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Public Ruling

Taxation Administration Act:
PART 6 OF THE TAXATION ADMINISTRATION
ACT 2001—OBJECTIONS, REVIEWS AND
APPEALS

A Public Ruling, when issued, is the published view of the Commissioner of State Revenue (the Commissioner) on the particular topic to which it relates. It therefore replaces and overrides any existing private rulings, memoranda, manuals and advice provided by the Commissioner in respect of the issue(s) it addresses. Where a change in legislation or case law (the law) affects the content of a Public Ruling, the change in the law overrides the Public Ruling—that is, the Commissioner will determine the tax liability or eligibility for a concession, grant or exemption, as the case may be, in accordance with the law.

What this Ruling is about

- Part 6 of the *Taxation Administration Act 2001* (the Administration Act) outlines the process of:
 - objections against assessments and reassessments and
 - appeals against, and applications for reviews of, objection decisions.
- Part 6 of the Administration Act applies to the following revenue laws:
 - Duties Act 2001*¹
 - Payroll Tax Act 1971*²
 - Land Tax Act 2010*³
 - the repealed *Land Tax Act 1915*⁴
 - the repealed *Stamp Act 1894*⁵.
- The purpose of this Public Ruling is to clarify the objection, appeal and review rights available to taxpayers.

¹ Sections 3 and 6(1) of the Administration Act

² Sections 3 and 6(2) of the Administration Act

³ Sections 3 and 6(4) of the Administration Act

⁴ Section 167 of the Administration Act

⁵ Section 157 of the Administration Act

Ruling and explanation

Right of objection

4. Section 63 of the Administration Act provides a taxpayer with a right of objection to the following:
 - (a) an original assessment,⁶ other than a compromise assessment⁷ and
 - (b) a reassessment⁸ increasing a taxpayer's liability for tax or a reassessment under s.18(b) decreasing a taxpayer's liability for tax, but the right of objection is limited to the changes for the particular matters for which the reassessment is made.
5. Part 6 of the Administration Act also applies to a decision to which s.500 of the *Duties Act 2001* (the Duties Act) applies as if the decision not to reassess was an assessment.⁹
6. An objection against an assessment or reassessment may be made on any grounds,¹⁰ with the following exceptions:
 - (a) for a land tax assessment or reassessment, an objection may not be made on the grounds that the value made under the *Land Valuation Act 2010* (LVA value) for an area of land is excessive¹¹ and
 - (b) for a decision to which s.500 of the Duties Act applies, the grounds of objection are limited to whether the particular circumstances apply for the instrument or transaction to which the decision relates.¹²
7. The objection must:
 - (a) be in writing
 - (b) state in detail the grounds of objection
 - (c) be accompanied by copies of all materials relevant to decide the objection and
 - (d) be lodged within 60 days after the assessment notice for the assessment or reassessment to which the objection relates is given to the taxpayer.¹³
8. Objections may be lodged by completing the objection form.¹⁴ Alternatively, a letter will suffice. The form or letter must be signed by the taxpayer or the taxpayer's duly authorised agent.

⁶ Defined in Schedule 2 of the Administration Act

⁷ Section 12 of the Administration Act

⁸ Defined in Schedule 2 of the Administration Act

⁹ Section 500(3) of the Duties Act

¹⁰ Section 64(1) of the Administration Act

¹¹ Section 81(1) of the *Land Tax Act 2010* and s.27 of the *Land Tax Act 1915*

¹² Section 64(2) of the Administration Act

¹³ Section 65(1) of the Administration Act

¹⁴ The form for making an objection is *Form OSR—GEN1—Objection*.

9. An extension of time may be given for the lodgement of the objection if the Commissioner is satisfied it would be unreasonable in the particular circumstances for the objection to be lodged within 60 days.¹⁵
10. An extension of time to lodge an objection is not granted automatically. The Commissioner will not consider a verbal request for an extension of time. The request for an extension of time must be made in writing, in either the objection form or the letter, and must outline the full facts and circumstances of why the extension of time is sought.
11. The Commissioner's decision to refuse to extend the time for lodging an objection is a non-reviewable decision.¹⁶
12. As the timeframe for lodging the objection is longer than the timeframe for paying the assessment or reassessment, the taxpayer must pay the assessment or reassessment on or before the due date¹⁷ even if the taxpayer has lodged, or intends to lodge, an objection. Failure to do so will result in unpaid tax interest accruing under s.54 of the Administration Act.
13. The lodgement of an objection does not affect the Commissioner's power under s.45 of the Administration Act to recover unpaid tax law¹⁸ amounts as debts due to the State.

