

Assessments – Period of Retrospectivity

Revenue Ruling GEN014 Replaces GEN013

Preamble

The Commissioner of State Revenue (the Commissioner) has power under the *Taxation Administration Act 1997* (TAA) to assess any tax outstanding for past periods regardless of how long these periods may be. Accordingly, taxpayers remain responsible for any unpaid tax liabilities whether or not they have recognised or are aware of those tax liabilities.

In most cases, the Commissioner will limit the period of retrospectivity to ensure that:

- general equivalence is maintained between the refund period and period of assessing tax arrears, and
- taxpayers are provided with some certainty on their tax liability.

This limitation does not apply where:

- there was undue delay on the part of the taxpayer between recognising a tax liability and making a voluntary disclosure of the tax liability to the Commissioner, or
- the taxpayer's unpaid taxes arise from an intentional disregard of a taxation law.

As part of the agreement between Victoria and NSW to align their payroll tax legislation, Victoria has moved from a three-year period to a five-year period for refunds and reassessments from 1 July 2007. The change in the refund period has been phased in. A taxpayer who made any overpayment on or after 1 July 2004 can claim a refund up to five years after the date of the overpayment.

To maintain parity with the phasing in of the five-year refund period, the Commissioner has similarly phased in the five-year retrospectivity period.

The five-year period of retrospectivity applies to congestion levy, duties, land tax and payroll tax.

The purpose of this Revenue Ruling is to clarify the Commissioner's position on the application of the five-year retrospectivity period to the different revenue lines.

Ruling

The five-year retrospectivity period does not apply to tax arrears which occurred before 1 July 2004 (unless the arrears arose as a result of undue delay or intentional disregard of a taxation law). The period of retrospectivity commences from the 'Reference Date', which is the earliest date on which:

1. the Commissioner receives a voluntary disclosure from a taxpayer
2. an investigation commenced, or
3. a taxpayer is advised of a tax liability.

A voluntary disclosure must be in writing. An investigation commences when a taxpayer is informed by the SRO in writing of an investigation to examine the taxpayer's compliance with one or more taxation laws. However, where the SRO needs to conduct an investigation on a person other than the taxpayer to determine a possible tax default, the investigation commences when the SRO notifies that person (not the taxpayer) in writing of the investigation. A taxpayer is considered to have been advised of a tax liability upon receipt of written advice from the SRO indicating that a tax liability exists (e.g. a private ruling).

The five-year period of retrospectivity applies in the following manner to the revenue lines below.

Payroll tax

As payroll tax is calculated based on financial years, the period of retrospectivity for payroll tax is also based on financial years. The period of retrospectivity is the financial year in which the Reference Date falls plus the preceding four financial years (but not including any underpayments prior to 1 July 2004).

Examples 1, 2 and 3 illustrate how the new period of retrospectivity is phased in for payroll tax.

Example	Reference Date	Period of retrospectivity goes back to
1	31 January 2008	1 July 2004
2	20 March 2009	1 July 2004
3	11 August 2009	1 July 2005

An exception may arise when an employer pays Victorian tax to another jurisdiction by mistake. If the other jurisdiction refunds the tax overpaid for a period

that exceeds the SRO's period of retrospectivity, the SRO will issue an assessment to match the period for which tax was refunded.

Land tax¹

As land tax is assessed on a calendar year basis, the period of retrospectivity for land tax is also based on calendar years. The period of retrospectivity is the current calendar year in which the Reference Date falls plus the four preceding calendar years (but not including any underpayments prior to the 2004 calendar year).

Examples 4, 5 and 6 illustrate how the new period of retrospectivity is phased in for land tax.

Example	Reference Date	Period of retrospectivity goes back to
4	31 January 2008	2004 assessment
5	25 November 2008	2004 assessment
6	1 March 2009	2005 assessment

However, if a taxpayer has an outstanding land tax liability and the SRO has not previously assessed the taxpayer for land tax, the SRO will assess the taxpayer's land tax liability only for the current calendar year. This will not apply to matters involving special land tax assessments or if the SRO is of the view that the taxpayer has misled the SRO whether by withholding information or providing inaccurate information relevant to the land tax liability. For example, a taxpayer not informing the SRO of a change to entitlement to an exemption previously granted. In this instance, the period of retrospectivity set out above will apply.

Congestion levy

As the congestion levy is assessed on a calendar year basis, the period of retrospectivity is also based on calendar years. The period of retrospectivity cannot go back before the 2006 calendar year as the Congestion Levy commenced on 1 January 2006. The period of retrospectivity will progressively increase by one calendar year until 2010 after which the five-year period will apply.

Duties

(a) Dutiable Transactions / Relevant Acquisitions

Certain transactions are subject to duty. These include transfers of land, a declaration of trust over land, and acquisitions of certain interests in land rich landholders.

For transactions that give effect to or evidence a dutiable transaction concerning dutiable property, or an acquisition of an interest in a land rich landholder, this Revenue Ruling is relevant only in instances where the SRO, independently of the taxpayer, identifies those documents/transactions in respect of which the correct amount of duty has not been paid in full (e.g. an investigation conducted by the SRO). A person can always present a document or written statement

for stamping and the payment of any applicable duty, regardless of whether or not the dutiable transaction occurred within the last five years.

