

TD 93/226 - Income tax: does the Administrative Appeals Tribunal (Tribunal) have the power to stay any recovery proceedings for amounts owing on an assessment whilst that assessment is subject to review by the Tribunal?

 This cover sheet is provided for information only. It does not form part of *TD 93/226 - Income tax: does the Administrative Appeals Tribunal (Tribunal) have the power to stay any recovery proceedings for amounts owing on an assessment whilst that assessment is subject to review by the Tribunal?*

This Determination, to the extent that it is capable of being a 'public ruling' in terms of Part IVAAA of the *Taxation Administration Act 1953*, is a public ruling for the purposes of that Part. Taxation Ruling TR 92/1 explains when a Determination is a public ruling and how it is binding on the Commissioner. Unless otherwise stated, this Determination applies to years commencing both before and after its date of issue. However, this Determination does not apply to taxpayers to the extent that it conflicts with the terms of a settlement of a dispute agreed to before the date of issue of the Determination (see paragraphs 21 and 22 of Taxation Ruling TR 92/20).

Taxation Determination

Income tax: does the Administrative Appeals Tribunal (Tribunal) have the power to stay any recovery proceedings for amounts owing on an assessment whilst that assessment is subject to review by the Tribunal?

1. No. The Tribunal is not empowered to grant a stay of any recovery proceedings for amounts outstanding on that assessment. Paragraph 14ZZB(1)(a) of the *Taxation Administration Act 1953* (TAA) renders subsection 41(2) of the *Administrative Appeals Tribunal Act 1975* (AAT Act) inapplicable.

2. Subsection 41(2) of the AAT Act provides that the Tribunal may make such orders staying proceedings for the purpose of securing the effectiveness of the hearing and determination of the application for review. However paragraph 14ZZB(1)(a) of the TAA provides that subsection 41(2) of the AAT Act does not apply to a reviewable objection decision (other than a reviewable objection decision that relates to a registration-type sales tax decision).

3. Section 14ZZM of the TAA allows the recovery of tax outstanding on an assessment as if no review were pending before the Tribunal.

Example:

X requests the Tribunal to review a decision on an objection against his/her income tax assessment for the year ended 30 June 1993. An amount of \$3000 is owing on the assessment.

X also seeks an order for a stay of recovery proceedings pending the Tribunal's decision on the review.

The Tribunal is not entitled to grant a stay of recovery proceedings.

Commissioner of Taxation

18/11/93

FOI INDEX DETAIL: Reference No. I 1216631

Previously issued as TD93/D226

Related Determinations

Related Rulings:

Subject Ref: Administrative Appeals Tribunal; Collection of Tax

Legislative Ref: TAA 14ZZB; TAA 14ZZM; AATA 41(2)

Case Ref: VT93/79 (Unreported, Administrative Appeals Tribunal, 13/5/93)

ATO Ref: CASSOO56

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