



COMMISSIONER'S PRACTICE TAA 21.0

COMPROMISE ASSESSMENTS

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

This Commissioner's practice provides guidelines on compromise agreements arising from negotiated settlements of taxation disputes. As such, this practice is directed at circumstances where, for reasons of good management of the revenue system, the Commissioner of State Revenue decides to compromise a tax liability either prior or post assessment. It will not be employed to settle or compromise a tax liability where there are only payment or recovery difficulties.

Background

It has long been accepted that settling matters is consistent with the good management of the tax system, overall fairness and best use of revenue and other community resources. This has become known as the "good management rule" and has been endorsed by the courts.

The courts have recognised that compromise is an appropriate approach to particular circumstances and at times highly desirable. Nevertheless, it is important to compromise liabilities only in appropriate circumstances and, when doing so, 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.

The *Taxation Administration Act 2003* ("TAA") provides the Commissioner with the general administration of the taxation Acts. In addition, a specific power to make compromise agreements and assessments provides the Commissioner with the ability to settle disputes with taxpayers about their liability prior or post assessment. The taxpayer's written agreement is required before a compromise assessment of the taxpayer's liability can be made.

Section 20A(1) of the TAA provides that the Commissioner may make an assessment in accordance with a written agreement (compromise agreement) made with a taxpayer in relation to the assessment of the taxpayer's liability, in circumstances where the Commissioner considers it appropriate to do so to avoid undue delay or expense, to settle a dispute or for any other reason.

Section 20A(2) of the TAA provides that if the Commissioner has made an assessment of a tax liability of a taxpayer under the compromise assessment provisions, the Commissioner cannot make a reassessment of the taxpayer's liability except where the taxpayer has agreed to the reassessment or where a compromise assessment under this section was procured by fraud or there was a deliberate failure to disclose material information.

Section 20A(3) of the TAA provides that a compromise assessment or reassessment, made with the taxpayer's agreement, is not subject to objection or review under Part 4 of the TAA or to any other form of appeal or review. That is, there is no formal process of objection and amendment available to the taxpayer, as the compromise assessment has been made with the agreement of the taxpayer. Also not subject to objection, review or any other form of appeal, is a decision of the Commissioner to make or not make a compromise agreement, and the terms of the compromise agreement.

Section 20A(4) of the TAA provides that the Commissioner cannot be required to make a compromise agreement.

Section 20A(5) of the TAA advises that the compromise assessment power does not limit the Commissioner's power to issue a default assessment under section 19 of the TAA.

Subject to the practices that follow, the compromise assessment provisions of section 20A of the TAA can be applied to relevant matters regardless of whether they arose prior to or after 13 October 2008, the date of commencement of the provisions.

Although the general rule is that the Commissioner does not forego tax properly payable (including penalty tax and interest) and will with minimal delay, seek to collect that tax, there will be circumstances where it would be desirable that the strictness of the general rule be moderated by the need for sensible administration and good management of the tax system.

Commissioner's Practice

General principles and approach on compromise assessments and negotiated settlements

1. The general administration of the taxation laws rests with the Commissioner. The general administrative powers are extremely wide, and give the Commissioner power to settle or compromise proceedings to which he is a party.
2. It is clear that once there is a dispute between the parties, including formal disputes such as an objection, application to the State Administrative Tribunal ("SAT"), or appeal to the court, then it is open to the parties, and at times desirable, to resolve the dispute by means of settlement.

3. In formulating what has been called “the good management rule”, the courts have recognised that it is open to a revenue Commissioner to make sensible decisions having regard to the best use of the limited resources available. The Commissioner is not obliged to pursue relentlessly every last tax dollar where that would clearly be uneconomic or where the outcome is at best problematic.

When a compromise assessment can occur

4. Issues between the Commissioner and taxpayers can generally be discussed and resolved in accordance with the law at any stage. Similarly, compromise assessment discussions may also take place at any stage, but should not circumvent any appropriate escalation of the issue.
5. Where a compromise assessment is sensible and appropriate in relation to a matter, settlement negotiations may occur before any formal process of objection and even before an assessment.
6. A request for a compromise agreement and assessment may be initiated by a taxpayer or their agent or by the Commissioner.

When a compromise assessment cannot occur

7. Compromise assessments are not to be entered into because the taxpayer advises they cannot afford to meet their assessment and that the taxpayer involved will be liquidated, bankrupted or will otherwise cease to exist if a compromise agreement cannot be met.

