



## COMMISSIONER'S PRACTICE TAA 16.3

### CERTAIN ASSESSMENT AND REASSESSMENT TIME LIMITS

This Commissioner's practice outlines the time periods that apply to assessments and reassessments of tax made by the Commissioner of State Revenue ('Commissioner').

*Tax* is defined in the Glossary to the *Taxation Administration Act 2003* ('TAA') and includes payroll tax, land tax, duties and stamp duty.

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

This practice does not apply to:

- assessments or reassessments arising from the negotiated settlement of a taxation dispute in accordance with section 20A of the TAA and Commissioner's Practice TAA 21 'Compromise Assessments'; or
- assessments made under sections 14, 15 or 15A of the LTA Act.

#### Background

The TAA provides the administrative framework for the taxation Acts administered by the Commissioner and deals with matters such as the issue of assessment notices and reassessments of tax.

Liability to tax is set out in each of the relevant taxation Acts. In some instances tax is self-assessed with the taxpayer required to remit returns disclosing the liability. In other instances the relevant taxation Act provides that a liable party is required to lodge certain documentation on which the Commissioner will make an official assessment of liability. In the case of land tax, a person identified as being liable to pay tax on a land tax assessment notice must advise the Commissioner of any material error or omission in the notice that is relevant to the assessment.<sup>1</sup>

#### Assessments

Under section 13 of the TAA, an *assessment* is a determination:

- of the amount payable under a taxation Act;
- that no tax is payable;

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<sup>1</sup> LTA Act section 9A.

- that a person liable to pay tax is exempt; or
- that an instrument, event or transaction is liable to tax or exempt from tax.

An assessment may be:

- a *self-assessment*<sup>2</sup> where the assessment is made by a taxpayer under a return or by a responsible party in a return or in accordance with a special tax return arrangement;<sup>3</sup> or
- an *official assessment*<sup>4</sup> made by the Commissioner.

Section 19 of the TAA allows an assessment to be made on the Commissioner's estimate of a liability where the Commissioner suspects on reasonable grounds that a liability exists or is not satisfied with the reliability of the information available to make an assessment.

Section 23 of the TAA sets out when the Commissioner must issue an assessment notice following the making of an assessment and when an assessment notice is not required to be issued. In the case of land tax, the Commissioner is not required to issue an assessment notice if land is exempt or 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.

#### *Original Assessment*

An *original assessment*, in relation to a reassessment of tax, is defined in the Glossary to the TAA as:

- a complete self-assessment made in relation to the tax; or
- where a self-assessment is not made, the first complete official assessment made by the Commissioner in relation to the tax, other than an interim assessment.

An original assessment does not include a reassessment.

The TAA does not limit the time in which an original assessment may be made.

#### *Interim Assessment*

In accordance with section 16A of the TAA and Commissioner's Practice TAA 27 'Interim Assessments for Transfer Duty and Landholder Duty Purposes', the Commissioner may make an interim assessment of a portion of transfer duty or landholder duty prior to making a complete assessment of the taxpayer's duty liability.

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<sup>2</sup> TAA section 14.

<sup>3</sup> TAA sections 49 – 53.

<sup>4</sup> TAA section 15.

## **Reassessments**

A *reassessment*<sup>5</sup> is an assessment made subsequent to an original assessment.

A reassessment supersedes any previous assessment and may result in an increase or decrease in tax.<sup>6</sup> A reassessment may be made regardless of whether or not any amount of tax has been paid on the previous assessment.<sup>7</sup>

Section 16(2) of the TAA provides that the Commissioner may make a reassessment on the application of the taxpayer or on the Commissioner's own initiative if it appears a previous assessment is or may be incorrect for any reason. It should be noted specific provisions of a taxation Act may apply in certain circumstances to provide that the Commissioner must make a reassessment.<sup>8</sup>

Under section 16(3A) of the TAA, the Commissioner cannot make a reassessment of an interim assessment unless specifically required to do so as a result of an objection determination or a direction given in the course of review proceedings.<sup>9</sup>

Section 16(5) of the TAA provides that where an assessment was based on a particular interpretation of the law or a particular practice of the Commissioner that applied at the time the original assessment was made, the Commissioner cannot make a reassessment on the ground the interpretation or practice is or was erroneous. Accordingly, where a return, transaction record or land item was assessed in accordance with a particular interpretation or practice that was in place at that time, a reassessment will be made in accordance with the relevant interpretation or version of a practice that was in place at the time of the original assessment.

