

REVENUE CIRCULAR

RC-GEN-005:

NEW TAXATION ADMINISTRATION ACT FROM 1 JANUARY 2008

Purpose

This Circular provides information on the new *Taxation Administration Act* (“new TAA”) which commences operation on 1 January 2008.

Summary of the new TAA

The new TAA will provide the administrative framework to support the *Pay-roll Tax Act* (“PTA”) and the new *Stamp Duty Act* (“new SDA”) from 1 January 2008. A summary of the provisions of the new TAA is provided below.

Part 1 – Preliminary Matters

This Part contains the definitions for the new TAA and provides that it is to be read as a single Act with each of the PTA and new SDA (collectively, “the taxation laws”).

Part 2 – Administration

This Part creates the office of the Commissioner of Territory Revenue, which will replace the office of the Commissioner of Taxes. Transitional provisions provide that the person in the office of the Commissioner of Taxes prior to 1 January 2008 will become the new Commissioner. Thereafter, the Administrator of the Northern Territory appoints the Commissioner.

The Part provides that the general administration of the Territory’s taxation laws will be the responsibility of the Commissioner of Territory Revenue, who will have the powers required to administer the taxation laws in a manner that is impartial and free from Ministerial direction.

The Commissioner may appoint Deputy Commissioners to assist with the administration of the taxation laws. Transitional provisions provide that the persons holding the office of Deputy or Assistant Commissioner of Taxes will become Deputy Commissioners of Territory Revenue. The Part also provides that other staff, consultants and contractors may be appointed to provide assistance to the Commissioner.

The Commissioner is granted the power to delegate any of his or her powers and functions to tax officers, except the power to write-off tax and certain other investigation related powers.

This Part also provides for the appointment of authorised officers, who may exercise the investigation powers under Part 9. It requires that photographic identity cards are issued to all authorised officers.

Part 3 – Assessment of tax liability

This Part sets out the general process for assessing tax liabilities. An assessment is the process of determining a tax liability, with the taxation laws specifying the basis on which a liability for tax arises. The new TAA adopts many of the existing procedures for determining and notifying a tax liability by way of an assessment, with subsequent rights of objection and appeal flowing from that assessment.

The making of an assessment underpins the ascertainment of tax liabilities and will be the basis on which subsequent rights flow, such as the recalculation of a liability, refunds and review rights.

Part 3 confirms that an assessment may be made on the basis of any information that is available to the Commissioner at that time. This includes information that is obtained from a source other than a taxpayer or their adviser.

Similarly, the Commissioner is authorised to make an estimated assessment of a taxpayer's liability. As an example, this may occur where a taxpayer fails to lodge an instrument or return or to provide relevant information. Importantly, a taxpayer's liability may be reassessed should all relevant information become available after the initial assessment has been made.

There may also be a small number of cases where, through no fault of either the Commissioner or the taxpayer, it is difficult to determine the taxpayer's liability. This may occur where a matter is complex or it is difficult to determine the value of property. Currently, these issues must be resolved in order to assess a taxpayer's liability, no matter how long that process may take. The new TAA provides for these circumstances by allowing the Commissioner to make a negotiated assessment with the written agreement of the taxpayer. It is envisaged that negotiated assessments will only be made in very limited circumstances.

The Commissioner may reassess a tax liability. Reassessments do not replace an assessment but either increase or decrease the liability, or vary the basis on which the assessment was made.

The existing legislation allows a stamp duty assessment to be amended within three years of an assessment. In comparison, the *Pay-roll Tax Act* does not limit when a reassessment of a payroll tax liability can be made by the Commissioner. The new TAA provides that the time for reassessing is generally limited to five years from the date of the initial assessment (with exceptions where, for example, the taxpayer fails to make a full and true disclosure). This provides greater certainty to taxpayers.

The general reassessment period of five years is aligned with the entitlement of taxpayers to a refund of tax that has been overpaid and with the record keeping requirements of the new TAA. This reassessment period is consistent with the reassessment periods applied in all other jurisdictions.

