



Western Australia

Taxation Administration Act 2003

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Defined terms

Western Australia

Taxation Administration Act 2003

**An Act to provide for the administration and enforcement of
legislation dealing with State taxation.**

Part 1 — Preliminary

1. Short title

This Act may be cited as the *Taxation Administration Act 2003*.

2. Commencement

- (1) This Act comes into operation on a day fixed by proclamation.
- (2) Different days may be fixed under subsection (1) for different provisions.

3. ^{1M, 1MC} Taxation Acts

- (1) The following enactments are taxation Acts for the purposes of this Act —
 - (a) this Act;
 - [(b), (c) deleted]*
 - (ca) the *Duties Act 2008*;
 - (d) the *Land Tax Act 2002*;
 - (e) the *Land Tax Assessment Act 2002*;
 - (f) the *Metropolitan Region Improvement Tax Act 1959* as in force from and after the time of commencement of this Act;
 - [(g) deleted]*
 - (ga) section 200 of the *Planning and Development Act 2005*;
 - (h) the *Pay-roll Tax Act 2002*;
 - (i) the *Pay-roll Tax Assessment Act 2002*;
 - (j) the *Stamp Act 1921* as in force from and after the time of commencement of this Act;
 - (jaa) the *Transport (Road Passenger Services) Act 2018* Part 9 Division 2;

- (ja) the *Biosecurity and Agriculture Management Act 2007* Part 6 Division 1 Subdivision 2;
 - (jb) the *Biosecurity and Agriculture Management Rates and Charges Act 2007*;
 - (jc) the *Betting Tax Act 2018*;
 - (jd) the *Betting Tax Assessment Act 2018*;
 - (k) any other enactment prescribed by the regulations as a taxation Act.
- (2) Each other taxation Act is to be read with this Act as if they formed a single Act.

[Section 3 amended: No. 38 of 2005 s. 15; No. 24 of 2007 s. 94; No. 12 of 2008 s. 34; No. 17 of 2010 s. 30(2); No. 26 of 2018 s. 329; No. 37 of 2018 s. 45; No. 11 of 2019 s. 4.]

[Modification, to section 3, to have effect under the Commonwealth Places (Mirror Taxes Administration) Act 1999 s. 7, see Commonwealth Places (Mirror Taxes Administration) Regulations 2007 r. 46 and endnote 1M.]

[Modification, to section 3, to have effect under the Commonwealth Places (Mirror Taxes) Act 1998 (Commonwealth) s. 8, see Commonwealth Places (Mirror Taxes) (Modification of Applied Laws (WA)) Notice 2007 cl. 49 and endnote 1MC.]

4. Terms used (Glossary)

The Glossary at the end of this Act defines or affects the meaning of some of the words and expressions used in this Act.

5.^{1MC} Crown bound

Subject to any express provision to the contrary, each taxation Act binds the Crown in right of Western Australia and, as far as the legislative power of Parliament permits, in all its other capacities.

s. 5

[Modification, to section 5, to have effect under the Commonwealth Places (Mirror Taxes) Act 1998 (Commonwealth) s. 8, see Commonwealth Places (Mirror Taxes) (Modification of Applied Laws (WA)) Notice 2007 cl. 50 and endnote 1MC.]

[5A., 5B.^{1M} Modification, to insert sections 5A and 5B, to have effect under the Commonwealth Places (Mirror Taxes Administration) Act 1999 s. 7, see Commonwealth Places (Mirror Taxes Administration) Regulations 2007 r. 47 and endnote 1M.]

[5A., 5B.^{1MC} Modification, to insert sections 5A and 5B, to have effect under the Commonwealth Places (Mirror Taxes) Act 1998 (Commonwealth) s. 8, see Commonwealth Places (Mirror Taxes) (Modification of Applied Laws (WA)) Notice 2007 cl. 51 and endnote 1MC.]

Part 2 — Tax administration generally

6. ^{IMC} Commissioner of State Revenue

A Commissioner of State Revenue is to be appointed under Part 3 of the *Public Sector Management Act 1994*.

[Modification, to repeal section 6, to have effect under the Commonwealth Places (Mirror Taxes) Act 1998 (Commonwealth) s. 8, see Commonwealth Places (Mirror Taxes) (Modification of Applied Laws (WA)) Notice 2007 cl. 52 and endnote IMC.]

7. Commissioner's functions as to taxation Acts

- (1) The Commissioner has the general administration of the taxation Acts and may do anything necessary or convenient to be done for that purpose.
- (2) Without limiting subsection (1) the Commissioner may —
 - (a) deal with a taxation matter in any manner; and
 - (b) exercise in relation to a taxation matter any discretion,that the Commissioner considers appropriate in the interests of good management.
- (3) In subsection (2) —

taxation matter means any matter or thing arising under or in relation to a taxation Act.

[Section 7 inserted: No. 31 of 2008 s. 23.]

8. Commissioner may perform investigators' functions

In addition to performing the functions conferred on the Commissioner under a taxation Act, the Commissioner may perform any function conferred on an investigator under a taxation Act.

9. Commissioner, judicial notice of appointment and signature

All courts and persons acting judicially are to take judicial notice —

- (a) of the fact that a person holds or has held the office of Commissioner; and
- (b) of the official signature of a person who holds or has held the office of Commissioner.

10.^{1M, 1MC} Delegation by Commissioner

- (1) The Commissioner may delegate any of the Commissioner's functions under a taxation Act except —
 - (a) the power to delegate under this section; and
 - (b) the power to issue an identity card; and
 - (c) the power to give an authorisation under section 98(3), 99(1)(a) or 101(2).
- (2) The delegation must be in writing signed by the Commissioner.
- (3) A person exercising or performing a power or duty that has been delegated to the person under this section is to be taken to do so in accordance with the terms of the delegation unless the contrary is shown.
- (4) Nothing in this section limits the ability of the Commissioner to perform a function through an agent.
- (5) The Commissioner is to keep a register of delegates, which may be kept electronically or otherwise.
- (6) If a person exercises, or claims to be entitled to exercise, functions delegated by the Commissioner in relation to a taxpayer or a taxpayer's affairs, the Commissioner must, at the request of the taxpayer, make the relevant entry in the register of delegates, or a print-out of it, available for inspection by the taxpayer or a representative of the taxpayer.

[Modification, to section 10, to have effect under the Commonwealth Places (Mirror Taxes Administration) Act 1999 s. 7, see Commonwealth Places (Mirror Taxes Administration) Regulations 2007 r. 48 and endnote 1M.]

[10. ^{1MC} Modification, to replace section 10, to have effect under the Commonwealth Places (Mirror Taxes) Act 1998 (Commonwealth) s. 8, see Commonwealth Places (Mirror Taxes) (Modification of Applied Laws (WA)) Notice 2007 cl. 53 and endnote 1MC.]

11. ^{1MC} Tax investigators

- (1) The Commissioner may appoint a person to be an investigator for the purposes of the taxation Acts.
- (2) The Commissioner is to issue an identity card to each investigator.
- (3) An identity card must —
 - (a) include a statement to the effect that the person identified by the card is an investigator for the purposes of the taxation Acts; and
 - (b) include a photograph of the investigator.
- (4) If a person to whom an identity card is issued ceases to be an investigator, the person must immediately return the card to the Commissioner.

Penalty for an offence against subsection (4): \$20 000.

[11. ^{1MC} Modification, to replace section 11, to have effect under the Commonwealth Places (Mirror Taxes) Act 1998 (Commonwealth) s. 8, see Commonwealth Places (Mirror Taxes) (Modification of Applied Laws (WA)) Notice 2007 cl. 53 and endnote 1MC.]

12. Appointed representatives for court proceedings

- (1) The Commissioner may appoint a person to represent the Commissioner —
 - (a) in court proceedings for recovery of tax; or
 - (b) in proceedings for an offence against a taxation Act; or
 - (c) in other proceedings before a court or tribunal to which the Commissioner is a party.
- (2) An appointed representative may represent the Commissioner in accordance with the authorisation.

Part 3 — Assessments of tax

Division 1 — Assessments

13. Assessments

- (1) An assessment is a determination —
 - (a) of the amount of tax payable under a taxation Act or of a portion of such an amount; or
 - (b) that no tax is payable; or
 - (c) that a person is liable to pay tax or is exempt from liability to pay tax; or
 - (d) that an instrument, event or transaction is liable to tax or is exempt from tax.
- (2) An assessment may be made in relation to any one or more, or all, of the components of the tax payable by a taxpayer.
- (3) The receipt by the Commissioner of an amount as payment of tax does not constitute an assessment of tax liability.

[Section 13 amended: No. 10 of 2013 s. 11.]

14. Self-assessments

A self-assessment is —

- (a) an assessment made by the taxpayer in a return under a taxation Act; or
- (b) an assessment made by a responsible party in a return or otherwise in accordance with a special tax return arrangement.

15. Official assessments

- (1) An official assessment is an assessment made by the Commissioner.

- (2) The Commissioner must make an official assessment of the tax payable by a person —
 - (a) if the person is or is likely to be liable to pay tax, but is not required to make a self-assessment; or
 - (b) when a taxation Act specifically requires the Commissioner to do so.
- (3) The Commissioner may make an official assessment on his or her own initiative, and may do so even if the taxpayer is required to make, or has made, a self-assessment.
- (4) The Commissioner may make an official assessment in any other circumstances at the taxpayer's request.

16A. Interim assessments

- (1) The Commissioner may make an assessment (an *interim assessment*) of a portion of the tax payable by a person when a taxation Act specifically authorises the Commissioner to do so.
- (2) The Commissioner can make only one interim assessment of the tax payable.
- (3) The interim assessment must be followed by a complete assessment, which the Commissioner must make when the Commissioner —
 - (a) has sufficient information to make such an assessment; or
 - (b) makes a compromise agreement.
- (4) An interim assessment does not bind the Commissioner in relation to an assessment made following the interim assessment.
- (5) The complete assessment following the interim assessment supersedes the interim assessment but does not affect any liability for —
 - (a) penalty tax arising out of the interim assessment; or

- (b) interest payable under a tax payment arrangement.
- (6) The complete assessment following the interim assessment is not a reassessment of the interim assessment.
- (7) The Commissioner is not prevented from making or enforcing an interim assessment by —
 - (a) the Commissioner having already made an assessment that is not a complete assessment, that is, an assessment that a person is liable to pay tax or that an instrument, event or transaction is liable to tax; or
 - (b) a person making an objection or taking review proceedings in relation to an assessment referred to in paragraph (a).
- (8) No action can be brought in any court or tribunal to compel the Commissioner to make an interim assessment.

[Section 16A inserted: No. 10 of 2013 s. 12.]

16. Reassessments

- (1) The Commissioner must make a reassessment —
 - (a) if specifically required to do so under a taxation Act; or
 - (b) if specifically required to do so under a direction given in the course of review proceedings; or
 - (c) if a taxation Act provides for a rebate or refund of tax in particular circumstances, and the circumstances were not taken into account when the previous assessment was made.
- (2) Subject to subsection (5), the Commissioner may also make a reassessment —
 - (a) on his or her own initiative, if it appears that a previous assessment is or may be incorrect for any reason; or
 - (b) on the application of the taxpayer.

- (3A) Despite subsections (1) and (2), the Commissioner cannot make a reassessment in relation to an interim assessment unless specifically required to do so by section 39(1) or a direction given in the course of review proceedings.
- (3B) A reference in this Act to an assessment following an interim assessment does not include a reference to a reassessment of an interim assessment.
- (3) A reassessment may be made whether or not any amount of tax has been paid on the previous assessment.
- (4) A reassessment may consolidate 2 or more separate assessments into a single assessment.
- (5) If an assessment is based on a particular interpretation of the applicable law or a particular practice of the Commissioner that was generally applied to assessments of that kind when the assessment was made, then the Commissioner cannot make a reassessment based on the ground that the interpretation or practice is or was erroneous.

[Section 16 amended: No. 55 of 2004 s. 1165; No. 10 of 2013 s. 13.]

17. Time limits on reassessments

- (1) A taxpayer is not entitled to apply for a reassessment more than 5 years after the original assessment was made.
- (2) The Commissioner may make a reassessment at any time after the previous assessment was made if —
- (a) the Commissioner has been directed, in the course of review proceedings, to make the reassessment; or
 - (b) there are reasonable grounds for suspecting that there has been an evasion of tax, or that the previous assessment was made on the basis of false or misleading information.

- (3) The Commissioner may make a reassessment of the amount of pay-roll tax or betting tax payable on an original assessment that was made in or in relation to any of the 5 financial years that precede the financial year in which the reassessment is made.
- (4) However, in any other circumstances the Commissioner may only make a reassessment within 5 years after the date of the original assessment or on an application made within 5 years after the date of the original assessment.

[Section 17 amended: No. 55 of 2004 s. 1166; No. 37 of 2018 s. 46.]

18. Effect of reassessment

- (1) A reassessment of an interim assessment or an original assessment supersedes the assessment and any earlier reassessment.
- (2) A reassessment may increase or decrease the amount originally assessed.
- (3) If tax payable on —
 - (a) an instrument; or
 - (b) a transaction or event that an instrument effects or records,

is reassessed, and the instrument or a duplicate or copy of it is produced to the Commissioner, the Commissioner may endorse it to indicate the amount of tax (if any) payable under the reassessment and the amount of tax paid (if any), (but the reassessment takes effect irrespective of it being so endorsed).

- (4) A reassessment does not invalidate proceedings for the recovery of tax, but the amount to be recovered is to be amended to take account of the reassessment.
- (5) If an objection to an assessment is lodged but a reassessment is made before the objection is determined, the objection may be continued against the reassessment to the extent that it is liable

to the same objection or to an objection that is the same, or similar, in substance.

[Section 18 amended: No. 12 of 2008 s. 35; No. 10 of 2013 s. 14.]

18A. Withdrawal of assessments

- (1) The Commissioner may, within 5 years after the issue of a notice of assessment, withdraw the assessment.
- (2) An assessment may not be withdrawn if any amount of tax has been paid on the assessment.
- (3) The Commissioner must give a written notice of withdrawal to the taxpayer.
- (4) If an assessment in respect of an event or transaction is withdrawn, the assessment is taken never to have been made and, subject to this Act, the Commissioner may make an assessment in respect of the event or transaction at any time after the first-mentioned assessment is withdrawn.

[Section 18A inserted: No. 66 of 2003 s. 95(2).]

19. Assessments based on estimated or suspected liability

- (1) If the Commissioner suspects on reasonable grounds that a tax liability exists, the Commissioner may make an assessment on the basis of that suspicion and the Commissioner's estimate of the amount of the liability.
- (2) If a tax liability exists, but the Commissioner is not satisfied with the adequacy or reliability of information available to make an assessment, the Commissioner may make an assessment on the basis of the Commissioner's estimate of the amount of the liability.
- (3) The Commissioner cannot make an interim assessment under this section but can make an assessment following an interim assessment under this section.

[Section 19 amended: No. 10 of 2013 s. 15.]

20A. Compromise assessments

- (1) If the Commissioner considers it appropriate to do so to avoid undue delay or expense, to settle a dispute or for any other reason, the Commissioner may —
- (a) make a written agreement (a ***compromise agreement***) with a taxpayer in relation to the assessment of the taxpayer's tax liability; and
 - (b) make an assessment in accordance with the compromise agreement.
- (2A) The Commissioner cannot make an interim assessment in accordance with a compromise agreement but can make an assessment following an interim assessment in accordance with a compromise agreement.
- (2) Despite section 16 the Commissioner must not make a reassessment of a compromise assessment unless —
- (a) the taxpayer has agreed; or
 - (b) the Commissioner is satisfied that the compromise assessment —
 - (i) was procured by fraud; or
 - (ii) was made in consequence of the taxpayer knowingly failing to disclose material information or providing information knowing that it was incorrect, incomplete or misleading.
- (3A) Without limiting subsection (1), a compromise agreement may include —
- (a) conditions agreed with the taxpayer providing for the payment (and allowing for the remission) of interest at the prescribed rate or at some other rate fixed by or under the arrangement with the agreement of the taxpayer; and
 - (b) any other conditions the Commissioner considers appropriate.

- (3) Each of the following are final and not subject to objection or review under Part 4 or to any other form of appeal or review —
 - (a) a decision of the Commissioner under this section to make, or not make, a compromise agreement;
 - (b) a decision of the Commissioner under this section as to the terms of a compromise agreement;
 - (c) a compromise assessment.
- (4) No action can be brought in any court or tribunal to compel the Commissioner to make a compromise agreement.
- (5) This section does not limit the Commissioner's powers under section 19.

[Section 20A inserted: No. 31 of 2008 s. 29; amended: No. 17 of 2010 s. 23; No. 10 of 2013 s. 16.]

20. Assessments when instrument misleading or unavailable

- (1) If there are reasonable grounds for suspecting that an instrument lodged under a taxation Act is inaccurate or misleading, then for the purposes of making an assessment the Commissioner may —
 - (a) subject to subsection (4), create a memorandum of the instrument; and
 - (b) treat the memorandum as if it were the instrument.
- (2) If tax is or may be payable but an instrument has not been lodged as required under a taxation Act, then for the purposes of making an assessment, the Commissioner may —
 - (a) treat a copy of the instrument as if it were the instrument; or
 - (b) subject to subsection (4), create a memorandum of the instrument, and treat the memorandum as if it were the instrument.
- (3) A memorandum created under subsection (1)(a) or (2)(b) is taken to be the instrument and to have been lodged by the person required to lodge it under the taxation Act.

- (4) The Commissioner can only create a memorandum of an instrument under subsection (1)(a) or (2)(b) if the Commissioner has, so far as is practicable, made reasonable efforts to obtain sufficient information to make an accurate assessment.
- (5) The copy or memorandum may be endorsed to indicate the payment of tax.
- (6) The validity of an assessment and the liability to pay tax do not depend on the availability of an instrument or a copy of an instrument, or on the creation of a memorandum of an instrument.
- (7) This section does not limit the powers of the Commissioner under section 19.

[Section 20 amended: No. 66 of 2003 s. 95(3); No. 12 of 2008 s. 36.]

