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## Compromise Assessments

This Commissioner's practice provides guidelines on when the Commissioner may make a compromise agreement with a taxpayer to settle a taxation dispute.

### Background

Under section 7 of the *Taxation Administration Act 2003* (TAA) the Commissioner of State Revenue (Commissioner) has the general administration of the taxation Acts<sup>1</sup> and may do anything necessary or convenient for that purpose. The Commissioner may deal with a *taxation matter*<sup>2</sup> in any manner and exercise any discretion in relation to a taxation matter that the Commissioner considers appropriate in the interests of good management.<sup>3</sup>

The *good management rule* requires that an agency must function in a manner that is efficient and economic, and achieves the agency's objectives.<sup>4</sup> In the context of disputes, the good management rule requires the Commissioner to make sensible decisions so the law is administered in ways that reflect good management of revenue.

The courts have recognised that compromise in accordance with the good management rule is an appropriate, and sometimes desirable, approach to particular circumstances. While the TAA provides the Commissioner with the power to settle disputes with taxpayers about their liability prior or post assessment, the Commissioner is required to balance competing considerations and apply discretion and good sense so that any compromise assessment is capable of withstanding objective scrutiny and be justifiable on the facts and circumstances of the particular case.

### Compromise agreements

Under section 20A(1) of the TAA, the Commissioner may make a compromise agreement with a taxpayer in relation to the assessment of the taxpayer's tax liability and make an assessment in accordance with the agreement (compromise assessment). The Commissioner cannot be compelled to make a compromise agreement.<sup>5</sup>

The Commissioner cannot make an interim assessment in accordance with a compromise agreement but can make an assessment following an interim assessment in accordance with a compromise agreement.<sup>6</sup>

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<sup>1</sup> Section 3 of the TAA defines the taxation Acts for the purposes of the TAA and includes the *Duties Act 2008*, *Land Tax Assessment Act 2002* and *Pay-roll Tax Assessment Act 2002*.

<sup>2</sup> *Taxation matter* means any matter or thing arising under or in relation to a taxation Act: TAA s 7(3).

<sup>3</sup> TAA s 7(2).

<sup>4</sup> *Financial Management Act 2006* s 53.

<sup>5</sup> TAA s 20A(4).

<sup>6</sup> TAA s 20A(2A).

If the Commissioner has made a compromise assessment of a tax liability, the Commissioner can only make a reassessment where the taxpayer has agreed to the reassessment or where the compromise assessment:

- was procured by fraud or
- was a consequence of a deliberate failure by the taxpayer to disclose material information or where the taxpayer provided information knowing it was incorrect, incomplete or misleading.<sup>7</sup>

Section 20A(3) of the TAA provides that the following are not subject to objection or review under Part 4 of the TAA or to any other form of appeal or review:

- a decision of the Commissioner to make or not make a compromise agreement
- the Commissioner's decision regarding the terms of a compromise agreement under section 20A and
- a compromise assessment.

The compromise assessment powers do not limit the Commissioner's power to issue an assessment based on an estimated or suspected liability under section 19 of the TAA.<sup>8</sup>

### **Commissioner's Practice**

1. A compromise agreement may be negotiated between a person who is or may be liable to pay tax<sup>9</sup> (taxpayer) and the Commissioner where there is a dispute between the parties.
2. A compromise agreement may be initiated by either the taxpayer or the Commissioner. Except in relation to an interim assessment,<sup>10</sup> a compromise agreement may be made at any time including during an investigation or assessment process or in the course of a mediation or hearing for a matter subject to review by the State Administrative Tribunal or an appeal in a Court of law.
3. A decision to negotiate a compromise agreement will be made without consideration of whether the taxpayer can afford to pay an amount for which they are liable or whether the taxpayer involved will be liquidated, bankrupted or will otherwise cease to exist if a compromise agreement is not made.
4. Taxpayers must disclose all relevant facts during a compromise agreement negotiation, including all material information, and not provide any information knowing it is incorrect, incomplete or misleading.
5. Where the Commissioner rejects a taxpayer's offer to settle a dispute by way of a compromise agreement, the Commissioner will advise the taxpayer in writing of the reasons for rejecting the offer.

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<sup>7</sup> TAA s 20A(2).

<sup>8</sup> TAA s 20A(5).

<sup>9</sup> *Tax* has the meaning given in the Glossary to the TAA and includes tax or duty payable under a taxation Act, penalty tax and recoverable valuation costs.

<sup>10</sup> The circumstances in which an interim assessment will be made are detailed in Commissioner's Practice [TAA 27 'Interim Assessments'](#).