The new TAA also sets out the effect of the Commissioner withdrawing an assessment, an area in which the current legislation does not have any express provisions. This includes a requirement to refund any tax paid in relation to the assessment and a prohibition on issuing a fresh assessment more than five years after the date the withdrawn assessment was made.

Currently, where no information is voluntarily provided to the Commissioner, the onus is on the Commissioner to demand specific information from a person by way of a compulsory notice so that a correct assessment can be made.

This is an inefficient administrative process that can cause unnecessary delays in making a tax assessment and enables someone to frustrate the process of making a tax assessment by withholding information. The current approach in the Northern Territory is out of step with the laws in every other state and territory.

Accordingly, the new TAA requires taxpayers and their advisers to disclose upfront all the facts and circumstances that will enable the Commissioner to correctly assess a taxpayer's liability.

This requirement for full and true disclosure does not override legal professional privilege a taxpayer may have over communications with their lawyer. Accordingly, a taxpayer may rely on legal professional privilege and do not have to provide privileged communications to the Commissioner, such as legal advice that they may have received. However, the taxpayer and adviser must still fully and truly disclose all relevant facts and circumstances affecting an assessment.

The land-holder stamp duty rules currently allow the Commissioner to request a taxpayer to provide evidence of the unencumbered value of the land. This power has been extended to allow the Commissioner to request a written valuation from a taxpayer in all circumstances where a tax liability is determined by reference to the value of property. In certain circumstances, the Commissioner will be able to recover from the taxpayer the costs of obtaining a valuation. Commissioner's Guideline CG-SD-010 will be updated to provide further details on the Commissioner's power to request taxpayers to provide valuations under the new TAA.

Part 4 – Refunds of tax

This Part sets out the general rules relating to refunds. It provides that taxpayers are entitled to refunds for tax that has been overpaid, subject to certain conditions and time limits. Specific provisions for the making of refunds may be included in a taxation law, in addition to those contained in the new TAA. For example, a taxation law may require an application for refund in certain circumstances.

A refund of tax will be made where a taxpayer has paid more tax than required. In most instances, entitlement to a refund will expire within five years of the date of overpayment. However, where a refund arises from the reassessment of a tax liability, the relevant time period will be determined by the period set out for the making of a reassessment.

Instead of refunding an amount to a taxpayer, the Commissioner will be able to credit the amount against tax or other amounts payable by a taxpayer or, with the taxpayer's consent, credit the amount against a future tax liability.

The Part prohibits the refunding of tax where the taxpayer would get a windfall profit at the expense of the person who actually bore the cost of the tax by indemnifying the taxpayer. In such a case, the taxpayer must reimburse the third party for any refund made and the Commissioner can refuse to refund the amount until satisfied that arrangements are in place for such a reimbursement.

Part 5 – Interest and penalty tax

This Part sets out the rules for imposing interest and penalty tax on tax defaults (a failure to pay tax when it is due).

The objective of imposing interest on unpaid tax is to encourage payment on time and to compensate the Territory for the period that it has not had the use of those funds. The payment of tax can be deferred by a number of means, including the late lodgement of documents and returns, or by failing to pay tax by the due date.

Interest will be imposed on a daily basis, at the prescribed rate, on any unpaid portion of tax and penalty tax, from the end of the last day for payment until the tax is paid in full. Interest will be unaffected by the Commissioner granting an extension of time to pay tax. Interest will not accrue on unpaid interest, as it is a simple interest rate, not compound interest.

The interest rate will comprise a prescribed market rate component, which is subject to annual change, and a premium component. The premium component will act as a deterrent to the Territory being used as a source of finance for a taxpayer.

Penalty tax is an administrative sanction that is intended to deter non-compliance with the taxation laws by requiring taxpayers to pay an amount in addition to tax that is unpaid. It should be noted that penalty tax will be payable in addition to interest, but will not be payable on any interest or penalty tax that has not been paid.

