



## **COMMISSIONER'S PRACTICE**

### **TAA 27.2**

### **INTERIM ASSESSMENTS OF TRANSFER DUTY OR LANDHOLDER DUTY**

This Commissioner's practice outlines the circumstances in which the Commissioner will make an interim assessment of transfer duty or landholder duty.

#### **Background**

##### ***Interim Assessments***

Under section 16A(1) of the *Taxation Administration Act 2003* ('TAA'), the Commissioner may make an interim assessment of a portion of tax when specifically authorised by a taxation Act to do so.

Under section 44A of the *Duties Act 2008* ('Duties Act'), the Commissioner may make an interim assessment of transfer duty if:

- (a) the Commissioner is satisfied that duty is payable on the transaction; and
  - (b) one of the following applies –
    - (i) a period of more than six months has passed since the day on which a transaction record was lodged or ought to have been lodged;<sup>1</sup> or
    - (ii) the Commissioner is satisfied that it will not be possible to obtain all of the information necessary for determining the dutiable value of the transaction within six months after the day on which a transaction record ought to have been lodged;
- and
- (c) the Commissioner is satisfied that a portion of the dutiable value of the transaction can be determined.

Section 195A of the Duties Act provides that the Commissioner may make an interim assessment of landholder duty if:

- (a) the Commissioner is satisfied that duty is payable on the relevant acquisition; and
- (b) one of the following applies –
  - (i) a period of more than six months has passed since the day on which an acquisition statement for the relevant acquisition was lodged or

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<sup>1</sup> Under section 23 of the Duties Act, a person liable to pay duty on a dutiable transaction is required to lodge an instrument effecting the transaction within two months after the day on which liability for duty on the transaction arises.

ought to have been lodged,<sup>2</sup> or an application to the Commissioner for determination of liability under section 180 of the Duties Act was made for the relevant acquisition;<sup>3</sup> or

- (ii) the Commissioner is satisfied that it will not be possible to obtain the information necessary for determining the value of the landholder within six months after the day on which an acquisition statement ought to have been lodged;

and

- (c) the Commissioner is satisfied that a portion of the value of the landholder can be determined.

Under sections 44A(3) and 195A(3) of the Duties Act respectively, for the purpose of being satisfied that a portion of the dutiable value of a transaction or the value of the landholder can be determined, the Commissioner may have regard to any information that the Commissioner considers relevant, including:

- (a) the value of anything as agreed between the Commissioner and the taxpayer;
- (b) the consideration (if any) given for the dutiable transaction or the relevant acquisition;
- (c) any evidence of the value of anything, whether provided by the taxpayer or obtained by the Commissioner;
- (d) any document or record kept by or on behalf of a party to the dutiable transaction or the relevant acquisition;
- (e) any information held by a regulatory authority in the State, another Australian jurisdiction or an overseas jurisdiction; and
- (f) any publicly available information.

Section 16(3A) of the TAA provides that the Commissioner cannot make a reassessment in relation to an interim assessment unless specifically required to do so because an objection is allowed wholly or in part, or a direction is given in the course of review proceedings.

### ***Complete Assessments***

Section 16A(3) of the TAA provides that an interim assessment must be followed by a complete assessment, which the Commissioner must make when the Commissioner:

- (a) has sufficient information to make the assessment; or
- (b) makes a compromise agreement.

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<sup>2</sup> Section 200 of the Duties Act requires an acquisition statement to be lodged not later than two months after the day on which the relevant acquisition is taken to have occurred.

<sup>3</sup> An application under section 180 of the Duties Act must be made within two months after the day on which the acquisition occurs.

Section 16(4) of the TAA provides that an interim assessment does not bind the Commissioner in relation to an assessment made following the interim assessment.

If the tax paid on an interim assessment exceeds the tax payable on the assessment following the interim assessment, section 54(2A) of the TAA provides that the Commissioner must refund the taxpayer:

- (a) the difference between the tax paid on the interim assessment and the tax payable on the assessment following the interim assessment; and
- (b) interest at the prescribed rate<sup>4</sup> on the amount referred to in paragraph (a) for the period beginning on the date that the taxpayer paid the amount referred to in paragraph (a) and ending on the date that the Commissioner approves the refunding of that amount.

### ***Endorsement of Transaction Records***

Under section 273(3A) of the Duties Act, the Commissioner is not required to (but may) endorse a transaction record to indicate the duty paid as a consequence of an interim assessment.

Section 96(2A) of the TAA provides that the Commissioner may retain an instrument, document or other record in the Commissioner's possession even though an interim assessment and subsequent payment has been made.

### ***Objection to Interim Assessment***

Under section 34 of the TAA, a taxpayer cannot object to an interim assessment within three years after the date on which the assessment notice for the interim assessment is issued. An objection against an interim assessment can only be made against the validity or correctness of the interim assessment as at the date on which the assessment notice for the interim assessment was issued. A taxpayer ceases to be entitled to object to an interim assessment if the complete assessment is made before an objection against the interim assessment is lodged.

### ***Penalty Tax***

Under section 26(1) of the TAA, a taxpayer is liable to pay penalty tax where they do not lodge an instrument<sup>5</sup> in accordance with a taxation Act. The amount of penalty tax imposed under section 26(3) of the TAA is the amount of the taxpayer's primary liability. This amount may then be remitted under section 29 of the TAA in accordance with Commissioner's Practice TAA 18 'Remission of Penalty Tax, Late or Non-Lodgment of Returns, Transaction Records, Acquisition Statements, Instruments and Dutiable Statements'.