The period of retrospectivity applies to all dutiable transactions and acquisitions of an interest in a land rich landholder, which occur within five years of the Reference Date. Where the Reference Date falls on or after 1 January 2008, the five-year retrospectivity period for dutiable transactions will not include any transactions occurring prior to January 2005.

Examples 7, 8 and 9 illustrate how the new period of retrospectivity is phased in for transactions subject to duties.

Example	Reference Date*	Period of retrospectivity goes back to
7	31 January 2008	Dutiable transactions occurring on or after 1 January 2005
8	31 March 2009	Dutiable transactions occurring on or after 1 January 2005
9	31 March 2010	Dutiable transactions occurring on or after 1 April 2005

*does not relate to a voluntary disclosure, as a person can always present a document or written statement for stamping regardless of when the dutiable transaction occurred.

(b) Motor vehicle duty

Motor vehicle duty is payable on the lodging of an application for registration of a new or previously unregistered vehicle or application for a transfer of registration of a previously registered vehicle. Therefore the period of retrospectivity for motor vehicle duty applies to all applications for registration or transfer of registration lodged within five years of the Reference Date. Where the Reference Date falls on or after 1 January 2008, the five-year retrospectivity period for motor vehicle duty will not include any applications for registrations or transfers lodged prior to January 2005.

Examples 10, 11 and 12 illustrate how the new period of retrospectivity is phased in for motor vehicle duty.

Example	Reference Date	Period of retrospectivity goes back to
10	28 February 2008	Applications for registration/transfer lodged on or after 1 January 2005
11	30 April 2009	Applications for registration/transfer lodged on or after 1 January 2005
12	31 March 2010	Applications for registration/transfer lodged on or after 1 April 2005

(c) Return based duties

General Insurance and Life Insurance

As duty in respect of insurance is usually calculated on a monthly basis, the period of retrospectivity will also be based on a monthly basis. The period of retrospectivity for registered insurers that lodge monthly returns will be the month in which the Reference Date falls plus the monthly returns going back five years. Where the Reference Date falls on or after 1 January 2008, the five-year retrospectivity period for insurance will not include any underpayments occurring prior to January 2005.

Examples 13, 14 and 15 illustrate how the new period of retrospectivity is phased in for registered insurers lodging monthly returns.

Example	Reference Date	Period of retrospectivity goes back to
13	30 January 2008	January 2005 monthly return
14	21 May 2009	January 2005 monthly return
15	10 April 2010	April 2005 monthly return

The period of retrospectivity for insured persons lodging annual returns will be the current financial year and the four preceding financial years (but not including any underpayments prior to 1 July 2004). See examples under payroll tax.

Hire of goods duty

Although hire of goods duty was abolished from January 2007, this Revenue Ruling applies to underpayments for prior periods. Hire of goods duty was calculated on a monthly basis and the period of retrospectivity will also be based on a monthly basis, except where the registered commercial hire business lodges annual returns (see below).

The period of retrospectivity for a registered commercial hire business that lodged monthly returns will be the month in which the Reference Date falls plus the monthly returns going back five years. Where the Reference Date falls on or after 1 January 2008, the five-year retrospectivity period for hire of goods duty will not include any underpayments prior to January 2005. See examples under general insurance.

The period of retrospectivity for a registered commercial hire business that lodged annual returns will be the financial year in which the Reference Date falls plus the four preceding financial years (but not including any underpayments prior to 1 July 2004). See examples under payroll tax.

Undue delay

The SRO recognises that a taxpayer may need some time to confirm that a liability exists or to quantify the tax owing, particularly where the taxpayer wishes to seek advice from external advisers. Where, however, the SRO finds that there has been unreasonable delay between the time of the recognition of a tax liability and the time a taxpayer makes a voluntary disclosure, the period of retrospectivity may be extended beyond the five-year period.

Where the SRO is responsible for an unreasonable delay in completing its investigation and advising the taxpayer of any liability identified or issuing a private ruling to a taxpayer on a voluntary disclosure, the commencement date of the period of retrospectivity will be adjusted to reflect that delay. Where the SRO and taxpayer both agree that the SRO should obtain external advice to establish whether the taxpayer has a tax liability, an agreed date for the commencement of the period of retrospectivity will be negotiated.

Intentional disregard of a taxation law

The period of retrospectivity does not apply to a tax liability arising from an intentional disregard of a taxation law (refer to Revenue Ruling TAA.007). Instead, a taxpayer will be assessed for the maximum period permitted by the relevant Act to ensure that no taxpayer benefits or profits from such conduct.

Commencement

This Revenue Ruling applies to a Reference Date which occurs on or after 1 January 2008.

Please note that rulings do not have the force of law. Each decision made by the State Revenue Office is made on the merits of each individual case having regard to any relevant ruling. All rulings must be read subject to Revenue Ruling GEN.001.



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