

COMMISSIONER'S GUIDELINE

CG-GEN-003:

Objections and appeals

Guideline History

Version	Issued	Dates of effect	
		From:	To:
1	1 November 2005	1 November 2005	30 June 2006
2	25 June 2007	1 July 2006	31 December 2007
3	2 January 2008	1 January 20	30 June 2011

Purpose

This Guideline provides general information on:

- 1) the objections and appeals procedures under the *Taxation Administration Act* (TAA);
- 2) the types of decisions and assessments made under the *First Home Owner Grant Act* (FHOGA), the *Stamp Duty Act* (SDA), *Mineral Royalty Act* (MRA) and *Pay-roll Tax Act* (PTA) to which an objection may be lodged; and
- 3) who can lodge an objection.

Objections and appeals

Objections and appeals are not common law proceedings. Both are remedies that are conferred by the relevant legislation, which regulate the proper manner in which taxation decisions (including mineral royalty assessments) or decisions relating to the first home owner grant can be disputed.

Taxation decisions or first home owner grant decisions to which an objection may be lodged cannot be challenged in proceedings other than by way of objection and appeal under the TAA.¹

This process provides the Territory Revenue Office (TRO) with the opportunity to review the decision and is considered the most appropriate way to deal with disputes involving taxation decisions, as Courts have been reluctant in the past to become involved in matters that have a legislated dispute resolution mechanism.

In this respect, the TAA provides that an assessment must be accepted in any legal proceedings (other than an objection or appeal) as valid and correct.² Furthermore, the lodging of an objection or appeal does not affect the liability of a person to pay tax (including any interest and penalty tax) under an assessment or to repay the

¹ Section 108 of the TAA.

² Section 148(1) of the TAA.

grant (including any penalty and interest). It also does not prevent TRO taking action to recover the liabilities.³

Objections

The TAA provides that a person affected by a **relevant decision** may object to the decision.⁴

The definition of 'relevant decision' varies depending upon whether the matter relates to stamp duty, payroll tax, mineral royalties or the first home owner grant. This affects both the nature of the decision that may be objected against and who has standing to object to such decisions, as set out below.

- 1) For stamp duty and payroll tax, this means that a person in relation to whom an assessment is made (that is, the person liable to pay the tax) or a taxpayer whose liability to pay tax is affected by a decision may object to that assessment.⁵

For the purposes of payroll tax, an example of a decision that affects a person's liability to tax is a decision not to exclude the person from a payroll tax group. This decision affects the person's liability to pay payroll tax because of the effect on the level of general exemption threshold that the person is able to offset against their taxable wages.

For the same reason, each member of the payroll tax group is affected by the decision as any tax payable by a member of the group is a debt due jointly and severally by each member of the group.⁶

Another example of a decision that affects a person's liability to tax is a decision under section 11A of the PTA to disregard an arrangement, determine that a party to the arrangement is deemed to be an employer and that a payment made in respect of the arrangement is deemed to be wages.

- 2) For mineral royalties, this means that a royalty payer⁷ in relation to whom an assessment is made under Part II of the MRA (that is, the royalty payer liable to pay the royalty) may object to that assessment.⁸
- 3) In relation to the first home owner grant, an applicant may object to a decision –
 - a. on an application for a first home owner grant; or
 - b. requiring the repayment of money paid by way of a first home owner grant; or
 - c. relating to penalties and/or interest.⁹

³ Section 128 of the TAA.

⁴ Section 109(1) of the TAA.

⁵ Section 107 ('taxation decision') of the TAA.

⁶ Section 59(2) of the TAA.

⁷ Section 107 ('royalty payer') of the TAA; section 4 ('royalty payer') of the MRA.

⁸ Section 107 ('taxation decision'; 'royalty assessment') of the TAA.

⁹ Section 107 ('first home owner grant decision') of the TAA.

Objection procedure

Lodging an objection

An objection must be lodged with the **decision maker** within 60 days of the date of issue of the notice of assessment or decision.¹⁰ The decision maker is the Commissioner of Territory Revenue, except in the case of a decision under the MRA, where it is the Secretary.¹¹

The 60-day period commences from the date of issue of the notice of assessment or decision. This is distinct from the date that a person receives service of the notice because this provides certainty as to the date by which the objection is required to be lodged.