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<sup>4</sup> The prescribed rate of interest is provided in regulation 3 of the *Taxation Administration Regulations 2003*.

<sup>5</sup> *Instrument* is defined in the Glossary to the TAA to include an instrument required under a taxation Act for the assessment of tax or a document or other record which, or in relation to which, tax is payable under a taxation Act.

## **Commissioner's Practice**

### ***When an Interim Assessment May be Made***

1. The Commissioner may make an interim assessment if the Commissioner considers the complete assessment involves contested or complex factual, legal or valuation issues that will take more than six months from the date of lodgment to be resolved.
2. The Commissioner will not usually exercise the power to make an interim assessment where the primary liability for tax under the interim assessment will be less than \$500,000, unless the particular circumstances of a transaction make an interim assessment appropriate.
3. For example, the Commissioner may make an interim assessment where there is a significant variation between the Commissioner's valuation and the taxpayer's valuation, and the Commissioner expects the complete assessment of tax to be greater than \$500,000.

### ***Agreed Value***

4. For the purposes of sections 44A(3) and 195A(3) of the Duties Act, the Commissioner will consider any information that is relevant to determining the value of anything.
5. The Commissioner may have regard to previous correspondence with the taxpayer as evidence of a value with which the Commissioner may agree.
6. The Commissioner will usually base an interim assessment on the value the taxpayer submits duty should be assessed if the Commissioner is satisfied the value that will be adopted for the complete assessment is likely to be at least this value.
7. When making a complete assessment, the Commissioner is not bound to adopt any value or interpretation of law that was adopted for the purposes of the interim assessment.

### ***Advice to the Taxpayer Prior to the Interim Assessment***

8. The Commissioner will advise the taxpayer in writing of the intention to make an interim assessment. This provides the taxpayer the opportunity to direct the Commissioner's attention to any issues the taxpayer considers relevant to the proposed interim assessment, but is not a process of formal review of the Commissioner's decision to make an interim assessment.
9. In addition to the matters set out in section 44A(1) or section 195A(1) of the Duties Act as applicable, the Commissioner's advice to the taxpayer will include:
  - 9.1 a description of the dutiable transaction or relevant acquisition the subject of the proposed interim assessment;
  - 9.2 a summary of the issues to be resolved before a complete assessment may be made;

- 9.3 how the value to be adopted for the interim assessment has been determined, including the information taken into account for this purpose; and
  - 9.4 an invitation to the taxpayer to make submissions about any of the matters set out in the advice.
10. The taxpayer will be allowed a period of 28 days in which to respond to the Commissioner regarding the proposed interim assessment.
  11. The taxpayer may make a written request for further time to respond to the advice, which may be granted if the Commissioner considers the circumstances impacting on the taxpayer's ability to respond within 28 days warrant further time. It should be noted that a request for further time to enable the taxpayer to engage professional advisers such as expert valuers will not constitute circumstances warranting further time, as the resolution of these issues will form part of the complete assessment process.

### ***Endorsement and Return of Transaction Records***

12. The Commissioner may endorse and return transaction records when duty is paid on an interim assessment, but is not required to. The Commissioner may decide to endorse and return some but not all of the transaction records for a transaction.
13. The Commissioner will only endorse and return a transaction record prior to the issue and full payment of a complete assessment if the taxpayer can satisfy the Commissioner that:
  - 13.1 there are exceptional circumstances that warrant the endorsement and return of a transaction record; and
  - 13.2 the taxpayer will cooperate during the remainder of the assessment and payment process, for example, by responding fully to requests for information within agreed time frames.
14. Exceptional circumstances in this context will usually mean there are factors outside the taxpayer's control that will result in significant detriment to the taxpayer if the documents are not endorsed. Examples of what may constitute exceptional circumstances include where:
  - 14.1 the due date to register a mining tenement transfer with the registrar cannot be extended and the tenement is at risk of being forfeited; or
  - 14.2 registration of the land in the taxpayer's name is a condition of its financing arrangements and the taxpayer's solvency would be compromised if the financing arrangements are withdrawn.
15. A request for the endorsement of transaction records must be in writing and be accompanied by supporting information, including evidence from relevant third parties where applicable. The Commissioner may request further information to support the request, including details of the taxpayer's financial position.

### **Late Lodgment Penalty Tax**

16. Any liability to penalty tax resulting from the late lodgment of an acquisition statement, instrument or transaction record will not be assessed under an interim assessment. The penalty tax for late lodgment and appropriate level of remission will be assessed as part of the complete assessment following the interim assessment.
17. The fact that liability for late lodgment penalty tax will not be assessed under an interim assessment does not constitute a determination by the Commissioner to remit the applicable late lodgment penalty tax in full.

### **Date of Effect**

This Commissioner's practice takes effect from 3 August 2018.

Nicki Suchenia  
COMMISSIONER OF STATE REVENUE  
3 August 2018

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

<b>Commissioner's Practice</b>	<b>Issued</b>	<b>Dates of effect</b>	
		<b>From</b>	<b>To</b>
TAA 27.0	15 November 2013	15 November 2013	27 October 2014
TAA 27.1	28 October 2014	28 October 2014	2 August 2018
TAA 27.2	3 August 2018	3 August 2018	31 December 2018