Circumstances where it would generally be inappropriate for a compromise assessment to occur

8. Circumstances where it would generally be inappropriate to settle include:
 - 8.1 the outcome of a compromise assessment would be contrary to an articulated policy reflected in the law;
 - 8.2 the matter is clear-cut or there is a clearly established and articulated Commissioner’s view on the issue, and there are no special circumstances such as those described in paragraphs 9 and 10 below;
 - 8.3 the compromise assessment would involve inconsistency of treatment for taxpayers in comparable circumstances;
 - 8.4 it is in the public interest to have judicial clarification of the issue and the case is suitable for this purpose;
 - 8.5 pursuit of the matter through the courts could have a significant flow-on compliance effect and the case is suitable for this purpose;
 - 8.6 the contested issues relate to an arrangement that has the effect of a tax avoidance scheme under taxation law (subject to paragraph 9.4 below);
 - 8.7 a similar matter is being litigated and awaiting outcome; or

8.8 the Commissioner believes the taxpayer's case is without merit and unlikely to be successfully pursued through the SAT or court.

Circumstances in which it may be appropriate for a compromise assessment to occur

9. As a general guide, settlement may be an appropriate way to resolve a matter if:

9.1 the cost of litigating (including Office of State Revenue costs) is out of proportion to the possible benefits, having regard to prospects of success, including collection of the tax, and likely award of costs, assessed as objectively as possible;

9.2 there are complex factual or quantum issues in contention, or evidentiary difficulties sufficient to make the case problematic in outcome or unsuitable for resolution through the SAT or courts, (for example, where the issue is peculiar to the particular taxpayer, and the opposing positions are each considered reasonably arguable);

9.3 upon review it is considered that one or more issues should on their merits be re-determined in favour of the taxpayer (this is not strictly a compromise assessment unless the Commissioner is agreeing not to pursue a matter that, but for the agreement, would have been pursued);

9.4 a participant or group of participants in an arrangement that has the effect of a tax avoidance scheme under taxation law, has come to accept the Commissioner's position and settlement is around the steps necessary to unwind existing structures and arrangements;

9.5 the compromise assessment will achieve compliance by the taxpayer, group of taxpayers, or section of the public, for current and future years, in a cost-effective way and the area of law which created the liability is complex and, in the opinion of the Commissioner, has not been understood by the taxpayers; or

9.6 there is a significant number of liable transactions or arrangements not in contention, however, the resources required by the taxpayer and the Commissioner to extract the necessary information and determine assessment on all these matters would be an uneconomic use of both the taxpayer's and Commissioner's resources.

10. Provided the position is defensible, the Commissioner will ordinarily be prepared to litigate 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. However, where there are factors that point towards a compromise assessment, such as the factors outlined in paragraph 9, a compromise assessment may be considered, provided the mischief has been terminated either legislatively or in some other way.

“Global” compromise assessments and negotiated settlements

11. If a compromise assessment involves more than one issue, regard must be had to the legal and practical merits of each issue.
12. Negotiations around a single amount in full settlement of the tax, penalties and interest attributable to all unrelated issues under review (sometimes referred to as a “global” settlement) are only to be entered into in exceptional cases and must be approved by the Commissioner.

Issues of significance

13. In circumstances where the application of the law is disputed and the issue is of significance, the Commissioner may consider it to be in the public interest for the matter to be resolved before a tribunal or court and not to be included in any compromise assessment.
14. The taxpayer will be advised that the Commissioner is of the view that the matter is one best tested before a tribunal or in the courts.

Taxpayer’s written agreement

15. All compromise assessments will be evidenced by a written compromise agreement between the parties in the form of a deed.
16. The compromise agreement will also include, where relevant, how each particular issue has been resolved, relevant undertakings by the parties including a commitment to confidentiality of the terms and conditions of the agreement, treatment in future years, withdrawal of objections, requests for review and appeals, and payment arrangements.
17. There will be matters where penalty tax and interest could properly be considered as part of the settlement of the case.

Wherever possible, agreement should be reached in respect of the substantive issues before the Commissioner will consider settlement of any penalty tax or interest.

18. Notwithstanding any other Commissioner’s practice relating to the remission of penalty tax, any remission of penalty tax will be considered on the particular merits of the matter.
19. Where the terms of a compromise agreement include tax payment arrangements, the provisions of section 47 of the TAA will apply in respect of such arrangements.

20. The compromise agreement will also state that it is conditional upon full disclosure of relevant facts known to the taxpayer at the time of making the agreement.
21. Taxpayers should disclose all relevant facts in the course of compromise agreement discussions.
22. The compromise agreement and assessment will also be subject to a commitment to confidentiality by the Commissioner in accordance with taxation law.
23. The taxpayer may also be required to:
 - 23.1 consent to a withdrawal and dismissal under section 46 of the *State Administrative Tribunal Act 2004*;
 - 23.2 file a Notice of Discontinuance in the Court of Appeal; or
 - 23.3 pursue (or not to pursue as the case may be) future activities or claims in accordance with the compromise agreement.
24. The Commissioner will adhere to the terms of the compromise agreement, unless it emerges that relevant material facts were not disclosed to the Commissioner.

Date of Effect

This Commissioner's practice takes effect from 14 October 2008.

Bill Sullivan
COMMISSIONER OF STATE REVENUE

14 October 2008