituted by  
No. 76/2012  
s. 23.

- (1) The Commissioner may suspend the determination of an objection, by written notice given to the objector, if—
- (a) under a taxation law the Commissioner has required or requested a person to provide the Commissioner with information relevant to the objection; or
  - (b) the Commissioner has referred the matter to the Valuer-General or another competent valuer under section 100A for valuation.

S. 102(2)  
substituted by  
No. 76/2012  
s. 23.

- (2) A suspension under this section—
- (a) takes effect on service of the notice under subsection (1); and
  - (b) remains in effect until—
    - (i) in the case of subsection (1)(a), the objector, or another person, provides the information that the Commissioner has required or requested; or
    - (ii) in the case of subsection (1)(b), the Commissioner receives the valuation.
- (3) The Commissioner, at the request of the objector, may suspend the determination of an objection pending the outcome of legal proceedings relating to a tax liability of the same kind as the tax liability the subject of the objection.

**103 Notice of determination**

- (1) The Commissioner must give notice to the objector of the determination of the objection.
- (2) The Commissioner must, in the notice, give the reasons for disallowing an objection or for allowing an objection in part only.

**104 Recovery of tax pending objection, review or appeal**

- (1) The fact that an objection, review or appeal is pending does not in the meantime affect the assessment or decision to which the objection, review or appeal relates and tax may be recovered as if no objection, review or appeal were pending.
- (2) A reference in this section to an objection, review or appeal includes a reference to an objection, review or appeal under Part III of the **Valuation of Land Act 1960**.

S. 104  
amended by  
No. 84/2006  
s. 18(1) (ILA  
s. 39B(1)).

S. 104(2)  
inserted by  
No. 84/2006  
s. 18(1).

**105 Payment of interest following unsuccessful objection**

- (1) Division 1 of Part 5 applies to an amount of tax required to be paid following the determination of an objection.
- (2) A reference in this section to an objection includes a reference to an objection under Part III of the **Valuation of Land Act 1960**.

S. 105  
amended by  
No. 84/2006  
s. 18(2) (ILA  
s. 39B(1)).

S. 105(2)  
inserted by  
No. 84/2006  
s. 18(2).

**Division 2—Reviews and appeals**

**106 Right of review or appeal**

- (1) If—
  - (a) a taxpayer is dissatisfied with the Commissioner's determination of the taxpayer's objection; or

- (b) 90 days (not including any period of suspension under section 102) have passed since a taxpayer's objection was received by the Commissioner and the Commissioner has not determined the objection—

the taxpayer, in writing, may request the Commissioner to refer the matter to the Tribunal or to treat the objection as an appeal and cause it to be set down for hearing at the next sittings of the Supreme Court.

- (2) The taxpayer's request—
- (a) in the circumstances referred to in subsection (1)(a), must be made within 60 days after the date of service on the taxpayer of the notice of the Commissioner's determination of the objection; or
- (b) in the circumstances referred to in subsection (1)(b), may be made at any time after the 90 day period (not including any period of suspension under section 102).
- (3) Subject to section 107, within 60 days after the request, the Commissioner must refer the matter for review or cause the objection to be set down for hearing accordingly.

### **107 Request for further and better particulars**

- (1) Within 30 days after receiving a request to refer a matter or treat an objection as an appeal, the Commissioner may require the taxpayer to give further and better particulars of the objection.
- (2) If, within 30 days after giving the notice—
- (a) particulars are given, the Commissioner is not bound to refer the matter or cause the objection to be set down for hearing until 30 days after the Commissioner has received full details of the objection; or

(b) particulars are not given, the Commissioner must not refer the matter or cause the objection to be set down for hearing.

**108 Must tax be paid before a review or appeal is determined?**

S. 108  
substituted by  
No. 48/1998  
s. 15.

- (1) A taxpayer may make a request under section 106(1) for a review or appeal whether or not the tax to which it relates has been paid.
- (2) If a taxpayer makes a request before the tax has been paid, the Commissioner may apply to the Supreme Court for an order that the tax, or a specified part of it, be paid before the review or appeal proceed.
- (3) On an application under subsection (2), the Supreme Court may order that the review or appeal not proceed until the tax, or a specified part of it, is paid.
- (4) The Supreme Court may make an order under subsection (3) only if satisfied that it is reasonably likely that, unless the order is made, any tax payable by the taxpayer in accordance with the determination of the review or appeal would not be paid within the period within which it is payable.

**109 Grounds of review or appeal**

On a review or an appeal—

- (a) the taxpayer's case is limited to the grounds of the objection; and
- (b) the Commissioner's case is limited to the grounds on which the objection was disallowed—

unless the Tribunal or Court otherwise orders.

### 110 Onus on review or appeal

On a review or an appeal, the taxpayer has the onus of proving the taxpayer's case.

### 111 Referral to Tribunal<sup>5</sup>

- (1) The Tribunal must review a matter referred to it and, subject to subsection (2), may confirm, reduce, increase or vary the assessment or decision.
- (2) If the taxpayer does not appear before the Tribunal, the Tribunal must confirm the assessment or decision. However, if good cause is shown, the Tribunal, within the time prescribed by the regulations, may re-open and review the matter.
- (3) If the matter under review relates to a valuation made for or on behalf of the Commissioner under section 21(1)(b) of the **Land Tax Act 2005** used by the Commissioner in an assessment of land tax, the Tribunal has the same powers with respect to that matter as it has in a review under Part III of the **Valuation of Land Act 1960** and the provisions of that Part, with any necessary modifications, apply accordingly.
- (4) The powers of the Tribunal under subsection (3) are in addition to its powers and functions under this Act and the **Victorian Civil and Administrative Tribunal Act 1998**.

S. 111(3)  
repealed by  
No. 52/1998  
s. 311(Sch. 1  
item 89.2),  
new s. 111(3)  
inserted by  
No. 88/2005  
s. 113,  
amended by  
No. 69/2011  
s. 41.

S. 111(4)  
inserted by  
No. 88/2005  
s. 113.

### 112 Supreme Court appeals

- (1) On the hearing of an appeal by the Supreme Court, the Court may make any order it thinks fit and may by order confirm, reduce, increase or vary the assessment or decision.
- (2) The costs of the appeal are in the discretion of the Court.



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S. 113  
repealed by  
No. 52/1998  
s. 311(Sch. 1  
item 89.3).

#### 114 Giving effect to decision on review or appeal

- (1) Subject to section 115, within 60 days after the decision on review or appeal becomes final, the Commissioner must take any action that is necessary to give effect to it.
- (2) If no appeal to a court from—
  - (a) a decision of the Tribunal on a review<sup>6</sup>; or
  - (b) a decision of the Supreme Court on an appeal—

S. 114(1)  
amended by  
No. 10/2001  
s. 10(3).

is instituted within 30 days after the day on which the decision is made, the decision is to be taken, for the purposes of this section, to have become final at the end of that period.

### Division 3—Refund of amounts and payment of interest following successful objection, review or appeal

#### 115 Refund of amount

- (1) If—
  - (a) a taxpayer's objection to an assessment is allowed in whole or in part; or
  - (b) a taxpayer's review or appeal in respect of an assessment is upheld—

S. 115  
substituted by  
No. 10/2001  
s. 11.

the Commissioner must refund any amount paid under the assessment that is in excess of a requirement for payment under the relevant taxation law.

- (1A) If—
  - (a) a taxpayer's objection under Part III of the **Valuation of Land Act 1960** to a valuation is allowed in whole or part; or

S. 115(1A)  
inserted by  
No. 84/2006  
s. 18(3).

- (b) a taxpayer's review or appeal under Part III of the **Valuation of Land Act 1960** in respect of a valuation is upheld—

the Commissioner must refund any amount paid under an assessment of land tax that is in excess of a requirement for payment under the **Land Tax Act 2005**.

