



COMMISSIONER'S PRACTICE

TAA 27.0 **SUPERSEDED**

INTERIM ASSESSMENTS FOR TRANSFER DUTY AND LANDHOLDER DUTY PURPOSES

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 |

This Commissioner's practice outlines the circumstances in which the Commissioner will 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.

Background

Section 16A(1) of the *Taxation Administration Act 2003* ('TAA') provides that the Commissioner may make an interim assessment of a portion of tax payable by a person when a taxation Act specifically authorises the Commissioner to do so.

Sections 16A(3) and 16A(4) of the TAA respectively provide that:

- (a) an interim assessment must be followed by a complete assessment which the Commissioner must make when he either has sufficient information to make the assessment, or makes a compromise agreement; and
- (b) an interim assessment does not bind the Commissioner in relation to an assessment made following the interim assessment.

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;¹ or
 - (ii) the Commissioner is satisfied that it will not be possible to obtain all of the information necessary for determining the dutiable value within

¹ Under section 23 of the TAA, 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.

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 ought to have been lodged, or an application to the Commissioner for determination of liability under section 180 of the Duties Act was made for the relevant acquisition; 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 he considers relevant, including:

- (a) the value, as agreed between the Commissioner and the taxpayer, of anything;
- (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 information that is publicly available.

Under section 34 of the TAA, a taxpayer cannot make an objection against 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. However, 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.

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 where an objection is allowed wholly or in part, or a direction is given in the course of review proceedings.

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 his possession even though an interim assessment and subsequent payment has been made.

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 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.

Commissioner's Practice

When an Interim Assessment may be made

1. An interim assessment may be made if, in the Commissioner's opinion, the complete assessment involves the resolution of 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.
3. However, the Commissioner may make an interim assessment where the primary liability for tax under the interim assessment will be less than \$500,000 if the Commissioner considers it is appropriate to do so, having regard to the particular circumstances of the transaction. 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. Where the Commissioner and the taxpayer agree to the value of anything, the Commissioner will generally adopt that value for the purpose of making an interim assessment. It is not necessary for an agreed value to represent the entire value of that particular item of property.
6. The Commissioner may have regard to previous correspondence with the taxpayer as evidence of a value with which the Commissioner may agree.
7. Where the Commissioner has adopted a value for the purpose of making an interim assessment, the Commissioner relies on section 16A(4) of the TAA as authority that he is not bound to adopt that value when making the complete assessment.

Advice to Taxpayer Prior to Interim Assessment

8. Although the right to object to an interim assessment does not arise until three years after the date of issue of the interim assessment, a taxpayer will be given the opportunity to make submissions regarding the matters forming the basis of the interim assessment for the Commissioner's consideration prior to the making of the interim assessment.
9. The Commissioner will provide advice in writing to the taxpayer of the intention to make an interim assessment. This advice is given in the interests of procedural fairness to allow the taxpayer the opportunity to direct the Commissioner's attention to any issues that the taxpayer considers relevant to the proposed interim assessment. This is not a process of formal review of the Commissioner's proposed decision to make an interim assessment.
10. 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:
 - 10.1 a description of the dutiable transaction or relevant acquisition that will form the basis of the interim assessment;
 - 10.2 a summary of the issues to be resolved before a complete assessment may be made;
 - 10.3 how the value on which the interim assessment will be made has been arrived at, including the information that has been taken into account for this purpose; and
 - 10.4 an invitation to the taxpayer to make submissions about any of the matters set out in the advice.
11. The taxpayer will be allowed a period of 28 days in which to respond to the Commissioner regarding the proposed interim assessment.

12. The taxpayer may make a written request for further time to respond to the advice, which may be granted if the Commissioner considers that there are exceptional circumstances impacting on the taxpayer's ability to respond within 28 days. It should be noted that a request for further time to enable the taxpayer to engage professional advisors such as expert valuers will not be considered exceptional circumstances, on the basis that this will form part of the complete assessment process.

Endorsement and Return of Transaction Records

13. The effect of section 273(3A) of the Duties Act and section 96(2A) of the TAA is that the Commissioner is not obliged to endorse and return transaction records when duty is paid on an interim assessment.
14. The Commissioner will not endorse and return a transaction record unless the taxpayer can satisfy the Commissioner that:
 - 14.1 there are exceptional circumstances in the particular case that warrant the endorsement and return of a transaction record prior to the making of a complete assessment and payment of the full amount of duty for the transaction; and
 - 14.2 the Commissioner can be assured of the taxpayer's timely cooperation in the remainder of the assessment and payment process. For example, upon being satisfied that exceptional circumstances exist, the Commissioner may be prepared to endorse and return one transaction record for registration purposes and continue to hold other transaction records relating to significant items of property relevant to the assessment which will also require registration before the title to the items of property can be transferred.

Date of Effect

This Commissioner's practice takes effect from 15 November 2013.

Bill Sullivan
COMMISSIONER OF STATE REVENUE
15 November 2013