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## **Public Ruling Land Tax Act:**

### **SECTION 20 OF THE LAND TAX ACT 1915— ALTERATIONS OF ASSESSMENTS**

*A Public Ruling, when issued, is the published view of 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, subsidy or exemption, as the case may be, in accordance with the law.*

## **What this Ruling is about**

1. Section 20 of the *Land Tax Act 1915* (the Land Tax Act) provides the Commissioner with the authority to amend land tax assessments.
2. This Public Ruling sets out the Commissioner's practice in relation to the following:
  - (a) the time limits for amending assessments
  - (b) the imposition of additional tax where the tax payable increases
  - (c) the remission of all or part of the additional amount imposed.

## **Ruling and explanation**

### **Time limits to amend land tax assessments**

#### Increase in taxpayer's liability in certain circumstances

3. Sections 20(1) and (2) of the Land Tax Act deal with specific circumstances which will result in an increase in a taxpayer's liability for land tax.
4. Section 20(1) of the Land Tax Act applies where the Commissioner made an assessment of land tax without making or obtaining an independent valuation and subsequently the Commissioner determines, based on valuations made or obtained, or other information in the Commissioner's possession, that the assessment ought to have been for a greater amount.

5. In this circumstance, the Commissioner may alter the assessment within three years from the date of the assessment.
6. Section 20(2) of the Land Tax Act provides that an assessment may be altered where the Commissioner discovers that:
  - (a) land was not included in the assessment or
  - (b) the value of improvements has been overstated or
  - (c) the value of the improvements has been wrongly claimed or
  - (d) the unimproved value of the land has been understated.
7. There is no time limit imposed under s.20(2) of the Land Tax Act.

Decrease in taxpayer's liability in particular circumstances

8. Sections 20(5), (5A) and (5B) of the Land Tax Act specifically deal with circumstances that will result in a taxpayer's liability for land tax decreasing.
9. Section 20(5) of the Land Tax Act provides that, if within three years after the date when land tax is payable, it is discovered that too much land tax has been paid for that year because of duplicate taxation or arithmetic error, the Commissioner, upon being satisfied, must alter the assessment accordingly and refund the excess land tax paid to the taxpayer.
10. Section 20(5A) of the Land Tax Act provides that, if within the time limited for appeal to the Land Court<sup>1</sup>, which is 30 days after the due date of the assessment, it is discovered that too much land tax has been paid other than in the circumstances set out in s.20(5), the Commissioner, upon being satisfied, must alter the assessment accordingly and refund any excess to the taxpayer.
11. Section 20(5B) of the Land Tax Act provides that if, after the time limited for appeal but within three years after the date the assessment was made it is discovered that too much land tax has been paid for the year, other than in the circumstances set out in s.20(5), the Commissioner may in the Commissioner's absolute discretion alter the assessment accordingly and refund the excess to the taxpayer.

General amending provision

12. Section 20(4) of the Land Tax Act provides that, in addition to, and without prejudice to the other powers in the section, the Commissioner may at any time make all such alterations in, or additions to, any assessment as the Commissioner thinks necessary in order to ensure its completeness and accuracy.
13. This subsection will not apply where the more specific subsections of s.20 apply.

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<sup>1</sup> Section 27A of the Land Tax Act

**Example 1**

*Person X has been paying land tax on a certain property since 2001. In June 2008, Person X makes a claim for the principal place of residence deduction on this property for each of the years from 2001 through to 2007. The Commissioner is satisfied that Person X is eligible for the deduction and will amend the assessments after June 2005 (i.e within the three year limitation period) under s.20(5B) of the Land Tax Act. The assessments for the prior years (i.e from 2001 through to 2004) will not be amended.*

*As the particular circumstances fall within s.20(5B) of the Land Tax Act, s.20(4) has no application.*

**Imposition of additional tax and penalty amount**

14. Where the Commissioner alters an assessment under s.20(2) of the Land Tax Act, s.20(3) provides that the taxpayer shall be liable for an amount equal to twice the difference between any land tax that the taxpayer has paid and the land tax which the taxpayer ought to have paid if the assessment had been originally made as altered.
15. The amount which the taxpayer is liable for under s.20(3) of the Land Tax Act is made up of two components:
  - (a) the increase in the tax and
  - (b) an amount equal to the increase in tax (penalty amount).

**Example 2**

*A Co Pty Ltd received an assessment for land held 30 June 2008 with a due date for payment of 3 September 2008. A Co Pty Ltd paid the assessment of \$1 500 and did not inform the Commissioner that the assessment should have included a parcel of land the company acquired on 12 May 2008.*

*The Commissioner discovered the omission on 19 January 2009. On that date, the Commissioner issued an amended assessment which included the omitted land. The tax assessed was \$2 000. The Commissioner then imposed an equal penalty amount of \$500. Therefore the taxpayer was liable for an extra \$1 000, the increase in the tax of \$500 and penalty amount of \$500.*

**Remission of penalty**

16. However, s.20(3A) of the Land Tax Act provides that, where the Commissioner is satisfied that the taxpayer was not guilty of any wilful default or omission and has not done any act with intent to defraud the revenue, the Commissioner may remit the whole or any part of such tax over and above the amount computed on the ordinary rate, that is, the penalty amount.

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17. When deciding whether to exercise discretion to remit the penalty, the Commissioner will take into account all facts and circumstances. Some of the factors that will be taken into consideration include:
- (a) whether the taxpayer voluntarily disclosed the omission and, if so, when the omission was disclosed (eg before or after the due date of original assessment)
  - (b) the reasons for the failure to notify the Commissioner of the omission
  - (c) the taxpayer's previous failure to notify the Commissioner of any omissions.

**Example 3**

*Person B receives a 2008 Notice of Land Tax Assessment. The assessment is due for payment on 17 October 2008. A parcel of land which Person B purchased on 29 June 2008 is not included in the assessment.*

*The Notice of Assessment clearly states that the taxpayer has an obligation to advise the Office of State Revenue by the due date for payment of the details of any freehold lands in Queensland held that were not included in the assessment.*

*On 10 October 2008, Person B advises the Office of the details of the omitted land. An amended assessment issues with the land included. The increase in the tax is \$700 and therefore the penalty amount under s.20(3) of the Land Tax Act is a further \$700. However, after considering all the facts and circumstances of this case and in particular Person B's voluntary disclosure of the ownership of the land prior to the due date for payment, the penalty amount would be remitted in full.*

**Date of effect**

18. This Public Ruling takes effect from the date of issue.

David Smith  
Commissioner of Land Tax  
Date of Issue 24 February 2009

**References**

Public Ruling	Issued	Dates of effect	
		From	To
LTA020.1.1	24 February 2009	24 February 2009	30 June 2009
Supersedes Practice Direction LT 13.1	6 July 2004	6 July 2004	23 February 2009