21. Ascertaining value of property, consideration or benefit

- (1) If it is necessary to ascertain the value of any property, consideration or benefit for the purposes of a taxation Act, the Commissioner may require the taxpayer to provide —
 - (a) a written valuation of the property, consideration or benefit by a qualified valuer; and
 - (b) any document or other record in the possession or control of the taxpayer that is relevant to determining the value of the property, consideration or benefit.
- (2A) A requirement under subsection (1) may include that —
 - (a) a valuation, document or other record be provided in an electronic format; and
 - (b) a valuation include or be accompanied by the methods, models and assumptions (if any) used in arriving at the valuation; and
 - (c) if methods, models and assumptions must be provided electronically — they be provided in a form that allows

the Commissioner to examine and test them for the purposes of determining whether to adopt the valuation.

- (2B) A taxpayer may, in a particular case, comply with a requirement under subsection (1)(a) by providing other evidence as to the value of the property, consideration or benefit satisfactory to the Commissioner.
- (2) A requirement must specify the date on or before which the taxpayer is required to comply with it.
- (3) A person who does not comply with a requirement commits an offence.
Penalty: \$20 000.

[Section 21 amended: No. 10 of 2013 s. 29.]

22. Commissioner's power to have valuation made

- (1) For the purposes of a taxation Act, the Commissioner may —
- (a) have a valuation made of any property, consideration or benefit; or
 - (b) adopt any available valuation of the property, consideration or benefit that the Commissioner considers appropriate.
- (2) The Commissioner may have a valuation made, or adopt a valuation, regardless of whether —
- (a) the Commissioner has required the taxpayer to provide information under section 21 about the value of the property, consideration or benefit; or
 - (b) the taxpayer has complied with such a requirement.

23A. Recovery of valuation costs

- (1) The Commissioner may recover from a taxpayer the costs of obtaining a valuation under section 22(1)(a) if —
- (a) the taxpayer does not comply with a requirement under section 21(1)(a); or

- (b) the Commissioner is not satisfied with a valuation provided by the taxpayer (whether or not in compliance with a requirement under section 21(1)(a)) and the value on which the taxpayer's liability is assessed exceeds the designated valuation provided by the taxpayer by 15% or more.
- (2) However, if the validity or correctness of the assessment referred to in subsection (1)(b) is challenged by the taxpayer, the Commissioner can only recover the costs of obtaining the valuation if —
 - (a) the value on which the final assessment of the taxpayer's liability is based exceeds the designated valuation provided by the taxpayer by 15% or more; and
 - (b) the value on which the taxpayer's liability is assessed referred to in subsection (1)(b) does not vary from the value on which the final assessment of the taxpayer's liability is based by 15% or more.
- (3) In this section and section 27A(3), a reference to the designated valuation provided by the taxpayer is a reference to —
 - (a) a valuation nominated by the taxpayer for the purposes of this section; or
 - (b) in the absence of a nomination — the last valuation provided by the taxpayer prior to the Commissioner seeking a valuation under section 22(1)(a); or
 - (c) a valuation accepted as the designated valuation by the Commissioner under subsection (7).
- (4) If a taxpayer provides a valuation (whether or not in compliance with a requirement under section 21(1)(a)), the Commissioner may ask the taxpayer whether the taxpayer wishes to nominate that valuation for the purposes of this section.
- (5) The nomination must be in writing.
- (6) Subsection (1)(b) does not apply if the Commissioner has not sought a nomination from the taxpayer in relation to the valuation.

- (7) The Commissioner may accept a valuation, provided by the taxpayer after the taxpayer has nominated a valuation or after the Commissioner has sought a valuation, as the designated valuation for the purposes of this section but only if satisfied that it is reasonable to do so in all the circumstances.
- (8) In subsection (2), the final assessment of the taxpayer's liability is the assessment applicable after the objection and any subsequent review proceedings are discontinued or otherwise finally determined.
- (9) A reference in this section to a valuation does not include a reference to a valuation obtained because of or in the course of an objection or review proceedings.
- (10) For the purpose of this section, if a valuation gives a range of values and a preferred value is not provided in or with it, the valuation is taken to fix a value at the median point in the range.

[Section 23A inserted: No. 10 of 2013 s. 30.]

Division 2 — Assessment notices and returns

23. Assessment notices

- (1) When the Commissioner makes an assessment, he or she must issue an assessment notice.
- (2) However, the Commissioner does not have to issue an assessment notice —
 - (a) if the Commissioner makes a reassessment on his or her own initiative, and no tax is to be paid or refunded as a result of the reassessment provided confirmation is given in writing if requested; or
 - (b) if the Commissioner assesses the amount of tax payable and then immediately endorses an instrument to indicate the assessment; or
 - (c) if no tax is payable under an exemption (however expressed) provided under the *Land Tax Assessment Act 2002*; or

- (d) if land tax imposed under the *Land Tax Act 2002* or Metropolitan Region Improvement Tax imposed under the *Metropolitan Region Improvement Tax Act 1959* is waived under section 56.
- (3) When an assessment notice is issued, the Commissioner must serve it on the taxpayer.
- (4) However, liability to tax is not dependent on service of the assessment notice.

[Section 23 amended: No. 66 of 2003 s. 108(2); No. 82 of 2004 s. 19; No. 13 of 2007 s. 14; No. 12 of 2008 s. 37; No. 11 of 2019 s. 5.]

24. Form of assessment notice

- (1) An assessment notice may be —
 - (a) in the form of an account requiring payment of the amount assessed and of other amounts payable by the taxpayer; or
 - (b) in any other form approved by the Commissioner.
- (1a) An assessment notice must set out the date on which it is issued.
- (2) An assessment notice in relation to an assessment must —
 - (a) state the amount of tax payable under the primary liability; and
 - (b) state the amount of penalty tax payable, if any; and
 - (ca) state the amount of the costs of obtaining a valuation (if any) that are recoverable under section 23A; and
 - (c) indicate the due date for payment of the tax.
- (3A) An assessment notice in relation to the assessment following an interim assessment must also —
 - (a) state whether the amount assessed is more or less than the amount assessed under the interim assessment; and
 - (b) show a credit for any amount of tax that has been paid on the interim assessment; and

- (c) if an amount of tax has been overpaid — state whether the overpaid amount is to be refunded or credited to the taxpayer.
- (3) An assessment notice in relation to a reassessment must also —
 - (a) state whether the amount payable is more or less than the amount assessed under the previous assessment; and
 - (b) if an amount of tax has been overpaid — state whether the overpaid amount is to be refunded or credited to the taxpayer; and
 - (c) if the amount of tax has been increased, or an amount of tax remains unpaid — state the due date for payment of the amount or amounts to be paid.
- (4) For the purposes of subsection (3)(c), if the due date for payment of the tax has passed when the assessment notice is issued, the assessment notice must specify the due date for payment of any unpaid tax and any penalty tax payable in relation to the unpaid tax.
- (5) The date specified in an assessment notice in relation to an assessment other than a reassessment as the due date for payment must be at least 14 days after the date of the assessment notice.
- (5a) The date specified in an assessment notice in relation to a reassessment as the due date for payment must be at least 28 days after the date of the assessment notice.
- (6) More than one assessment of primary tax, penalty tax or costs of valuation, or any of them, may be included in an assessment notice, whether or not the assessments are made in respect of the same matter.
- (7) In subsection (6) —
costs of valuation means the costs of obtaining a valuation that are recoverable under section 23A.

[Section 24 amended: No. 12 of 2004 s. 9; No. 12 of 2008 s. 38; No. 10 of 2013 s. 17 and 31.]

- (ii) avoids or delays the submission of information required for the assessment of tax;
 - (d) where there is a material misstatement or omission in an instrument submitted to the Commissioner by or for the taxpayer under a taxation Act;
 - (e) where the taxpayer fails to provide information required under a taxation Act or (intentionally or unintentionally) provides information that is incorrect, incomplete or misleading;
 - (f) where the taxpayer makes an underestimation to avoid, delay or reduce the payment of tax;
 - (g) where the taxpayer fails to pay (or underpays) tax for which the taxpayer is liable.
- (2) If there are reasonable grounds for suspecting that a taxpayer is liable to pay penalty tax, the Commissioner may assess the amount of penalty tax payable by the taxpayer.
- (3) The amount of penalty tax payable is the amount equal to —
- (a) the amount of the taxpayer's primary liability; or
 - (b) the amount that the taxpayer would have been liable to pay if the circumstances giving rise to the liability to penalty tax had not occurred,

as the case requires.

[Section 26 amended: No. 66 of 2003 s. 95(4).]

27A. Penalty tax for undervaluation

- (1) This section does not apply to a taxpayer in relation to a failure to comply with a requirement under section 21(1)(a).
- (2) If the costs of obtaining a valuation are recoverable under section 23A and the Commissioner decides to recover those costs from the taxpayer, the taxpayer is also liable to pay penalty tax.

- (3) The amount of penalty tax payable is the difference between —
- (a) what would be the amount of the taxpayer's primary liability if the designated valuation provided by the taxpayer were used in assessing the taxpayer's liability; and
 - (b) the lesser of —
 - (i) the amount of the taxpayer's primary liability assessed on the value referred to in section 23A(1)(b); and
 - (ii) if the validity or correctness of the assessment is challenged by the taxpayer — the amount of the taxpayer's primary liability as assessed in the final assessment of the taxpayer's liability.
- (4) In subsection (3)(b)(ii), the final assessment of the taxpayer's liability is the assessment applicable after the objection and any subsequent review proceedings are discontinued or otherwise finally determined.
- (5) For the purpose of this section, if a valuation gives a range of values and a preferred value is not provided in or with it, the valuation is taken to fix a value at the median point in the range.

[Section 27A inserted: No. 10 of 2013 s. 33.]

27. Penalty tax for late payment

- (1) If tax is not paid by the due date, the taxpayer is liable to pay an amount of penalty tax for late payment equal to 20% of the amount outstanding on the due date.
- (2) However, penalty tax is not payable for late payment of —
 - (a) instalments due under a tax payment arrangement; or
 - (b) an amount payable under section 47(6) as a result of the cancellation of a tax payment arrangement.

28. Limitation on amount of penalty tax

If the total amount of penalty tax assessed as payable by a taxpayer in relation to a primary liability exceeds, or would but for this section exceed, the amount of the primary liability, the amount of penalty tax payable is reduced to the amount equal to the amount of the primary liability.

29. Remitting penalty tax

- (1) The Commissioner may remit penalty tax wholly or in part.
- (2) Penalty tax may be remitted before or after an assessment of the penalty tax is made.
- (3) If penalty tax is paid and later remitted, the amount remitted is to be refunded or credited against the taxpayer's present or future tax liabilities.

30. Practice for remitting penalty tax

The Commissioner must publish on the OSR website the practice followed by the Commissioner when deciding whether or not to remit penalty tax under section 29.

[Section 30 inserted: No. 11 of 2019 s. 6.]

Part 4 — Objections and review proceedings

[Heading amended: No. 55 of 2004 s. 1167.]

Division 1 — Procedures and restrictions

31. Procedure for challenging assessments

A taxpayer is not entitled to challenge the validity or correctness of an assessment, or of any other decision for which rights of objection or review are conferred by this Act, except —

- (a) in proceedings by way of objection or in review proceedings; or
- (b) in any other manner specifically provided in a taxation Act.

[Section 31 amended: No. 55 of 2004 s. 1168.]

32. Objections to land valuations

The validity or correctness of a valuation under the *Valuation of Land Act 1978* may only be challenged in proceedings under Part IV of that Act, and not by way of objection against an assessment under this Act based on the valuation.

[Section 32 amended: No. 55 of 2004 s. 1169.]

33. Continuing obligation to pay assessed tax

- (1) An obligation to pay tax is not suspended or deferred by an objection or case stated or by review proceedings.
- (2) An order cannot be made in review proceedings if it would have the effect of suspending or deferring an obligation to pay tax before those proceedings are finally determined.

[Section 33 inserted: No. 55 of 2004 s. 1170.]

34A. Beneficial body determinations

- (1) A decision to make, or not to make, or to revoke or amend, a beneficial body determination is final and not subject to

objection or review under this Act or to any other form of appeal or review.

- (2) No action can be brought in any court or tribunal to compel the Minister to make a beneficial body determination.

[Section 34A inserted: No. 8 of 2015 s. 18.]

34B. Surrender of right of objection or review

- (1) This section applies to a decision in respect of which an application may be made for a beneficial body determination.
- (2) If a taxpayer gives written notice in respect of a decision to which this section applies to the Commissioner to the effect that —
- (a) the taxpayer surrenders all rights of objection or review conferred by this Act in respect of the decision, then the decision is not subject to objection or review under this Act or to any other form of appeal or review; or
 - (b) an objection to the decision having been determined, the taxpayer surrenders all subsequent rights of review conferred by this Act in respect of the decision, then the decision is not subject to review under this Act or to any other form of appeal or review.
- (3) Notice about a decision cannot be given —
- (a) under subsection (2)(a) after the right to object to the decision under this Act has expired; or
 - (b) under subsection (2)(b) after the right to take review proceedings in respect of the decision has expired.

[Section 34B inserted: No. 8 of 2015 s. 18.]

Division 2 — Objections

34. Right to object

- (1) A taxpayer may object to —
- (a) an assessment, other than a compromise assessment; or

- (b) another decision under a taxation Act that affects the taxpayer's liability to taxation; or
 - (ca) a decision to recover the costs of obtaining a valuation under section 23A or the amount of the costs sought to be recovered; or
 - (c) a decision made on a pre-transaction decision request made under the *Duties Act 2008* section 261, unless any exemption granted under that Act for the transaction to which the request relates has been revoked; or
 - (d) a decision made on a pre-section 270 decision request made under the *Duties Act 2008* section 269, unless the Commissioner has already decided under the *Duties Act 2008* section 270(1) to disregard the scheme that was the subject of the request.
- (2) However, an objection cannot be made against —
- (a) the determination of an objection;
 - (b) an assessment of an amount of duty and penalty tax that is assessed under a taxation Act and specified in an infringement notice as defined in the *Road Traffic (Administration) Act 2008* section 4, unless the amount has been paid;
 - (ca) an interim assessment within 3 years after the date on which the assessment notice for the interim assessment is issued;
 - (cb) a decision to make, or not to make, or to revoke or amend, a beneficial body determination;
 - (cc) a decision which, under section 34B(2)(a), is not subject to objection under this Act;
 - (c) a directly reviewable decision;
 - (d) a decision in respect of which a taxation Act specifically provides other procedures for objection or appeal;
 - (e) a decision which, under section 20A(3), is not subject to objection under this Part.

- (3A) An objection against an interim assessment can only be made against the validity or correctness of the interim assessment as at the date on which the assessment notice for the interim assessment was issued.
- (3B) A taxpayer ceases to be entitled to object to an interim assessment if the assessment following the interim assessment is made before an objection against the interim assessment is lodged.
- (3) If a reassessment is made and the time for lodging an objection to the previous assessment has expired, an objection may only be made against an increase in liability.
- (4) Where a decision of the Commissioner is by any of the taxation Acts declared to be directly reviewable a taxpayer may, within 60 days of being notified of the decision, apply to the State Administrative Tribunal for a review of the decision.

[Section 34 amended: No. 55 of 2004 s. 1171; No. 12 of 2008 s. 39; No. 31 of 2008 s. 24 and 30; No. 8 of 2012 s. 178; No. 10 of 2013 s. 19 and 34; No. 8 of 2015 s. 19.]

35. Form of objection

An objection must —

- (a) be in writing; and
- (b) set out fully and in detail the grounds on which the taxpayer objects to the assessment or decision; and
- (c) be lodged in accordance with section 115.

36. Time for lodging objection

- (1) An objection to an official assessment must be lodged within 60 days after —
- (a) the assessment notice is issued; or

- (b) if the assessment is indicated by endorsement in accordance with section 23(2)(b) — the date on which the document was endorsed; or
 - (c) if a taxpayer has requested a statement of grounds in accordance with section 25(2)(a) within 30 days of the issue of the assessment — the date on which the Commissioner serves a statement of the grounds; or
 - (d) if the assessment is an interim assessment — the date on which the 3-year period referred to in section 34(2)(ca) ends.
- (2) An objection to a self-assessment must be lodged within 60 days after the due date for lodging the return related to the assessment.
- (3) An objection to another decision must be lodged within 60 days after the day on which the person affected by the decision was notified of the decision.
- (4) However, the Commissioner may, on application by the taxpayer, extend the time for lodging an objection.
- (5) An application for an extension of time —
- (a) must be made within 12 months after the date on which the objection was to have been lodged under subsection (1), (2) or (3), but may be made before or after that date; and
 - (b) must set out in detail the grounds on which the applicant asks for an extension of time.
- (6) If objection is taken to a decision about self-assessment of tax, the date of the decision is taken to be the date by which the first return affected by the decision is to be lodged by the taxpayer after the taxpayer receives notice of the decision.

[Section 36 amended: No. 12 of 2008 s. 40; No. 10 of 2013 s. 20.]

37. Consideration of objections

- (1) The Commissioner must consider and determine an objection, having regard to —
 - (a) the grounds set out in the objection and any other relevant written material submitted by the taxpayer; and
 - (b) if the objection is against an interim assessment — any other information relevant to considering the objection that was obtained by the Commissioner before the assessment notice for the interim assessment was issued; and
 - (c) if the objection is not against an interim assessment — any other information relevant to considering the objection, whether obtained by the Commissioner before or after the objection was lodged.
- (2) The onus of establishing that an assessment or decision to which an objection relates is invalid or incorrect lies on the taxpayer.
- (3) If the objection relates to an assessment that was made under section 19(1) on the basis of suspected liability —
 - (a) it is not necessary for the taxpayer to establish that there were no reasonable grounds for the suspicion; and
 - (b) the objection is to be allowed if the taxpayer establishes, on the balance of probabilities, that the taxpayer is not liable to the tax (or penalty tax) assessed.
- (4A) The Commissioner is not required to consider, or to continue considering, an objection against an interim assessment once the assessment following the interim assessment is made.
- (4B) A decision on an objection against an interim assessment and any findings made for the purposes of the decision do not bind the Commissioner in the consideration of an objection against an assessment following the interim assessment.

- (4) On determining an objection, the Commissioner must serve on the taxpayer a notice setting out —
- (a) the decision on the objection; and
 - (b) if the objection is disallowed in whole or part — the reasons for the decision.

[Section 37 amended: No. 10 of 2013 s. 21.]