### ***When a compromise agreement is not appropriate***

6. A compromise agreement will not usually be considered in circumstances where:
  - 6.1 the outcome of the agreement would be contrary to an articulated policy reflected in the law
  - 6.2 the Commissioner has clearly established or articulated a view on the issue and circumstances such as those described in paragraphs 7 and 8 do not apply
  - 6.3 the agreement would result in the inconsistent treatment of taxpayers in comparable circumstances
  - 6.4 it is in the public interest to have judicial clarification of the issue and the case is suitable for this purpose
  - 6.5 pursuit of the matter through the courts could have a significant flow-on compliance effect and the case is suitable for this purpose
  - 6.6 the contested issues relate to an arrangement that, in the Commissioner's opinion, has the effect of a tax avoidance scheme under a taxation law (subject to paragraph 7.3 below)
  - 6.7 a similar matter is being litigated and awaiting an outcome or
  - 6.8 the Commissioner believes the taxpayer's case is without merit and unlikely to be successfully pursued through the review or appeal processes.

### ***When a compromise agreement may be appropriate***

7. A compromise agreement will usually be considered appropriate to resolve a matter if:
  - 7.1 the cost of litigating is disproportionate to the possible benefits, having regard to the likely precedential value of a decision and objective prospects of success, including collection of the tax and the likely award of costs on this outcome
  - 7.2 there are complex issues in contention or evidentiary difficulties that would make the outcome problematic or unsuitable for resolution through the review or appeal processes, for example, where there is a valuation dispute for a duties assessment that arises simply because of the different assumptions and inputs adopted by each valuer rather than a dispute about the duty treatment of different assets
  - 7.3 participants in an arrangement that has the effect of a tax avoidance scheme under a taxation law accept the Commissioner's position and the compromise agreement is dealing with the steps necessary to unwind the existing structures and arrangements
  - 7.4 where the Commissioner considers the issue in dispute has not been properly understood by taxpayers, the compromise agreement will be a cost-effective way to encourage current and future compliance or
  - 7.5 a significant number of the transactions or arrangements that form part of a wider transaction or arrangement are not in contention, however, the resources required to extract the necessary information and determine the correct assessment for all matters would be an uneconomic use of the taxpayer's and the Commissioner's resources.
8. The Commissioner will usually be prepared to defend the assessment of a scheme that has the effect of a tax avoidance arrangement under taxation law or an arrangement which is inconsistent with the policy underlying the law. Where factors such as those

outlined in paragraph 7 support the making of a compromise agreement, a compromise agreement may still be considered if the mischief of the scheme has been dealt with, either by legislative amendment or in some other way.

9. If a compromise assessment proposal involves unrelated issues, regard must be given to the merits of each issue. Consideration of a single amount in full settlement of the tax, penalties and interest attributable to unrelated issues under review will only be entered into in exceptional cases.

### **Terms of compromise agreement**

10. A deed will be signed by the Commissioner and taxpayer for all compromise agreements. The Commissioner will then issue a compromise assessment in accordance with the compromise agreement.
11. A compromise agreement will include, where relevant:
  - 11.1 a record of how each particular issue has been resolved
  - 11.2 relevant undertakings by the parties, including a commitment to preserve the confidentiality of the terms and conditions of the agreement
  - 11.3 how the issue will be treated in future assessment years
  - 11.4 the terms of any payment arrangements
  - 11.5 a statement that the agreement is conditional upon the full disclosure of all relevant facts known to the taxpayer at the time of making the agreement and
  - 11.6 conditions dealing with the withdrawal of objections and requests for review and appeals which may require the taxpayer to:
    - 11.6.1 consent to a withdrawal and dismissal under section 46 of the *State Administrative Tribunal Act 2004*
    - 11.6.2 file a Notice of Discontinuance in the Court of Appeal or
    - 11.6.3 pursue (or not to pursue as the case may be) future activities or claims in accordance with the compromise agreement.
12. Wherever possible, agreement should be reached about the substantive issues before the Commissioner will consider settlement of any penalty tax or interest. Any remission of penalty tax will be considered on the particular merits of the matter notwithstanding any other Commissioner's practice relating to the remission of penalty tax. This does not include where recoverable valuation costs or undervaluation penalty tax are applicable. The Commissioner will have regard to the relevant Commissioner's practice<sup>11</sup> when considering these amounts as part of a compromise agreement.
13. Where the terms of a compromise agreement include tax payment arrangements, the provisions of section 47 of the TAA will apply to the arrangements.

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<sup>11</sup> Commissioner's Practice [TAA 24 'Penalty Tax and Recovery of Valuation Costs for Written Valuations'](#).

**Date of Effect**

This Commissioner's practice takes effect from 1 September 2017.

Nicki Godecke  
COMMISSIONER OF STATE REVENUE

1 September 2017

## Commissioner's Practice History

Commissioner's Practice	Issued	Dates of effect	
		From	To
TAA 21.0	14 October 2008	14 October 2008	31 August 2017
TAA 21.1	1 September 2017	1 September 2017	Current