

AUSTRALIA

SUMMARY OF HOW TAX DISPUTES ARE HANDLED

INTRODUCTION

1 Australia is a federation comprising six States. Unsurprisingly, taxes are levied at a federal and state level. The major revenue raisers are income tax and a goods and services tax ('GST'). They are exclusively levied at a federal level, although the whole of the GST raised is presently passed on to the States under Commonwealth-State financial arrangements.

2 There are no capital, wealth or inheritance taxes imposed in Australia at any level apart from annual State land taxes on land holdings other than the principal private residence and holdings of land used for primary production, both of which are exempt. Death, however, is a triggering event for the taxation of capital gains under the income tax regime.

CHALLENGING TAXATION DECISIONS

General

3 A uniform code governs the procedures for challenging a taxation decision under various federal statutes. The uniform code applies where an Act or Regulations provide that a person or entity 'dissatisfied with' an assessment, determination, notice or decision may object against it in accordance with Pt IVC of the *Taxation Administration Act* ('TAA'): s 14ZL(1). For example, s 175A of the *Income Tax Assessment Act 1936* gives a taxpayer the right to object against an income tax assessment. A taxpayer may also object against the Commissioner's failure to make a private ruling. A GST assessment is reviewable under Pt IVC: see s 105-40 Pt 3-10 Sch 1 TAA.

Time Limits

4 The time limits for objecting against assessments generally match the period within which the Commissioner may amend an assessment (in the absence of fraud or evasion or some special provision): s 14ZW(1) TAA.

Amended Assessments

5 Where an assessment has been amended, the right of a taxpayer to object against the amended assessment is limited to the particular amendment: s 14ZV TAA.

Extension of Time to Lodge an Objection

6 Where the period for lodging an objection has expired, the taxpayer may nevertheless send the objection to the Commissioner together with an application in writing requesting the Commissioner to treat the objection as having been duly lodged: s 14ZW(2) TAA. An extension of time should be granted where the cause of the delay was beyond the taxpayer's control, for example, in case of illness, absence overseas or systematic problems with the post or where the taxpayer's agent failed to act upon instructions to lodge an objection, provided the taxpayer lodges the objection as soon as possible after the cause of the delay ceases to exist.

Form of Objection

7 An objection must be in the approved form: s 14ZU(a) TAA. It must comply with s 388-50 in Sch 1 to the TAA, i.e., it must be in writing in the form approved by the Commissioner, contain the required information and a declaration verifying the information and be signed by the taxpayer (if lodged electronically, it must contain the appropriate declarations and electronic signatures).

Grounds of Objection

8 An objection must state fully and in detail the grounds of objection to be relied on by the taxpayer: s 14ZU(c) TAA.

Amending Grounds of Objection

9 The taxpayer is generally limited to the grounds stated in the objection in the event of a review application against the Commissioner's decision on the objection. However, the taxpayer may amend the grounds of an objection at the discretion of the court or Administrative Appeals Tribunal ('AAT') hearing the application: ss 14ZZK(a) and 14ZZO(a) TAA.

Objections against Private Rulings

10 A person dissatisfied with a private ruling i.e. the person to whom the ruling applies ('the rulee') may object against the ruling in accordance with Pt IVC in the same manner as a

taxpayer may object against an assessment or other taxation decision made by the Commissioner: former s 114ZAZA TAA; s 359-60 Sch 1 TAA.

Decision of Commissioner on Objection

- 11 The Commissioner must consider a taxpayer's objection and may either disallow it or allow it either wholly or in part: s 14ZY(1) TAA. The Commissioner's decision is called an 'objection decision': s 14ZY(2) TAA.

Deemed Disallowance

- 12 Although there is no specific time limit for making an objection decision, s 14ZYA TAA gives a taxpayer the right to require a decision to be made. If an objection decision (other than in relation to an objection against the failure to make a private ruling) has not been made within sixty (60) days after an objection is lodged (or within sixty days after the Commissioner receives any further information requested from the taxpayer), the taxpayer can give the Commissioner a written notice requesting that a decision be made. If a decision is not made within sixty days after receiving the taxpayer's notice, the objection is deemed to be disallowed.

APPEALS AND REVIEWS

Application for Appeal or Review

- 13 A person who is dissatisfied with an objection decision (including a decision under s 14ZY(1) TAA to make a different private ruling from the one sought) has rights of review and appeal under Pt IVC. The review/appeal process is summarised in the diagram which I have circulated.