38. Time limit for determining objections

- (1) The Commissioner must determine an objection within the decision period calculated under subsection (2).
- (2) The decision period is the initial period of 90 days beginning on the day the objection is lodged with the Commissioner, plus the number of days equal to the number of days the Commissioner needs (whether the needed days fall during or after the initial 90-day period) —
- (a) to obtain from the taxpayer information that the Commissioner reasonably requires to determine the objection; or
 - (b) to consider any information provided by the taxpayer after the objection was lodged; or
 - (c) to obtain any advice and assistance from an external agency that the Commissioner reasonably requires to determine the objection.
- (3) The Commissioner must notify the taxpayer, before the end of the initial 90-day period, of any periods by which the decision period has been extended up to the time of notification and, if further delays extending the decision period occur after the initial notification, must keep the taxpayer reasonably informed about the extent and the reasons for the further delays.
- (4) If the Commissioner fails to determine an objection within 120 days of the day that the objection was lodged with the Commissioner, the taxpayer may, by written notice to the Commissioner, require the Commissioner to apply to the State

Administrative Tribunal for directions as to any or all of the matters referred to in this section, including but not limited to —

- (a) the length of the decision period;
 - (b) the time for a taxpayer to comply with a request for information;
 - (c) the information to be provided by the taxpayer;
 - (d) the time for the Commissioner to seek advice and assistance from an external agency.
- (5) On receiving a request under subsection (4), the Commissioner must apply to the State Administrative Tribunal for those directions within 14 days of the written notice.

[(6) deleted]

- (7) Non-compliance with subsection (1) does not invalidate a determination on an objection.

[Section 38 amended: No. 55 of 2004 s. 1172; No. 12 of 2005 s. 9.]

39. Reassessment on determination of objection

- (1) If an objection is allowed wholly or in part, the Commissioner must make a reassessment accordingly.
- (2) If, as a result of the reassessment, an amount is to be refunded or credited to the taxpayer, the following amounts are also to be refunded or credited to the taxpayer —
- (a) any amount paid by the taxpayer for the lodging of a memorial under section 76, 77 or 77A, if the Commissioner has lodged a withdrawal of the memorial as a result of the reassessment;
 - (b) interest during the reassessment period, calculated at the prescribed rate, on the amount to be refunded or credited, including any amount referred to in paragraph (a).

- (3) In subsection (2)(b) —
- reassessment period**, in relation to the payment of interest on an amount, means the period —
- (a) beginning on whichever is the later of —
 - (i) the date on which the amount to be refunded or credited to the taxpayer, as a result of the reassessment, was paid by the taxpayer; or
 - (ii) the date on which the assessment or decision objected to was made;
 - and
 - (b) ending on the date, on or after the date the Commissioner made the reassessment, on which the Commissioner approves the refunding or crediting of the amount.

[Section 39 amended: No. 17 of 2010 s. 24.]

Division 3 — Reviews and stated cases

[Heading amended: No. 55 of 2004 s. 1173.]

40. Right of review by State Administrative Tribunal

- (1) A person dissatisfied with the Commissioner's decision on an objection or on an application for an extension of time for lodging an objection may apply to the State Administrative Tribunal for a review of the decision.
- (2) A person ceases to be entitled to apply to the State Administrative Tribunal for a review of a decision on an objection against an interim assessment if the assessment following the interim assessment is made before the person makes an application under subsection (1) for a review of the decision.

- (3) Subsection (1) does not apply to, or in respect of, a decision if this Act expressly provides that the decision is not subject to review under this Act.

[Section 40 amended: No. 55 of 2004 s. 1174; No. 10 of 2013 s. 22; No. 8 of 2015 s. 20.]

[41. Deleted: No. 55 of 2004 s. 1175.]

42. Time for review

- (1) An application to the State Administrative Tribunal for a review of a decision must be made within 60 days after notice of the decision is served on the taxpayer.

[(2) deleted]

[Section 42 amended: No. 55 of 2004 s. 1176.]

43.^{1MC} Proceedings before State Administrative Tribunal

- (1) When the State Administrative Tribunal is dealing with a matter brought before it under this Act other than a matter to which subsection (2) or (2aa) applies, the State Administrative Tribunal is to be constituted by, or include —
- (a) its President or a Deputy President of it; or
 - (b) a senior member of it, as defined in subsection (1) of section 3 of the *State Administrative Tribunal Act 2004*, who is a legal practitioner as defined in that subsection.
- (2) When the State Administrative Tribunal is dealing with a matter brought before it under this Act that relates to an assessment or decision under or for the purposes of the *Duties Act 2008*, the *Pay-roll Tax Assessment Act 2002*, or the *Stamp Act 1921*, the State Administrative Tribunal is to be constituted by its President, or a Deputy President of it, sitting alone unless subsection (2aa) applies.

- (2aa) A proceeding brought before the State Administrative Tribunal under this Act is included in the operation of section 93 of the *State Administrative Tribunal Act 2004* if it is —
- (a) a proceeding of a kind described in paragraph (a) of the definition of *minor proceeding* in subsection (1) of that section or included by regulations referred to in paragraph (b) of that definition; or
 - (b) a proceeding for the review of a directly reviewable decision; or
 - (c) a proceeding for the review of a decision of the Commissioner under section 47 in connection with extending time for payment of tax or approving payment of tax in instalments,

but the effect of a no appeals election made under that section in relation to the proceeding is modified as described in subsection (2ab).

- (2ab) The no appeals election does not prevent the Commissioner from making an appeal under the *State Administrative Tribunal Act 2004* Part 5, without leave, against the decision in the proceeding on a question of law if the Minister —
- (a) certifies in writing that the question is significant for the protection of the revenue of the State; and
 - (b) agrees to indemnify each other party to the proceeding in respect of any cost involved in the appeal,

but a decision made by the Supreme Court in dealing with the appeal does not affect the decision in the proceeding from which the appeal arose and the matter cannot be sent back to the State Administrative Tribunal for reconsideration.

- (2a) For the purposes of subsections (1) and (2) —
- (a) a person appointed as a supplementary President of the State Administrative Tribunal under section 139 of the *State Administrative Tribunal Act 2004* is not to be regarded as its President unless the person is a judge,

acting judge or auxiliary judge of the Supreme Court;
and

- (b) a person appointed as a supplementary Deputy President of the State Administrative Tribunal under section 141 of the *State Administrative Tribunal Act 2004* is not to be regarded as a Deputy President of it unless the person is a judge, acting judge or auxiliary judge of the District Court.

(2b) Subsections (1) and (2) apply to the constitution of the State Administrative Tribunal at every stage of a proceeding before it, including a directions hearing or other hearing of a procedural nature before the Tribunal.

(3) If the final reassessment of the taxpayer's liability indicates that tax has been overpaid, the taxpayer is entitled to a refund or credit of the overpaid amount and the following amounts —

- (a) any amount paid by the taxpayer for the lodging of a memorial under section 76, 77 or 77A, if the Commissioner has lodged a withdrawal of the memorial as a result of the final reassessment;
- (b) interest during the reassessment period, calculated at the prescribed rate, on the amount to be refunded or credited, including any amount referred to in paragraph (a).

(4A) In subsection (3)(b) —

reassessment period, in relation to the payment of interest on an amount, means the period —

- (a) beginning on whichever is the later of —
 - (i) the date on which the overpaid amount was paid by the taxpayer; or
 - (ii) the date on which the assessment or decision the subject of the Commissioner's decision to which the review proceedings relate, was made;

and

- (b) ending on the date, on or after the date the Commissioner made the final reassessment, on which the Commissioner approves the refunding or crediting of the amount.
- (4) For the purposes of subsection (3) —
 - (a) the final reassessment of a taxpayer's liability is the last assessment to have been made as directed in the course of review proceedings at the time that the case is discontinued or otherwise finally determined; and
 - (b) a refund or credit of an amount referred to in that subsection need not be made until rights to take review proceedings (including any right that may exist to seek special leave to appeal to the High Court) have been exhausted or have expired, and no further reassessment can be made.
- (5) The State Administrative Tribunal may, on its own initiative or the application of a party, dismiss a proceeding relating to an objection against an interim assessment once the assessment following the interim assessment is made.

[Section 43 amended: No. 55 of 2004 s. 1177; No. 12 of 2008 s. 41; No. 17 of 2010 s. 25 and 30(3); No. 29 of 2012 s. 41; No. 10 of 2013 s. 23.]

[Modification, to section 43, to have effect under the Commonwealth Places (Mirror Taxes) Act 1998 (Commonwealth) s. 8, see Commonwealth Places (Mirror Taxes) (Modification of Applied Laws (WA)) Notice 2007 cl. 54 and endnote IMC.]

43A. Appeal from decision of State Administrative Tribunal

- (1) An appeal from a decision of the State Administrative Tribunal can be brought on a question of law, of fact, or mixed law and fact, without having first obtained leave to appeal.

- (2) The appeal has to be instituted in accordance with the rules of the Supreme Court and within the period of 28 days after —
- (a) the day on which the Tribunal's decision is made; or
 - (b) if the Tribunal gives oral reasons for the decision and the appellant then requests it to give written reasons under section 78 of the *State Administrative Tribunal Act 2004*, the day on which the written reasons are given to the appellant.

[Section 43A inserted: No. 55 of 2004 s. 1178.]

44. Cases stated by Commissioner

- (1) The Commissioner may state a case on a question of law arising under a taxation Act and forward the case to the Supreme Court.
- (2) The Supreme Court —
- (a) is to decide the question of law; and
 - (b) may make orders for costs and other incidental matters.

Part 5 — Payment and refund of tax

Division 1 — Payment

45. When tax is due for payment

- (1) Subject to this section, tax is due for payment on the date fixed by or worked out in accordance with the relevant taxation Act.
- (2) If the relevant taxation Act does not make provision for the date of payment, the tax is due for payment on the date specified in the assessment notice.

[Section 45 amended: No. 12 of 2004 s. 10.]

46. Allocation of payment

When the Commissioner receives a payment from a taxpayer, the payment is to be allocated as follows —

- (a) if it is clear from the circumstances in which the payment is made how the payment is to be allocated — the payment is to be allocated accordingly; and
- (b) in any other case — the payment is to be allocated to the taxpayer's tax liabilities as decided by the Commissioner.

47. Arrangements for instalments and extensions of time

- (1) The Commissioner may approve an arrangement (with or without amendment) —
 - (a) extending the time for paying tax; or
 - (b) providing for the payment of tax in specified instalments.
- (2) An application for approval of a proposed tax payment arrangement must set out the reasons that the taxpayer wants more time to pay the tax.

- (3) A tax payment arrangement may include —
- (a) conditions agreed with the taxpayer providing for the payment (and allowing for the remission) of interest at the prescribed rate or at some other rate fixed by or under the arrangement with the agreement of the taxpayer; and
 - (b) any other conditions the Commissioner considers appropriate.
- (4) The Commissioner may, by notice to the taxpayer, amend a tax payment arrangement —
- (a) by agreement with the taxpayer; or
 - (b) as provided in the conditions of the arrangement.
- (5) The Commissioner may, by notice to the taxpayer, cancel a tax payment arrangement if —
- (a) a payment is not made in accordance with the arrangement; or
 - (b) the taxpayer does not comply with any other condition of the arrangement.
- (6) On cancellation of a tax payment arrangement, the whole of the tax outstanding under the arrangement (together with interest) becomes due and payable as from the date of cancellation or the original due date for payment of the tax to which the arrangement relates (whichever is the later).
- (7) Despite cancellation of a tax payment arrangement, interest continues to accrue at the prescribed rate (or the other rate fixed by or under the arrangement) until the outstanding tax to which the arrangement formerly applied is paid.
- (8) A decision of the Commissioner under this section in connection with extending time for payment of tax or approving payment of tax in instalments is directly reviewable.

- (9) In this section, a reference to tax is to be read as including costs of the kinds referred to in section 62(a), (b), (ba) and (d).

[Section 47 amended: No. 55 of 2004 s. 1179; No. 11 of 2019 s. 7.]

48. No action to compel approval of tax payment arrangement

No action can be brought in a court to compel the Commissioner to approve a tax payment arrangement.

Division 2 — Special tax return arrangements

49. Approval of special tax return arrangements

- (1) The Commissioner may make a special tax return arrangement with a taxpayer or another person in relation to a taxpayer's obligations under a taxation Act.
- (2) Without limiting subsection (1), a special tax return arrangement may be made with —
- (a) a particular taxpayer in relation to the taxpayer's obligations under a taxation Act; or
 - (b) a particular taxpayer in relation to obligations the taxpayer has jointly with other taxpayers under a taxation Act; or
 - (c) an agent in relation to obligations of taxpayers for whom the agent is authorised to act.
- (3) A special tax return arrangement is to be made —
- (a) in writing; and
 - (b) on terms agreed between the Commissioner and the responsible party.

50. Content of special tax return arrangement

- (1) A special tax return arrangement —
- (a) may require the lodging of returns, and the self-assessment and payment of tax, in accordance with the arrangement; and
 - (b) may require compliance with any other obligations imposed under the conditions of the arrangement; and
 - (c) may exempt the taxpayer or taxpayers covered by the arrangement from compliance with specified administrative requirements of a taxation Act; and
 - (d) may provide for the endorsement or certification of instruments to indicate the amount of tax paid or payable under the special tax return arrangement, or to indicate that tax is not payable; and
 - (e) may require the responsible party to keep specified records; and
 - (f) may authorise the responsible party to correct errors of a prescribed kind, or to alter a self-assessment in prescribed circumstances; and
 - (g) may authorise the responsible party to do things for the purpose of giving effect to any corrections or alterations made in accordance with the arrangement.
- (2) If an instrument that the responsible party is required to include in a tax return would be of no effect until registered under an enactment, then it is a condition of the arrangement that the responsible party is to include the instrument in a return before the instrument is lodged for registration.
- (3) If a condition of a special tax return arrangement is contravened, the responsible party commits an offence.

Penalty: \$20 000.

- (4) A special tax return arrangement does not transfer the taxpayer's tax liability from the taxpayer to the responsible party.

[Section 50 amended: No. 12 of 2005 s. 10; No. 12 of 2008 s. 42.]

51. Improper endorsement or certification of instrument

A person who endorses or certifies an instrument so as to suggest or imply that the instrument has been properly endorsed or certified under a special tax return arrangement commits an offence unless the instrument is properly endorsed or certified in accordance with the conditions of the arrangement.

Penalty: \$20 000.

[Section 51 inserted: No. 12 of 2008 s. 43.]

52. Lodging returns under special tax return arrangement

- (1) A return lodged under a special tax return arrangement must —
- (a) be in a form approved by the Commissioner; and
 - (b) contain the information required by the form; and
 - (c) contain any other information required by the Commissioner that is relevant to assessing the tax payable for the matters covered by the return.
- (2) A return must be lodged within 15 days after the end of the return period, unless the special tax return arrangement or a later agreement between the Commissioner and the responsible party provides otherwise.
- (3) The return period for a special tax return arrangement is a month, unless the arrangement or a later agreement between the Commissioner and the responsible party provides otherwise.
- (4) A responsible party who is required to lodge a return under a special tax return arrangement must lodge the return in accordance with this section and with the arrangement.

Penalty: \$5 000.

53. Amendment or cancellation of arrangement

- (1) The Commissioner may, by agreement with the responsible party, amend the conditions of a special tax return arrangement.
- (2) The Commissioner may, by notice served on the responsible party, cancel a special tax return arrangement.

Division 3 — Refunds of tax

54. Refunds

- (1) The Commissioner must refund tax to a taxpayer if —
 - (a) as a result of a reassessment, it appears that an overpayment of tax has been made; or
 - (b) the Commissioner is satisfied on an application for a refund under this section that an overpayment of tax has been made; or
 - (c) in the circumstances of a particular case, the Commissioner is required by a taxation Act to make a refund of tax.
- (2A) If the tax paid on an interim assessment exceeds the tax payable on the assessment following the interim assessment, the Commissioner must refund the taxpayer these amounts —
 - (a) the difference between the tax paid on the interim assessment and the tax payable on the assessment following the interim assessment;
 - (b) interest, calculated at the prescribed rate, on the amount referred to in paragraph (a) during the period —
 - (i) beginning on the date on which the amount referred to in paragraph (a) was paid by the taxpayer; and
 - (ii) ending on the date on which the Commissioner approves the refunding of that amount.

- (2) However, instead of repaying the amount to be refunded, the Commissioner may credit the amount of the refund against the taxpayer's existing and future tax liabilities (but the Commissioner must not credit an amount of \$50 or more against future liabilities if the taxpayer requests repayment).
- (3) An application for a refund may only be made —
 - (a) on a ground on which refunds are authorised or required by a taxation Act; or
 - (b) on the ground that the amount paid by the taxpayer exceeds the amount of tax payable in accordance with the relevant assessment.
- (4) An application for a refund under this section must be made —
 - (a) within a period fixed by a taxation Act for making the application; or
 - (b) if no period is fixed by a taxation Act — within 5 years of the date when the overpayment was made.

[Section 54 amended: No. 10 of 2013 s. 24.]

54A. Interest on refunds resulting from proceedings under *Valuation of Land Act 1978*

- (1) This section applies if a reassessment is made, and an amount is to be refunded or credited to a taxpayer under section 54(1)(a) or (2), as a result of —
 - (a) an objection under the *Valuation of Land Act 1978* section 32 being allowed, wholly or in part; or
 - (b) a review by the State Administrative Tribunal under the *Valuation of Land Act 1978* section 33.
- (2) The following amounts must also be refunded or credited to the taxpayer —
 - (a) any amount paid by the taxpayer for the lodging of a memorial under section 76, if the Commissioner has lodged a withdrawal of the memorial as a result of the reassessment;

- (b) interest during the reassessment period, calculated at the prescribed rate, on the amount to be refunded or credited, including any amount referred to in paragraph (a).
- (3) In subsection (2)(b) —
reassessment period, in relation to the payment of interest on an amount, means the period —
 - (a) beginning on whichever is the later of —
 - (i) the date on which the amount to be refunded or credited to the taxpayer, as a result of the reassessment referred to in subsection (1), was paid by the taxpayer; or
 - (ii) the date on which the assessment of tax to which the objection or review under the *Valuation of Land Act 1978* related was made;
 - and
 - (b) ending on the date, on or after the date the Commissioner made the reassessment referred to in subsection (1), on which the Commissioner approved the refunding or crediting of the amount.

[Section 54A inserted: No. 11 of 2019 s. 8.]