The decision maker may extend the period for lodging an objection where satisfied that the objector has a reasonable excuse for not lodging in the relevant 60-day period. This period may only be extended on written application for an extension of time that sets out the reasons for failure to lodge within the 60-day period.¹² A taxpayer may request an extension of time before the 60-day period has expired.

Form of objections

An objection is required to be in writing and to state fully and in detail the grounds of objection.¹³ The grounds of objection are the reasons that the objector considers the decision or assessment incorrect. The person lodging the objection should also provide all relevant information or evidence that supports the grounds of objection.

Decision on an objection

All objections are considered by an independent and separate area within the TRO and are generally decided by one of several delegates of the Commissioner of Territory Revenue, being the Director Revenue Development, an Assistant Director Legislative Policy or a Principal Policy Officer. The Commissioner's delegates operate separately to the compliance and operational areas of TRO that issued the original assessment or decision.

The person lodging an objection will receive written notice of the decision on the objection, which sets out whether the objection is disallowed or allowed, either in whole or part.¹⁴ Where the decision is disallowed or allowed only in part, the notice will set out the reasons for reaching that decision.¹⁵ Additionally, the notice will set out the procedures for commencing an appeal.¹⁶

¹⁰ Section 110(1) of the TAA.

¹¹ Section 107 ('decision maker') of the TAA.

¹² Section 111 of the TAA.

¹³ Section 110 of the TAA.

¹⁴ Section 114(1) of the TAA.

¹⁵ Section 114(2)(a) of the TAA.

¹⁶ Section 114(2)(b) of the TAA.

Where an objection is allowed in whole or part, TRO will take the necessary steps to adjust the person's liability as quickly as possible, such as by means of a reassessment and refund of any overpaid amount. In the case of stamp duty assessments, it may be necessary for the taxpayer to re-lodge the assessed instrument so that the stamping on that instrument can be amended.

In accordance with the Taxpayers' Charter, TRO endeavours to determine objections within 120 days. However, the Charter recognises that due to complexity or the need for further information, some objections will take a longer period of time to determine.

Objections to reassessments – stamp duty, payroll tax and mineral royalties

A taxpayer may only object to a reassessment (other than a reassessment as a result of an objection or appeal) to the extent to which it increases the assessed amount of tax or royalty liability.¹⁷

However, where the reassessment is a result of a decision on an objection, a taxpayer may not object to that reassessment. Instead the objector must exercise their right to appeal against the objection decision to the Taxation and Royalty Appeals Tribunal (Tribunal) or the Supreme Court.¹⁸

Refunds

If an objector is entitled to a refund as a result of an objection or appeal, then the amount refunded will also include interest.¹⁹ The amount of interest will be calculated at the market interest rate for the period commencing on the day on which the amount was paid by the objector/appellant and ending on the day on which the refund is paid.²⁰

Please refer to TRO's website for the current market interest rate.

Commencing an appeal

In relation to a taxation decision (including a mineral royalty assessment), a taxpayer that is dissatisfied with the decision on an objection, has the choice of commencing an appeal to either:

- 1) the Tribunal, by lodging a notice of appeal with the registrar of the local court;²¹
or
- 2) the Supreme Court, by filing a notice of appeal in the registry of the Supreme Court.²²

¹⁷ Section 109(2) of the TAA.

¹⁸ Section 115(1) of the TAA.

¹⁹ Sections 129(3) of the TAA.

²⁰ Section 129(4) of the TAA.

²¹ Sections 115 and 118 of the TAA.

²² Sections 115 and 124 of the TAA.

The taxpayer may only appeal to either the Tribunal or the Supreme Court, but not both.²³

