



COMMISSIONER'S PRACTICE TAA 16.1

CERTAIN ASSESSMENT AND REASSESSMENT TIME LIMITS

Commissioner's Practice History

Commissioner's Practice	Issued	Dates of effect	
		From	To
TAA 16.0	23 December 2003	23 December 2003	30 June 2008
TAA 16.1	1 July 2008	1 July 2008	20 September 2012

This Commissioner's practice outlines matters relating to the time periods for which assessments and reassessments of pay-roll tax, stamp duty, debits tax, hire of goods duty, insurance duty, tax under a special tax return arrangement, transfer duty, and land tax will be made by the Commissioner.

Background

The *Taxation Administration Act 2003* ("TAA") provides the administrative framework for a number of taxation Acts administered by the Commissioner, including the *Stamp Act 1921*, the *Pay-roll Tax Assessment Act 2002*, the *Land Tax Assessment Act 2002*, the *Debits Tax Assessment Act 2002* and the *Duties Act 2008*. Matters covered by the TAA include the issue of assessment notices and the imposition of penalty tax.

Liability to tax is set out in each of the relevant taxation Acts. In some instances tax liability is self assessed with the taxpayer required to remit returns disclosing liability. In other instances the relevant taxation Act provides that a liable party is required to lodge certain documentation on which the Commissioner is required to make an official assessment of liability.

Superseded

Original Assessment

An original assessment is defined in the Glossary to the TAA. In the case of self assessed (return based) tax, an original assessment represents an assessment made by a taxpayer in respect to returns lodged. Where no self assessment was made, an original assessment is the first official assessment of tax. The TAA does not provide any time limits that apply to the issuing of original assessments.

Reassessment

A reassessment is an assessment made subsequent to an original assessment, which adjusts and supersedes a previous assessment. Section 17 of the TAA sets out time limits that apply to reassessments.

Section 16(2) of the TAA provides that the Commissioner may make a reassessment on his or her own initiative if it appears a previous assessment is or may be incorrect for any reason, or on the application of the taxpayer.

Section 16(5) of the TAA provides that where an assessment has been made based upon a particular practice of the Commissioner that was generally applied to assessments of that kind when the assessment was made, the Commissioner is prevented from making a reassessment on the basis that the practice was erroneous. Accordingly, where a return or transaction record was assessed in accordance with a particular practice that was in place at that time, the reassessment will be made in accordance with the relevant version of that practice that was in place at the time of the initial assessment.

Commissioner's Practice

1. Original assessments and reassessments may be generated where a taxpayer has made a voluntary disclosure or where the Commissioner has identified a tax liability.
2. The Commissioner may derive information to enable an assessment or reassessment to be made from various sources, including but not limited to:
 - 2.1 investigation/audit processes;
 - 2.2 disclosures from the taxpayer;
 - 2.3 other State or Federal jurisdictions.
3. Assessments or reassessments may include current and/or past financial periods.
4. Assessments or reassessments may result in the application of penalty tax. The rates of penalty tax are remitted in accordance with published Commissioner's practices.

Superseded

5. Where the Commissioner has reasonable grounds for suspecting that an evasion of tax has occurred or that a previous assessment was made on the basis of false or misleading information, the Commissioner is not restricted by any time limits and an assessment or a reassessment will be issued for as many years as possible.

Original Assessments

6. For the purposes of establishing the time periods for which the Commissioner may issue an original assessment, “contact year” is the financial year during which the information is disclosed, that is:

- 6.1 the date when the information required to make the assessment is received by the Commissioner (outside of an investigation/enquiry conducted by the Commissioner); or
- 6.2 the date the Commissioner commences an investigation/enquiry.

Commencement of an investigation/enquiry is deemed to be the date an officer first contacts the taxpayer or their representative. For example, if an audit commenced in February 2008 for which an assessment is subsequently issued in September 2008, then for the purposes of this practice the “contact year” will be 2007/08.

Return based taxes

7. In the case of an original assessment raised in respect of pay-roll tax, debits tax, hire of goods duty, insurance duty or tax under a special tax return arrangement, subject to paragraphs 8 and 9, the Commissioner may derive information to enable an assessment to be made covering the contact year and the previous five financial years, plus any financial years following the contact year. For example, if a pay-roll tax audit commenced in 2007/08 financial year, which is not completed until mid September 2008, for the purposes of this practice “contact year” will be 2007/08, and the Commissioner may raise original assessments in respect of the contact year (i.e. 2007/08) plus the previous five years (i.e. 2002/03 – 2006/07) and also in respect of the financial year following the contact year (i.e. the months of July – August 2008).
8. An assessment for a return based tax may be made covering liabilities for as many prior years as it is possible where there is evidence that a taxpayer has:
 - 8.1 claimed an income tax deduction on the basis that the tax has been paid to the Office of State Revenue, but that payment has not been made;
 - 8.2 been previously advised of a liability for a particular class of payment, receipt, withdrawal or transaction but has continued to omit to disclose amounts owing in this respect from returns; or
 - 8.3 failed to register or declare the correct amount of tax when, in the opinion of the Commissioner, the taxpayer should have been aware of the liability.

Superseded

9. Where the Commissioner has reasonable grounds for suspecting that an evasion of tax has occurred an assessment will be issued for as many years as possible.