55A. Unused credit

- (1) If an amount credited against a taxpayer's future tax liabilities under section 54(2) is not debited against those liabilities within 2 years after the credit arose the Commissioner may —
 - (a) if the amount is less than the prescribed amount, write off the credit; or
 - (b) otherwise, pay the amount to the Treasurer to be dealt with as prescribed retained money in accordance with the *Unclaimed Money Act 1990* section 9(1)(r)(ii).

- (2) If a credit is written off under subsection (1)(a) —
 - (a) the amount written off is to be credited to the Consolidated Account; and
 - (b) the *Unclaimed Money Act 1990* does not apply to or in relation to that amount.
- (3) If a credit is written off under subsection (1)(a) and within 5 years after the credit arose the taxpayer requests payment of the written off amount, the Commissioner must pay that amount to the taxpayer.

[Section 55A inserted: No. 31 of 2008 s. 25.]

55. Refunds or credits to be passed on to third parties in some cases

- (1) This section applies to payment of any of the following taxes —
 - (a) pay-roll tax;
 - (b) duty payable under Part III F or Part IV B of the *Stamp Act 1921*;
 - (ba) duty payable under the *Duties Act 2008* Chapter 4.
- (2) If —
 - (a) the tax payable by the taxpayer is paid out of money provided by a third party, or a third party reimburses the taxpayer for payment of tax; and
 - (b) the tax is, in whole or part, refunded or credited to the taxpayer (whether under this Division or not),

then the taxpayer is to reimburse the third party in accordance with subsection (3) or (4), as the case requires.

- (3) If the third party provided all the money with which the tax payment was made, or fully reimbursed the taxpayer for the payment, the taxpayer must reimburse the third party with an amount equal to the amount of the refund or credit.
- (4) If the third party contributed part only of the tax payment, or partially reimbursed the taxpayer for the payment, the taxpayer

must reimburse the third party with an amount that bears the same proportion to the amount of the refund or credit as the amount of the refund or credit amount bears to the amount of the payment.

- (5) The taxpayer must —
- (a) make the reimbursement to the third party within 90 days after the refund was paid or credited to the taxpayer or within any longer period allowed by the Commissioner; or
 - (b) if the reimbursement is not made within that period — repay the amount of the refund to the Commissioner or ask the Commissioner to cancel the credit in the taxpayer's favour within 7 days from the end of that period.

Penalty: \$20 000.

- (6) The Commissioner may recover any amount that should have been, but was not, repaid under subsection (5)(b) as if it were unpaid tax.
- (7) No action can be brought in a court to compel the Commissioner to take or refrain from taking proceedings for recovery of the amount refunded or credited to the taxpayer.

[Section 55 amended: No. 12 of 2008 s. 44; No. 17 of 2010 s. 30(4).]

Division 4 — Power to waive or write off liability

56. Waiving tax

- (1) The Commissioner may waive the payment of tax or another amount payable under a taxation Act (for example, interest or legal costs), up to a prescribed limit.
- (2) If the Commissioner waives the payment of tax or some other amount payable under a taxation Act, the liability to make the payment is extinguished.

- (3) A decision by the Commissioner to waive tax, or not to waive tax, is directly reviewable.

[Section 56 amended: No. 55 of 2004 s. 1180.]

57. Writing off tax liability

- (1) The Commissioner may write off a tax liability, or a liability to pay another amount under a taxation Act, if satisfied that action or further action to recover the tax or other amount is impracticable or unwarranted.
- (2) Writing off a liability does not —
- (a) extinguish the liability; or
 - (b) preclude the Commissioner from taking later action to recover the amount of the liability.
- (3) A decision by the Commissioner to write off a liability, or not to write off a liability, is directly reviewable.

[Section 57 amended: No. 55 of 2004 s. 1181.]

58. Powers subject to *Financial Management Act 2006*

This Division is to be read subject to the *Financial Management Act 2006*.

[Section 58 amended: No. 77 of 2006 Sch. 1 cl. 166.]

59. No action to compel waiver or writing off

- (1) No action can be brought in a court to compel the Commissioner to waive payment of tax or to write off a tax liability.
- (2) Subsection (1) does not prevent an appeal from a decision of the State Administrative Tribunal.

[Section 59 amended: No. 55 of 2004 s. 1182.]

Part 6 — Recovery of tax

Division 1 — Recovery generally

60. ^{1MC} Recovery of unpaid tax

- (1) Unpaid tax is a debt due to the State.
- (2) The Commissioner may recover unpaid tax on behalf of the State by action in any court of competent jurisdiction.

[Modification, to section 60, to have effect under the Commonwealth Places (Mirror Taxes) Act 1998 (Commonwealth) s. 8, see Commonwealth Places (Mirror Taxes) (Modification of Applied Laws (WA)) Notice 2007 cl. 55 and endnote 1MC.]

61. Power of court to order payment of tax

When a court convicts a person of an offence against a taxation Act, the court may (in addition to any penalty imposed for the offence) order the convicted person to pay tax outstanding at the time of the conviction.

62. This Part applies to tax and also costs and interest

In this Part, a reference to tax is to be read as including —

- (a) legal costs incurred by the Commissioner in relation to proceedings for the recovery of the tax; and
- (b) costs incurred for lodging a memorial under section 76, 77 or 77A(2), (3), (4A) or (4); and
- (ba) costs incurred for lodging a withdrawal of memorial under section 81; and
- (c) interest payable under a tax payment arrangement; and
- (d) prescribed costs.

[Section 62 amended: No. 17 of 2010 s. 26; No. 11 of 2019 s. 9.]

63. Recovery in cases of joint liability

- (1) If 2 or more persons are jointly liable for tax, the whole of the tax may be recovered from any one or more of them but not so as to recover more than the whole of the tax.
- (2) This section does not affect the right of a taxpayer who pays tax to recover contributions from a person jointly liable for the tax.

64. Notice of administrator’s appointment

- (1) A person who is appointed as statutory administrator of a taxpayer’s assets must, within 14 days of appointment, or within any longer time allowed by the Commissioner, serve on the Commissioner written notice of the appointment.

Penalty: \$5 000.

- (2) However, in prescribed circumstances a statutory administrator does not have to serve notice of the appointment.
- (3) For the purposes of this section, a person is a ***statutory administrator of a taxpayer’s assets*** if the person is —
 - (a) a liquidator of a corporate taxpayer; or
 - (b) a receiver or receiver and manager of the whole or a part of a taxpayer’s property; or
 - (c) a taxpayer’s trustee in bankruptcy; or
 - (d) a person who holds a prescribed position or prescribed powers in relation to a taxpayer or a taxpayer’s affairs.

65. Recovery from garnishee

- (1) The Commissioner may serve a garnishee notice on a person (the ***garnishee***) if the Commissioner believes on reasonable grounds that the garnishee —
 - (a) holds or may receive money for or on account of a taxpayer; or
 - (b) is liable or may become liable to pay money to a taxpayer; or

- (c) has authority to pay money to a taxpayer.
- (2) A garnishee notice is a notice —
 - (a) requiring the garnishee to pay money in the garnishee's possession or control to which the taxpayer is or becomes entitled to the Commissioner up to the amount of a liability for tax stated in the notice; and
 - (b) fixing a time for payment (which cannot be before the time the taxpayer becomes entitled to the money).
- (3) The Commissioner may serve a garnishee notice even though the taxpayer's entitlement to the money may be subject to unfulfilled conditions.
- (4) However, a garnishee notice served on the employer of a taxpayer can require the garnishee to pay to the Commissioner the wages payable by the garnishee to the taxpayer in respect of a period only to the extent of the amount by which the amount of the wages exceeds the amount of average earnings for that period calculated on the basis of statistics published in respect of the period by the government statistician.
- (5) The Commissioner must serve a copy of the garnishee notice on the taxpayer.
- (6) If the liability to which a garnishee notice relates is discharged wholly or partly before the time for payment under the notice and the discharge or partial discharge affects the amount to be recovered from the garnishee, the Commissioner must, by notice served on the garnishee and the taxpayer —
 - (a) inform them of that fact; and
 - (b) state whether and, if so, how the garnishee's obligation under the garnishee notice is affected by the discharge or partial discharge of the liability.
- (7) A garnishee who does not comply with a garnishee notice commits an offence.
Penalty: \$20 000.

- (8) A garnishee who is under an obligation to pay money to the taxpayer is taken to have satisfied that obligation to the extent of the payment made under the garnishee notice.

66. Recovery from partnerships

If a tax liability is incurred by or on behalf of a partnership, the tax is recoverable jointly and severally from any one or more of the partners.

67. Recovery from directors of body corporate

- (1) This section applies where the Commissioner believes, on reasonable grounds, that —
- (a) a body corporate has been trading while insolvent to the knowledge of a director;
 - (b) the Commissioner has issued an assessment notice, which assessment consists of or includes an amount in relation to pay-roll tax, to the body corporate, and the amount assessed in relation to pay-roll tax has not been paid by the due date.
- (2) The Commissioner may serve notice on the director informing the director that the director, along with any other directors of the body corporate on whom the Commissioner serves notice in similar terms, will become jointly and severally liable with the body corporate for the payment of the pay-roll tax unless before the expiry of 28 days from the date of the notice the body corporate remedies its default.
- (3) The Commissioner must serve a notice under subsection (2) by arranging for a copy of the notice to be given to each director personally.
- (4) However, if, after exercising due diligence, it appears to the Commissioner that it is not practicable to give a copy of the notice personally to a director, then the Commissioner may apply to the Supreme Court for an order for substituted service in accordance with section 117(2).

- (5) For the purpose of this section, a body corporate is taken to remedy a default if —
- (a) the liability is paid; or
 - (b) the Commissioner by notice to the body corporate offers the body corporate an opportunity to enter into a tax payment arrangement, and the body corporate enters into the tax payment arrangement on conditions satisfactory to the Commissioner; or
 - (c) the body corporate enters into voluntary administration under Part 5.3A of the *Corporations Act 2001* of the Commonwealth; or
 - (d) the body corporate goes into liquidation.
- (6) If the body corporate fails to remedy its default within the time specified in the notice to a director under this section, the directors become jointly and severally liable, with the body corporate, for the payment of the tax liability assessed against the body corporate.
- (7) If a body corporate remedies its default by entering into a tax payment arrangement but later contravenes a condition of the arrangement, the body corporate's default is taken to revive and the Commissioner may serve another notice on the directors under this section.
- (8) In proceedings for recovery of tax from a director under this section, it is a defence for the director to establish that —
- (a) the director took all reasonable steps that were possible in the circumstances to get the body corporate to remedy its default; or
 - (b) the director was unable because of illness or for some other proper reason to take steps to get the body corporate to remedy its default.
- (9) In proceedings for recovery of tax from a director under this section, the onus of establishing that the director did not have the knowledge required by section 67(1)(a) is on the director.

- (10) If a director pays tax or tax is recovered from a director under this section, the director is entitled to be indemnified by the body corporate for the amount paid or recovered.
- (11) This section does not apply in relation to —
 - (a) a director of a body corporate to which the *Statutory Corporations (Liability of Directors) Act 1996* applies; or
 - (b) a director of a body that is incorporated or taken to be incorporated under the *Associations Incorporation Act 2015*.

[Section 67 amended: No. 30 of 2015 s. 229.]

68. Director or body corporate may apply to Supreme Court to set aside s. 67 notice

- (1) Any person served with a notice under section 67(2) may apply to the Supreme Court for an order setting aside that notice.
- (2) The body corporate, of which a person served with a notice under section 67(2) is a director, may also apply to the court for an order setting aside any such notice.
- (3) An application under subsection (1) or (2) may only be made within 21 days after the notice is so served.
- (4) An application is made in accordance with this section only if, within the time period specified in subsection (3) —
 - (a) an affidavit supporting the application is filed with the court; and
 - (b) a copy of the application, and a copy of the supporting affidavit, are served on the Commissioner.

69. Proceedings on s. 68 application where genuine dispute as to assessment of pay-roll tax

- (1) This section applies where, on an application under section 68, the court is satisfied that there is a genuine dispute between the body corporate and the Commissioner about —
- (a) the validity; or
 - (b) the merits; or
 - (c) the amount,
- of the assessment to which the notice relates, so far as that assessment concerns pay-roll tax.
- (2) Where subsection 67(1) applies, the court must, by order —
- (a) set aside the notice or notices referred to in the application;
 - (b) order the Commissioner to withdraw any other notice served on any director of the body corporate under section 67 which relates to the assessment.

70. On s. 68 application, court may set aside s. 67 notice etc.

- (1) On application under section 68, the court may by order set aside the notice and order the Commissioner to withdraw any other notice if it is satisfied that —
- (a) because of a defect in the notice, substantial injustice will be caused unless the notice is set aside; or
 - (b) there is some other reason why the notice should be set aside.
- (2) Except as provided in subsection (1), the court must not set aside a notice merely because of a defect.

71. Effect of order setting aside s. 67 notice

A notice served on a director of a body corporate under section 67(2) has no effect while there is in force under

section 69 or 70 an order setting aside any notice served on any director of that body corporate.

72. Dismissal of s. 68 application

Unless the court makes, on an application under section 68, an order under section 69 or 70, the court is to dismiss the application.

73. Order under s. 69 or 70 may be subject to conditions

An order under section 69 or 70 may be made subject to conditions.

74. Costs where applicant successful

Where, on an application under section 68, the court sets aside the notice, it may order the Commissioner to pay the applicant's costs in relation to the application.

75. Period for complying with s. 67 notice if s. 68 application made

Notwithstanding anything contained in section 67, if an application is made in accordance with section 68 for an order setting aside a notice, the period for compliance with that notice and any other notice which has been served on any director of the body corporate to which the notice relates, shall be the period beginning on the day when the demand is served and ending 7 days after the application under section 68 is finally determined or otherwise disposed of.

Division 2 — Charges on land

76A. Terms used

(1) In this Division —

land, in relation to unpaid landholder duty or transfer duty (within the meanings given in section 77A), has the meaning given in the *Duties Act 2008* section 3;

land, in relation to unpaid stamp duty payable under the *Stamp Act 1921* Part III BA, has the meaning given in section 76 of that Act;

lodge means lodge or deliver for registration under a relevant land Act;

mining tenement has the meaning given in the *Mining Act 1978* section 8(1);

real property means real property in respect of which an instrument may be lodged under the *Registration of Deeds Act 1856*;

register means register against land under a relevant land Act;

relevant land Act means —

- (a) in relation to TLA land, the *Transfer of Land Act 1893*;
- (b) in relation to a mining tenement, the *Mining Act 1978*;
- (c) in relation to real property, the *Registration of Deeds Act 1856*;

TLA land means land that is under the operation of the *Transfer of Land Act 1893*.

- (2) In this Division a reference to tax of a particular kind is to be read as including —
- (a) penalty tax that is payable in relation to tax of that kind; and
 - (b) interest payable under a tax payment arrangement in relation to tax of that kind; and
 - (c) costs of the kinds referred to in section 62(a), (b), (ba) and (d) that are payable in relation to tax of that kind; and
 - (d) costs of obtaining a valuation, in relation to making an assessment of tax of that kind, that are recoverable under section 23A.

- (3) A purported payment is *dishonoured* —
- (a) if the purported payment is by means of a cheque and the cheque is dishonoured or cancelled; or
 - (b) if the purported payment is by means of a credit card and the payment is not authorised by the issuer of the card; or
 - (c) if the purported payment is pursuant to an arrangement to directly debit an account with a person and the person fails to authorise the payment; or
 - (d) in circumstances prescribed by the regulations.

[Section 76A inserted: No. 31 of 2008 s. 4; amended: No. 31 of 2008 s. 18; No. 10 of 2013 s. 35; No. 11 of 2019 s. 10.]

76.^{1MC} Charge on land to secure land tax

- (1) As from the time it becomes payable under the *Land Tax Assessment Act 2002* section 7(1), land tax is a charge on the land for which the tax is payable —
- (a) whether or not an assessment notice has been issued for the tax; and
 - (b) whether or not the tax is due for payment; and
 - (c) whether or not a memorial of the charge has been registered; and
 - (d) whether or not the land is disposed of,
- but ceases to be such a charge when it is paid.
- (2) If the land tax is not paid by the due date, the Commissioner may lodge a memorial for registration against the land.
- (3) If a purported payment of land tax is dishonoured, the tax is taken not to be paid by the due date for the purposes of subsection (2) (even though the due date may not have arrived when the purported payment is dishonoured).
- [(4) deleted]*

- (5) The taxpayer's liability to pay the land tax continues until it is paid, despite any disposition of the land.
- (6) If there is a disposition of the land before the tax is paid, the new owner becomes jointly liable with the taxpayer to pay the tax except to the extent section 80(3) provides otherwise.
- (7) If land tax is assessed in relation to land comprising a number of separate lots or parcels —
 - (a) the charge attaches to each separate lot or parcel; and
 - (b) the amount secured by the charge on an individual lot or parcel is the amount that bears to the total amount of the unpaid tax the same proportion that the taxable value of the lot or parcel bears to the total taxable value of the land.
- (8) However, this section does not apply in relation to land owned by, or vested in the State, or any agency or instrumentality of the State, or a local government or any other public statutory authority.

[Section 76 amended: No. 31 of 2008 s. 5 and 26; No. 29 of 2012 s. 42¹; No. 11 of 2019 s. 11.]

[Modification, to section 76, to have effect under the Commonwealth Places (Mirror Taxes) Act 1998 (Commonwealth) s. 8, see Commonwealth Places (Mirror Taxes) (Modification of Applied Laws (WA)) Notice 2007 cl. 56 and endnote 1MC.]

77. ^{1MC} Charge on land to secure stamp duty

- (1) If stamp duty payable under item 4, 10, 14A, 15, 17 or 19 of the Second Schedule to the *Stamp Act 1921* on an instrument in relation to land is not paid by the due date because it is taken not to be paid under subsection (5), the Commissioner may lodge a memorial to create a charge on the land for the unpaid stamp duty.