- (2) If—

- (a) a taxpayer's objection to a decision other than an assessment is allowed in whole or in part; or  
(b) a taxpayer's review or appeal in respect of a decision other than an assessment is upheld—

the Commissioner must refund any amount paid in the relevant period in excess of a requirement for payment under the relevant taxation law.

- (3) In subsection (2), the *relevant period* is the period of 5 years immediately preceding the earlier of—
- (a) the date of the decision;  
(b) if the decision was made in response to a written request from the taxpayer that included a description of the facts and circumstances on which the request was based—the date of the request for the decision.

S. 115(3)  
amended by  
No. 26/2007  
s. 105(d).

## 116 Payment of interest

In addition to an amount refunded under this Part, the Commissioner is required to pay interest on the amount calculated at the market rate referred to in section 25(a) on a daily basis from—

- (a) the date of payment of the amount overpaid that is refunded; or

S. 116(a)  
amended by  
No. 10/2001  
s. 12.

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(b) the date on which the Commissioner made  
the assessment to which the objection and  
review or appeal relates—  
whichever is the later, until the date of the refund.

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**PART 10A—FEASIBILITY STUDIES**

Pt 10A  
(Heading and  
ss 116A–116I)  
inserted by  
No. 86/2009  
s. 6.

**116A Power to conduct feasibility study**

S. 116A  
inserted by  
No. 86/2009  
s. 6.

- (1) The Commissioner may conduct feasibility studies in the public interest.
- (2) Without limiting subsection (1), the Commissioner may conduct a feasibility study in relation to fire services funding.

**116B Power to require information for feasibility study**

S. 116B  
inserted by  
No. 86/2009  
s. 6.

- (1) The Commissioner may, by written notice, require a person to provide to the Commissioner (either orally or in writing) information that is described in the notice for the purpose of a feasibility study to be conducted by the Commissioner.
- (2) The Commissioner must state in the notice—
  - (a) the purpose for which the information is required; and
  - (b) the form in which the information is to be provided; and
  - (c) the person to whom the information is to be provided; and
  - (d) the period for compliance with the requirement in the notice.
- (3) The period specified in a notice for compliance with a requirement in the notice must be at least 30 days.
- (4) The Commissioner must not require a person to provide information under this section unless the Commissioner determines that there are no other reasonable means of obtaining that information.

- (5) Division 2 of Part 9 does not apply to the obtaining of information for the purposes of a feasibility study.

**116C Protection against self-incrimination**

S. 116C  
inserted by  
No. 86/2009  
s. 6.

A person is not required to give information under section 116B if the giving of the information would tend to incriminate the person.

**116D Use of information obtained for feasibility study**

S. 116D  
inserted by  
No. 86/2009  
s. 6.

A person must not use any information obtained under this Part for a purpose other than the conduct of a feasibility study.

**116E Prohibition on disclosures of information obtained for feasibility study**

S. 116E  
inserted by  
No. 86/2009  
s. 6.

- (1) A person must not disclose any information obtained under this Part, except as permitted by this Part.

Penalty: 100 penalty units.

**Note**

Section 130B applies to an offence against this subsection.

Note to  
s. 116E(1)  
inserted by  
No. 13/2013  
s. 46(3).

- (2) For the purposes of the **Freedom of Information Act 1982**, information referred to in subsection (1) is information of a kind to which section 38 of that Act applies.

- (3) Division 3 of Part 9 does not apply to information obtained under this Part.

**116F Information not admissible as evidence**

S. 116F  
inserted by  
No. 86/2009  
s. 6.

Information obtained under this Part is not admissible as evidence against any person in civil or criminal proceedings.

S. 116G  
inserted by  
No. 86/2009  
s. 6.

### **116G Permitted disclosure for purposes of this Part**

A person may disclose information obtained under this Part—

- (a) to any person employed or engaged in the administration or enforcement of a taxation law or another law under the general administration of the Commissioner, if the disclosure is for the purpose of the conduct of a feasibility study; or
- (b) to any person employed in or engaged to work in or for the Department of Treasury and Finance, if the disclosure is for the purpose of the conduct of a feasibility study; or
- (c) with the consent of the person to whom the information relates.

S. 116H  
inserted by  
No. 86/2009  
s. 6.

### **116H Disclosures of a general nature**

The Commissioner or a person employed in or engaged to work in or for the Department of Treasury and Finance may disclose information obtained under or in relation to the conduct of a feasibility study unless that information will or is likely to—

- (a) identify a particular person; or
- (b) disclose, in respect of a business, commercial or financial undertaking—
  - (i) trade secrets; or
  - (ii) other matters of a business, commercial or financial nature.

**116I Secondary disclosure of information disclosed under this Part**

S. 116I  
inserted by  
No. 86/2009  
s. 6.

- (1) A person must not disclose any information obtained from a person under section 116G unless the Commissioner consents to the disclosure and—
- (a) the disclosure is for a purpose set out in section 116G(a) or (b); or
  - (b) in the case of information obtained under section 116G(c), the disclosure is made with the consent of the person to whom the information relates.

Penalty: 100 penalty units.

**Note**

Section 130B applies to an offence against this subsection.

**Note to  
s. 116I(1)  
inserted by  
No. 13/2013  
s. 46(3).**

- (2) For the purposes of the **Freedom of Information Act 1982**, information referred to in subsection (1) is information of a kind to which section 38 of that Act applies.
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**PART 11—MISCELLANEOUS PROVISIONS**

**117 Means and time of payment**

S. 117(1)(a)  
amended by  
No. 11/2001  
s. 3(Sch.  
item 73.1).

- (1) Tax may be paid to the Commissioner—
- (a) by a cash payment made at, or a cheque drawn on account of an authorised deposit-taking institution or postal money order delivered to, an office of the Commissioner; or
  - (b) by any other means approved by the Commissioner.

- (2) An approval of the Commissioner may be—
- (a) general or limited to particular taxes, persons or payments; and
  - (b) unconditional or subject to conditions.

- (3) If the Commissioner approves payment by a personal cheque—

S. 117(3)(a)  
amended by  
No. 11/2001  
s. 3(Sch.  
item 73.2).

- (a) payment will be taken to be effected when the cheque is received by the Commissioner provided that payment occurs when the Commissioner first presents the cheque to the authorised deposit-taking institution for payment; or
- (b) in any other case, payment will be taken to be effected when payment occurs under the cheque following presentation by the Commissioner (however, the Commissioner is under no obligation to present a cheque for payment more than once).

- (4) An approval of a means of payment (other than personal cheque) may include a stipulation as to when payment by that means will be taken to be effected and any such stipulation will have effect according to its terms.



(5) The Commissioner may vary or cancel an approval under this section.

(6) In this section—

*authorised deposit-taking institution* has the same meaning as in the Banking Act 1959 of the Commonwealth.

S. 117(6)  
inserted by  
No. 11/2001  
s. 3(Sch.  
item 73.3).

### **118 Adjustments for fraction of a dollar**

(1) If a single amount of tax payable by a taxpayer is not a multiple of a dollar, the Commissioner may decrease the amount but not lower than the nearest dollar.

(2) If the Commissioner aggregates two or more amounts of tax that are payable by a taxpayer and the aggregated amount is not a multiple of a dollar, the Commissioner may decrease the aggregated amount but not lower than the nearest dollar.

### **119 Valuation of foreign currency**

(1) If an amount involved in the calculation of tax is not in Australian currency, the amount is to be converted to Australian currency at the exchange rate published by the Reserve Bank of Australia on the day on which the liability to pay the tax arose.