Determination of the objection

14. The onus of proof for an objection is on the person making the objection.¹⁹
15. If a delegate of the Commissioner made the assessment or reassessment against which the objection is lodged, that delegate will not decide the objection.²⁰
16. The Commissioner must give written notice to the objector of the Commissioner's decision on the objection (the objection decision).²¹
17. If the objection is allowed in part or disallowed, the notice must state:
 - (a) the decision
 - (b) the reasons for the decision
 - (c) that the taxpayer has a right to appeal to the Supreme Court (the Court), or to apply, as provided under the *Queensland Civil and Administrative Tribunal Act 2009* (the QCAT Act), to the Queensland Civil and Administrative Tribunal (the Tribunal) for a review of the objection decision and
 - (d) how, and the period within which, the taxpayer may appeal or apply for the review.²²

¹⁵ Section 65(2) of the Administration Act

¹⁶ Section 65(3) and Part 6, Division 3 of the Administration Act

¹⁷ Defined in Schedule 2 of the Administration Act as the date by which tax under the assessment or self assessment must be paid

¹⁸ A tax law is defined in Schedule 2 of the Administration Act as a revenue law or the Administration Act

¹⁹ Section 66 of the Administration Act

²⁰ Section 67(2) of the Administration Act

²¹ Section 68(1) of the Administration Act

²² Section 68(2) of the Administration Act

Right of appeal or review

18. Section 69 of the Administration Act provides that if a taxpayer is dissatisfied with the objection decision, the taxpayer may, within 60 days after notice is given to the taxpayer of the objection decision,²³ either:
- (a) appeal to the Court or
 - (b) apply, as provided under the QCAT Act, to the Tribunal for a review of the objection decision.
19. However, no right of appeal or review exists if the whole of the amount of the tax and late payment interest payable under the assessment or reassessment to which the objection decision relates has not been paid.²⁴

Appeal process

20. To start an appeal to the Court:
- (a) a notice of appeal must be filed with the Court within 60 days after notice is given to the taxpayer of the objection decision (no extension of time is available for filing the notice)²⁵ and
 - (b) written notice of the appeal must be given to the Commissioner within seven days after the notice of appeal is filed with the Court.²⁶
21. The notice of appeal must state fully the grounds of the appeal and the facts relied on.²⁷
22. The grounds of the appeal are limited to the grounds of objection unless the Court orders otherwise.²⁸
23. For objection decisions relating to land tax assessments or reassessments, no right of appeal against an objection decision exists on the grounds that the LVA value for an area of land is excessive.²⁹
24. The appellant has the onus of proving the appellant's case.³⁰
25. If the Court is satisfied that evidence material to the objection was not submitted to the Commissioner when the objection was decided and the evidence is admitted to the Court then:
- (a) the Court must adjourn the hearing of the appeal and

²³ Part 11, Division 3 of the Administration Act provides how the Commissioner may give notice of the objection decision to the taxpayer and the time at which such notice is taken to have been given.

²⁴ Section 69(1)(b) of the Administration Act

²⁵ Section 70(2) and (3) of the Administration Act

²⁶ Section 70(1) of the Administration Act

²⁷ Section 70(4) of the Administration Act

²⁸ Section 70(5) of the Administration Act

²⁹ Section 81(2) of the *Land Tax Act 2010* and s.28(1) of the *Land Tax Act 1915*

³⁰ Section 70A of the Administration Act

- (b) the Court must direct the Commissioner to reconsider the objection having regard to the evidence and any other evidence obtained by the Commissioner.³¹
26. Paragraphs 25(a) and (b) do not apply if the Commissioner requests the Court to continue the hearing without the Commissioner reconsidering the objection.³²
27. If the Commissioner does reconsider the objection, the Commissioner has all the powers conferred by the Administration Act.³³
28. The Court must allow the appeal completely or partly, or disallow it.³⁴

Review process

29. To make an application for review by the Tribunal, an application must be filed in the Tribunal registry. The application must be made using the approved form^{35, 36} and state the reasons for the application.³⁷
30. The application must be filed with the Tribunal within 60 days after notice is given to the taxpayer of the objection decision.³⁸ No extension of time is available for filing the application.³⁹
31. The principal registrar of the Tribunal may accept the application (conditionally⁴⁰ or unconditionally), or reject the application on the grounds that:
- (a) the application is made by a person who is not authorised to make it
 - (b) the application is made after the expiry of the period within which it is required to be made or
 - (c) the application does not otherwise comply with the QCAT Act or the QCAT Rules.⁴¹
32. A proceeding in the Tribunal commences when the principal registrar of the Tribunal accepts the application (conditionally or unconditionally).⁴²
33. Once the proceeding commences, the applicant must give a copy of the application to the Commissioner within seven days after the application is accepted by the principal registrar of the Tribunal.⁴³

³¹ Section 70B(1) and (2) of the Administration Act

³² Section 70B(3) of the Administration Act

³³ Section 70B(4) of the Administration Act

³⁴ Section 70C of the Administration Act

³⁵ Rule 7 of the *Queensland Civil and Administrative Tribunal Rules 2009* (the QCAT Rules)

³⁶ The approved form for applying for a review by the Tribunal is *QCAT Form Number 23—Application to review a decision*.