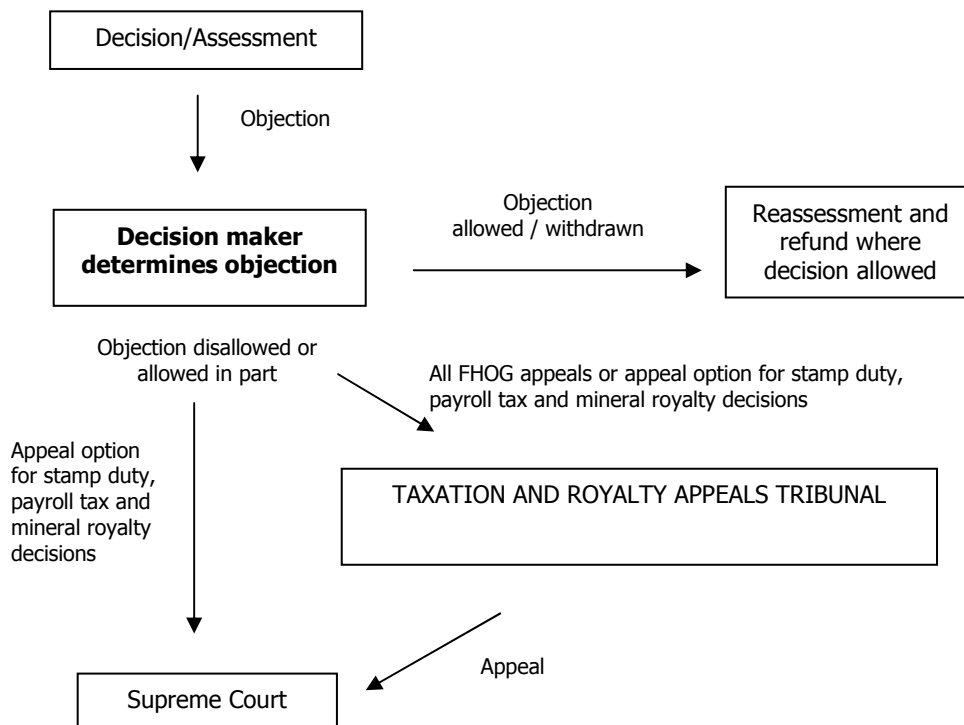
In relation to a first home owner grant decision, an objector that is dissatisfied with the decision on an objection may commence an appeal to the Tribunal, by lodging a notice of appeal with the registrar of the local court.²⁴

A person wishing to appeal must commence an appeal within 60 days of the date of issue of the objection decision.²⁵ Appeals are not limited to the grounds stated in the original objection and additional information can be provided to the Tribunal or Supreme Court.²⁶

The Tribunal should offer a lower cost alternative to the Supreme Court, although in the case of some taxation or mineral royalty matters, it may be more appropriate to appeal to the Supreme Court, such as where a decision relates to complex questions of law and/or fact.

Diagram of appeal procedure

The following diagram details the procedure for objections and appeals.



²³ Section 115(2)(b) of the TAA.

²⁴ Sections 115(2)(a) and 118 of the TAA.

²⁵ Section 117(1) of the TAA.

²⁶ Sections 118(4) and 125(1) of the TAA.

Extension of time to appeal

The Supreme Court and Tribunal have the power to extend time for an objector to commence an appeal where satisfied that the person has a reasonable excuse for not commencing the appeal within the relevant 60-day time period. An application for the extension of time must be made in writing and set out fully and in detail the reasons for the failure to commence the appeal within the 60-day period.²⁷

The Tribunal

The Tribunal is constituted by the Chief Magistrate or another magistrate chosen by the Chief Magistrate.²⁸

Lodging an appeal with the Tribunal

An appellant may commence an appeal with the Tribunal by lodging a notice of appeal with the Registrar of the Local Court within the 60-day appeal period and paying the prescribed fee.²⁹ The notice may be lodged by delivering it to the office of the Registrar or by electronic transmission (such as fax or email) provided that the hard copy of the document is delivered to the office of the Registrar within three working days after the date of lodgement.³⁰

The notice of appeal is Form 1 of Schedule 1 to the *Taxation and Royalty Appeals Tribunal Rules* (the Rules) and the prescribed fee is set out in Schedule 2 to the Rules. At the date of issue of this Guideline the fee is \$10.

The notice must state fully, and in detail the grounds for appeal and provide any further information or submissions not previously provided to TRO.³¹ The appellant is required to serve a copy of the appeal and the additional material on the decision maker within the 60-day appeal period.³²

As soon as practicable after receiving the copy of the notice of appeal and additional information, the decision maker must lodge with the Registrar and serve on the appellant a copy of the decision maker's records relevant to the appeal and any submissions that the decision maker wishes to make to the Tribunal.³³

Conduct of appeals to the Tribunal

In order to aid in resolving appeals as quickly and as inexpensively as possible, the Tribunal is required to determine the appeal on the material provided by the parties without conducting a hearing.³⁴ That is, the Tribunal will determine the appeal on:

²⁷ Section 117(2) and (3) of the TAA.

²⁸ Section 130(3) of the TAA.

²⁹ Section 118 of the TAA.

³⁰ Rule 5 of the *Taxation and Royalty Appeals Tribunal Rules*.

³¹ Section 118 of the TAA.