(2) This section is subject to a provision of another taxation law governing the calculation of tax where an amount involved in the calculation is not in Australian currency.

S. 119(1)  
substituted by  
No. 36/2005  
s. 38.

### **120 Rewards**

The Minister may at his discretion reward any person who informs the Minister of any offence against a taxation law or assists in the recovery of any penalty.

S. 121  
substituted by  
No. 34/1999  
s. 19(Sch.  
item 5) (as  
amended by  
No. 74/2000  
s. 3(Sch. 1  
item 23.2).

## 121 Appropriation of Consolidated Fund

- (1) If the Commissioner is authorised or required—
  - (a) to pay an amount under this Act; or
  - (b) to pay an amount under the corresponding applied law to this Act, pursuant to an arrangement between the Governor-General of the Commonwealth and the Governor of the State under section 9(1) of the Commonwealth Places (Mirror Taxes) Act 1998 of the Commonwealth—

the amount is to be paid from the Consolidated Fund which is appropriated by this section to the necessary extent.

- (2) This section as substituted by item 5 of the Schedule to the **Commonwealth Places (Mirror Taxes Administration) Act 1999** applies, and must be taken to have always applied, on and from 6 October 1997.
- (3) Subsection (1) does not apply in respect of a an amount paid by the Commissioner relating to the whole or part of a contribution paid under Part 9B of the **Planning and Environment Act 1987**, in which case the amount is to be paid in equal shares from the Growth Areas Public Transport Fund and the Building New Communities Fund established under Division 5 of that Part.

S. 121(3)  
inserted by  
No. 23/2010  
s. 30.

## 122 Public officer of body corporate

- (1) The Commissioner, by written notice served on a body corporate, may require the body corporate to appoint, within a period specified in the notice, a natural person whose principal place of residence is in Victoria as a public officer of the body corporate for the purposes of the taxation laws, and to keep the office of public officer constantly filled by such a person.

(2) An appointment of a public officer is not duly made until written notice of the appointment, specifying the name and residential address of the officer, has been lodged with the Commissioner.

(3) If—

(a) the Commissioner has required a body corporate to appoint a public officer; and

(b) the body corporate does not make such an appointment as required or does not keep the office of public officer constantly filled as required—

S. 122(3)  
amended by  
No. 44/2001  
s. 3(Sch.  
item 109).

the Commissioner may appoint a director, a secretary or an executive officer (within the meaning of the Corporations Act) of the body corporate as the public officer of the body corporate by written notice served on the person and the body corporate.

(4) Service of a document on the public officer of the body corporate is sufficient service on the body corporate for the purposes of a taxation law, and, if at any time the body corporate does not have a public officer as required under this section, then service on a person acting or appearing to act in the business of the body corporate is sufficient.

(5) The public officer is answerable for the discharge of all obligations imposed on the body corporate under a taxation law, and, in case of default, is liable to the same penalties.

(6) Everything that the public officer is required to do and does in his or her representative capacity is taken to have been done by the body corporate, but the absence or non-appointment of a public officer does not excuse the body corporate from the necessity of complying, or from a penalty for failure to comply, with a provision of a taxation law and the body corporate is liable to comply

with the taxation laws as if there were no requirement to appoint a public officer.

- (7) A document served on or requirement made of the public officer is taken to have been served on or made of the body corporate.
- (8) Any civil or criminal proceedings brought under a taxation law against the public officer are taken to have been brought against the body corporate, and the body corporate is liable jointly with the public officer for any penalty imposed on the public officer, or for compliance with any order made against the public officer.

### **123 Service of documents on Commissioner**

A document authorised or required to be served on, given to or lodged with the Commissioner for the purposes of a taxation law may be served, given or lodged—

- (a) by delivering it to an office of the Commissioner; or
- (b) by post addressed to the Commissioner at an office of the Commissioner; or
- (c) by a means indicated by the Commissioner as being an available means of service (such as by facsimile transmission or by delivering it, addressed to the Commissioner, to the facilities of a document exchange); or
- (d) by leaving it with a person who has authority to accept documents on the Commissioner's behalf.

### **124 Day of service of document or payment of money**

If a document is served on the Commissioner or a payment of money is tendered to the Commissioner at a time on a day that is after the ordinary hours of business when the offices of the Commissioner are open to the public on that day,

the document or payment is taken to have been served on or tendered to the Commissioner on the following business day.

## 125 Service of documents by Commissioner

- (1) A document authorised or required to be served on or given to a person by the Commissioner for the purposes of a taxation law may be served on or given to the person—
- (a) personally; or
  - (b) by leaving it at the last address of the person known to the Commissioner (including, in the case of a body corporate, the registered office or a business address of the body corporate); or
  - (c) by post addressed to the person at the last address of the person known to the Commissioner (including, in the case of a body corporate, the registered office or a business address of the body corporate); or
  - (d) by a means indicated by the person as being an available means of service (such as by facsimile or other electronic transmission or by delivering it, addressed to the person, to the facilities of a document exchange); or
  - (e) by any means provided for the service of the document by another Act or law.

S. 125(1)(d)  
amended by  
No. 10/2001  
s. 13.

- (1A) To avoid doubt, this section applies to the service of any court process in proceedings to recover any amount under this Act.
- (1B) If the on-line duty payment system is used in respect of a dutiable transaction under the **Duties Act 2000**, deemed service of a deemed assessment under section 14(1A) is service of a notice of assessment for the purposes of subsection (1).

S. 125(1A)  
inserted by  
No. 83/2009  
s. 37.

S. 125(1B)  
inserted by  
No. 28/2011  
s. 43.

- (2) If a person (*the agent*) has actual or apparent authority to accept service of a document on behalf of another, the Commissioner may, for the purposes of a taxation law, serve the document on the agent as if the agent were that other person.
- (3) Service of a document on a member of a partnership, or on a member of the committee of management of an unincorporated association or other body of persons, is taken, for the purposes of a taxation law, to constitute service of the document on each member of the partnership, or on each member of the association or other body of persons.

S. 125A  
inserted by  
No. 10/2001  
s. 14.

#### 125A When is service effective?

- (1) For the purposes of a taxation law, a document must be taken, unless the contrary is proved, to have been served on or given to a person by the Commissioner—
  - (a) in the case of delivery in person—at the time the document is delivered;
  - (b) in the case of posting—2 business days after the day on which the document was posted;
  - (c) in the case of a facsimile or other electronic transmission—at the time the facsimile or transmission is received.
- (2) If a facsimile or other electronic transmission is received after 4.00 p.m. on any day, it must be taken to have been received on the next business day.
- (3) If the on-line duty payment system is used in respect of a dutiable transaction under the **Duties Act 2000**, the Commissioner is taken to have served a deemed assessment on a taxpayer at the time the Commissioner validates the information submitted in relation to the dutiable transaction by the user of the on-line duty payment system for

S. 125A(3)  
inserted by  
No. 28/2011  
s. 44.

the purpose of payment (including a nil payment) of the duty calculated by the on-line duty payment system.

**126 Presumption of regularity as to issue of documents**

A document or a copy of a document bearing the written, printed or stamped signature or name of the Commissioner or a person described in the document as a delegate of the Commissioner is, in the absence of evidence to the contrary, to be taken to have been lawfully issued by the Commissioner.

**127 Evidence of assessment**

Production of a notice of assessment, or of a document signed by the Commissioner purporting to be a copy of a notice of assessment, is—

- (a) conclusive evidence of the due making of the assessment; and
- (b) conclusive evidence that the amount and all particulars of the assessment are correct, except in objection, review or appeal proceedings (in which it is proof in the absence of evidence to the contrary).

