



SUPERSEDED

COMMISSIONER'S PRACTICE TAA 16.2

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
TAA 16.2	21 September 2012	21 September 2012	26 May 2016

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

Under section 200(4) of the *Planning and Development Act 2005*, the provisions of the *Land Tax Assessment Act 2002* ("LTAA") and the *Taxation Administration Act 2003* ("TAA") relating to land tax and land also apply as far as possible to the metropolitan region improvement tax ("MRIT") and land in the metropolitan region. References to "land tax" in this practice are to be taken to include the MRIT.

This practice does not apply to:

- assessments or reassessments arising from a negotiated settlement of a taxation dispute. In the absence of a negotiated settlement being entered into in accordance with Commissioner's Practice TAA 21, the Commissioner will apply the practices set out in this practice.
- assessments made under sections 14, 15 or 15A of the LTAA.

Background

The 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 LTAA, 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 the case of land tax, the taxpayer is not required to remit a return disclosing a land tax liability. However, a person identified as being liable to pay land tax by a land tax assessment notice must advise the Commissioner of any material error or omission in the notice that is relevant to the assessment. 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.

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 with respect to returns lodged. Where no self assessment was made, an original assessment is the first official assessment of tax made by the Commissioner.

In the case of land tax, an original assessment will comprise either a determination made by the Commissioner that tax is payable, in which case an assessment notice will be issued to reflect the assessment; or a determination that land is exempt or that no tax is payable because the aggregated taxable value of all land owned by the taxpayer for the assessment year is below the taxable threshold, in which case no assessment notice will be issued in accordance with section 23(2)(c) of the TAA.

The TAA does not provide any time limits that apply to the making of original assessments.

Reassessment

A reassessment is an assessment made subsequent to an original assessment, which adjusts and supersedes a previous assessment. A reassessment may result in an increase or decrease in tax.

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, transaction record or land item 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.

The Commissioner's power to make a reassessment is not confined to reassessment of an original assessment. As such, the Commissioner may make a reassessment of a reassessment (e.g. a reassessment of an annual reconciled assessment for a return based tax), subject to the time limitations imposed by section 17 of the TAA.

Section 17 of the TAA sets out the following time limits that apply to reassessments:

- A taxpayer may only apply for a reassessment within five years after the original assessment was made;
- The Commissioner may make a reassessment at any time after the previous assessment was made if directed to do so in the course of review proceedings, or if there are reasonable grounds for suspecting that there has been an evasion of tax or that the previous assessment was made on the basis of false or misleading information;
- The Commissioner may make a reassessment of the amount of pay-roll tax payable on an original assessment that was made in, or in relation to, any of the five financial years that precede the financial year in which the reassessment is made; and
- In any other circumstances the Commissioner may only make a reassessment within five years after the date of the original assessment or on an application made within five years after the date of the original assessment.

Commissioner's Practice

1. Original assessments and reassessments may be made 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; and/or
 - 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.
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 original assessment or a reassessment will be made in respect of any tax liability that the Commissioner can reasonably establish.

Original Assessments

6. For the purposes of establishing the time periods for which the Commissioner may make 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 or enquiry conducted by the Commissioner); or
 - 6.2 the date the Commissioner commences an investigation or enquiry.
7. Commencement of an investigation or 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

8. In the case of an original assessment raised in respect of pay-roll tax, insurance duty or tax under a special tax return arrangement, subject to paragraph 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 the 2007/08 financial year, and 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).
9. Where the Commissioner has reasonable grounds for suspecting that an evasion of tax has occurred or that false or misleading information has been provided, an assessment will be made for the period for which the Commissioner has established that the taxpayer has a tax liability. Examples of circumstances where this paragraph applies include where there is evidence that a taxpayer has:
 - 9.1 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;

- 9.2 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
- 9.3 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.

