



Office of State Revenue
NSW TREASURY

ABN: 77 456 270 638

Revenue Ruling G7

Commonwealth Places (Mirror Taxes Administration) Act 1998

PREAMBLE

1. Following the decision of the High Court in *Allders International Pty Ltd v Commissioner of State Revenue (Vic)* (1996) 186 CLR 630, the application of a number of State taxes to Commonwealth places was put in doubt. At the request of the States, the Commonwealth made provision for taxing laws that will mirror State laws to the extent to which the State laws are inapplicable by reason of the operation of paragraph 52(i) of the *Constitution*, and will deliver the resulting revenue to the State. This has been established by means of the *Commonwealth Places (Mirror Taxes) Act 1998* (“the Commonwealth Act”), and the *Commonwealth Places (Mirror Taxes Administration) Act 1998* (“the NSW Act”).
2. These taxes are known as “mirror taxes” because they impose Commonwealth taxes that “mirror” State imposed taxes. For example, the pay-roll tax paid to a State by businesses operating on Commonwealth places is a Commonwealth pay-roll tax identical to the State tax that would otherwise be payable.
3. Arrangements have been made for the Office of State Revenue to collect and administer the mirror taxes on the Commonwealth’s behalf. This will ensure that taxpayers at Commonwealth places are treated in the same manner as other State taxpayers. In particular, taxpayers who operate both in Commonwealth places in New South Wales and elsewhere within the State are required to pay only one amount of tax as usual. The NSW Act and the Commonwealth Act together ensure that the total amount of tax payable remains unchanged.
4. On 14 February 2002, the Governor-General signed an arrangement with the Governor of New South Wales under section 9 of the Commonwealth Act and section 5 of the NSW Act. This effectively triggers the operation of the mirror taxes, which are taken to have always applied in relation to Commonwealth places in New South Wales, but not so as to impose any liability for tax for things that happened before 6 October 1997.
5. The mirror taxes that apply in relation to Commonwealth places are pay-roll tax, stamp duties, financial institutions duty, and debits tax (see Schedule 1 of the Commonwealth Act) and land tax (see section 4 of the *Commonwealth Places (Mirror Taxes) Regulations 2000* of the Commonwealth).

RULING

6. A Commonwealth place generally means a property that is owned by the Commonwealth Government or one of its agencies. This includes Commonwealth owned properties that are leased and sub-leased to non-Commonwealth occupants. It does not include privately owned properties that are leased to and occupied by the Commonwealth.

Lang Centre
Cnr Hunter and Marsden Streets
Parramatta NSW
GPO Box 4042
Sydney NSW 2001
DX 456 Sydney
Phone (02) 9639 6200
Facsimile (02) 9639 6464
Internet www.nsw.gov.au

7. Liability to the Commonwealth taxes commences from 6 October 1997. To the extent that any tax in relation to a Commonwealth place collected prior to 6 October 1997 would otherwise be repayable to the taxpayer, the *Commonwealth Places Windfall Tax (Imposition) Act 1997* and *Commonwealth Places Windfall Tax (Collection) Act 1997* impose a 100% tax on that amount. These Acts also require the State to deduct the tax from the amount repayable, and pay the tax to the Commonwealth. As a consequence, State taxes paid prior to 6 October 1997 will not be refunded if the amounts are repayable solely because of being invalid under paragraph 52(i) of the *Constitution*.
8. Payments already made to the Office of State Revenue since 6 October 1997 will be credited against the liability to mirror taxes, so that taxpayers will not be taxed twice.
9. **Pay-roll tax**
Regardless of whether pay-roll tax is payable under the *Pay-roll Tax Act 1971* or the mirror tax legislation or both, calculation of the tax applies seamlessly as a single tax. Pay-roll taxpayers should include wages paid in respect of services performed at Commonwealth places in New South Wales as New South Wales wages when calculating the amount of tax payable.
10. **Lease duty**
Any lease of property at a Commonwealth place in New South Wales is subject to lease duty, and the provisions of Chapter 5 of the *Duties Act 1997* will apply as a mirror tax. Similarly, any transfer or agreement for the sale or transfer of a Commonwealth property in New South Wales is subject to transfer duty, and the provisions of Chapter 2 of the *Duties Act 1997* will apply as a mirror tax. Any other transactions that are subject to stamp duty and that could be characterised as being “with respect to a Commonwealth place” in New South Wales are subject to duty on the same basis as any other transaction in New South Wales.
11. **Land tax**
Although mirror taxes include land tax under the *Land Tax Management Act 1956*, paragraph 114 of the *Constitution* prohibits States from imposing a tax on property of the Commonwealth without the consent of the Commonwealth Parliament. Land tax therefore only applies to Commonwealth places owned by bodies in respect of which the Commonwealth has legislated to permit State taxes to apply. Land tax is not payable by lessees of land at Commonwealth places.
12. When a place ceases to be a Commonwealth place (by virtue of being sold by the Commonwealth), the mirror taxes will cease to apply. In such a case, the corresponding State taxing law will apply from that time (see section 13 of the NSW Act). Furthermore, it is considered that all State laws of general application would automatically apply in respect of that place, including where there was no prior, corresponding liability to a mirror tax. As a consequence, New South Wales taxation laws will apply to that place, and any prior categorisation as a Commonwealth place is irrelevant to the liability to tax.

13. Any person who would otherwise be liable to pay any State tax since 6 October 1997, and who has not done so on the basis that the taxation law does not apply in respect of a Commonwealth place, should contact the Office of State Revenue to confirm that the mirror tax applies. If such a disclosure is made by 30 June 2002, no interest or penalty tax will be imposed. In appropriate circumstances, arrangements can be made for the payment of arrears of tax by instalment.
14. If a voluntary disclosure is not made by 30 June 2002, interest and penalty tax will apply as if the tax is due on that date (subject to remission or reduction in appropriate circumstances).
15. Voluntary disclosures should be made to the Deputy Director Compliance Operations, who can be contacted on (02) 9689 6609.

General information on mirror taxes can be obtained on (02) 9689 6145.

Tony Newbury
Chief Commissioner of State Revenue
23 April 2002