**128 Certificate evidence**

A certificate signed by the Commissioner that states any of the following matters is admissible in proceedings under a taxation law and, in the absence of evidence to the contrary, is proof of the matters stated in the certificate—

- (a) that the person named in the certificate is liable to pay tax;
- (b) that an assessment of tax has been made in relation to circumstances specified in the certificate;

S. 128(ca)  
inserted by  
No. 103/1998  
s. 30.

- (c) that the amount of tax, a penalty or interest specified in the certificate is payable by a person named in the certificate or has been paid in whole or in part by or on behalf of a person so named;
- (ca) that an amount of tax or interest specified in the certificate is payable by a person specified in the certificate in accordance with a special arrangement approved under section 39;
- (d) that a document specified in the certificate was posted to, delivered to, or served personally on, a person named in the certificate on a day specified in the certificate;
- (e) that a person named in the certificate is, or is not, registered or licensed as required by the relevant taxation law;
- (f) that a return or statement required by a taxation law has been, or has not been, lodged by or on behalf of a person named in the certificate on or as at a day specified in the certificate;
- (g) that a person named in the certificate is, or was, an authorised officer on the date specified in the certificate.

S. 129  
substituted by  
No. 88/2005  
s. 114.

## **129 Copies of and extracts from certain documents**

A document signed by the Commissioner purporting to be a copy of, or an extract from, any of the following is admissible in proceedings under a taxation law without production of the original—

- (a) a return lodged with the Commissioner;



- (b) a document issued by the Commissioner;
- (c) a notice given under section 103 or 104 of the **Land Tax Act 2005**.

**130 Offences by officers of bodies corporate**

S. 130  
(Heading)  
inserted by  
No. 13/2013  
s. 44(1).

\* \* \* \* \*

S. 130(1)–(3)  
repealed by  
No. 13/2013  
s. 44(2).

- (4) Sections 130A, 130B and 130C do not affect a liability imposed on a body corporate for an offence committed by it against a taxation law.

S. 130(4)  
amended by  
No. 13/2013  
s. 44(3).

\* \* \* \* \*

S. 130(5)  
repealed by  
No. 13/2013  
s. 44(2).

**130A Criminal liability of officers of bodies corporate—  
accessorial liability**

S. 130A  
inserted by  
No. 13/2013  
s. 45.

- (1) If a body corporate commits an offence against a provision specified in subsection (2), an officer of the body corporate also commits an offence against the provision if the officer—
  - (a) authorised or permitted the commission of the offence by the body corporate; or
  - (b) was knowingly concerned in any way (whether by act or omission) in the commission of the offence by the body corporate.
- (2) For the purposes of section (1)—
  - (a) the following provisions of this Act are specified—
    - (i) section 22(2);

- (ii) section 47(6);
  - (iii) section 54(1);
  - (iv) section 60;
  - (v) section 89;
  - (vi) section 91(1);
- (b) the following provisions of the **Congestion Levy Act 2005** are specified—
- (i) section 27(1);
  - (ii) section 28(1) and (2);
- (c) the following provisions of the **Duties Act 2000** are specified—
- (i) section 69D(2);
  - (ii) section 89X(4);
  - (iii) section 139(5);
  - (iv) section 142(1);
  - (v) section 199;
  - (vi) section 257(3);
  - (vii) section 258(6);
  - (viii) section 270(1);
  - (ix) section 271(1);
- (d) the following provisions of the **Livestock Disease Control Act 1994** are specified—
- (i) section 92(1), (1A) and (2);
  - (ii) section 94B;
  - (iii) section 95(5) and (7);
  - (iv) section 95A(5) and (7);
  - (v) section 95B (5) and (7);

- (e) the following provisions of the **Payroll Tax Act 2007** are specified—
- (i) section 97(1) and (3);
  - (ii) clause 21 of Schedule 2.
- (3) Without limiting any other defence available to the officer, an officer of a body corporate may rely on a defence that would be available to the body corporate if it were charged with the offence with which the officer is charged and, in doing so, the officer bears the same burden of proof that the body corporate would bear.
- (4) An officer of a body corporate may commit an offence against a provision specified in subsection (2) whether or not the body corporate has been prosecuted for, or found guilty of, an offence against that provision.
- (5) In this section—
- body corporate* has the same meaning as corporation has in section 57A of the Corporations Act;
- officer* in relation to a body corporate means—
- (a) a person who is an officer (as defined by section 9 of the Corporations Act) of the body corporate; or
  - (b) a person (other than a person referred to in paragraph (a)), by whatever name called, who is concerned in, or takes part in, the management of the body corporate.
- (6) This section does not affect the operation of Subdivision (1) of Division 1 of Part II of the **Crimes Act 1958**.

S. 130A(6)  
substituted by  
No. 20/2015  
s. 56(Sch. 1  
item 12).

S. 130B  
inserted by  
No. 13/2013  
s. 45.

**130B Criminal liability of officers of bodies corporate—  
failure to exercise due diligence**

- (1) If a body corporate commits an offence against a provision specified in subsection (2), an officer of the body corporate also commits an offence against the provision if the officer failed to exercise due diligence to prevent the commission of the offence by the body corporate.
- (2) For the purposes of subsection (1)—
- (a) the following provisions of this Act are specified—
- (i) section 10(1) and (2);
  - (ii) section 43(1) and (2);
  - (iii) section 50(1);
  - (iv) section 51(2);
  - (v) section 52(1);
  - (vi) section 53;
  - (vii) section 55(1);
  - (viii) section 56;
  - (ix) section 58;
  - (x) section 59;
  - (xi) section 73(8);
  - (xii) section 88(1);
  - (xiii) section 94(1);
  - (xiv) section 116E(1);
  - (xv) section 116I(1);
- (b) the following provisions of the **Duties Act 2000** are specified—
- (i) section 21B;
  - (ii) section 21C(1);

- (iii) section 21D(2);
  - (iv) section 24(6);
  - (v) section 89O(2);
  - (vi) section 140(2);
  - (vii) section 185;
  - (viii) section 188(1);
  - (ix) section 205(1);
  - (x) section 253(1);
  - (xi) section 264B(3);
  - (xii) section 266(1);
  - (xiii) section 269;
- (c) the following provisions of the **Livestock Disease Control Act 1994** are specified—
- (i) section 94A(1) and (2);
  - (ii) section 95(1), (2), (3) and (4);
  - (iii) section 95A(1), (2), (3) and (4);
  - (iv) section 95B(1), (2), (3) and (4);
  - (v) section 96(2);
  - (vi) section 96B.
- (3) In determining whether an officer of a body corporate failed to exercise due diligence, a court may have regard to—
- (a) what the officer knew, or ought reasonably to have known, about the commission of the offence by the body corporate; and
  - (b) whether or not the officer was in a position to influence the body corporate in relation to the commission of the offence by the body corporate; and

- (c) what steps the officer took, or could reasonably have taken, to prevent the commission of the offence by the body corporate; and
  - (d) any other relevant matter.
- (4) Without limiting any other defence available to the officer, an officer of a body corporate may rely on a defence that would be available to the body corporate if it were charged with the offence with which the officer is charged and, in doing so, the officer bears the same burden of proof that the body corporate would bear.
- (5) An officer of a body corporate may commit an offence against a provision specified in subsection (2) whether or not the body corporate has been prosecuted for, or found guilty of, an offence against that provision.
- (6) In this section—
- body corporate* has the same meaning as in section 130A;
- officer* in relation to a body corporate, has the same meaning as in section 130A.

