



Taxation and Royalty Appeals Tribunal

This Circular provides information on amendments to the Taxation (Administration) Act ('TAA'), the Pay-roll Tax Act ('PTA') and the Mineral Royalty Act ('MRA') by the Taxation (Administration) Amendment (Objections and Appeals) Act to establish a new Taxation and Royalty Appeals Tribunal and provide new uniform rules for taxation and mineral royalty objections and appeals.

Summary of measures

In summary, the amendments establish:

- (a) the new Taxation and Royalty Appeals Tribunal (the 'Tribunal') announced by Government as part of the 2004-05 Budget; and
- (b) a uniform framework in the TAA for objections and appeals under each of the TAA, PTA and MRA, including a choice of an appeal to the Tribunal or to the Supreme Court.

Previous objection procedures

Under the old procedures, taxpayers and mineral royalty payers could object to tax or mineral royalty assessments or payroll tax decisions of the Commissioner of Taxes or Mineral Royalty Secretary ('the decision maker'). Objections were required to be lodged:

- a) under the TAA, within **30 days** after the **taxpayer being informed of the assessment**¹;
- b) under the MRA, within **30 days** after the date on which the **royalty payer is informed of the assessment**²; and
- c) under the PTA, within **60 days** after **service of notice of the decision or assessment**³.

However, the decision maker could extend this time period where satisfied that the taxpayer had a **reasonable excuse** for not lodging in the required time period.

Previous TAA and PTA appeal procedures

Where the taxpayer was not satisfied with the stamp duty or payroll tax objection decision, an appeal to the decision could be made to the Supreme Court. The appeal was required to be lodged within **30 days** after **service of notice of the decision on the objection**⁴.

The appeal was limited to the grounds stated in the original objection and the burden of proof was on the taxpayer⁵. The decision of the Supreme Court could be appealed to the Court of Appeal. Leave could be sought to appeal the Court of Appeal's decision to the High Court.

Where the royalty payer was not satisfied with the decision on a mineral royalty objection, a request could be made to have the objection treated as an application for review. Such a request had to be lodged within **60 days** after **service of notice of the decision**⁶.

¹ Former section 100 of the TAA.

² Former section 28 of the MRA.

³ Former section 34 of the PTA.

⁴ Former section 101 of the TAA and section 35 of the PTA.

⁵ Former section 101 of the TAA and section 35 of the PTA.

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Previous MRA 'appeal' procedure

An application for review was decided by the Treasurer after a Board of Review gave an opinion and recommendations on the application. The grounds of the application for review were the same as those in the original objection⁷. The action taken by the decision maker on the decision of the Treasurer could be appealed to the Supreme Court, but only on a question of law arising from the opinion of the Board of Review. The decision of the Supreme Court could not be appealed against⁸.

New uniform objection procedure

All taxpayers and mineral royalty payers ('taxpayers') are now able to lodge an objection within **60 days** of the **date of issue of the notice of assessment or decision** ('the decision')⁹. The 60-day period runs from the **date of issue** of the notice of the decision, rather than from the date of service of the decision. This approach provides a certain date, as it is written on the assessment notice, whereas confirming when a notice has been received can be more difficult due to postal delays or other administration related events.

The decision maker retains the ability to extend the period for lodging an objection where satisfied that the taxpayer has a **reasonable excuse** for not lodging in the 60-day period¹⁰.

This objection procedure allows the decision maker to more quickly rectify errors without the involvement of the Court system. It also allows the decision maker to identify and act on areas where greater community awareness may be required, and to consider recommending changes to the legislation where outcomes are unfair or anomalous.

As occurred prior to the amendments, objections are considered and determined by an independent and separate area within Territory Revenue Management (TRM) called the Policy and Legislation Branch. This area operates separately to the compliance and operational areas of TRM that issued the original assessment. This ensures the objective consideration of objections.

In accordance with the Taxpayers' Charter, the Policy and Legislation Branch 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.

⁶ Former section 29 of the MRA.

⁷ Former section 32 of the MRA.

⁸ Former section 35 of the MRA.

⁹ Section 102 of the TAA.

¹⁰ Section 103 of the TAA.