- (1a) If stamp duty payable as a result of a reassessment under section 75AG of the *Stamp Act 1921* is not paid by the due date, the Commissioner may lodge a memorial to create a charge on the land for the unpaid stamp duty.
- (2) If stamp duty payable under Part IIIIBA of the *Stamp Act 1921* in relation to land is not paid by the due date, the Commissioner may lodge a memorial to create a charge for the unpaid stamp duty —
- (a) on the land in relation to which the duty is payable; and
 - (b) on land owned by a person who is related to the taxpayer as mentioned in subsection (7).
- (3) However, if stamp duty is assessed under section 76AA of the *Stamp Act 1921* in relation to land then, at any time after the assessment is made, the Commissioner may lodge a memorial to create a charge for the unpaid stamp duty —
- (a) on the land in relation to which the duty is payable; and
 - (b) on land owned by a person who is related to the taxpayer as mentioned in subsection (7).
- (4) The charge arises on the land referred to in subsection (1), (1a), (2) or (3) when the memorial is registered.
- (5) If a purported payment of stamp duty is dishonoured, the duty is taken not to be paid by the due date for the purposes of subsections (1), (1a) and (2) (even though the due date may not have arrived when the purported payment is dishonoured).
- (6) A memorial to create a charge on land for stamp duty payable in relation to a transaction cannot be lodged under subsection (1) or (1a) until the title to the land has been transferred in accordance with the transaction.

- (7) A person is related to a taxpayer for the purposes of subsection (2) or (3) if —
- (a) both the person and the taxpayer are bodies corporate and one is a subsidiary of the other within the meaning of section 76AI(4) of the *Stamp Act 1921*; or
 - (b) the person is a body corporate and a beneficiary under a trust, or a potential beneficiary under a discretionary trust, of which the taxpayer is a trustee.

[Section 77 amended: No. 12 of 2004 s. 11; No. 31 of 2008 s. 6; No. 11 of 2019 s. 12.]

[Modification, to section 77, to have effect under the *Commonwealth Places (Mirror Taxes) Act 1998* (Commonwealth) s. 8, see *Commonwealth Places (Mirror Taxes) (Modification of Applied Laws (WA)) Notice 2007 cl. 57* and endnote IMC.]

77A. Charge on land to secure transfer duty or landholder duty

- (1) In this section —
- landholder** has the meaning given in the *Duties Act 2008* section 148(1);
- landholder duty** means duty under the *Duties Act 2008* Chapter 3 or Chapter 3A Part 3;
- linked entity** has the meaning given in the *Duties Act 2008* section 148(1);
- transaction record** has the meaning given in the *Duties Act 2008* section 3;
- transfer duty** means duty under the *Duties Act 2008* Chapter 2 or Chapter 3A Part 2;
- transfer duty interim assessment** means an interim assessment under the *Duties Act 2008* section 44A or 205R.
- (2) If transfer duty payable on a transaction in relation to land is not paid by the due date because it is taken not to be paid under

subsection (6), the Commissioner may lodge a memorial to create a charge on the land for the unpaid transfer duty.

- (2A) If the Commissioner has made a transfer duty interim assessment on a transaction in relation to land and the transaction record for the transaction is endorsed under the *Duties Act 2008* section 273(3A), the Commissioner may lodge a memorial to create a charge on the land for the transfer duty payable on the transaction for which the Commissioner has not made an assessment (the *remaining transfer duty*).
- (2B) A memorial under subsection (2A) —
- (a) cannot be lodged without the consent of the taxpayer; and
 - (b) can be lodged even though an assessment of the amount of the remaining transfer duty has not been made.
- (3) If transfer duty payable as a result of a reassessment is not paid by the due date, the Commissioner may lodge a memorial to create a charge on the land for the unpaid transfer duty.
- (4A) If the Commissioner lodges a memorial under the *First Home Owner Grant Act 2000* section 55(2A) to create a charge on a relevant interest in land, then the Commissioner may also lodge a memorial under subsection (3) and for that purpose that subsection applies as if —
- (a) a reassessment to give effect to the *Duties Act 2008* section 145 had taken place; and
 - (b) the transfer duty payable as a result of that reassessment was not paid by the due date; and
 - (c) the amount of the unpaid transfer duty is the amount that would be payable as a result of such a reassessment.
- (4) If landholder duty is not paid by the due date in respect of an acquisition of an interest in a landholder, the Commissioner may lodge a memorial to create a charge for the unpaid duty on any land the landholder's or a linked entity's entitlement to which

was taken into account in relation to the acquisition for the purposes of calculating the landholder duty payable.

- (5) The charge arises on the land when the memorial is registered.
- (6) If a purported payment of transfer duty or landholder duty is dishonoured, the duty is taken not to be paid by the due date for the purposes of this section (even though the due date may not have arrived when the purported payment is dishonoured).
- (7) A memorial creating a charge on land for transfer duty payable in relation to a transaction cannot be lodged under subsection (2), (2A) or (3) until the title to the land has been transferred in accordance with the transaction.

[Section 77A inserted: No. 12 of 2008 s. 45; amended: No. 31 of 2008 s. 19; No. 17 of 2010 s. 27; No. 11 of 2019 s. 13.]

78. Charge on subsequent mining tenement

If —

- (a) a charge arises on a mining tenement as a result of the registration of a memorial against that tenement; and
- (b) under the *Mining Act 1978* section 103EA(3) a memorial is registered against a later tenement within the meaning given in that section,

the registration of the memorial against the later tenement creates a charge on that later tenement for the unpaid tax secured by the charge referred to in paragraph (a).

[Section 78 inserted: No. 31 of 2008 s. 7.]

79. Priority of charge

- (1) A charge arising under this Division is the first charge on the land and has priority over all other mortgages, charges and encumbrances over the land.
- (2) However, if there is another statutory charge on the same land that ranks as a first charge under another Act, the relative

priority of the charges is to be determined according to the order of registration.

[Section 79 amended: No. 31 of 2008 s. 8.]

80. Certificate as to charge to secure unpaid land tax

- (1) An owner of land or a person intending to purchase land may apply to the Commissioner for a certificate as to the matters in subsection (2).
- (2) On receiving such an application, the Commissioner must issue a certificate that —
 - (a) states whether, on the date of the certificate, there is a charge on the land under section 76; and
 - (b) if there is such a charge and it relates to land tax for which an assessment notice has been issued, states the amount of unpaid land tax secured by the charge as at that date; and
 - (c) if there is such a charge and it relates to land tax for which an assessment notice has not been issued, estimates the amount of land tax that will be assessed.
- (3) If —
 - (a) a certificate issued under subsection (2) states there is a charge on the land under section 76 and states the amount of unpaid land tax secured by the charge and does not estimate an amount of land tax that will be assessed; and
 - (b) the amount of land tax payable in respect of the land increases or decreases,

then any new owner who under section 76(6) is jointly liable for unpaid land tax is liable for not more than the amount stated in the certificate.

- (4) If a certificate issued under subsection (2) estimates the amount of land tax that will be assessed —
- (a) the certificate does not prevent the Commissioner from assessing an amount of land tax different to the estimate; and
 - (b) the amount of land tax assessed, even if it is different to that estimated, is the amount in respect of which a charge on the land arises under section 76; and
 - (c) the amount of land tax assessed, even if it is different to that estimated, is the amount for which any new owner is jointly liable under section 76(6).
- (5) The prescribed fees are payable for the issue of a certificate under subsection (2).

[Section 80 inserted: No. 29 of 2012 s. 43.]

81. Withdrawal of memorial to be given when tax paid

- (1) If a memorial is lodged under section 76, the Commissioner must give a withdrawal of memorial to the taxpayer on payment of —
- (a) the land tax that was unpaid at the time the memorial was lodged; and
 - (b) any land tax (including any amounts of the kinds referred to in section 76A(2)) that has subsequently become payable in relation to the land (whether or not the due date for payment of that tax has arrived).
- (2) However, if land tax is assessed in relation to land comprising a number of separate lots or parcels, the Commissioner is not obliged to give a withdrawal of memorial for any lot or parcel unless the whole of the land tax is paid.

- (3) If a memorial is lodged under section 77 or 77A, the Commissioner must give a withdrawal of memorial to the taxpayer on payment of —
- (a) the tax secured by the charge created by the registration of the memorial; and
 - (b) any amounts of the kinds referred to in section 76A(2) that have subsequently become payable in relation to that tax.
- (4) A taxpayer given a withdrawal of memorial may lodge it for registration against the land.
- (5) If a memorial is lodged under this Division, the Commissioner —
- (a) may lodge a withdrawal of memorial at any time whether or not the relevant tax has been paid; and
 - (b) must lodge a withdrawal of memorial when the land is sold in accordance with an order made under section 85.

[Section 81 inserted: No. 31 of 2008 s. 9; amended: No. 31 of 2008 s. 20.]

82. Memorials etc. affecting TLA land or real property, lodging etc.

- (1) In this section —
- instrument*** —
- (a) in relation to TLA land, has the meaning given in the *Transfer of Land Act 1893* section 4; and
 - (b) in relation to real property, means a judgment, deed, conveyance or instrument in writing;
- Registrar*** means —
- (a) in relation to TLA land, the Registrar of Titles; and
 - (b) in relation to real property, the Registrar of Deeds and Transfers.

- (2) A memorial or withdrawal of memorial affecting TLA land or real property is to be lodged in a form approved by the Registrar.
- (3) When a memorial or withdrawal of memorial affecting TLA land or real property is lodged the Registrar must register it against the land.
- (4) A memorial affecting TLA land or real property takes effect when it is registered and ceases to have effect when a withdrawal of the memorial is registered.
- (5) While a memorial registered against TLA land or real property is in effect the Registrar must not register any instrument affecting the land without the consent of the Commissioner.
- (6) Subsection (5) does not prevent a person lodging, or the Registrar accepting, an instrument for registration.
- (7) If an instrument is accepted for registration but not registered because a memorial is in effect, when the memorial ceases to have effect the instrument has effect as if the memorial had not been registered.

[Section 82 inserted: No. 31 of 2008 s. 9.]

83. Memorials affecting mining tenements, lodging etc.

A memorial or withdrawal of memorial affecting a mining tenement is to be lodged and registered, and has effect, in accordance with the *Mining Act 1978* Part IVA.

[Section 83 inserted: No. 31 of 2008 s. 9.]

84. Mortgagees to be notified if memorial registered

When a memorial lodged under this Division is registered, the Commissioner must notify all mortgagees who hold registered mortgages over the land of the registration of the memorial (but failure to do so does not invalidate the registration of the memorial).

[Section 84 amended: No. 31 of 2008 s. 10.]

85. Orders for sale of land

- (1) If all or part of the land tax for an assessment year remains unpaid at the expiry of 18 months after the due date for payment of that tax the Commissioner may apply to the Supreme Court for an order for the sale of all or part of the land.
- (2A) If a charge has arisen under section 77 or 77A (other than where the memorial creating the charge is lodged under section 77A(2A)) and any of the tax secured by the charge remains unpaid at the expiry of 18 months after the charge arose the Commissioner may apply to the Supreme Court for an order for the sale of all or part of the land.
- (2) A single application may be made under this section in relation to a number of separate lots or parcels in the same ownership.
- (3) At least 6 months before the Commissioner makes an application to the Supreme Court under this section, the Commissioner must —
 - (a) have notice of the intended application published in 2 newspapers —
 - (i) one circulating generally throughout Western Australia; and
 - (ii) the other circulating generally throughout Australia;and
 - (b) if the whereabouts of the owner of the land is known to the Commissioner — serve notice of the intended application on the owner; and
 - (c) serve notice of the intended application on the holder of any registered encumbrance over the land whose address is known to the Commissioner.

- (4) On an application under this section, the Supreme Court may order the sale of the land and make incidental orders —
- (a) about how the sale is to be conducted; and
 - (b) authorising an officer of the court to execute documents, and to do anything else necessary, for the sale and conveyance of the land; and
 - (c) directing a person who is responsible under a relevant land Act for registering documents to register any documents and to do anything else necessary to give effect to the sale; and
 - (d) directing (subject to subsection (5)) how the proceeds of sale are to be dealt with; and
 - (e) dealing with costs of the proceedings and other incidental matters.
- (5) A sale by order of the Supreme Court is to discharge the land from any mortgage or other encumbrance securing a monetary obligation, but the land remains subject to any lease, easement or other encumbrance.
- (6) The proceeds of the sale are to be applied as follows —
- (a) firstly, in payment of the costs of the sale; and
 - (b) secondly, in payment of costs of proceedings so far as those costs are, by order of the court, to be paid out of the proceeds of sale; and
 - (c) thirdly, in discharge of —
 - (i) if the application was made under subsection (1) — all land tax payable for the land (whether or not the due date for payment of that tax has arrived); or
 - (ii) if the application was made under subsection (2A) — all unpaid tax secured by the charge;
- and

- (d) fourthly, in discharge of any outstanding monetary liability secured by a mortgage or other encumbrance securing a monetary obligation; and
- (e) lastly, any remaining balance is to be applied as directed by the court.

[Section 85 amended: No. 31 of 2008 s. 11 and 21; No. 11 of 2019 s. 14.]

86. Means of enforcement not limited to charge

The existence of a charge or registration of a memorial under this Division does not affect the Commissioner's discretion to proceed for recovery of the outstanding tax in proceedings unrelated to the charge.

[Section 86 amended: No. 31 of 2008 s. 12.]

Part 7 — Tax records

87. How long tax records to be kept

A person required to keep a tax record under a taxation Act must, unless the Act otherwise provides, retain the tax record for at least 5 years after —

- (a) the date it was made by the person or, if it was not made by the person, the date it was obtained by the person; or
- (b) if it relates to a transaction, the date of completion of the transaction,

whichever is the later.

Penalty: \$20 000.

88. Form of tax records

- (1) A person required to keep a tax record must ensure that it is kept —
 - (a) in the form of a document in the English language, or in some other form which can be readily converted into a document in the English language or from which a document in the English language can be readily reproduced; or
 - (b) in some other form allowed by the regulations.

Penalty: \$20 000.

- (2) If a person required to keep a tax record does not keep it in the form of a document in the English language, the Commissioner may request the person to convert it to such a document within a reasonable time.
- (3) If the person does not comply with the request, the Commissioner may —
 - (a) have the tax record converted; and
 - (b) recover from the person as a debt the reasonable cost of converting it.

89. Where tax records to be kept

- (1) A person required to keep a tax record must keep it in Western Australia unless —
- (a) the taxation Act specifically allows the tax record to be kept elsewhere; or
 - (b) the regulations allow the tax record to be kept elsewhere; or
 - (c) the Commissioner gives approval allowing the tax record to be kept elsewhere.

Penalty: \$20 000.

- (2) The Commissioner may require a person who keeps a tax record outside Western Australia to bring it into Western Australia within a reasonable time allowed by the Commissioner.
- (3) A person who does not comply with a requirement under subsection (2) commits an offence.
Penalty: \$20 000.
- (4) The Commissioner may recover as a debt, from a person required to keep a tax record, costs reasonably incurred by the Commissioner as a result of the person's failure to comply with subsection (1) or with a requirement made under this section.
- (5) If a tax record is brought into Western Australia in accordance with a requirement under subsection (2), the tax record does not give rise to any tax liability that would not have existed if it had not been brought into Western Australia.

90. Failure to keep proper tax records

A person commits an offence if the person —

- (a) makes an entry in a tax record knowing the entry to be false or misleading in a material particular; or
- (b) keeps a tax record knowing it to be false or misleading in a material particular; or

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- (c) within the time during which the tax record is required to be kept, wilfully damages or destroys a tax record.

Penalty: \$20 000 plus 3 times the amount of tax that was avoided or might have been avoided if the false or misleading entry or tax record had been accepted as true.

91. General and specific exemptions

- (1) An exemption of general application may be given by regulation from —
 - (a) the requirement to keep a tax record; or
 - (b) incidental requirements relating to the keeping of a tax record.
- (2) The Commissioner may, by notice to a person, exempt the person from —
 - (a) the requirement to keep a tax record; or
 - (b) other requirements incidental to keeping a tax record.
- (3) An exemption may be given subject to conditions specified in the relevant regulation or notice of exemption.
- (4) The Commissioner may amend or cancel an exemption given to a person under subsection (2) by giving notice to the person of the amendment or cancellation.

Part 8 — Investigations

Division 1 — Investigations

92. Investigations, purposes of

An investigation may be carried out under this Part for any or all of the following purposes —

- (a) to ascertain whether a tax liability exists;
- (b) to gather any information relevant to making an assessment;
- (c) to gather any information relevant to making a decision under a taxation Act;
- (d) to audit tax records;
- (e) to gather evidence of a suspected contravention of a taxation Act;
- (f) any other purpose relevant to the administration of a taxation Act.

93. Investigations for purposes of recognised revenue laws

- (1) The Commissioner may, by agreement with the corresponding Commissioner of a recognised jurisdiction —
 - (a) authorise the corresponding Commissioner to carry out an investigation under this Part for the purposes of a recognised revenue law in force in the jurisdiction; or
 - (b) carry out an investigation under this Part on behalf of the corresponding Commissioner for the purposes of a recognised revenue law in force in the jurisdiction.
- (2) The Commissioner may only exercise powers under this section if the law of the recognised jurisdiction has reciprocal provisions providing for investigations by or on behalf of the Commissioner.

- (3) For the purposes of carrying out an investigation under this section for the purposes of a recognised revenue law —
- (a) a reference in this Part to tax is to be read as a reference to tax payable under the recognised revenue law; and
 - (b) a reference to a tax liability is to be read as a reference to a tax liability under the recognised revenue law; and
 - (c) a reference to a taxation Act is to be read as a reference to the recognised revenue law; and
 - (d) a reference to a contravention of a taxation Act is to be read as a reference to a contravention of the recognised revenue law.
- (4) If the Commissioner authorises a corresponding Commissioner of a recognised jurisdiction to carry out an investigation under this Part —
- (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 investigator is to be read as a reference to a person authorised to take part in the investigation under a recognised revenue law in force in the recognised jurisdiction; and
 - (c) a reference in this Part to an investigator’s identity card, in relation to a person authorised to take part in the investigation under a recognised revenue law in force in the recognised jurisdiction, is to be read as a reference to an identification card or certificate issued to the person under the recognised revenue law.

Division 2 — Obtaining tax records and other information

94. Power to require person to provide information

- (1) The Commissioner may, for investigation purposes, require a taxpayer or any other person —
- (a) to provide oral or written answers to specified questions; or

- (b) to produce to the Commissioner specified relevant material or relevant material of a specified class, in the person's possession or control.
- (2) The Commissioner may make the requirement —
 - (a) if an oral response is required — orally; or
 - (b) in any other case — by notice served on the person to whom the requirement is addressed.
- (3) The Commissioner may require a person to verify written answers to questions by statutory declaration.
- (4) The Commissioner must —
 - (a) allow the person a reasonable time within which to comply with a requirement; and
 - (b) if the requirement is made by notice served on the person, specify the time allowed in the notice.
- (5) A person must comply with a requirement under this section within the time allowed under subsection (4) or within any further time allowed by the Commissioner.
Penalty: \$20 000.