S. 130C  
inserted by  
No. 13/2013  
s. 45.

**130C Criminal liability of officers of bodies corporate—  
failure to exercise due diligence (legal burden of  
proof)**

- (1) If a body corporate commits an offence against a provision specified in subsection (2), an officer of the body corporate also commits an offence against the provision.
- (2) For the purposes of subsection (1)—
- (a) the following provisions of this Act are specified—
    - (i) section 57(1);
    - (ii) section 61;

- (b) section 268(1) and (2) of the **Duties Act 2000** is specified.
- (3) It is a defence to a charge for an offence against a provision specified in subsection (2) for an officer of a body corporate to prove that the officer exercised due diligence to prevent the commission of the offence by the body corporate.
- (4) In determining whether an officer of a body corporate exercised due diligence, a court may have regard to—
- (a) what the officer knew, or ought reasonably to have known, about the commission of the offence by the body corporate; and
  - (b) whether or not the officer was in a position to influence the body corporate in relation to the commission of the offence by the body corporate; and
  - (c) what steps the officer took, or could reasonably have taken, to prevent the commission of the offence by the body corporate; and
  - (d) any other relevant matter.
- (5) Without limiting any other defence available to the officer, an officer of a body corporate may rely on a defence that would be available to the body corporate if it were charged with the offence with which the officer is charged and, in doing so, the officer bears the same burden of proof that the body corporate would bear.
- (6) An officer of a body corporate may commit an offence against a provision specified in subsection (2) whether or not the body corporate has been prosecuted for, or found guilty of, an offence against that provision.

(7) In this section—

*body corporate* has the same meaning as in section 130A;

*officer* in relation to a body corporate, has the same meaning as in section 130A.

### **131 Offences by partnerships etc.**

Where a taxation law provides that person, being a partnership or an unincorporated association, is guilty of an offence, that reference to the person—

- (a) in the case of a partnership—is to be read as a reference to each member of the partnership; and
- (b) in the case of an unincorporated association—is to be read as a reference to each member of the committee of management of the association.

### **132 Tax liability unaffected by payment of penalty**

The payment by a person of a penalty imposed by a court does not relieve the person from the payment of any other amount the person is liable to pay under a taxation law.

### **133 Continuing offences**

- (1) A person may be convicted of a second or subsequent offence for a failure to do an act (where the failure constitutes an offence) if the failure continues beyond the period or date in respect of which the person is convicted for the failure.
- (2) The maximum penalty for the offence is the same whether it is a second or subsequent offence.



### 134 Time for commencing prosecutions

A prosecution for an offence against a taxation law may be commenced at any time within 3 years after the alleged commission of the offence.

### 135 Supreme Court—limitation of jurisdiction

- (1) It is the intention of sections 5, 12(4), 18(1), 96(2), 100(4) and 108(1) to alter or vary section 85 of the **Constitution Act 1975**.
- (2) It is the intention of clause 13(8), (9) and (10) in Schedule 1 to alter or vary section 85 of the **Constitution Act 1975**.
- (3) It is the intention of sections 5, 12(4), 18(1), 96(2) and 100(4), as they apply on and after the commencement of section 115 of the **Land Tax Act 2005**, to alter or vary section 85 of the **Constitution Act 1975**.
- (4) It is the intention of sections 5, 12(4), 18(1), 96(2) and 100(4), as they apply on and after the commencement of section 37 of the **Congestion Levy Act 2005**, to alter or vary section 85 of the **Constitution Act 1975**.
- (5) It is the intention of sections 5, 12(4), 18(1), 96(2) and 100(4), as they apply on and after the commencement of section 31 of the **Planning and Environment Amendment (Growth Areas Infrastructure Contribution) Act 2010**, to alter or vary section 85 of the **Constitution Act 1975**.

S. 135 amended by No. 10/2001 s. 15 (ILA s. 39B(1)).

S. 135(2) inserted by No. 10/2001 s. 15.

S. 135(3) inserted by No. 88/2005 s. 115.

S. 135(4) inserted by No. 74/2005 s. 37.

S. 135(5) inserted by No. 23/2010 s. 31.

### 136 Regulations

- (1) The Governor in Council may make regulations for or with respect to any matter or thing required or permitted by this Act to be prescribed or that is necessary to be prescribed to give effect to this Act.
- (2) A regulation may create an offence punishable by a penalty not exceeding 20 penalty units.

### **137 Savings, transitional and other provisions**

Schedule 1 has effect.

S. 138  
repealed by  
No. 103/1998  
s. 31,  
new s. 138  
inserted by  
No. 13/2013  
s. 47.

### **138 Transitional provision—Statute Law Amendment (Directors' Liability) Act 2013**

- (1) For the avoidance of doubt, section 130A applies with respect to an offence against a provision specified in subsection (2) of that section that is alleged to have been committed by a body corporate on or after the commencement of section 45 of the **Statute Law Amendment (Directors' Liability) Act 2013**.
  - (2) For the avoidance of doubt, section 130B applies with respect to an offence against a provision specified in subsection (2) of that section that is alleged to have been committed by a body corporate on or after the commencement of section 45 of the **Statute Law Amendment (Directors' Liability) Act 2013**.
  - (3) For the avoidance of doubt, section 130C applies with respect to an offence against a provision specified in subsection (2) of that section that is alleged to have been committed by a body corporate on or after the commencement of section 45 of the **Statute Law Amendment (Directors' Liability) Act 2013**.
  - (4) This section does not limit section 14 of the **Interpretation of Legislation Act 1984**.
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## **SCHEDULES**

### **SCHEDULE 1**

Section 137

#### **SAVINGS, TRANSITIONAL AND OTHER PROVISIONS**

##### **1 Application of Interpretation of Legislation Act 1984**

Except where the contrary intention appears, this Schedule does not affect or take away from the **Interpretation of Legislation Act 1984**.

##### **2 Savings and transitional regulations**

The regulations may contain provisions of a savings and transitional nature consequent on the enactment of this Act.

##### **3 Reconstruction of references**

A reference in any other Act or any instrument to the Commissioner of Business Franchises, the Commissioner of Land Tax, the Commissioner of Pay-roll Tax or the Comptroller of Stamps is to be read as a reference to the Commissioner of State Revenue in relation to any act, matter or thing occurring on or after the commencement of this clause.

##### **4 Assessments**

- (1) An assessment may be made under Part 3 of a tax liability under a taxation law whether arising before, on or after the commencement of Part 3.
- (2) An assessment made under a taxation law before the commencement of Part 3 is to be taken after that commencement to have been made under that Part.

## **5 Refunds**

Part 4 applies to the refund or recovery of tax paid before, on or after the commencement of that Part.

## **6 Interest**

- (1) If a tax default occurred before the commencement of Division 1 of Part 5, interest accrues in relation to that default from that commencement in accordance with that Division.
- (2) The Commissioner's power to remit interest extends to interest that accrued under a taxation law before the commencement of Division 1 of Part 5.

## **7 Penalty tax**

- (1) Division 2 of Part 5 does not apply to a tax default that occurred before the commencement of that Division.
- (2) The Commissioner's power to remit penalty tax extends to penalty tax imposed on a taxpayer by a taxation law before the commencement of Division 2 of Part 5.
- (3) If a tax default or other default occurred or commenced under a taxation law before the commencement of Division 2 of Part 5, the Commissioner may make an assessment under this Act, on or after that commencement, of any additional tax that would have been payable or assessable under that taxation law in relation to the default if Schedule 2 had not been enacted, and this Act will apply as if the additional tax were penalty tax under this Act.

Sch. 1 cl. 7(3)  
inserted by  
No. 86/1997  
s. 27.

(4) In this clause—

**additional tax** means additional, penal or penalty tax or duty, or any tax or duty payable by way of a fine or penalty, under a taxation law as in force immediately before the commencement of Schedule 2.