As the Commissioner's power to make a reassessment is not confined to the reassessment of an original assessment, the Commissioner may make a reassessment of a reassessment subject to the time limitations imposed by section 17 of the TAA.

For further information about reassessments see Commissioner's Practice TAA 14 'Applications for Reassessment' and Commissioner's Practice TAA 19 'Remission of Penalty Tax – Reassessments'.

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<sup>5</sup> A *reassessment* does not include an interim assessment or an original assessment: TAA Glossary.

<sup>6</sup> TAA section 18.

<sup>7</sup> TAA section 16(3).

<sup>8</sup> See, for example, Duties Act sections 132 and 263.

<sup>9</sup> See TAA sections 39 and 43.

## *Time Limits on Reassessments*

Under section 17 of the TAA:

- 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<sup>10</sup> or if there are reasonable grounds for suspecting there has been an evasion of tax or the previous assessment was made on the basis of false or misleading information;
- the Commissioner may make a reassessment of the amount of payroll 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.

In some circumstances, the time limit in section 17 of the TAA for a taxpayer to apply for a reassessment is modified by a specific provision of another taxation Act. In these cases, the Commissioner can only make a reassessment of tax if the taxpayer's application for reassessment is made within the timeframe set out in the specific provision. For further information about these specific timeframes, please refer to the relevant taxation Acts.<sup>11</sup>

### **Commissioner's Practice**

1. An assessment may be made where a taxpayer has made a voluntary disclosure or where the Commissioner has identified a tax liability.
2. The Commissioner may obtain information from various sources to enable an assessment or reassessment to be made, including:
  - 2.1 disclosures from the taxpayer;
  - 2.2 investigation or audit processes; and
  - 2.3 other State or Federal jurisdictions.
3. Assessments or reassessments may include current and/or past financial periods.

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<sup>10</sup> Proceedings in the State Administrative Tribunal or subsequent higher court: TAA Glossary.

<sup>11</sup> *Duties Act 2008*, *LTA Act*, *Pay-roll Tax Assessment Act 2002*.

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.<sup>12</sup>
5. Where the Commissioner has reasonable grounds for suspecting an evasion of tax has occurred or a previous assessment was made on the basis of false or misleading information, an original assessment or a reassessment will be made in respect of any tax liability that the Commissioner can reasonably establish regardless of any time limits.

### **Original Assessments**

#### *Return based taxes*

6. For the purposes of establishing the time periods relevant to the making of assessments, the *contact year* is the financial year that includes:
  - 6.1 the date when the information required to make the assessment is received by the Commissioner outside of an investigation conducted by the Commissioner under Part 8 of the TAA; or
  - 6.2 the date the Commissioner commences an investigation or enquiry.<sup>13</sup>
7. Where an original assessment is made in respect of payroll tax or insurance duty, subject to paragraph 8, the Commissioner may obtain information to enable an assessment to be made for the contact year, the five previous financial years, and any financial years following the contact year up to and including the financial year in which the assessment is made.
8. Where the Commissioner has reasonable grounds for suspecting an evasion of tax has occurred or false or misleading information has been provided, an assessment will be made for the period for which the Commissioner has established that a tax liability exists. This may include circumstances 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 previously been advised of a liability for a particular class of payment, receipt, withdrawal or transaction but has continued not to disclose these amounts in returns;
  - 8.3 failed to register or declare the correct amount of tax when, in the Commissioner's opinion, the taxpayer should have been aware of the liability; or

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<sup>12</sup> Penalty tax may be remitted in accordance with Commissioner's Practices TAA 18, TAA 19 and TAA 20.

<sup>13</sup> Commencement of an investigation or enquiry is deemed to be the date an officer first contacts the taxpayer or their representative regardless of when an assessment is actually issued.

