


***TD 93/D226 - Income tax: does the Administrative Appeals Tribunal (Tribunal) have the power to stay recovery proceedings for amounts owing on an assessment whilst that assessment is subject to review by the Tribunal?***

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This document has been finalised by TD 93/226.

Draft Taxation Determinations (TDs) represent the preliminary, though considered, views of the ATO. Draft TDs may not be relied on; only final TDs are authoritative statements of the ATO.

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## Draft Taxation Determination

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### **Income tax: does the Administrative Appeals Tribunal (Tribunal) have the power to stay 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 recovery proceedings for any amount outstanding on that assessment. Paragraph 14ZZB (1)(a) of the *Taxation Administration Act 1953* (Administration Act) 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 Administration Act 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 Administration Act 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**

2/9/93

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FOI INDEX DETAIL: Reference No.

Related Determinations:

Related Rulings:

Subject Ref: Administrative Appeals Tribunal; Collection of Tax

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

Case Ref: VT 93/79 (Unreported, AAT, 13/5/93)

ATO Ref: CASSAPRE051

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