The new TAA clearly identifies the circumstances in, and the rate at which penalty tax will be levied, providing for a more certain and transparent approach to levying penalty tax. Commissioner's Guideline CG-GEN-002 will be updated to provide further details on the interest and penalty provisions of the new TAA.

Part 6 – Returns

This Part sets out the general rules relating to returns. In addition to the requirement to lodge instruments with the Commissioner for assessing, taxpayers can also pay some forms of tax by lodging returns with the Commissioner. Examples of this include payroll tax and insurance duty.

Returns must be in a form approved by the Commissioner and are taken to be lodged when they are received by the Commissioner. The Commissioner may also extend the time for lodging a return and vary the period to which it relates.

This Part allows the Commissioner to approve special tax return arrangements for the lodgement and payment of tax by specified taxpayers, or classes of taxpayers, and their agents. Conditions, such as keeping specific records, lodging and paying tax at specific times may be imposed in respect of any approved arrangements. Two examples of special tax return arrangements that may be approved by the Commissioner are the 'conveyance by return' stamp duty scheme and an approval for the designated group employer of a payroll tax group to pay tax and lodge returns on behalf of members of the group.

The purpose of having special tax return arrangements is to provide flexibility in the way tax is assessed and returns may be lodged. It also allows the Commissioner to respond to the individual circumstances of a taxpayer and, more importantly, changes in the way that business is conducted generally.

Part 7 – Payment and recovery of tax

To comply with their obligations, taxpayers need adequate information about tax payment methods and the time within which payment must be made. Times for the payment of particular taxes will be specified in the relevant taxation law.

This Part provides that the Commissioner has the discretion to extend the time for payment of tax, or allow a person to pay tax by instalments. Instalment arrangements will generally be entered into where the payment of the tax will lead to significant financial hardship. By entering into such an arrangement, debt recovery proceedings will be suspended, although interest will continue to accrue on the unpaid tax. However, any instalment arrangement will be subject to the Commissioner's right to terminate the arrangement and recover the outstanding tax. *Commissioner's Guidelines CG-GEN-004 and CG-HI-007* will be updated to provide further details on instalment arrangements under the new TAA.

As it is necessary for the Commissioner to be able to collect tax promptly, sufficient powers are provided for the effective recovery of unpaid tax. Any unpaid tax is a debt due to the Territory, which the Commissioner can recover.

The current taxation laws do not adequately provide for the collection of taxes from companies that accumulate tax debts by trading while insolvent. In extreme cases, this is done deliberately to avoid paying taxes by stranding tax debts in a company that does not have the financial capacity to pay its debts, while the people behind such a company form a new company to continue their business operations.

The new TAA provides a mechanism to make directors responsible for ensuring that a company takes commercially sensible action to address the continued non-payment of tax. Those actions are what would be expected from companies with good corporate governance arrangements in place and to meet other legislative obligations required for the proper administration of companies.

This will only apply after a company has failed to pay its tax on time and a notice has been served on the directors of the company advising them that they will become personally liable for the tax owed by the company if the company does not take appropriate action.

A director of a company will not be held liable for the payment of the company's debts if the director can establish that reasonable action was taken by them to ensure that the company remedied its non-payment, or the director was unable to take such action because of illness or some other appropriate reason.

The Commissioner currently has the power under the stamp duty land-holder rules to secure the payment of tax by placing an encumbrance over land. This prevents land subject to the encumbrance being sold without that tax being paid. In extreme cases, this could result in the land being sold to recover the unpaid tax.

The power to secure stamp duty by an encumbrance over land has been extended. Any tax liability arising from the acquisition of land, or an interest in a land-holding corporation, that is not paid by the due date becomes an overriding statutory charge over the land that may be registered (this also applies to mining tenements). In accordance with current experience, it is envisaged that overriding statutory charges will only be registered in limited circumstances involving the non-payment of tax or as security where tax is being paid by instalments.