8.4 in the case of insurance duty:

8.4.1 collected but failed to remit the duty as part of a periodic return; or

8.4.2 failed to remit the duty on all the premiums associated with the contract of insurance as part of a periodic return.

*Transaction record, instrument or statement evidencing liability to duty*

9. The Commissioner will make an original assessment at any time when a transaction record, instrument or dutiable statement evidencing liability to duty under the *Stamp Act 1921* or the *Duties Act 2008* is lodged for assessment.

10. In accordance with the requirements of the relevant taxation Act, the Commissioner will impound<sup>14</sup> any transaction record presented for immediate assessment (before or after the due date) where the taxpayer is unable to make immediate payment.

*Land tax*

11. Where an original assessment has not been made because a land item was not recorded by the Commissioner as being owned by a particular taxpayer:

11.1 an assessment notice will be issued for the current assessment year and, if relevant, the previous assessment year; or

11.2 an assessment notice will be issued for the current assessment year together with the years of assessment from and including the year the liability first arose if the Commissioner has reasonable grounds for suspecting an evasion of tax has occurred, or false or misleading information on which the Commissioner relied to make a determination was provided.

**Reassessments**

*Duties and return based taxes*

12. It is the Commissioner's practice to make a reassessment of any tax liability arising within the five year reassessment period in accordance with section 17 of the TAA, with the exception of where the circumstances identified in paragraph 8 apply.

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<sup>14</sup> See TAA section 96.

## Land tax

13. For the purposes of establishing the time period in which the Commissioner may make a reassessment of land tax, the *current assessment year* is the financial year during which:
  - 13.1 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
  - 13.2 the Commissioner commences<sup>15</sup> an investigation under Part 8 of the TAA.
14. Where a taxpayer has not advised the Commissioner of an error or omission in a land tax assessment notice pursuant to section 9A of the LTA Act, a reassessment will be made of any liability established by the Commissioner subject to the limitations imposed by the TAA.
15. Where an original assessment has been made and a land tax assessment notice has not been issued to the taxpayer, a reassessment will be made for the current assessment year and the previous assessment year if a tax liability existed in that year.
16. Where an original assessment has been made and a land tax assessment notice has not been issued to the taxpayer because:
  - 16.1 an exemption was approved in a prior assessment year; and
  - 16.2 the taxpayer has not complied with a request to advise the Commissioner of any change in circumstances that would invalidate the exemption,a reassessment will be made for the current assessment year together with the lesser of the:
  - 16.3 two previous assessment years; or
  - 16.4 assessment years from and including the financial year from which the exemption was no longer applicable.
17. Where the Commissioner has reasonable grounds for suspecting 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.

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<sup>15</sup> Commencement of an investigation is deemed to be the date an officer first contacts the taxpayer or their representative regardless of when an assessment is actually issued.

## **Retrospective Determinations**

18. Where a previous investigation under Part 8 of the TAA determined that a taxpayer was not subject to a tax liability and a further investigation in relation to the same issue is carried out, the Commissioner will not make an assessment or reassessment in relation to that issue if:
- 18.1 the previous investigation has been completed and a written report exists in the Office of State Revenue's records which includes a determination about that issue; and
  - 18.2 the current circumstances surrounding the determination of that issue are substantially the same as those resulting in the previous determination; and
  - 18.3 the Commissioner is satisfied the information supplied to the investigator<sup>16</sup> to enable the initial determination to be made was complete and the taxpayer did not withhold information that may have changed the earlier determination had that information been available at the time of the initial investigation.
19. Where paragraph 18 applies, a prospective assessment may be made in respect of the relevant issue 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 27 May 2016.

Nicki Suchenia

COMMISSIONER OF STATE REVENUE

27 May 2016

### **Commissioner's Practice History**

<b>Commissioner's Practice</b>	<b>Issued</b>	<b>Dates of Effect</b>	
		<b>From</b>	<b>To</b>
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
TAA 16.3	27 May 2016	27 May 2016	31 December 2018

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<sup>16</sup> Under section 11 of the TAA, the Commissioner may appoint a person to be an investigator for the purposes of that Act. Once appointed, the Act confers powers of investigation and inspection directly upon the investigator.