Sch. 1 cl. 7(4)  
inserted by  
No. 86/1997  
s. 27.

## **8 Approval of special tax return arrangements**

Division 2 of Part 6 extends to an approval that has been given under a taxation law before the commencement of that Division that is in force immediately before that commencement.

## **9 Collection of unpaid tax**

- (1) Part 7 extends to tax that is payable but remains unpaid immediately before the commencement of that Part.
- (2) Nothing in subclause (1) affects any action or legal proceeding for the recovery of an amount under a taxation law commenced but not completed before the commencement of Part 7 and any such action or proceeding may be continued and completed as if this Act (other than Division 1 of Part 5, section 137 and clause 7(1) of this Schedule) had not been enacted.

## **10 Records**

Sections 53, 54, 55 and 56 apply to records commenced to be kept under a taxation law before the commencement of those sections as well as to records commenced to be kept on or after that commencement.

## **11 Tax officers**

The person holding appointment as Commissioner of State Revenue immediately before the commencement of section 62 continues as Commissioner of State Revenue under this Act.

## **12 Secrecy**

Division 3 of Part 9 applies to information obtained by a tax officer or other person before the commencement of that Division as well as to information obtained on or after that commencement.

## **13 Objections, reviews and appeals**

- (1) The provisions of Part 10 apply on and after the commencement of that Part—
  - (a) in relation to assessments made under a taxation law before that commencement in the same way as to assessments made under this Act; and
  - (b) in relation to decisions made by the Commissioner that could have been the subject of objection under a taxation law in force immediately before that commencement in the same way as to decisions made by the Commissioner under a taxation law that can be the subject of objection under Part 10.
- (2) Subclause (1) does not apply to an assessment or decision if an objection has been lodged against it under a taxation law before the commencement of Part 10 and proceedings on that objection may be continued and completed as if this Act had not been enacted.
- (3) Review or appeal proceedings in relation to a decision on an objection lodged under a taxation law before the commencement of Part 10 may be commenced and completed, or continued and completed, as if this Act had not been enacted.
- (4) Division 3 of Part 10 applies to an objection that is allowed, or a review or appeal that is upheld, on or after the commencement of that Division, despite the other provisions of this clause.

- (5) Section 96(1A), as inserted by section 10(2) of the **State Taxation Acts (Further Miscellaneous Amendments) Act 2000**, extends to any refusal by the Commissioner to refund tax paid or purportedly paid by a taxpayer that was made by the Commissioner before the commencement of that section 10(2). Sch. 1 cl. 13(5)  
inserted by  
No. 10/2001  
s. 16.
- (6) For the purposes of subclause (5) and section 96(1A), a failure by the Commissioner to refund tax within the period of 3 months after the application for refund is lodged with the Commissioner is taken to be a refusal to refund the tax. Sch. 1 cl. 13(6)  
inserted by  
No. 10/2001  
s. 16.
- (7) Section 115, as substituted by section 11 of the **State Taxation Acts (Further Miscellaneous Amendments) Act 2000**, extends to— Sch. 1 cl. 13(7)  
inserted by  
No. 10/2001  
s. 16.
- (a) any assessment or decision made; and
- (b) any objection allowed, or review or appeal upheld—
- before the commencement of that section 11.
- (8) If— Sch. 1 cl. 13(8)  
inserted by  
No. 10/2001  
s. 16.
- (a) a taxpayer applied before 15 October 1993 for a refund of an amount paid or purportedly paid under a taxation law; and
- (b) the Commissioner refused or failed to refund the amount; and
- (c) the taxpayer did not commence proceedings in any court for the refund or recovery of the amount before 14 November 2000—
- the taxpayer or any other person is not entitled, on or after 14 November 2000, to commence proceedings in any court for the refund or recovery of the amount or any part of it.

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Sch. 1 cl. 13(9)  
inserted by  
No. 10/2001  
s. 16.

- (9) If—
- (a) a taxpayer applied before 15 October 1993 for a refund of an amount paid or purportedly paid under a taxation law; and
  - (b) the Commissioner refused to refund the amount; and
  - (c) the taxpayer lodged an objection to the refusal of the Commissioner to refund the amount; and
  - (d) the objection had not been determined by the Commissioner before 14 November 2000—

the Commissioner is not entitled to determine the objection on or after 14 November 2000 and the taxpayer or any other person is not entitled, on or after 14 November 2000, to take any further action in respect of the objection or commence proceedings in any court for the refund or recovery of the amount or any part of it.

Sch. 1  
cl. 13(10)  
inserted by  
No. 10/2001  
s. 16.

- (10) If a person commenced proceedings on or after 14 November 2000 but before the day on which the **State Taxation Acts (Further Miscellaneous Amendments) Act 2000** received the Royal Assent (*the commencement day*), being proceedings that the person would not have been entitled to commence because of subclause (8) or (9) had those subclauses been in operation at the time, the court must, as soon as practicable after the commencement day, dismiss those proceedings.

Sch. 1  
cl. 13(11)  
inserted by  
No. 10/2001  
s. 16.

- (11) Nothing in subclause (5), (6), (7), (8), (9) or (10) affects the rights of the parties in the proceedings in the Supreme Court between—
- (a) Drake Personnel Limited (ARBN 007 504 609) and Others and the Commissioner of State Revenue of the State of Victoria (No. 5418 of 1994);



- (b) Select Appointments Pty Ltd (ACN 003 840 546) and the Commissioner of State Revenue of the State of Victoria (No. 5930 of 1998);
- (c) MediHealth 2000 Pty Ltd (ACN 061 789 786) and the Commissioner of Pay-roll Tax for the State of Victoria (No. 5911 of 1997).
- (12) Sections 100A and 102, as in force immediately before the commencement of Part 4 of the **State Taxation and Other Acts Amendment Act 2012**, continue to apply on and after that commencement in relation to an objection lodged under section 96 before that commencement.

Sch. 1  
cl. 13(12)  
inserted by  
No. 76/2012  
s. 24.

#### 14 Evidence

Sections 128 and 129 apply on and after the commencement date of that section in relation to proceedings relating to a taxation law commenced on or after that commencement whether the proceedings relate to matters or things occurring before, on or after that commencement.

#### 15 Public officers

The appointment of a public officer under section 41 of the **Pay-roll Tax Act 1971**, being an appointment that is in force immediately before the repeal of that section, is to be taken to be an appointment under section 122.

#### 16 Reassessment and refund periods extended to 5 years

- (1) Section 9(3), as amended by section 105(a) of the **Payroll Tax Act 2007**, applies to a reassessment of an initial assessment of a tax liability where the transaction, event or occurrence giving rise to that tax liability takes place on or after 1 July 2007.

Sch. 1 cl. 16  
inserted by  
No. 26/2007  
s. 107.

- (2) Section 9(3), as in force immediately before the commencement of section 105(a) of the **Payroll Tax Act 2007**, continues to apply to a reassessment of an initial assessment of a tax liability where the transaction, event or occurrence giving rise to that tax liability took place before 1 July 2007.
- (3) Section 13, as amended by section 105(b) of the **Payroll Tax Act 2007**, applies if the date of service of the notice of assessment is on or after 1 July 2007.
- (4) Section 13, as in force immediately before the commencement of section 105(b) of the **Payroll Tax Act 2007**, continues to apply if the date of service of the notice of assessment was before 1 July 2007.
- (5) Section 19(1), as amended by section 105(c) of the **Payroll Tax Act 2007**, applies if the tax in respect of which the application for a refund is made was paid on or after 1 July 2004.
- (6) Section 19(1), as in force immediately before the commencement of section 105(c) of the **Payroll Tax Act 2007**, continues to apply if the tax in respect of which the application for a refund is made was paid before 1 July 2004.
- (7) Section 115(3), as amended by section 105(d) of the **Payroll Tax Act 2007**, applies on and after 1 July 2009.
- (8) During the period commencing on and including 1 July 2007 and ending on 30 June 2009, despite anything to the contrary in section 115(3), the relevant period for the purpose of section 115(2) is the period commencing on 1 July 2004.