Part 8 – Record keeping and general offences

The new TAA sets out record keeping requirements and general offence provisions that are similar to those in the existing legislation. The Commissioner's ability to properly administer the taxation laws depends on the existence of suitable records to enable a person's liability under the taxation laws to be identified.

This part provides that taxpayers are required to keep records necessary to enable their tax liability to be established. They may also be required to keep additional records, as specified by the Commissioner. Such records generally must be kept for five years.

A number of offences are provided in relation to the keeping of records. For example, these include failing to keep proper records, keeping false or misleading records or wilfully damaging or destroying records.

Three main other offences are specified - tax evasion, providing misleading information and falsifying or concealing information. A general defence for the offences is provided where the taxpayer took reasonable care to comply or the contravention arose from circumstances beyond the control of the taxpayer.

Part 9 – Investigations

Part 9 details the power of authorised officers to investigate the level of compliance with the taxation laws, including avoidance or evasion. An investigation may be undertaken for any number of reasons, including to determine whether a tax liability exists; audit tax records; gather information relevant to an objection or appeal against a decision of the Commissioner; determine whether a tax law (including the *First Home Owner Grant Act*) has been contravened or gather evidence of this; and decide an application made under a tax law.

The investigation powers set out in Part 9 are largely the same as existing powers, but are more transparent. This provides clearer rules as to what powers authorised officers may exercise and some powers have been reduced or restricted from their current level.

Under arrangements with interstate taxation Commissioners, investigation powers may be exercised for the purposes of interstate taxation laws. This enables persons administering similar laws in another state or territory to conduct investigations in the Northern Territory, or for the Northern Territory Commissioner to conduct investigations on their behalf. The other states and the ACT have similar legislation, which allows Northern Territory investigators to conduct investigations in those jurisdictions.

Part 10 – Disclosure of information

In administering the taxation laws, the Commissioner is provided with information that may relate to the personal, business or commercial affairs of taxpayers. Given the nature of the information and the fact that the Commissioner may compel its provision, the new TAA places appropriate limitations on the disclosure of the information by the Commissioner, staff, former staff and others acquiring the information (including persons who acquire confidential information by unauthorised means). Heavy penalties are provided for the disclosure of confidential information when not permitted by the Act.

Part 11 – Objections and appeals

Taxpayers that are dissatisfied with an assessment or decision made by the Commissioner have avenues available to them to have those assessments and decisions reviewed. This would normally occur through lodging an objection with the Commissioner (which the Commissioner would determine) and appealing to the Taxation and Royalty Appeals Tribunal (the Tribunal) or the Supreme Court against objections determined by the Commissioner.

The objection and appeal provisions contained in the new TAA reflect those that exist in the current *Taxation (Administration) Act*, which also apply to the *First Home Owner Grant Act* and the *Mineral Royalty Act*. Commissioner's Guideline CG-GEN-003 will be updated to provide further details on the objection and appeal provisions of the new TAA.

Part 12 – Prosecutions and offence provisions

Part 12 of the new TAA deals with the administration of taxation prosecutions, offences by corporations and the effect of criminal penalties. It provides that taxation prosecutions must be commenced within five years of the alleged offence, unless the offence involves tax evasion. This is because tax evasion is considered the most serious criminal activity for which sanctions are provided under the taxation laws.

Where an offence is committed by a corporation, the management of the corporation is taken to have committed the same offence and to be liable for the same penalty. The management of the corporation includes directors, secretaries and managers such as administrators and trustees.

Part 13 – Miscellaneous and transitional provisions

The new TAA has miscellaneous provisions that mainly set out administrative procedures such as the service of documents on and by the Commissioner.

The new TAA also contains transitional provisions to ensure an efficient transition to the new administrative arrangements. The new TAA takes effect from 1 January 2008 and the new arrangements generally supersede the current arrangements from that date.

Commissioner's Guideline CG-GEN-001, which sets out information on the revenue publication system, is incorporated into and is to be read as one with this Circular. All Circulars and Guidelines are available from TRO's website.

Refer to the *Taxation Administration Act 2007* for precise details.



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