³² Section 119 of the TAA.

³³ Section 120 of the TAA.

³⁴ Section 131(2) of the TAA.

- 1) the information before the decision maker at the time of deciding the objection;
- 2) the notice of decision detailing the reasons for the decision;
- 3) additional information included in the appellant's notice of appeal; and
- 4) written submissions of the parties including any response made by the decision maker to additional information included in the appellant's notice of appeal.

However, the Tribunal may conduct a hearing where it considers there is insufficient information for the Tribunal to make a decision. The requirement to consider an appeal 'on the papers' where possible is in keeping with the aim of providing a less expensive appeal alternative to the Supreme Court, as it limits the cost of legal or other professional representation required for a hearing.

Decisions of the Tribunal

The Tribunal can:

- 1) confirm the decision appealed against;
- 2) vary the decision appealed against; or
- 3) substitute another decision that the decision maker could have made.³⁵

The Tribunal is required to keep a record of proceedings and to give written reasons for its decisions.³⁶ These decisions will act as precedent for the decision maker and will aid the Supreme Court should there be an appeal from the decision of the Tribunal.

Referral to the Supreme Court

The Tribunal may refer the appeal to the Supreme Court if it considers that the Supreme Court is the more appropriate venue.³⁷ For example, this could occur where an extensive hearing or oral submissions/evidence is necessary or there are complex questions of law and/or fact to consider.

Appeals from the Tribunal

Decisions of the Tribunal may be appealed to the Supreme Court on a question of law only.³⁸ This means that the Supreme Court accepts the facts as determined by the Tribunal, does not hear new evidence and will only hear legal arguments. This is consistent with normal court appeal procedures.

Tribunal Costs

Generally, each party bears their own costs of an appeal, but the Tribunal may award costs in favour of either party if it is satisfied that it is fair to do so, having regard to a

³⁵ Section 122 of the TAA.

³⁶ Sections 131(4) and (5) of the TAA.

³⁷ Section 121 of the TAA.

³⁸ Section 123 of the TAA.

number of factors.³⁹ These factors include the manner in which the parties have conducted the appeal, the relative strength of each party's claims and the nature and complexity of the appeal.

The Tribunal may also order a representative of a party to an appeal to pay the costs of the other party, if the Tribunal considers that the representative was responsible for unreasonably prolonging the time taken to complete the appeal or conducted the appeal in a way that unnecessarily disadvantaged other parties to the appeal.⁴⁰

This treatment is consistent with that adopted by other administrative appeals tribunals operating in other states.

Appeals to the Supreme Court from an objection decision

The conduct of appeals to the Supreme Court is largely governed by the *Supreme Court Rules*, particularly Order 83 of these Rules. However, the TAA does regulate some of the Supreme Court appeal procedures, as set out below.

Decisions of the Supreme Court

The Supreme Court can:

- 1) confirm the decision appealed against;
- 2) vary the decision appealed against; or
- 3) substitute another decision that the decision maker could have made.⁴¹

Supreme Court may admit new evidence on an appeal directly from an objection decision

On an appeal directly to the Supreme Court from an objection decision (rather than an appeal from a decision of the Tribunal), the Court may admit new evidence that was not before the decision maker at the time of making the decision on the objection. This requires the Court to be satisfied that the evidence is material to the decision. If this occurs, the appeal is adjourned and the decision maker is to be given the opportunity to reconsider the objection in light of the new evidence. The decision maker can choose not to reconsider the objection and request the Court to continue with the appeal.⁴²

If the decision maker amends or varies the decision in favour of the appellant, the Court may order the appellant to pay some or all of the decision maker's costs of the appeal.⁴³ This allows the Court to recompense the decision maker for any additional costs borne in the appeal that could have been avoided if all relevant information was provided by the taxpayer prior to the objection being determined. Accordingly, the

³⁹ Section 132 of the TAA.

⁴⁰ Section 132(3) of the TAA.

⁴¹ Section 127 of the TAA.

⁴² Section 127 of the TAA.


⁴³ Section 126(3) of the TAA.

amount of costs that the Court may order the appellant to pay may depend upon such things as whether the objection is allowed in whole or part and whether the appeal continues after the variation of the decision.

Commissioner's Guideline CG-GEN-001, which sets out information on the revenue publication system, is incorporated into and is to be read as one with this Guideline. All Circulars and Guidelines are available from TRO's website.

Date of effect

This version of the Guideline has effect from 1 January 2008.



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