



## **Interim Assessments of Transfer Duty or Landholder Duty**

This Commissioner's practice outlines when the Commissioner will

- make an interim assessment of transfer or landholder duty and
- endorse transaction records following an interim transfer duty assessment.

### **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 authorised by a taxation Act to do so.

Under the *Duties Act 2008* ('Duties Act'), the Commissioner may make an interim assessment of transfer duty, foreign transfer duty, landholder duty or foreign landholder duty if<sup>1</sup>

- (a) the Commissioner is satisfied duty is payable on the transaction and
- (b) one of the following applies
  - (i) more than six months has passed since the day on which a transaction record or an acquisition statement or agreement for making an acquisition was or should have been lodged<sup>2</sup> or
  - (ii) the Commissioner is satisfied it will not be possible to obtain all of the information necessary for determining the dutiable value of the transaction or the value of the landholder within six months after the day on which a transaction record, acquisition statement or agreement for making an acquisition should have been lodged

and

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

To be satisfied that a portion of the dutiable value of a transaction or the value of a landholder can be determined, the Commissioner may have regard to any information the Commissioner considers relevant.<sup>3</sup> This includes

- (a) the value of anything as agreed between the Commissioner and the taxpayer
- (b) the consideration (if any) for the transaction or 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 transaction or acquisition

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<sup>1</sup> Duties Act ss 44A, 205R, 195A and 205ZL.

<sup>2</sup> A transaction record must be lodged within two months after the day on which liability for duty on the transaction record arises: Duties Act s 23. A landholder acquisition statement or agreement for making a landholder acquisition must be lodged within two months after the acquisition: Duties Act s 200.

<sup>3</sup> Duties Act s 44A(3); s 195A(3); s 205R(2) and s 205ZL(2).

- (e) any information held by a regulatory authority in the State, another Australian jurisdiction or an overseas jurisdiction and
- (f) any publicly available information.

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.<sup>4</sup>

### **Objection to interim assessment**

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.<sup>5</sup>

- (a) 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 interim assessment notice was issued.
- (b) 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.

### **Complete assessments**

An interim assessment must be followed by a complete assessment, which can only be made when the Commissioner has sufficient information to make the assessment or makes a compromise agreement.<sup>6</sup> An interim assessment does not bind the Commissioner in relation to an assessment made following the interim assessment.<sup>7</sup>

If the tax paid on an interim assessment exceeds the tax payable on the assessment following the interim assessment, the Commissioner must refund the taxpayer<sup>8</sup>

- (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 on this amount for the period beginning on the date the taxpayer paid the amount and ending on the date the Commissioner approves the refund.<sup>9</sup>

### **Endorsing transaction records and registering memorials**

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 on or under an interim assessment.

If a transaction record has been endorsed after an interim assessment has been paid, section 77A(2A) of the TAA allows the Commissioner to lodge a memorial to create a charge on the land for the transfer duty payable on the transaction that has not been assessed. Land includes a mining tenement.<sup>10</sup>

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<sup>4</sup> TAA s 16(3A).

<sup>5</sup> TAA s 34.

<sup>6</sup> TAA s 16A(3)

<sup>7</sup> TAA s 16A(4).

<sup>8</sup> TAA s 54(2A).

<sup>9</sup> Regulation 3 of the *Taxation Administration Regulations 2003* provides the prescribed interest rate.

<sup>10</sup> Duties Act s 3A.

A memorial cannot be lodged until the land has been transferred to the taxpayer under the transaction and the taxpayer has consented to it being lodged.<sup>11</sup>

The Commissioner must withdraw a memorial on payment of the tax secured by the charge.<sup>12</sup> The Commissioner may withdraw a memorial at any time whether or not the relevant tax has been paid.<sup>13</sup>

### **Penalty tax**

Under section 26 of the TAA, a taxpayer is liable for penalty tax equal to their primary liability if they do not lodge an instrument in accordance with a taxation Act.<sup>14</sup> This amount may 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'](#).

## **Commissioner's Practice**

### ***When an interim assessment may be made***

1. The Commissioner may make an interim assessment if satisfied the matter involves contested or complex factual, legal or valuation issues that will take more than six months to be resolved.
2. The Commissioner will not usually make an interim assessment if the duty under the interim assessment will be less than \$500,000, unless it is appropriate in the circumstances of the transaction. For example, the Commissioner may make an interim assessment if there is a significant variation between the Commissioner's and the taxpayer's valuations and the complete assessment is expected to be greater than \$500,000.

### ***Value for interim assessment***

3. The Commissioner will usually base an interim assessment on the value submitted by the taxpayer if satisfied the value that will be adopted for the complete assessment is likely to be at least this value. The Commissioner may consider previous correspondence with the taxpayer when determining the value to adopt.
4. 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***

5. The Commissioner will advise the taxpayer in writing of the intention to make an interim assessment. The advice will explain why an interim assessment will be made and include
  - 5.1 a description of the dutiable transaction or relevant acquisition

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<sup>11</sup> TAA s 77A(2B) and (7).

<sup>12</sup> TAA s 81(3).

<sup>13</sup> TAA s 81(5).

<sup>14</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.