**17 Penalty tax for notification defaults**

Sch. 1 cl. 17  
inserted by  
No. 83/2009  
s. 35.

- (1) Division 2 of Part 5 does not apply to permit the imposition of penalty tax for a trust notification default if the event requiring the lodging of notice with the Commissioner occurred before 1 January 2010.
- (2) Division 2 of Part 5 does not apply to an error notification default that occurred in relation to a notice of assessment that was served on the taxpayer before 1 January 2010.
- (3) In this clause—

*error notification default* means a failure to notify the Commissioner of an error or omission in accordance with section 104A of the **Land Tax Act 2005**;

*trust notification default* means a failure to lodge a notice under section 46K of the **Land Tax Act 2005**.

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Sch. 2  
amended by  
No. 86/1997  
s. 28(2),  
repealed by  
No. 103/1998  
s. 31.

## Endnotes

### 1 General information

See [www.legislation.vic.gov.au](http://www.legislation.vic.gov.au) for Victorian Bills, Acts and current authorised versions of legislation and up-to-date legislative information.

*Minister's second reading speech—*

*Legislative Assembly: 10 April 1997*

*Legislative Council: 30 April 1997*

The long title for the Bill for this Act was "to make general provision for the administration and enforcement of taxation laws, to make consequential amendments to other Acts and for other purposes."

#### **Constitution Act 1975:**

*Section 85(5) statement:*

*Legislative Assembly: 10 April 1997*

*Legislative Council: 30 April 1997*

*Absolute majorities:*

*Legislative Assembly: 30 April 1997*

*Legislative Council: 14 May 1997*

The **Taxation Administration Act 1997** was assented to on 3 June 1997 and came into operation as follows:

Part 1 (sections 1–6) on 3 June 1997: section 2(1); rest of Act on 1 July 1997: Government Gazette 12 June 1997 page 1330.

## 2 Table of Amendments

This publication incorporates amendments made to the **Taxation Administration Act 1997** by Acts and subordinate instruments.

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### **State Taxation (Amendment) Act 1997, No. 86/1997**

*Assent Date:* 2.12.97  
*Commencement Date:* S. 28(2) on 3.6.97: s. 2(3); s. 27 on 1.7.97: s. 2(5);  
s. 28(1) on 2.12.97: s. 2(1)  
*Current State:* This information relates only to the provision/s  
amending the **Taxation Administration Act 1997**

### **Audit (Amendment) Act 1997, No. 93/1997**

*Assent Date:* 16.12.97  
*Commencement Date:* S. 28(Sch. item 30) on 1.7.98: s. 2(2)  
*Current State:* This information relates only to the provision/s  
amending the **Taxation Administration Act 1997**

### **Public Sector Reform (Miscellaneous Amendments) Act 1998, No. 46/1998**

*Assent Date:* 26.5.98  
*Commencement Date:* S. 7(Sch. 1) on 1.7.98: s. 2(2)  
*Current State:* This information relates only to the provision/s  
amending the **Taxation Administration Act 1997**

### **State Taxation (Amendment) Act 1998, No. 48/1998**

*Assent Date:* 26.5.98  
*Commencement Date:* S. 15 on 26.5.98: s. 2(1)  
*Current State:* This information relates only to the provision/s  
amending the **Taxation Administration Act 1997**

### **Tribunals and Licensing Authorities (Miscellaneous Amendments) Act, No. 52/1998**

*Assent Date:* 2.6.98  
*Commencement Date:* S. 311(Sch. 1 item 89) on 1.7.98: Government Gazette  
18.6.98 p. 1512  
*Current State:* This information relates only to the provision/s  
amending the **Taxation Administration Act 1997**

### **State Taxation (Further Amendment) Act 1998, No. 103/1998**

*Assent Date:* 1.12.98  
*Commencement Date:* Ss 28, 29, 31 on 1.12.98: s. 2(1); ss 27, 30 on 1.2.99:  
Government Gazette 21.1.99 p. 80  
*Current State:* This information relates only to the provision/s  
amending the **Taxation Administration Act 1997**

### **Commonwealth Places (Mirror Taxes Administration) Act 1999, No. 34/1999 (as amended by No. 74/2000)**

*Assent Date:* 8.6.99  
*Commencement Date:* S. 19(Sch. item 5) on 30.1.01: Special Gazette (No. 8)  
30.1.01 p. 1  
*Current State:* This information relates only to the provision/s  
amending the **Taxation Administration Act 1997**

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**State Taxation Acts (Amendment) Act 1999, No. 47/1999**

*Assent Date:* 8.6.99  
*Commencement Date:* S. 23 on 1.7.99: s. 2(3)  
*Current State:* This information relates only to the provision/s amending the **Taxation Administration Act 1997**

**Audit (Amendment) Act 1999, No. 53/1999**

*Assent Date:* 14.12.99  
*Commencement Date:* S. 26(Sch. item 23) on 1.1.00: Government Gazette 23.12.99 p. 2764  
*Current State:* This information relates only to the provision/s amending the **Taxation Administration Act 1997**

**Duties Act 2000, No. 79/2000** (as amended by No. 46/2001)

*Assent Date:* 28.11.00  
*Commencement Date:* S. 285(Sch. 1 item 6) on 1.7.01: s. 2  
*Current State:* This information relates only to the provision/s amending the **Taxation Administration Act 1997**

**State Taxation Acts (Further Miscellaneous Amendments) Act 2001, No. 10/2001**

*Assent Date:* 8.5.01  
*Commencement Date:* Ss 9–16 on 8.5.01: s. 2(1)  
*Current State:* This information relates only to the provision/s amending the **Taxation Administration Act 1997**

**Statute Law Amendment (Authorised Deposit-taking Institutions) Act 2001, No. 11/2001**

*Assent Date:* 8.5.01  
*Commencement Date:* S. 3(Sch. item 73) on 1.6.01: s. 2(2)  
*Current State:* This information relates only to the provision/s amending the **Taxation Administration Act 1997**

**Corporations (Consequential Amendments) Act 2001, No. 44/2001**

*Assent Date:* 27.6.01  
*Commencement Date:* S. 3(Sch. item 109) on 15.7.01: s. 2  
*Current State:* This information relates only to the provision/s amending the **Taxation Administration Act 1997**

**State Taxation Legislation (Amendment) Act 2001, No. 79/2001**

*Assent Date:* 27.11.01  
*Commencement Date:* Ss 15–17 on 28.11.01: s. 2  
*Current State:* This information relates only to the provision/s amending the **Taxation Administration Act 1997**

**State Taxation Acts (Further Miscellaneous Amendments) Act 2003, No. 113/2003**

*Assent Date:* 9.12.03  
*Commencement Date:* Ss 7, 8 on 10.12.03: s. 2(1)  
*Current State:* This information relates only to the provision/s amending the **Taxation Administration Act 1997**

**State Taxation Acts (Tax Reform) Act 2004, No. 46/2004**

*Assent Date:* 16.6.04  
*Commencement Date:* S. 26 on 17.6.04: s. 2(1)  
*Current State:* This information relates only to the provision/s amending the **Taxation Administration Act 1997**

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**Public Administration Act 2004, No. 108/2004**