Transaction Record, Instrument or Statement Evidencing Liability to Duty

- 10. An original assessment will be made 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 making 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 an original assessment has not been made in any year from the time that a taxpayer first became liable for land tax on a land item because the land item was not recorded by the Commissioner as being owned by that taxpayer, an assessment notice will be issued for the current assessment year and the previous assessment year if a tax liability existed in that year.
- 13. Where an original assessment has not been made in any year from the time that a taxpayer first became liable for land tax on a land item because the land was not recorded by the Commissioner as being owned by that taxpayer and the Commissioner has reasonable grounds for suspecting that an evasion of tax has occurred, or false or misleading information was provided on which the Commissioner relied to make a determination, an assessment will be made for the current assessment year together with the years of assessment from and including the year the liability first arose. For example, where an assessment has not been made as a result of the taxpayer intentionally providing incorrect advice as to the ownership of a land item, an assessment will be made for the current year and all previous assessment years in which a liability existed with respect to that land item.

Reassessments

- 14. 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

15. 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 made 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).

Duty and Taxes (excluding Pay-roll Tax and Land Tax) – Reassessment Time Limits

16. 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 five years after the date of the original assessment or on an application by the taxpayer that is made within five years after the date of the original assessment. For example, if an original assessment notice was issued on 1 July 2008, the latest date a reassessment could be made is 1 July 2013.
17. It is the Commissioner's practice to make a reassessment of any tax liability arising within the five year reassessment period.

Land Tax – Reassessment Time Limits

18. For the purposes of establishing the time periods when the Commissioner may make a reassessment of land tax, "current assessment year" is the financial year during which:
 - 18.1 the information required to make the reassessment is received by the Commissioner (outside of an investigation conducted by the Commissioner under Part 8 of the TAA); or
 - 18.2 the Commissioner commences an investigation under Part 8 of the TAA.
19. Commencement of an investigation is considered to be the date an officer first contacts the taxpayer or their representative. For example, if an audit is commenced in February 2012 which results in the making of a reassessment in September 2012, the current assessment year is the 2011/12 assessment year.
20. Where a taxpayer has been identified as being liable to pay land tax by a land tax assessment notice, and the taxpayer has not advised the Commissioner of an error or omission in that notice (pursuant to section 9A of the LTAA), a reassessment will be made of any liability that the Commissioner has established, subject to the limitations imposed by the TAA.

21. Where an original assessment has been made and a land tax assessment notice has not been issued to the taxpayer advising of a liability to pay land tax, a reassessment will be made for the current assessment year and the previous assessment year if a tax liability existed in that year.
22. Where an original assessment has been made and a land tax assessment notice has not been issued to the taxpayer advising of a liability because an exemption was approved in a prior assessment year, and the taxpayer has not complied with a request to advise the Commissioner of any change in circumstances that would invalidate the exemption (e.g. the land is no longer used for the exempt purpose), a reassessment will be made for the current assessment year together with the lesser of the:
 - 22.1 two previous assessment years; and
 - 22.2 assessment years from and including the financial year from which the exemption was no longer applicable.
23. Where the Commissioner has reasonable grounds for suspecting that an evasion of tax has occurred or that false or misleading information has been provided, an assessment will be made for the period for which the Commissioner has established that the taxpayer has a tax liability.
24. Where the Commissioner has reasonable grounds for suspecting that an evasion of tax has occurred, or a previous assessment was made on the basis of false or misleading information, a reassessment will be made for the current year together with the assessment years from and including the year the liability first arose. For example, where a taxpayer is not identified as being liable to pay land tax by a land tax assessment notice 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.

Retrospective Determinations

25. Where a taxpayer has previously been the subject of an authorised investigation under Part 8 of the TAA 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 make an assessment or reassessment in relation to that issue where all the factors listed in paragraph 25.1 to 25.3 occur:
 - 25.1 the previous investigation has been completed and a written report exists in the Department's records which includes a determination made concerning that issue;
 - 25.2 the current circumstances surrounding the determination of that issue are essentially the same as when the previous determination was made; and

25.3 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.

26. Where paragraph 25 applies to prevent a retrospective assessment being made, 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 21 September 2012.

Bill Sullivan
COMMISSIONER OF STATE REVENUE

21 September 2012

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