95. Power to require person to attend for examination

- (1) The Commissioner may, for investigation purposes, require a taxpayer or any other person to attend for examination by an investigator.
- (2) A requirement is to be made by notice served on the taxpayer or other person.
- (3) A notice —
 - (a) must indicate the time and place fixed for the examination (which must, if practicable, be reasonably convenient to the person to be examined); and
 - (b) must indicate the subject of the examination; and
 - (c) may require the person to bring and produce to the examining investigator relevant material in the person's

possession or control relating to the subject of the examination.

- (4) An investigator conducting an examination —
- (a) may require a person attending for examination to make an oath to answer all questions truthfully and may administer the oath; and
 - (b) may require the person to answer a question relevant to the subject matter of the examination put by the investigator, or with the consent of the investigator, by another person present at the examination; and
 - (c) may require the person to produce for examination by the investigator relevant material in the person's possession at the examination.
- (5) A person must comply with a requirement under this section.
Penalty: \$20 000.
- (6) A person, other than a taxpayer or a taxpayer's representative, who attends for examination is entitled to be paid the prescribed fees and expenses.

96. Power to retain documents and other records

- (1) The Commissioner may retain any instrument or other document or record in his or her possession that is relevant to performing his or her functions under a taxation Act for as long as is necessary —
- (a) to examine it or copy it, or both;
 - (b) if it is relevant to proceedings that have been or may be instituted — for the purposes of the proceedings;
 - (c) in the case of an instrument on which, or which effects or evidences a transaction on which, tax is payable — until the tax is paid;
 - (d) in the case of a document or other record that is relevant to making an assessment — until the assessment is made and any tax payable as a result of the assessment is paid.

- (2A) The Commissioner may retain an instrument, document or other record in his or her possession under subsection (1) even though the Commissioner has made an interim assessment and the tax payable on that assessment has been paid.
- (2) While an instrument or other document or record is being retained under subsection (1), the Commissioner must permit the inspection of the instrument, document or record by, or provide a copy of it to —
- (a) in the case of an instrument or record effecting or evidencing a transaction — a party to the transaction; or
 - (b) in any other case — the person who lodged the instrument, document or record with the Commissioner.

[Section 96 amended: No. 12 of 2008 s. 48; No. 10 of 2013 s. 25 and 36.]

97. Recording proceedings under s. 95

- (1) An investigator may make a recording of the questions asked by an investigator and the answers given by a person who attends for examination under section 95.
- (2) If an investigator decides to make a record, the investigator must advise the person attending for examination to that effect before recording begins.
- (3) Where an investigator makes a recording under subsection (1), the person attending for examination may request a copy of the recording, and the investigator is to provide a copy to them within 30 days of the date of the request.

Division 3 — Access to premises

98. Power to enter premises

- (1) Subject to subsection (2), an investigator may, for investigation purposes, enter and remain on premises to exercise his or her powers of investigation.

- (2) The investigator may only enter residential premises as follows —
- (a) the investigator may enter the premises at any reasonable time with the consent of the occupier of the premises;
 - (b) the investigator may enter the premises in accordance with the authorisation conferred by a warrant;
 - (c) if the investigator believes, on reasonable grounds, that it is urgently necessary to do so in order to prevent the destruction of or interference with relevant material, the investigator may enter the premises at any time without the consent of the occupier and without warrant.
- (3) The investigator must not exercise the power set out in subsection (2)(c) unless the Commissioner has, in the particular case, given the investigator prior authorisation in writing to do so.
- (4) The investigator must, on first encountering a person apparently in a position of authority on the premises, and also on the reasonable request of any other person on the premises —
- (a) display his or her identity card to the person or persons respectively; and
 - (b) if the investigator has entered or is about to enter the premises under a warrant — display the warrant to the person or persons respectively.

99. Powers of investigator while on premises

- (1) When an investigator exercises his or her powers of entry under this Act, except where the power of entry is exercised pursuant to a warrant under section 98(2)(b), the investigator may do any or all of the following —
- (a) search the premises and examine anything on the premises (opening it if necessary and, if given specific prior authorisation in writing by the Commissioner with respect to those premises, breaking it open);

- (b) take possession of, and remove from the premises, documents or other records, or anything else relevant to the investigation, found in the course of exercising his or her powers under this Act;
 - (c) take extracts from or make copies of, or download or print-out, any documents or other records found in the course of carrying out his or her functions under this Act;
 - (d) photograph or film anything on the premises;
 - (e) if anything on the premises that is relevant to the investigation cannot be conveniently removed — secure it against interference;
 - (f) require any person who is on the premises —
 - (i) to state his or her full name and address;
 - (ii) to answer (orally or in writing) questions put by the investigator that are relevant to the investigation;
 - (iii) to give the investigator any information in the person's possession or control that is relevant to the investigation;
 - (iv) to operate or allow the investigator to operate equipment or facilities on the premises for investigation purposes;
 - (v) to give the investigator any translation, code, password or other information necessary to gain access to or to interpret and understand any document or other record or information located or obtained by the investigator in the course of exercising his or her functions under this Act;
 - (vi) to give other assistance that the investigator reasonably requires to carry out the investigation.
- (2) Where an investigator exercises a power of entry pursuant to a warrant under section 98(2)(b), the investigator may only

exercise those powers set out in subsection (1) that the warrant specifically authorises the investigator to use.

- (3) A person who —
- (a) does not comply with a requirement under subsection (1)(f); or
 - (b) gives an investigator information that the person knows to be false or misleading,
- commits an offence.
Penalty: \$20 000.
- (4) An investigator is not authorised to take anything from premises unless he or she —
- (a) gives the occupier or another person apparently responsible to the occupier a receipt for the thing taken, if requested to do so by the occupier or other person; or
 - (b) if the occupier or a person apparently responsible to the occupier is not present, leaves a receipt for the thing taken, in an envelope addressed to the occupier, in a prominent position on the premises.
- (5) A receipt is to be in a form approved by the Commissioner.
- (6) The Commissioner must ensure that a person from whom a document or anything else is taken under this section and who would otherwise be entitled to possession of it is given a copy of it, or reasonable access to it, as appropriate.
- (7) If an investigator takes possession of anything under this section, the Commissioner must ensure that it is returned to the person entitled to possession of it as follows —
- (a) if it was taken in connection with the prosecution or possible prosecution of a suspected tax contravention of a taxation Act — as soon as practicable after the relevant prosecution is completed or discontinued or, if no prosecution is commenced, as soon as practicable after

the decision is made not to prosecute the suspected contravention;

- (b) if it was an instrument on which duty was payable — as soon as practicable after assessment and payment of the relevant duty;
- (c) in any other case — within 28 days after it was taken.

[Section 99 amended: No. 10 of 2013 s. 37.]

100. Warrants to enter premises

- (1) If a justice is satisfied on an application supported by evidence on oath that it is reasonably necessary for an investigator to enter premises for investigation purposes, the justice may issue a warrant authorising an investigator —
 - (a) to enter the premises at a time or within a period stated in the warrant; and
 - (b) to exercise the powers of search and investigation conferred by this Part.
- (2) An investigator who applies to a justice or magistrate for a warrant under this section must produce his or her identity card to the justice or magistrate.
- (3) The authority conferred by a warrant may be exercised by the investigator who applied for the warrant or by any other investigator.

[Section 100 amended: No. 84 of 2004 s. 80.]

101. Use of force

- (1) An investigator may use reasonable force —
 - (a) to enter premises under this Part; or
 - (b) to exercise powers under section 99(1)(a) to (e).
- (2) However, if the use of reasonable force is likely to cause damage to property, the investigator is not entitled to use force unless the Commissioner has, in the particular case, given the investigator prior authorisation in writing to do so.

Division 4 — General provisions

102. Complying with requirements to provide information

- (1) A person is not excused from complying with a requirement under this Part to provide information or relevant material on the grounds that complying with the requirement would tend to incriminate the person or render the person liable to a penalty.
- (2) However, information or material provided by the person in compliance with the requirement is not admissible in evidence in any proceedings against the person for an offence against a taxation Act except an offence against section 94(5), 95(5) or 99(3).

103. Legal professional privilege

- (1) A person must provide an official document when so required by the Commissioner or an investigator whether or not that official document would otherwise be protected by legal professional privilege.
- (2) A document, information or relevant material that, at the time it is provided to, or acquired by the Commissioner or an investigator, is claimed to be protected by legal professional privilege —
 - (a) is to be separated from any document, information or relevant material for which no claim is made, retained under secure conditions in a sealed container to which must be affixed the name, address and contact details of the person making the claim and of the person on whose behalf the claim is made, and a statement that the contents are, or may be, subject to legal professional privilege;
 - (b) is not to be viewed, accessed, or otherwise dealt with by the Commissioner or an investigator for any purpose.
- (3) Where no claim is made under subsection (2), but it is apparent on examination by the Commissioner or an investigator that a

document, information or relevant material that has been provided or acquired is, or is likely to be, protected by legal professional privilege, it becomes the duty of the Commissioner or an investigator to comply with subsection (2) in relation to that document, information or relevant material.

- (4) If a claim of legal professional privilege is made for a document, information or relevant material already in the possession of the Commissioner or an investigator, and at the time that the claim is made the document, information or relevant material —
- (a) has not been examined, accessed, or dealt with for a purpose under a taxation Act, subsection (2) applies as if the claim had been made at the time when it was provided or acquired;
 - (b) is being, or is intended or likely to be, used for a purpose under a taxation Act, its further use is terminated or not to commence, as the case requires, and subsection (2)(a) applies.
- (5) The Commissioner may apply to the Supreme Court or a judge —
- (a) for a declaration that legal professional privilege does, or does not, apply to a document, information or relevant material provided or acquired under this Part;
 - (b) for an order to extinguish legal professional privilege where it applies to a document, information or relevant material,

and the Commissioner is to give effect to, and act in accordance with, any declaration or order, or other direction made by the court or the judge.

- (6) A person who claims the benefit of legal professional privilege in relation to a document, information or relevant material may apply for an order under subsection (5)(a).

- (7) A document, information or relevant material —
- (a) that is declared to be subject to legal professional privilege under subsection (5)(a); or
 - (b) for which an order under subsection (5)(b) is refused,
- must be returned to the person named under subsection (2)(a) from whom the document, information or relevant material was obtained without delay and remains subject to subsection (2)(b) in the period between publication of the decision of the court or judge and the return.
- (8) Nothing in this section prevents a person entitled to claim legal professional privilege from waiving its application to a document, information or relevant material and a waiver once made cannot later be revoked.
- (9) A person, either personally or on another's behalf, who claims that legal professional privilege applies to a document, information or relevant material and who knows, or ought to know at the time that claim is made that it is false, misleading, or without substance, commits an offence.
- Penalty: \$20 000.

104. Interaction with other Acts

This Part prevails over —

- (a) any law that would otherwise protect from disclosure information about the transfer or ownership of a statutory licence; and
- (b) any law that would otherwise protect from disclosure information about payments made for the benefit of employees; and
- (c) any law that would otherwise protect from disclosure information about the registration, transfer of registration or ownership of motor vehicles; and

- (d) any law that would otherwise protect from disclosure information about the transfer or ownership of mining tenements or petroleum licences; and
- (e) any law that would otherwise protect from disclosure information about the whereabouts of taxpayers; and
- (f) any other prescribed law that would otherwise protect information from disclosure.

Part 9 — Offences

105. General penalty provision

- (1) A person who commits an offence against a taxation Act for which no penalty is specifically provided is liable on conviction to a penalty not exceeding \$20 000.
- (2) If a person does not comply with a requirement made under a taxation Act by the Commissioner or an investigator, and no penalty is specifically provided for the non-compliance, the person commits an offence.
Penalty: \$20 000.

106. Evasion of tax

- (1) A person who, by an intentional act or omission, evades or attempts to evade paying tax that the person is liable to pay, commits an offence.
- (2) A court by which a person is convicted of an offence against subsection (1) must impose a penalty within a range extending from a minimum of 3 times the amount of the primary tax the accused evaded or attempted to evade to a maximum equivalent to the minimum plus \$20 000.

[Section 106 amended: No. 84 of 2004 s. 82.]

107. False or misleading information

- (1) A person must not —
 - (a) provide information to the Commissioner or an investigator knowing it to be false or misleading in a material particular; or
 - (b) provide a tax record to the Commissioner or an investigator knowing it to be false or misleading in a material particular.

Penalty: \$20 000 plus 3 times the amount of tax that was avoided or might have been avoided if the false or

misleading information or tax record had been accepted as true.

- (2) If a person provides the Commissioner or an investigator with information or a tax record that is false or misleading in a material particular then, in proceedings for an offence against this section, the person is presumed to have known that the information or tax record was false or misleading in the material particular unless the contrary is established.

108. Obstructing or misleading investigator

- (1) A person who hinders or obstructs the Commissioner or an investigator in carrying out functions under a taxation Act commits an offence.

Penalty: \$20 000.

- (2) A person who misleads the Commissioner or an investigator in a way that may affect the carrying out of his or her functions under a taxation Act commits an offence.

Penalty: \$20 000.

109. Offence by body corporate

- (1) If a body corporate commits an offence against a taxation Act each director of the body corporate commits the offence and is liable to the penalty prescribed for an individual who commits the offence.

- (2) It is a defence to a charge of an offence by a director under this section to prove that the accused —

(a) did not aid, abet, counsel or procure the act or omission of the body corporate concerned; and

(b) was not in any way, by act or omission, directly or indirectly, knowingly concerned in, or party to, the act or omission of the body corporate.

[Section 109 amended: No. 84 of 2004 s. 82.]

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110. Criminal penalties not to affect civil liabilities

The imposition of a penalty for an offence does not relieve the person on whom the penalty is imposed from a tax liability (including a liability for penalty tax) arising out of the same wrongful act.

111. Time for commencing prosecutions

- (1) A prosecution for an offence against a taxation Act must be commenced within 3 years after the date on which the offence is alleged to have been committed.
- (2) However, if the alleged offence involves tax evasion, an intention to mislead or some other form of dishonesty, a prosecution for the offence may be commenced at any time.

112. Authority required for prosecution

- (1) Proceedings for an offence against a taxation Act may only be taken —
 - (a) by the Commissioner, or under the Commissioner's authority; and
 - (b) in the Commissioner's name.
- (2) A statement in a prosecution notice for an offence against a taxation Act that the prosecution is commenced by the Commissioner or under the Commissioner's authority is to be taken to be proved in the absence of evidence to the contrary.

[Section 112 amended: No. 84 of 2004 s. 80.]

113. General defence

It is a defence to a charge of an offence against this Act consisting of a failure to comply with a requirement imposed by or under this Act to prove that the accused could not, by the exercise of reasonable diligence, have complied with the requirement to which the charge relates.

[Section 113 amended: No. 84 of 2004 s. 82.]

Part 10 — Miscellaneous

Division 1 — Confidentiality

114.^{1M, 1MC} Duty of confidentiality

- (1) The following persons are subject to a duty of confidentiality under this section —
 - (a) the Commissioner or a former Commissioner;
 - (b) a delegate or former delegate of the Commissioner;
 - (c) an investigator or former investigator;
 - (d) an appointed representative, or former appointed representative, of the Commissioner;
 - (e) any other person to whom the information or material is disclosed under a taxation Act;
 - (f) any other person who properly or improperly gains access to the information or material in some other way.

- (2) A person who is subject to a duty of confidentiality under this section must not record, disclose, or make use of information or material obtained under a taxation Act except —
 - (a) for a purpose related to the administration or enforcement of the taxation Act under which the information or material was obtained or another Act administered by the Commissioner or under which the Commissioner exercises statutory functions; or
 - (b) as required or allowed by this Act or another law that specifically or by necessary implication overrides the duty of confidentiality imposed by this section; or
 - (c) as authorised by the person to whose affairs the information or material relates; or
 - (d) for the purpose of proceedings, or a report of proceedings, arising out of a taxation Act to which —
 - (i) the Commissioner is a party; and

- (ii) the person to whose affairs the information or material relates is a party.

Penalty: \$20 000.

(3) This section does not prevent —

- (a) the disclosure of information or material in connection with the investigation or prosecution of a criminal offence to —
 - (i) the Director of Public Prosecutions for a State or the Commonwealth; or
 - (ii) an officer of the police force of a State or the Commonwealth; or
 - (iii) an officer of the Australian Securities and Investment Commission; or
 - (iv) an officer of another law enforcement agency established under State or Commonwealth law that is authorised by regulation to receive confidential information under this paragraph;
- (b) the disclosure of information or material to an official administering a taxation law of the Commonwealth or another State for a purpose related to the administration of such a law;
- (c) the disclosure of information or material to —
 - (i) an officer of the department of the Public Service principally assisting the Minister to administer this Act; or
 - (ii) an officer of the department of the Public Service principally assisting the Treasurer; or
 - (iii) an officer of the department of the Public Service principally assisting in the administration of the *Betting Control Act 1954*, the *Gaming and Wagering Commission Act 1987* or the *Racing and Wagering Western Australia Act 2003*;

- (d) the disclosure of information about the ownership, sale and capital and rental value of property to the Valuer-General;
 - (e) the disclosure of statistical or other information that could not reasonably be expected to lead to the identification of any person to whom it relates;
 - (f) the disclosure in accordance with the *Unclaimed Money Act 1990* of information or material relating to amounts paid under section 55A(1)(b);
 - (g) the disclosure of information or material in other circumstances in which its disclosure is permitted by the regulations.
- (4A) A word or expression that is defined in the *Electronic Conveyancing Act 2014* section 3 has the same meaning in subsection (4B) as it has in that section.
- (4B) This section does not prevent the disclosure of information or material to the Authority, the Commissioner, the Registrar, an ELNO or subscribers for the purpose of enabling subscribers to complete conveyancing transactions or associated financial transactions, or both, by means of an ELN provided and operated under the *Electronic Conveyancing Act 2014*.
- (4) However, information or material obtained by the Commissioner despite restrictions on its disclosure imposed under some other Act remains subject to those restrictions in the hands of the Commissioner and may only be disclosed under subsection (2) to the extent the disclosure is consistent with those restrictions.
- (5) If information is lawfully disclosed under this section, this section does not prevent the further disclosure of the information, or the recording or use of the information, for the purpose for which the disclosure was made.
- (6) A court cannot require a person who is subject to a duty of confidentiality under this section to give evidence, or to produce

a record contrary to this section except in proceedings arising from the lawful disclosure of information.