*Assent Date:* 21.12.04  
*Commencement Date:* S. 117(1)(Sch. 3 item 200) on 5.4.05: Government Gazette 31.3.05 p. 602  
*Current State:* This information relates only to the provision/s amending the **Taxation Administration Act 1997**

**State Taxation Acts (General Amendment) Act 2005, No. 36/2005**

*Assent Date:* 28.6.05  
*Commencement Date:* Ss 35–38 on 29.6.05: s. 2(1)  
*Current State:* This information relates only to the provision/s amending the **Taxation Administration Act 1997**

**Congestion Levy Act 2005, No. 74/2005**

*Assent Date:* 2.11.05  
*Commencement Date:* Ss 36, 37 on 1.1.06: s. 2  
*Current State:* This information relates only to the provision/s amending the **Taxation Administration Act 1997**

**Land Tax Act 2005, No. 88/2005**

*Assent Date:* 29.11.05  
*Commencement Date:* Ss 108–115 on 1.1.06: s. 2  
*Current State:* This information relates only to the provision/s amending the **Taxation Administration Act 1997**

**State Taxation Legislation (Miscellaneous Amendments) Act 2006, No. 84/2006**

*Assent Date:* 10.10.06  
*Commencement Date:* S. 17(1) on 1.1.06: s. 2(2); ss 16, 17(2)(3), 18 on 11.10.06: s. 2(1)  
*Current State:* This information relates only to the provision/s amending the **Taxation Administration Act 1997**

**Payroll Tax Act 2007, No. 26/2007**

*Assent Date:* 26.6.07  
*Commencement Date:* Ss 104–107 on 1.7.07: s. 2(1)  
*Current State:* This information relates only to the provision/s amending the **Taxation Administration Act 1997**

**State Taxation Acts Amendment Act 2007, No. 33/2007**

*Assent Date:* 24.7.07  
*Commencement Date:* S. 9 on 25.7.07: s. 2  
*Current State:* This information relates only to the provision/s amending the **Taxation Administration Act 1997**

**State Taxation Acts Further Amendment Act 2008, No. 84/2008**

*Assent Date:* 11.12.08  
*Commencement Date:* S. 37 on 12.12.08: s. 2(1)  
*Current State:* This information relates only to the provision/s amending the **Taxation Administration Act 1997**

**State Taxation Acts Further Amendment Act 2009, No. 83/2009**

*Assent Date:* 8.12.09  
*Commencement Date:* Ss 30–37 on 9.12.09: s. 2(4); ss 23–29 on 1.3.10: Government Gazette 18.2.10 p. 288  
*Current State:* This information relates only to the provision/s amending the **Taxation Administration Act 1997**

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**Fire Services Funding (Feasibility Study) Act 2009, No. 86/2009**

*Assent Date:* 15.12.09  
*Commencement Date:* Ss 4–6 on 16.12.09: s. 2  
*Current State:* All of Act in operation

**Transport Integration Act 2010, No. 6/2010** (as amended by No. 45/2010)

*Assent Date:* 2.3.10  
*Commencement Date:* S. 203(1)(Sch. 6 item 45) on 1.7.10: Special Gazette (No. 256) 30.6.10 p. 1  
*Current State:* This information relates only to the provision/s amending the **Taxation Administration Act 1997**

**Planning and Environment Amendment (Growth Areas Infrastructure Contribution) Act 2010, No. 23/2010**

*Assent Date:* 1.6.10  
*Commencement Date:* Ss 21–31 on 1.7.10: Special Gazette (No. 242) 25.6.10 p. 1  
*Current State:* This information relates only to the provision/s amending the **Taxation Administration Act 1997**

**State Taxation Acts Amendment Act 2010, No. 36/2010**

*Assent Date:* 15.6.10  
*Commencement Date:* Ss 14, 19 on 16.6.10: s. 2(1)  
*Current State:* This information relates only to the provision/s amending the **Taxation Administration Act 1997**

**State Taxation Acts Amendment Act 2011, No. 28/2011**

*Assent Date:* 21.6.11  
*Commencement Date:* Ss 40–44 on 27.6.11: s. 2(2)  
*Current State:* This information relates only to the provision/s amending the **Taxation Administration Act 1997**

**State Taxation Acts Further Amendment Act 2011, No. 69/2011**

*Assent Date:* 29.11.11  
*Commencement Date:* Ss 37–41 on 30.11.11: s. 2(1)  
*Current State:* This information relates only to the provision/s amending the **Taxation Administration Act 1997**

**State Taxation and Other Acts Amendment Act 2012, No. 76/2012**

*Assent Date:* 4.12.12  
*Commencement Date:* Ss 21–24 on 5.12.12: s. 2(1)  
*Current State:* This information relates only to the provision/s amending the **Taxation Administration Act 1997**

**Statute Law Amendment (Directors' Liability) Act 2013, No. 13/2013**

*Assent Date:* 13.3.13  
*Commencement Date:* Ss 44–47 on 14.3.13: s. 2  
*Current State:* This information relates only to the provision/s amending the **Taxation Administration Act 1997**

**State Tax Laws Amendment (Budget and Other Measures) Act 2013, No. 41/2013**

*Assent Date:* 28.6.13  
*Commencement Date:* Ss 46–51 on 29.6.13: s. 2(1)  
*Current State:* This information relates only to the provision/s amending the **Taxation Administration Act 1997**



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**State Taxation and Financial Legislation Amendment Act 2013, No. 69/2013**

*Assent Date:* 19.11.13  
*Commencement Date:* S. 17 on 1.12.14: s. 2(4)  
*Current State:* This information relates only to the provision/s amending the **Taxation Administration Act 1997**

**Victoria Police Amendment (Consequential and Other Matters) Act 2014, No. 37/2014**

*Assent Date:* 3.6.14  
*Commencement Date:* S. 10(Sch. item 165) on 1.7.14: Special Gazette (No. 200) 24.6.14 p. 2  
*Current State:* This information relates only to the provision/s amending the **Taxation Administration Act 1997**

**Building a Better Victoria (State Tax and Other Legislation Amendment) Act 2014, No. 40/2014**

*Assent Date:* 17.6.14  
*Commencement Date:* S. 39 on 18.6.14: s. 2(1)  
*Current State:* This information relates only to the provision/s amending the **Taxation Administration Act 1997**

**Justice Legislation Amendment Act 2015, No. 20/2015**

*Assent Date:* 16.6.15  
*Commencement Date:* S. 56(Sch. 1 item 12) on 17.6.15: s. 2(3)  
*Current State:* This information relates only to the provision/s amending the **Taxation Administration Act 1997**

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**3 Amendments Not in Operation**

Not updated for this publication.

#### 4 Explanatory details

<sup>1</sup> S. 30: The following table contains a summary of the provisions of sections 30, 31 and 32—

<i>Penalty Category</i>	<i>Prime Rate %</i>	<i>Voluntary Disclosure Before Investigation %</i>	<i>Voluntary Disclosure During Investigation %</i>	<i>Concealment or Hindrance in Establishing Under Payment %</i>
Failure to take reasonable care but no intentional disregard of the law	25	5	20	30
Intentional disregard of the law	75	15	60	90

<sup>2</sup> S. 31: See note 1.

<sup>3</sup> S. 32: See note 1.

<sup>4</sup> S. 75(2): Sections 84 and 85 deal with retention of possession and return of documents and things produced or provided to the Commissioner or another authorised officer.

<sup>5</sup> S. 111: Part 5 of the **Victorian Civil and Administrative Tribunal Act 1998** provides for appeals from the Tribunal to the Supreme Court or the Court of Appeal on questions of law and section 96 of that Act provides for the Tribunal to refer questions of law to the Supreme Court or Court of Appeal.

<sup>6</sup> S. 114(2)(a): See note 5.