



Use of averments in taxation prosecutions

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Introduction

1. S8ZL of the Taxation Administration Act 1953 ("the TAA") permits the use of averments only in a prosecution for a "prescribed taxation offence".
2. A prescribed taxation offence is defined in s8A to mean, in effect:
 - (i) Where the offence is committed by a natural person:
 - any offence against section 8C except where the Commissioner has made an election under section 8F(1);
 - any offence under section 8D(1) and (2) except where the Commissioner has made an election under section 8F(1);
 - any offence under section 8K;
 - any offence under section 8L;
 - first offences under section 8N except where the Commissioner has made an election under section 8S;
 - first offences under section 8Q except where the Commissioner has made an election under section 8S;
 - (ii) Where an offence is committed by a company, any offence under the TAA.
3. Consequently averments may be available against a corporation in some cases where they would not be available against an individual. Indeed, if an individual and a company are prosecuted in respect of one offence, averments may be available against one defendant but not the other.

Instruction

4. Averments should be used against companies in all taxation prosecutions where they are available and it is otherwise proper to use them irrespective of whether averments would be available if the defendant was a natural person.

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