³⁷ Section 33(1) and (2) of the QCAT Act

³⁸ Section 69(2)(b) of the Administration Act

³⁹ Section 69(3) of the Administration Act

⁴⁰ Rule 18 of the QCAT Rules sets out the conditions that may be imposed.

⁴¹ Section 35 of the QCAT Act

⁴² Section 36 of the QCAT Act

⁴³ Section 37(2) of the QCAT Act and rule 19 of the QCAT Rules

34. The grounds on which the application for review can be made are limited to the grounds of objection unless the Tribunal orders otherwise.⁴⁴
35. For objection decisions relating to land tax assessments or reassessments, an application for review of an objection decision may not be made on the basis that the LVA value for an area of land is excessive.⁴⁵
36. The Tribunal must hear and decide the review of the objection decision by way of a reconsideration of the evidence that was before the Commissioner at the time of making the objection decision, unless the Tribunal considers it necessary in the interests of justice to allow new evidence.⁴⁶
37. The review must be decided in accordance with the same law that applied when the assessment or reassessment the subject of the objection decision was made.⁴⁷
38. The applicant has the onus of proving the applicant's case.⁴⁸
39. The Tribunal may, at any stage in a proceeding, invite the Commissioner to reconsider the objection decision the subject of the proceeding. The Commissioner will then have 28 days to reconsider the decision. If, as a result of such reconsideration:
 - (a) the Commissioner confirms the objection decision—the proceeding for the review of the objection decision must continue or
 - (b) the Commissioner either amends the objection decision or sets aside the objection decision and substitutes another decision (the replacement decision)—the proceeding for the review will continue, but will be in relation to either the objection decision (as amended) or the replacement decision, as the case may be.⁴⁹
40. The Tribunal may:
 - (a) confirm or amend the objection decision
 - (b) set aside the objection decision and substitute its own decision or
 - (c) set aside the objection decision and return the matter for reconsideration to the Commissioner, with such directions as the Tribunal considers appropriate.⁵⁰

Reassessment after appeal or review started

41. If a taxpayer has appealed to the Court against, or applied to the Tribunal for a review of, an objection decision that relates to an assessment or reassessment of the taxpayer's liability for tax, the Commissioner may make a reassessment of the liability for tax after the appeal or

⁴⁴ Section 71(2) of the Administration Act

⁴⁵ Section 81(3) of the *Land Tax Act 2010* and s.28(2) of the *Land Tax Act 1915*

⁴⁶ Section 71(3) of the Administration Act

⁴⁷ Section 71(3) of the Administration Act

⁴⁸ Section 73 of the Administration Act

⁴⁹ Section 23 of the QCAT Act

⁵⁰ Section 24 of the QCAT Act

review has started but before the appeal or review has been decided (the post-objection reassessment).⁵¹

42. If the Commissioner makes a post-objection reassessment, the taxpayer may:
- (a) continue or withdraw the existing appeal or the taxpayer's application for review (as the case may be) or
 - (b) instead of objecting to the post-objection reassessment, change the grounds of appeal or review, by filing notice of the change with:
 - (i) in the case of an appeal—the registrar of the Court or
 - (ii) in the case of a review—the registrar of the Tribunal.⁵²
43. The taxpayer may only change the grounds of appeal or review to the extent that the taxpayer would have the right of objection to the post-objection reassessment.⁵³

Date of effect

44. This Public Ruling takes effect from 1 July 2014.

Elizabeth Goli
 Commissioner of State Revenue
 Date of issue: 1 July 2014

References

Public Ruling	Issued	Dates of effect	
		From	To
TAA000.1.6	1 July 2014	1 July 2014	4 January 2016
TAA000.1.5	6 June 2011	1 July 2011	30 June 2014
TAA000.1.4	30 June 2010	30 June 2010	30 June 2011
TAA000.1.3	1 December 2009	1 December 2009	29 June 2010
TAA000.1.2	3 July 2009	30 June 2009	30 November 2009
TAA000.1.1	24 February 2009	24 February 2009	29 June 2009
Supersedes Revenue Ruling TA 5.1	1 July 2005	1 July 2005	23 February 2009

⁵¹ Section 69A(1) of the Administration Act

⁵² Section 69A(2) of the Administration Act

⁵³ Section 69A(3) of the Administration Act