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

[Section 114 amended: No. 66 of 2003 s. 100; No. 31 of 2008 s. 27; No. 17 of 2010 s. 28; No. 29 of 2012 s. 44; No. 2 of 2014 s. 60; No. 37 of 2018 s. 47.]

[Modification, to section 114, to have effect under the Commonwealth Places (Mirror Taxes Administration) Act 1999 s. 7, see Commonwealth Places (Mirror Taxes Administration) Regulations 2007 r. 49 and endnote 1M.]

[Modification, to section 114, to have effect under the Commonwealth Places (Mirror Taxes) Act 1998 (Commonwealth) s. 8, see Commonwealth Places (Mirror Taxes) (Modification of Applied Laws (WA)) Notice 2007 cl. 58 and endnote 1MC.]

Division 2 — Service of documents

115. Service on Commissioner

A document may be served on the Commissioner —

- (a) by lodging the document at the Commissioner's office;
or
- (b) by prepaid post; or
- [(c) deleted]*
- (d) if the regulations authorise service of the document under this paragraph — by sending computer data from which the document can be reproduced, in a format prescribed by the regulations, to an address for the receipt of electronic mail prescribed in the regulations.

[Section 115 amended: No. 11 of 2019 s. 15.]

116. Service on agent or representative of taxpayer

- (1) A notice or other document to be served on taxpayers who are jointly liable for land tax is taken to have been served on both or all the taxpayers if served on any one of them.
- (2) A notice or other document to be served by the Commissioner may be served on —
 - (a) an agent with apparent authority to accept service of the notice or other document; or
 - (b) a person who lodged the application or instrument to which the notice or other document relates.
- (3) A notice or other document to be served by the Commissioner on a partnership is taken to have been served on all members of a partnership if it is served on any member of the partnership.

[Section 116 amended: No. 17 of 2010 s. 30(5).]

117. Method of service by Commissioner

- (1) A notice or other document to be served by the Commissioner under a taxation Act may be served on a person by —
 - (a) giving it to the person personally; or
 - (b) leaving it for the person to be served at the person's place of residence or business; or
 - (c) sending it by prepaid post (including document exchange) addressed to the person at an address appearing on recent correspondence addressed by or on behalf of the person to the Commissioner or otherwise notified to the Commissioner; or
 - (d) leaving it for collection by the person to be served, or that person's agent, in a collection box maintained at the Commissioner's office; or
 - (e) emailing it to an email address of the person; or
 - (f) communicating it in some other way agreed with the person.

- (2) Where any of the methods of service in subsection (1) are impracticable, or have failed, the Commissioner can apply to the Supreme Court for substituted service.
- (3) The use of a particular method for service of a document on a particular person does not prevent the service of other documents on the same person in a different way.
- (4) If a notice or other document is not served personally, the notice or document is taken to be served on a day prescribed by the regulations.
- (5) For the purposes of subsection (4), the regulations may prescribe different days for documents served by different methods and in different circumstances.

[Section 117 amended: No. 11 of 2019 s. 16.]

118. This Division in addition to other laws about service

The provisions of this Division are in addition to, and do not derogate from, other provisions of an enactment for facilitating service.

Division 3 — Evidentiary provisions

119. Evidentiary value of assessment notice

An assessment notice (or a copy of an assessment notice) is admissible as evidence in proceedings under a taxation Act and, in the absence of proof to the contrary, is proof of —

- (a) the making of the assessment; and
- (b) the amount of tax assessed; and
- (c) the identity of the person liable for the tax; and
- (d) the due date for paying the tax; and
- (e) any other fact stated in the notice.

120. Evidentiary value of copies and reproductions of documents

- (1) In proceedings under a taxation Act, a copy of a notice or other document issued by the Commissioner —
 - (a) is, if produced by or on behalf of the Commissioner, admissible in the same way as the original; and
 - (b) has the same evidentiary value as the original.
- (2) For the purposes of the law of evidence, if 2 or more documents are produced from the same computer data (or from computer data recording the same information), they are both or all to be regarded as originals.

121. Evidentiary certificates

- (1) The Commissioner may issue —
 - (a) a certificate of the making of an assessment including details of the assessment; or
 - (b) a certificate stating that an assessment was served on a taxpayer on a particular date by a specified means; or
 - (c) a certificate stating that a person identified in the certificate was authorised by delegation under this Act to exercise specified functions of the Commissioner on a specified date or over a specified period; or
 - (d) a certificate stating that a return had not been received at the Commissioner's office by a specified date; or
 - (e) a certificate stating that a person identified in the certificate failed to comply with a requirement made under a taxation Act to provide documents or information within the time allowed by the Commissioner; or
 - (f) a certificate stating that a person identified in the certificate was not registered under a specified provision of a taxation Act on a date specified in the certificate.

- (2) A certificate issued under this section is evidence of the facts stated in the certificate and, in the absence of evidence to the contrary, is proof of those facts.

122. Extracts from register of delegates

A copy or print-out of an entry in the register of delegates kept under section 10 is evidence of the facts stated in the copy or print-out and, in the absence of evidence to the contrary, is proof of those facts.

123. Averments in charges

In proceedings for an offence against a taxation Act —

- (a) an allegation in the charge that the accused is a party to a specified instrument or transaction is, in the absence of evidence to the contrary, evidence of the alleged fact; and
- (b) an allegation in the charge that the accused had on a specified date a specified liability under a taxation Act is, in the absence of evidence to the contrary, evidence of the existence of the alleged liability; and
- (c) an allegation in the charge that the accused was, on a specified date, under an obligation to lodge a return under a specified provision of a taxation Act is, in the absence of evidence to the contrary, evidence of the existence of the alleged obligation.

[Section 123 amended: No. 84 of 2004 s. 80 and 82.]

124. Presumption of regularity

- (1) Proceedings taken in a court or tribunal in the name of the Commissioner are presumed, in the absence of evidence to the contrary, to have been duly taken by the Commissioner, or on the Commissioner's authority.
- (2) In proceedings under a taxation Act, compliance by the Commissioner or an investigator with the requirements of the

taxation Acts is presumed, in the absence of evidence to the contrary.

Division 4 — Exemption from personal liability

125.^{1MC} Exemption from personal liability

- (1) The Commissioner or an investigator is not personally liable for anything done or omitted to be done in good faith and without negligence in the performance or purported performance, of a function under a taxation Act.
- (2) Subsection (1) does not relieve the State of any liability that, but for that subsection, it might have had for the acts or omissions of the Commissioner or an investigator.

[Modification, to section 125, to have effect under the Commonwealth Places (Mirror Taxes) Act 1998 (Commonwealth) s. 8, see Commonwealth Places (Mirror Taxes) (Modification of Applied Laws (WA)) Notice 2007 cl. 59 and endnote 1MC.]

Division 5 — Regulations, practices and forms

[Heading amended: No. 12 of 2008 s. 49.]

126. Regulations

- (1) The Governor may make regulations prescribing all matters that are required or permitted by this Act to be prescribed or are necessary or convenient to be prescribed for giving effect to this Act.
- (2) Regulations may create offences and provide, in respect of an offence so created, for the imposition of a fine not exceeding \$5 000.
- (3) A regulation made under section 104(f) may not be contained in regulations dealing with any other matter and is to disclose in its title that it is a regulation which removes the protection given by a law from the disclosure of information.

127. Practices

- (1) The Commissioner is to publish all existing practices relating to the assessment of tax on the OSR website.
- (2) The Commissioner cannot establish or direct a practice to be observed unless the Commissioner first publishes that practice on the OSR website.

[Section 127 amended: No. 11 of 2019 s. 17.]

128. Forms

A form approved for use under a taxation Act may require information provided in the form to be verified by statutory declaration.

[Section 128 inserted: No. 12 of 2008 s. 50.]

Division 6 — Early operation of certain amendments to taxation Acts

[Heading inserted: No. 31 of 2008 s. 28.]

129. Terms used

- (1) In this Division —
 - amending Bill**, in relation to a determination notice, means a Bill provisions of which are determined by the notice to be pre-enactment provisions;
 - determination notice** means a notice made under section 130;
 - tax threshold** means an amount, value or level above, from, up to or below which —
 - (a) tax is or is not payable; or
 - (b) a particular rate of tax applies; or
 - (c) a concession or exemption does or does not apply;
 - taxation Act** includes the *First Home Owner Grant Act 2000*.

- (2) For the purposes of this Division a Bill is *before* a House of Parliament if the second reading of the Bill in that House has been moved but the Bill has not been passed by the House.

[Section 129 inserted: No. 31 of 2008 s. 28.]

130. Determination of pre-enactment provisions

- (1) If a Bill that would amend a taxation Act is before the Legislative Assembly or Legislative Council the Minister may, by notice published in the *Gazette*, determine specified provisions of the Bill, as introduced into that House, to be pre-enactment provisions for the purposes of section 133.
- (2) The Minister may determine provisions of a Bill to be pre-enactment provisions if, and only if, they would —
- (a) amend a taxation Act to do one or more of the following —
 - (i) reduce an amount or rate of tax (including by reducing it to zero);
 - (ii) change or remove a tax threshold;
 - (iii) expand the class of persons, acts, matters or things in respect of whom or which a concession or exemption applies;
 - (iv) introduce a concession or exemption;
 - (v) effect a change that will have the same effect as making an amendment of a kind described in subparagraphs (i) to (iv);
 - or
 - (b) amend a taxation Act to make amendments necessary or convenient to be made for the purpose of giving effect to an amendment of a kind described in paragraph (a); or
 - (c) make provision for the commencement or application of amendments of the kind described in paragraphs (a) and (b) or for transitional matters relating to them.

[Section 130 inserted: No. 31 of 2008 s. 28.]

131. Duration of determination notice

- (1) A determination notice comes into force on the day on which it is published in the *Gazette*.
- (2) A determination notice ceases to be in force at the end of the day on which the first of the following occurs —
 - (a) the amending Bill (whether or not it has been amended in Parliament) receives the Royal Assent;
 - (b) the notice is revoked by the Minister by notice published in the *Gazette*;
 - (c) the period of 6 months from the day on which the notice came into force expires;
 - (d) the amending Bill is defeated in either House of Parliament;
 - (e) the Legislative Assembly expires or is dissolved before the amending Bill has been passed by both Houses of Parliament;
 - (f) the determination notice ceases to have effect under the *Interpretation Act 1984* section 42(2) as applied by subsection (4).
- (3) When a determination notice ceases to be in force, the *Interpretation Act 1984* section 37 applies as if the cessation were the repeal of a written law.
- (4) The *Interpretation Act 1984* section 42(1), (2), (3) and (5) apply to a determination notice as if the notice were regulations.
[Section 131 inserted: No. 31 of 2008 s. 28.]

132. Amendment and replacement of determination notice

- (1) The Minister may, by notice published in the *Gazette*, amend a determination notice but only for the purpose of correcting —
 - (a) a clerical mistake; or
 - (b) an accidental slip or omission; or

- (c) an error in the way in which the amending Bill or a provision of the Bill is referred to.
- (2) The Minister cannot determine a provision of a Bill to be a pre-enactment provision more than once.
- (3) If —
 - (a) a determination notice (*original notice*) was made in respect of provisions of a Bill while it was before the Legislative Assembly; and
 - (b) the Bill was amended by the Legislative Assembly; and
 - (c) the Bill is before the Legislative Council,

then despite subsection (2) the Minister may make a replacement determination notice revoking the original notice and determining specified provisions of the Bill, as introduced into the Legislative Council, to be pre-enactment provisions for the purposes of section 133.

- (4) In relation to a replacement determination notice the reference in section 131(2)(c) to the day on which the notice came into force is taken to be a reference to the day on which the original notice came into force.

[Section 132 inserted: No. 31 of 2008 s. 28.]

133. Effect of pre-enactment provisions

- (1) While a determination notice is in force an Act that would be amended by the pre-enactment provisions specified in the notice has effect as if those provisions had been passed without amendment and had come into operation.
- (2) However, if the amount of tax payable by a taxpayer under an Act as affected by subsection (1) is greater than the amount of tax that would be payable if the determination notice was not in force (the *unaffected amount*), the amount of tax payable is reduced to the unaffected amount.

[Section 133 inserted: No. 31 of 2008 s. 28.]

134. Review of Division

- (1) The Minister is to carry out a review of the operation and effectiveness of this Division as soon as is practicable after —
 - (a) the 5th anniversary of the commencement of the *Revenue Laws Amendment Act (No. 2) 2008* section 28; and
 - (b) the expiry of each 5 yearly interval after that anniversary.
- (2) The Minister is to prepare a report based on the review and, as soon as is practicable after the report is prepared (and in any event not more than 12 months after the relevant anniversary), cause it to be laid before each House of Parliament.

[Section 134 inserted: No. 31 of 2008 s. 28.]

[Div. 7 (s. 135) deleted: No. 11 of 2019 s. 18.]

Part 11 — Transitional matters

[Heading inserted: No. 10 of 2013 s. 38.]

136. Provisions for *Revenue Laws Amendment Act 2013 Part 3*

- (1) In this section —
commencement day means the day on which the *Revenue Laws Amendment Act 2013 Part 3* comes into operation.
- (2) The amendments effected by the *Revenue Laws Amendment Act 2013 Part 3* apply in relation to the value of any property, consideration or benefit relevant to assessing a taxpayer's primary liability that arose before commencement day.
- (3) However, the Commissioner cannot recover under section 23A the costs of obtaining a valuation of any property, consideration or benefit to which subsection (2) applies (and penalty tax is not payable under section 27A accordingly) if —
 - (a) the taxpayer provided the Commissioner with a written valuation of the property, consideration or benefit before commencement day; or
 - (b) under section 22 the Commissioner sought, or adopted, a valuation of the property, consideration or benefit before commencement day.
- (4) In this section, a reference to a valuation does not include a reference to an estimate.

[Section 136 inserted: No. 10 of 2013 s. 38.]

137. Provisions for *Taxation Administration Amendment Act 2019*

- (1) In this section —
commencement day means the day on which the *Taxation Administration Amendment Act 2019* section 8 comes into operation.
- (2) Section 54A applies in relation to an amount refunded or credited to a taxpayer on or after commencement day, even if

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the objection or review under the *Valuation of Land Act 1978* that resulted in the reassessment being made and the refund or credit becoming payable occurred before commencement day.

- (3) A refund or credit of interest to a taxpayer made, or purported to be made, on or after 1 July 2003 and before commencement day is, and is taken to have always been, as valid and effective as it would have been if, on the day on which the refund or credit was made —
- (a) section 54A (as in force on commencement day) had been in force; and
 - (b) the prescribed rate for section 54A had been the rate prescribed for the purposes of section 39 on that day.

[Section 137 inserted: No. 11 of 2019 s. 19.]

Glossary

[s. 4]

1. ^{1M, 1MC} Terms used

Unless the contrary intention appears —

address of a person means —

- (a) the address of the person's residence or place of business; or
- (b) if the person has a post office box for receiving personal or business mail — the address of the post office box;

appointed representative means a person appointed under section 12 to represent the Commissioner in proceedings under a taxation Act;

approved means approved by the Commissioner;

assessment means a determination of a kind referred to in section 13(1), whether the determination is made by way of a self-assessment or an official assessment;

assessment notice means a notice under section 23;

beneficial body determination means a determination that a relevant body is a beneficial body for the purposes of the taxation Acts made under any of the following —

- (a) the *Duties Act 2008* section 96C;
- (b) the *Land Tax Assessment Act 2002* section 38AC;
- (c) the *Pay-roll Tax Assessment Act 2002* section 42C;

charge, in relation to land, means a charge on the land created under section 76 or 77;

Commissioner means the Commissioner of State Revenue appointed in accordance with section 6;

complete, in relation to an assessment, means that the assessment is —

- (a) of the tax payable by a person under a taxation Act; or
- (b) that a person, instrument, event or transaction is exempt from tax;

compromise assessment means an assessment made in accordance with section 20A;

corresponding Commissioner, in relation to a recognised jurisdiction in which a recognised revenue law is in force, means the person responsible for administering the recognised revenue law;

date of an assessment notice means the date on which it is issued;

decision includes a direction;

directly reviewable decision means a decision under a taxation Act that is expressed by the Act to be directly reviewable;

document includes information stored or recorded by any means;

due date means —

- (a) in relation to the payment of tax — the date on which the tax is due for payment under section 45(1) or (2), as the case requires;
- (b) in relation to lodging a return — the date by which the return is required to be lodged under a taxation Act;

endorse includes stamp;

garnishee has the definition given in section 65;

group means 2 or more persons who are grouped together for the purposes of a taxation Act;

identity card means an identity card issued to an investigator under section 11;

instrument means —

[(a) *deleted*]

- (b) an instrument, or return that is required under a taxation Act for the assessment of tax;
- (c) a copy or memorandum that is treated under section 20 as if it were an instrument;
- (d) a document or other record on which, or in relation to which, tax is payable under a taxation Act;
- (e) anything else that is to be regarded as an instrument under the provisions of another taxation Act;

interim assessment has the meaning given in section 16A(1);

investigation purposes means any or all of the purposes for which an investigation may be carried out under section 92 or 93;

investigator means a person appointed to be an investigator under section 11;

objection means an objection under Part 4;

official assessment has the definition given in section 15(1);

official document means an instrument and any other record or document that is —

- (a) kept under or for the purposes of a taxation Act; or
- (b) required to be endorsed under or for the purposes of a taxation Act; or
- (c) required to be lodged with the Commissioner under or for the purposes of a taxation Act;

original assessment, in relation to a reassessment of tax payable under a taxation Act, means —

- (a) a complete self-assessment made in relation to the tax; or
- (b) if no self-assessment is made — the first complete official assessment made in relation to the tax, other than an interim assessment,

but does not include a reassessment;