- 5.2 a summary of the issues to be resolved before a complete assessment may be made and
  - 5.3 how the value to be adopted for the interim assessment has been determined.
6. The taxpayer will have 28 days to respond to any issues relevant to the proposed assessment. This is not a formal review of the Commissioner's decision to make an interim assessment.
7. On the taxpayer's written request, additional time to respond will be granted if the Commissioner considers the circumstances affecting the taxpayer's ability to respond within 28 days warrant an extension. An extension of time will not be granted if the purpose is to allow the taxpayer to seek advice about issues that can be addressed in the process of making the complete assessment (for example, to obtain advice from an expert valuer).

### ***Endorsing and returning transaction records***

8. The Commissioner may endorse and return some or all transaction records when an interim transfer duty assessment is paid, but is not required to do so.
9. On written request, the Commissioner will usually release an endorsed transaction record before a complete assessment is paid if
- 9.1 the transaction record relates to the transfer of land, the taxpayer consents to memorials being lodged against the property until the complete assessment is issued and paid, and the Commissioner is satisfied the memorial will provide sufficient security for the duty that may be payable under the complete assessment or
  - 9.2 the Commissioner is satisfied
    - 9.2.1 the taxpayer is unable to consent to a memorial being registered for reasons outside their control
    - 9.2.2 there are exceptional circumstances that warrant release of the endorsed transaction records without a memorial being registered
    - 9.2.3 there is no significant risk that any further duty likely to be due under the complete assessment will not be paid and
    - 9.2.4 the Commissioner does not have concerns about the taxpayer's financial circumstances
- and
- 9.3 in both cases the Commissioner is satisfied the taxpayer will cooperate during the remainder of the assessment and payment process, for example, by responding fully to requests for information within agreed timeframes. Relevant considerations include whether the taxpayer voluntarily lodged the transaction or acquisition and has previously cooperated during the assessment process.
10. For the purpose of paragraph 9.2.2, exceptional circumstances generally means factors outside the taxpayer's control that will result in significant detriment to them or another person if the land is not transferred under the transaction. Examples include
- 10.1 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

- 10.2 registering 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.
11. The request for transaction records to be endorsed must be accompanied by supporting information, including any relevant evidence from third parties and
- 11.1 the taxpayer's consent to a memorial being lodged, including details of which titles they may be registered against or
- 11.2 if the taxpayer does not consent to a memorial being lodged, the reasons why they do not consent and what detriment they will or are expected to suffer if they are unable to register the transfer. In these cases, the taxpayer may suggest an alternative security arrangement for the Commissioner to consider.
12. The Commissioner may require further information such as details of the taxpayer's financial position.
13. When the taxpayer consents to memorials being lodged, the Commissioner will consult with them to decide whether memorials should be lodged against all or part of the land the subject of the interim assessment.
14. Matters relating to the Commissioner's decision to lodge a memorial will not be taken into account when the Commissioner makes a decision about the complete assessment. On that basis, a taxpayer's consent to a memorial being registered does not prejudice them in the making of a complete assessment.

#### *Withdrawing a memorial*

15. The Commissioner will make all reasonable endeavours to withdraw a memorial as soon as possible after a complete assessment is paid.<sup>15</sup>
16. The Commissioner will usually only withdraw a memorial before a complete assessment is paid if
- 16.1 the taxpayer provides evidence that the memorial is causing them substantial detriment, for example, by preventing further financing or investment from unrelated parties that is necessary to ensure the taxpayer remains solvent and
- 16.2 the Commissioner is satisfied there is limited risk of the property being sold to another person before the complete assessment is paid or that the taxpayer's financial circumstances would prevent any further duty being paid.

#### *Commissioner's consent to dealing*

17. When a memorial is lodged against land, a dealing can only be registered against the land with the Commissioner's consent.<sup>16</sup> Requests for the Commissioner to consent to a dealing being registered will be considered on a case-by-case basis.
18. The Commissioner will generally consent to registration of a dealing that does not significantly increase the risk of collecting any further duty that may be assessed under a

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<sup>15</sup> This includes payment of any penalties, interest or recoverable valuation costs raised under the complete assessment. The costs of lodging and withdrawing a memorial for an interim transfer duty assessment cannot be recovered from the taxpayer.

<sup>16</sup> TAA s 82(5).

complete assessment. For example, the Commissioner would usually consent to registration of the transfer of a minor interest or a mortgage to allow the taxpayer to obtain finance.

19. If the Commissioner has lodged a memorial on land following an interim assessment and the land is sold to another person, consent to register the land in the new purchaser's name will not be given until the complete assessment is paid in full.

### **Late lodgment penalty tax**

20. Penalty tax for late lodgment of a transaction record, acquisition statement or agreement for an acquisition will not be assessed under an interim assessment. This is not a decision by the Commissioner to remit the penalty tax in full. The penalty tax and appropriate level of remission will be assessed as part of the complete assessment following the interim assessment.

### **Date of Effect**

This Commissioner's practice takes effect from 17 September 2020.

Nicki Godecke  
 COMMISSIONER OF STATE REVENUE  
 17 September 2020

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

Commissioner's Practice	Issued	Dates of effect	
		From	To
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
TAA 27.3	1 January 2019	1 January 2019	16 September 2020
TAA 27.4	17 September 2020	17 September 2020	Current