Transaction record, instrument or statement evidencing liability to duty

10. An original assessment will be raised by the Commissioner in respect of a transaction record, instrument or dutiable statement evidencing liability to duty under the *Stamp Act 1921* or the *Duties Act 2008*, at any time when such a document is lodged for assessment by a liable party.
11. The TAA does not provide any time limits that apply to the issue of original assessments. The Commissioner will impound any transaction record, instrument or dutiable statement that has not been lodged in accordance with the requirements of the relevant taxation Act by the due date.

Land tax

12. Where a land tax assessment notice has not been issued to a taxpayer in any year from the time land owned by the taxpayer first became taxable, an assessment notice will be issued for the current year and the previous assessment year.
13. Where an owner of land who was in receipt of an exemption from land tax in the previous assessment year does not comply with a request to advise the Office of State Revenue of any change in circumstances that would invalidate the exemption, a retrospective assessment will be issued for the current assessment year together with the lesser of:
 - 13.1 the two previous assessment years; and
 - 13.2 the assessment years from and including the financial year from which the exemption was no longer applicable.
14. Where the Commissioner has reasonable grounds for suspecting that an evasion of tax has occurred, an assessment will be issued for the current assessment year together with the years of assessment from and including the year the liability arose. For example where a land tax assessment notice has not been issued to a taxpayer in any year from the time land owned by the taxpayer first became taxable, and there is evidence that the taxpayer has claimed an income tax deduction on the basis that land tax has been paid to the Office of State Revenue, but that payment has not been made, an assessment notice will be issued for the current year and the previous assessment years in which a liability existed and a taxation deduction was claimed.

Superseded

Reassessments

15. In all cases, reassessment of tax and duty may be generated as a result of a voluntary disclosure by a taxpayer or the Commissioner identifying a variation to a tax liability. However, section 17 of the TAA sets out time limits in which a reassessment may be made in various circumstances.

Pay-roll tax – reassessment time limits

16. Section 17(3) of the TAA provides specific time limits that apply to reassessments of pay-roll tax. In the absence of any grounds for suspecting evasion of tax, the Commissioner may make a reassessment of pay-roll tax in relation to any of the five financial years preceding the financial year of the reassessment. For example, if an audit commenced in the 2007/08 financial year for which an assessment is subsequently issued in the 2008/09 financial year, the Commissioner can make a reassessment of tax for the financial year 2008/09 plus the five preceding financial years (i.e. 2003/04, 2004/05, 2005/06, 2006/07 and 2007/08).
17. Section 17(3) of the TAA confers on the Commissioner the power to make a reassessment in respect of any original assessment that was made in relation to any of the five years preceding the year of the reassessment. Subsection (3) does not limit or confine the Commissioner's power to a reassessment of the original assessment. As such the Commissioner may make a reassessment of a reassessment (e.g. a reassessment of an annual reconciled assessment), provided that the financial year in which the original assessment was made, or to which the original assessment relates is within the past five years of the date of the reassessment. This principle applies in the case of reassessments resulting in both an increase and decrease in tax.

Duty and taxes (excluding pay-roll tax) – reassessment time limits

18. Section 17(4) of the TAA provides that the Commissioner may only make a reassessment of tax or duty (other than pay-roll tax) within 5 years after the date of the original assessment or on an application by the taxpayer that is made within 5 years after the date of the original assessment. For example if an original assessment was issued on 1 July 2003, the latest date a reassessment could be made is 1 July 2008.
19. Except in the case of a reassessment of land tax, it is the Commissioner's practice that a reassessment will be made for as many years as possible, subject to the limitations imposed by the TAA.

Land tax – reassessment time limits

20. Where a taxpayer has previously received a land tax assessment notice, but has not advised of a correction to the taxable status of the land, or of additional land which have been omitted from the assessment, a reassessment will be issued for the lesser of:
 - 20.1 the assessment years to which the original assessment was made during the five year period up until the date of the reassessment; and

Superseded

- 20.2 the last assessment year together with the assessment years from and including the year when the liability first arose.
21. Where the Commissioner has reasonable grounds for suspecting that an evasion of tax has occurred, or a previous assessment was issued on the basis of false or misleading information, a reassessment will be issued for the current year together with the assessment years from and including the year the liability arose.

Retrospective Determinations

22. Where a taxpayer has previously been investigated in relation to a particular issue which the Commissioner determined was not subject to a tax liability, and is then subject to a further investigation in relation to the same issue, the Commissioner will not raise an assessment or reassessment in relation to that issue where all the factors listed in paragraph 22.1 to 22.3 occur:
- 22.1 the previous investigation has been completed and a written report exists in the Department's records which includes a determination made concerning that issue;
- 22.2 the current circumstances surrounding the determination of that issue were essentially the same as when the previous determination was made; and
- 22.3 the Commissioner is satisfied that the information supplied to the investigator to enable the initial determination to be made was complete, and that the taxpayer did not withhold information at that time, which may have changed the earlier determination had that information been available at the time of the initial investigation.
23. Where paragraph 22 applies to prevent a retrospective assessment, an assessment may be made in respect of the relevant issue on a prospective basis from the date the taxpayer is advised of the revised determination in relation to the issue.

Date of Effect

This Commissioner's practice takes effect from 1 July 2008.

Bill Sullivan
COMMISSIONER OF STATE REVENUE

1 July 2008