OSR website means a website maintained by or on behalf of the Commissioner;

penalty tax means —

- (a) penalty tax payable under section 26; or
- (ba) penalty tax payable under section 27A for undervaluation; or
- (b) penalty tax payable under section 27 for late payment of tax; or
- (c) penalty tax payable under sections 75JE, 75JF, 76I(2)(b), 76J(2)(b) or 112NA(2) of the *Stamp Act 1921*; or
- (d) penalty tax payable under the *Duties Act 2008* section 239(3)(b), 249(4)(b) or 266(1A)(b) or (2)(b);

person includes a group;

premises means —

- (a) land (whether built on or not); or
- (b) a building or structure on land; or
- (c) a vehicle,

and includes a part of premises;

previous assessment, in relation to a reassessment of tax, means the assessment that was or is to be reviewed by the reassessment;

primary liability for tax means a liability for tax exclusive of any liability for penalty tax or costs of obtaining a valuation that are recoverable under section 23A;

qualified valuer means —

- (a) a person licensed under the *Land Valuers Licensing Act 1978*; or
- (b) a person licensed or registered under a law of another State or a Territory corresponding to the *Land Valuers Licensing Act 1978*; or
- (c) a person who the Commissioner is satisfied is suitably qualified or experienced to provide a valuation;

reassessment does not include an interim assessment or an original assessment;

recognised jurisdiction means the Commonwealth or another State;

recognised revenue law means —

- (a) a law of the Commonwealth or another State corresponding to a taxation Act; or
- (b) a law of the Commonwealth or another State declared by regulation to be a recognised revenue law;

record means any thing or process —

- (a) upon or by which information is recorded or stored; or
- (b) by means of which a meaning can be conveyed in a visible or recoverable form,

whether or not the use or assistance of some electronic, electrical, mechanical, chemical or other device or process is required to recover or convey the information or meaning;

Registrar of Titles means the Registrar of Titles or the Registrar of Deeds and Transfers;

relevant material means an instrument, document or other record or anything else that is relevant to —

- (a) ascertaining whether a tax liability exists; or
- (b) assessing the amount of a tax liability; or
- (c) deciding an application for a rebate or refund of tax, or an exemption from tax, or any other application under a taxation Act; or
- (d) auditing records relevant to the assessment of tax; or
- (e) ascertaining whether a contravention of a taxation Act has occurred;

responsible party, in relation to a special tax return arrangement, means the person with whom the arrangement is made as mentioned in section 49(1);

review proceedings means —

- (a) proceedings on an application under section 40; or
- (b) proceedings on appeal under Part 5 of the *State Administrative Tribunal Act 2004* (as affected by section 43A) from a decision on an application under section 40; or
- (c) proceedings on appeal from a decision on an appeal referred to in paragraph (b) or this paragraph;

self-assessment has the meaning given in section 14;

special tax return arrangement means an arrangement approved under section 49;

State includes the Northern Territory and the Australian Capital Territory;

tax means —

- (a) tax, duty or another impost, or an instalment of tax, duty or other impost, that is payable under a taxation Act; or
- (b) penalty tax payable under a taxation Act; or
- (c) costs of obtaining a valuation that are recoverable under section 23A;

tax liability means a liability to pay tax (including a liability that has not fallen due for payment);

tax payment arrangement means an arrangement approved under section 47;

tax record means a record required to be kept under a taxation Act or under a special tax return arrangement;

taxation Act means an enactment specified as a taxation Act under section 3(1);

taxpayer means —

- (a) a person who is or may be liable to pay tax; or
- (b) a responsible party who is required to pay tax on behalf of another taxpayer under a special tax return arrangement; or
- (c) a person of a prescribed class who is subject to statutory obligations relating to the assessment or payment of tax;

vehicle includes a train, vessel or aircraft.

[Glossary amended: No. 66 of 2003 s. 95(5) and 108(3); No. 12 of 2004 s. 12; No. 55 of 2004 s. 1183; No. 60 of 2006 s. 184; No. 12 of 2008 s. 51; No. 31 of 2008 s. 31; No. 19 of 2010 s. 51; No. 10 of 2013 s. 27 and 39; No. 8 of 2015 s. 21; No. 11 of 2019 s. 20.]

[Modification, to the Glossary, to have effect under the Commonwealth Places (Mirror Taxes Administration) Act 1999 s. 7, see Commonwealth Places (Mirror Taxes Administration) Regulations 2007 r. 50 and endnote 1M.]

[Modification, to the Glossary, to have effect under the Commonwealth Places (Mirror Taxes) Act 1998 (Commonwealth) s. 8, see Commonwealth Places (Mirror Taxes) (Modification of Applied Laws (WA)) Notice 2007 cl. 60 and endnote 1MC.]



Notes

This is a compilation of the *Taxation Administration Act 2003* and includes amendments made by other written laws². For provisions that have come into operation, and for information about any reprints, see the compilation table.

Compilation table

Short title	Number and year	Assent	Commencement
<i>Taxation Administration Act 2003</i>	1 of 2003	20 Mar 2003	s. 1 and 2: 20 Mar 2003; Act other than s. 1, 2, 34(2)(c), (4) and (5), 41(2) and (4), 47(8), 48, 56(3), 57(3), 59 and 127 and the definition of non-reviewable decision in the Glossary: 1 Jul 2003 (see s. 2 and <i>Gazette</i> 27 Jun 2003 p. 2383); s. 127: 2 Jan 2004 (see s. 2 and <i>Gazette</i> 19 Dec 2003 p. 5137); s. 34(2)(c) and (4), 47(8), 48, 56(3), 57(3) and 59: 2 Mar 2009 (see s. 2 and <i>Gazette</i> 24 Feb 2009 p. 385)
<i>Business Tax Review (Assessment) Act (No. 2) 2003</i> s. 95, 100 and 108 ³	66 of 2003	5 Dec 2003	s. 108: 1 Jul 2003 (see s. 2(5) and <i>Gazette</i> 27 Jun 2003 p. 2383); s. 95(1)-(4) and (5)(a): 1 Jan 2004 (see s. 2(1) and (2) and <i>Gazette</i> 30 Dec 2003 p. 5721); s. 100: 1 Jul 2004 (see s. 2(3)); s. 95(5)(b): 1 Jul 2004 (see s. 2(1) and (2) and <i>Gazette</i> 21 May 2004 p. 1711)
<i>Revenue Laws Amendment and Repeal Act 2004</i> Pt. 4	12 of 2004	29 Jun 2004	29 Jun 2004 (see s. 2(1))
<i>State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004</i> Pt. 2 Div. 124 ^{4,5}	55 of 2004	24 Nov 2004	1 Jan 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7130)
<i>Revenue Laws Amendment (Tax Relief) Act 2004</i> Pt. 3 ⁶	82 of 2004	8 Dec 2004	8 Dec 2004 (see s. 2(1))

Short title	Number and year	Assent	Commencement
<i>Criminal Procedure and Appeals (Consequential and Other Provisions) Act 2004</i> s. 80 and 82	84 of 2004	16 Dec 2004	2 May 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7129 (correction by <i>Gazette</i> 7 Jan 2005 p. 53))
<i>Revenue Laws Amendment Act (No. 2) 2005 Pt. 4</i>	12 of 2005	30 Aug 2005	30 Aug 2005 (see s. 2(1))
Reprint 1: The Taxation Administration Act 2003 as at 14 Oct 2005 (includes amendments listed above)			
<i>Planning and Development (Consequential and Transitional Provisions) Act 2005 s. 15</i>	38 of 2005	12 Dec 2005	9 Apr 2006 (see s. 2 and <i>Gazette</i> 21 Mar 2006 p. 1078)
<i>Land Information Authority Act 2006 s. 184</i>	60 of 2006	16 Nov 2006	1 Jan 2007 (see s. 2(1) and <i>Gazette</i> 8 Dec 2006 p. 5369)
<i>Financial Legislation Amendment and Repeal Act 2006 Sch. 1 cl. 166</i>	77 of 2006	21 Dec 2006	1 Feb 2007 (see s. 2(1) and <i>Gazette</i> 19 Jan 2007 p. 137)
<i>Revenue Laws Amendment (Assessment) Act 2007 Pt. 3</i>	13 of 2007	29 Jun 2007	30 Jun 2007 (see s. 2(b))
Reprint 2: The Taxation Administration Act 2003 as at 7 Sep 2007 (includes amendments listed above)			
<i>Biosecurity and Agriculture Management (Repeal and Consequential Provisions) Act 2007 s. 94</i>	24 of 2007	12 Oct 2007	1 May 2013 (see s. 2(2) and <i>Gazette</i> 5 Feb 2013 p. 823)
<i>Duties Legislation Amendment Act 2008 Pt. 2 Div. 3⁷</i>	12 of 2008	14 Apr 2008	1 Jul 2008 (see s. 2(d))
<i>Revenue Laws Amendment Act (No. 2) 2008 Pt. 2 Div. 1 and 3 and Pt. 3</i>	31 of 2008	27 Jun 2008	Pt. 2 Div. 1 and Pt. 3 Div. 1 and 2: 28 Jun 2008 (see s. 2(b)); Pt. 2 Div. 3: 1 Jul 2008 (see s. 2(c)(ii)); Pt. 3 Div. 3: 11 Oct 2008 (see s. 2(d) and <i>Gazette</i> 10 Oct 2008 p. 4539)
Reprint 3: The Taxation Administration Act 2003 as at 22 Aug 2008 (includes amendments listed above except those in the <i>Biosecurity and Agriculture Management (Repeal and Consequential Provisions) Act 2007</i> and the <i>Revenue Laws Amendment Act (No. 2) 2008 Pt. 3 Div. 3</i>)			

Short title	Number and year	Assent	Commencement
<i>Revenue Laws Amendment and Repeal Act 2010</i> Pt. 5 and s. 30	17 of 2010	25 Jun 2010	26 Jun 2010 (see s. 2(b))
<i>Standardisation of Formatting Act 2010</i> s. 51	19 of 2010	28 Jun 2010	11 Sep 2010 (see s. 2(b) and <i>Gazette</i> 10 Sep 2010 p. 4341)
Reprint 4: The Taxation Administration Act 2003 as at 3 Dec 2010 (includes amendments listed above except those in the <i>Biosecurity and Agriculture Management (Repeal and Consequential Provisions) Act 2007</i>)			
<i>Road Traffic Legislation Amendment Act 2012</i> Pt. 4 Div. 48	8 of 2012	21 May 2012	27 Apr 2015 (see s. 2(d) and <i>Gazette</i> 17 Apr 2015 p. 1371)
<i>Revenue Laws Amendment Act 2012</i> Pt. 8	29 of 2012	3 Sep 2012	Heading to Pt. 8, s. 40 and 42(4): 1 Jul 2009 (see s. 2(d)); s. 41, 42(1)-(3), 43 and 44: 4 Sep 2012 (see s. 2(e))
<i>Revenue Laws Amendment Act 2013</i> Pt. 2 Div. 2 and Pt. 3	10 of 2013	24 Sep 2013	25 Sep 2013 (see s. 2(b))
<i>Electronic Conveyancing Act 2014</i> Pt. 8	2 of 2014	24 Mar 2014	3 Jun 2014 (see s. 2(c) and <i>Gazette</i> 30 May 2014 p. 1679)
<i>Taxation Legislation Amendment Act (No. 2) 2015</i> Pt. 5	8 of 2015	9 Mar 2015	10 Mar 2015 (see s. 2(b))
<i>Associations Incorporation Act 2015</i> s. 229	30 of 2015	2 Nov 2015	1 Jul 2016 (see s. 2(b) and <i>Gazette</i> 24 Jun 2016 p. 2291-2)
Reprint 5: The Taxation Administration Act 2003 as at 22 Apr 2016 (includes amendments listed above except those in the <i>Associations Incorporation Act 2015</i>)			
<i>Transport (Road Passenger Services) Act 2018</i> Pt. 14 Div. 2 Subdiv. 8	26 of 2018	30 Oct 2018	1 Apr 2019 (see s. 2(b) and <i>Gazette</i> 26 Feb 2019 p. 449-50)
<i>Betting Tax Assessment Act 2018</i> Pt. 8 Div. 1 Subdiv. 4	37 of 2018	12 Dec 2018	1 Jan 2019 (see s. 2(c))
<i>Taxation Administration Amendment Act 2019</i> Pt. 2	11 of 2019	12 Jun 2019	13 Jun 2019 (see s. 2(b))

Other notes

^{1M} Under the *Commonwealth Places (Mirror Taxes Administration) Act 1999* s. 7, modifications to State taxing laws may be prescribed. Modifications are prescribed in the *Commonwealth Places (Mirror Taxes Administration) Regulations 2007* Pt. 7 Div. 1.

If a modification is to:

- replace or insert a numbered provision, the new provision is identified by the superscript 1M appearing after the provision number;
- amend a numbered provision, the amended provision is identified by the superscript 1M appearing after the provision number.

^{1MC} Under the *Commonwealth Places (Mirror Taxes) Act 1998* (Commonwealth) s. 8, modifications to State taxing laws, in their application as Commonwealth laws in Commonwealth places in Western Australia, may be prescribed. Modifications are prescribed in the *Commonwealth Places (Mirror Taxes) (Modifications of Applied Laws (WA)) Notice 2007* (Commonwealth) Pt. 7 Div. 1.

If a modification is to:

- replace or insert a numbered provision, the new provision is identified by the superscript 1MC appearing after the provision number;
- amend a numbered provision, the amended provision is identified by the superscript 1MC appearing after the provision number.

¹ The *Revenue Laws Amendment Act 2012* s. 42(4) was deemed to have come into operation on 1 Jul 2009, see s. 2(d) of that Act).

² The amendment to s. 114(3)(f) in the *Workers' Compensation Reform Act 2004* s. 174 cannot be included because the paragraph it seeks to amend was deleted by the *Business Tax Review (Assessment) Act (No. 2) 2003* s. 100.

³ The *Business Tax Review (Assessment) Act (No. 2) 2003* s. 100(3) reads as follows:

100. Taxation Administration Act 2003 amended and transitional

- (3) The amendment effected by this section does not apply in relation to a policy of insurance of the kind described in that section 114(3)(f) if the period for which the insurance is effected commenced on or before 29 June 2004.

⁴ Section 34(5) of this Act had not come into operation when it was deleted by the *State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004* s. 1171(3).

Section 41(2) and (4) of this Act had not come into operation when s. 41 was deleted by the *State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004* s. 1175.

The definition of **non reviewable decision** in the Glossary of this Act had not come into operation when it was repealed by the *State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004* s. 1183.

⁵ The *State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004* Pt. 5, the *State Administrative Tribunal Act 2004* s. 167 and 169, and the *State Administrative Tribunal Regulations 2004* r. 28 and 42 deal with certain transitional issues some of which may be relevant for this Act.

⁶ The *Revenue Laws Amendment (Tax Relief) Act 2004* Pt. 4 reads as follows:

Part 4 — Reassessment

20. Certain instruments to be assessed again

(1) In this section —

Commissioner means the Commissioner of State Revenue appointed in accordance with the *Taxation Administration Act 2003* section 6;

duty means duty payable under the *Stamp Act 1921*;

former provisions means the provisions of the *Stamp Act 1921* that are amended by the *Revenue Laws Amendment (Tax Relief) Act (No. 2) 2004* Part 4, as those provisions were enacted immediately before 29 October 2004;

instrument means a conveyance or transfer of property or a contract, agreement or other instrument that is chargeable with duty as a conveyance or transfer of property;

new provisions means the provisions of the *Stamp Act 1921* as amended by the *Revenue Laws Amendment (Tax Relief) Act (No. 2) 2004* Part 4.

(2) The Commissioner must make an assessment under the new provisions of the duty on any instrument —

(a) which was first executed on or after 29 October 2004; and

(b) on which duty has been assessed under the former provisions.

(3) Subsection (2) does not authorise the Commissioner to make an assessment under the new provisions of the duty on an instrument to the extent (if any) to which the former provisions apply in relation to it under the *Revenue Laws Amendment (Tax Relief) Act (No. 2) 2004* section 9(2)(b).

- (4) The *Taxation Administration Act 2003* sections 18 and 54(1)(a) apply in relation to an assessment under subsection (2) as if it were a reassessment under section 16 of that Act.

⁷ The amendment in the *Duties Legislation Amendment Act 2008* s. 46 is not included because the section it sought to amend had been replaced by the *Revenue Laws Amendment Act (No. 2) 2008* s. 7 before the amendment was to come into operation.

Defined terms

[This is a list of terms defined and the provisions where they are defined.

The list is not part of the law.]

Defined term	Provision(s)
address	Gl.
amending Bill.....	129(1)
appointed representative	Gl.
approved	Gl.
assessment.....	Gl.
assessment notice	Gl.
before	129(2)
beneficial body determination.....	Gl.
charge.....	Gl.
commencement day	136(1), 137(1)
Commissioner	Gl.
complete.....	Gl.
compromise agreement	20A(1)
compromise assessment	Gl.
corresponding Commissioner	Gl.
costs of valuation	24(7)
date.....	Gl.
decision	Gl.
determination notice.....	129(1)
directly reviewable decision.....	Gl.
dishonoured.....	76A(3)
document.....	Gl.
due date	Gl.
endorse	Gl.
garnishee	65(1), Gl.
group	Gl.
identity card	Gl.
instrument	82(1), Gl.
interim assessment	16A(1), Gl.
investigation purposes.....	Gl.
investigator.....	Gl.
land	76A(1)
landholder	77A(1)
landholder duty	77A(1)
linked entity	77A(1)
lodge	76A(1)
mining tenement	76A(1)
objection	Gl.
official assessment	Gl.
official document	Gl.

Defined terms

original assessment	Gl.
original notice	132(3)
OSR website	Gl.
penalty tax	Gl.
person.....	Gl.
premises	Gl.
previous assessment	Gl.
primary liability	Gl.
qualified valuer	Gl.
real property	76A(1)
reassessment.....	Gl.
reassessment period	39(3), 43(4A), 54A(3)
recognised jurisdiction	Gl.
recognised revenue law	Gl.
record	Gl.
register	76A(1)
Registrar.....	82(1)
Registrar of Titles	Gl.
relevant land Act	76A(1)
relevant material	Gl.
remaining transfer duty	77A(2A)
responsible party	Gl.
review proceedings	Gl.
self-assessment.....	Gl.
special tax return arrangement	Gl.
State	Gl.
statutory administrator of a taxpayer's assets	64(3)
tax	Gl.
tax liability	Gl.
tax payment arrangement	Gl.
tax record	Gl.
tax threshold.....	129(1)
taxation Act.....	129(1), Gl.
taxation matter	7(3)
taxpayer.....	Gl.
TLA land.....	76A(1)
transaction record.....	77A(1)
transfer duty	77A(1)
transfer duty interim assessment	77A(1)
unaffected amount.....	133(2)
vehicle.....	Gl.