- 14 A person dissatisfied with an objection decision (called a 'reviewable objection decision') may apply to the AAT for review of the decision or appeal direct to the Federal Court against the decision (unless the decision is an 'ineligible income tax remission decision': s 14ZZ TAA).

Application for Review/Appeal

- 15 An application for review by the AAT is governed by Div 4 of Pt IVC and the *Administrative Appeals Tribunal Act 1975* ('AAT Act'). An appeal to the Federal Court against an objection decision is governed by Div 5 of Pt IVC and O 52B of the *Federal Court Rules*.

Where Extension of Time Permissible

- 16 An extension of time to lodge an application for review by the AAT may be granted if, in all the circumstances, it is reasonable to do so: s29(7) AAT Act. The Federal Court does not have the power to extend the time for lodging an appeal beyond the sixty-day period specified in s 14ZZN TAA.

Onus of Proof Lies upon the Taxpayer

- 17 The taxpayer has the onus of proving that an assessment (or amended assessment) is excessive, e.g., by showing that certain amounts should not have been included in assessable income or that certain amounts should be allowed as deductions), whether the matter is before the AAT or Federal Court: ss 14ZZK(b) and 14ZZO(b) TAA.

AAT or Court

- 18 When an unfavourable decision on an objection is given, the taxpayer is required to consider the body to which it should be referred: s 14ZZ TAA. In all matters of opinion (e.g., the exercise of a discretion), the reference should be to the AAT, as the High Court indicated that a court cannot alter the opinion of the Commissioner unless it is shown that he acted capriciously in reaching his decision (which is very difficult to prove). Issues of fact should also be referred to the AAT, but if a question of law is involved it may be better to refer the matter direct to the Federal Court.

- 19 Another important factor is the cost of the proceedings. The AAT fees are considerably less than the Federal Court fees and AAT proceedings will nearly always cost less than Federal Court proceedings, not least because the former are more informal and the taxpayer does not have to be represented by a lawyer.

DECISION OF THE AAT

- 20 The AAT may affirm, vary, set aside to make a decision in substitution or remit the matter for reconsideration in accordance with any direction or recommendation of the AAT. The AAT must give reasons either orally or in writing for its decision.

APPEAL BY TAXPAYER DIRECT TO COURT

- 21 A person dissatisfied with the Commissioner's objection decision may appeal directly to the Federal Court, provided the decision is an appealable objection decision. Appeals are governed by the *Federal Court of Australia Act 1976* and the *Federal Court Rules*.

APPEAL FROM A DECISION OF THE AAT

- 22 The Commissioner or the taxpayer may appeal to the Federal Court from any decision of the AAT on a question of law: s 44(1) of the AAT Act.

APPEAL TO FULL FEDERAL COURT OR HIGH COURT

- 23 A taxpayer or the Commissioner may appeal from a decision of a single judge of the Federal Court to the Full Court of the Federal Court. Appeals must generally be filed within twenty-one (21) days after pronouncement of the decision appealed against (O 52 r 15 *Federal Court Rules*). An extension of time may be granted under s 25(2) of the *Federal Court of Australia Act 1976*.
- 24 Appeals from a Full Federal Court decision to the High Court of Australia can only proceed where special leave has been granted by the High Court. Where special leave to appeal is granted, the matter is then heard by the court and a separate decision handed down on the merits of the appeal.

OTHER REVIEW MECHANISMS

Judicial Review of Administrative Decisions

- 25 An assessment can generally only be challenged through the objection and appeal procedure in Pt IVC of the TAA. In the past, some assessments have been challenged under s 39B of the *Judiciary Act 1903* on grounds of bad faith or improper purpose; alleging that they were not assessments. Generally, such attempts have not been successful.

ALTERNATIVE DISPUTE RESOLUTION

- 26 Over the last five to ten years we have seen an increasing willingness on the part of the Revenue to have recourse to alternative dispute resolution mechanisms, principally mediation, in an attempt to settle matters. Previously, the Commissioner had not been keen to take this course, but times have certainly changed. Retired High Court and Federal Court judges are frequently engaged to undertake the mediation process.

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TAX REVIEW AND APPEAL PROCEEDINGS