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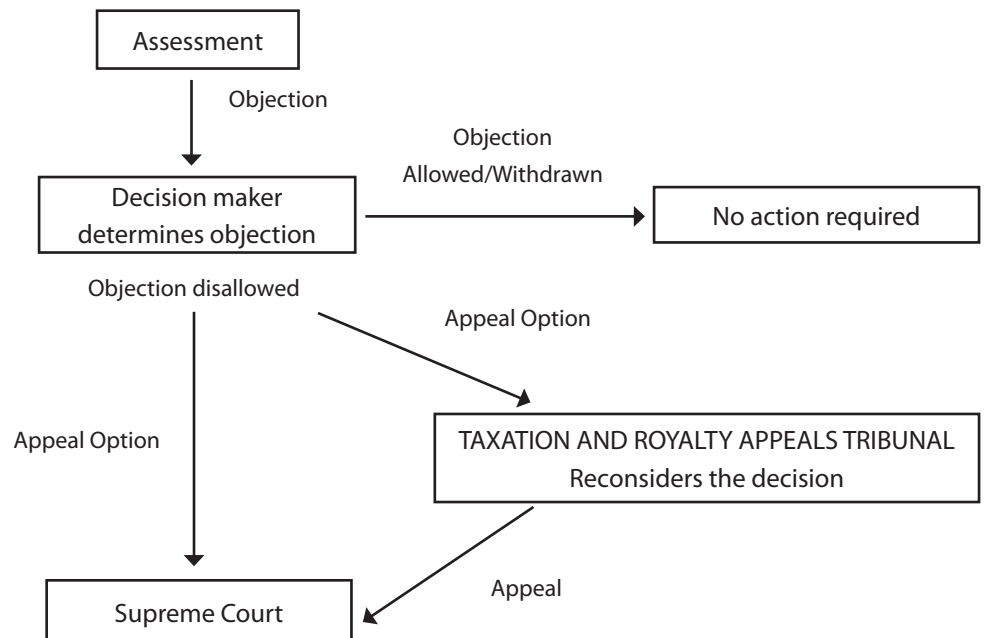
New uniform appeal procedure

A taxpayer that is not satisfied with the decision on an objection has the choice of appealing either to the Tribunal or the Supreme Court (but only one or the other)¹¹. Under the new uniform procedure taxpayers may commence an appeal within **60 days** of the **date of issue of the objection decision**¹². Appeals are no longer limited to the grounds stated in the original objection and additional information can be provided to the Tribunal or Court¹³. See below for further details on the appeal procedure.

In relation to a mineral royalty objection, the previous procedure for establishing a Board of Review to advise the Treasurer has been replaced with the choice of an appeal to the Tribunal or Supreme Court. This approach has been adopted because it is more consistent with the accepted procedure for appealing other revenue decisions and provides an established framework for the consideration of such appeals.

The Tribunal should offer a lower cost alternative to the Supreme Court, although in some situations it may be more appropriate to appeal to the Supreme Court. For example, this may include instances where a decision relates to complex questions of law or fact.

The following diagram details the new procedure for objections and appeals in respect of a taxation or mineral royalty matter.



¹¹Sections 105A(1), 105B(2) and 105J(2) of the TAA.

¹²Sections 105B(1) and 105J(1) of the TAA.

¹³Sections 105C(3) and 105L(1).

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Application of the new procedures

The new appeal provisions apply to objections decided after 18 May 2004 being the date that the Government announced the establishment of the Tribunal. However, where the taxpayer has otherwise commenced action to appeal, the procedures existing prior to these amendments are to apply. Taxpayers will have 60 days from 31 March 2005, or the date of the decision (whichever is later) in which to lodge their appeals¹⁴.

The Tribunal

The Tribunal is constituted by the Chief Magistrate or another magistrate chosen by the Chief Magistrate¹⁵.

Lodging an appeal with the Tribunal

A taxpayer 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 period¹⁶. The notice must state fully and in detail the grounds of appeal and provide any further information or submissions not included with the original objection¹⁷. Within that same 60-day period, the taxpayer is to serve a copy of the appeal (and the additional material) on the decision maker¹⁸.

As soon as practicable after the lodgement of an appeal to the Tribunal, the decision maker will review the appellant's submissions and further information. This provides an opportunity for the decision maker to review the objection decision, on the basis of the new information or grounds that were not provided at the time that the original decision on the objection was made. If the decision maker's position is unchanged, the objection documentation including the decision maker's relevant records and additional submissions will be lodged with the Tribunal¹⁹.

If the decision maker allows the objection in part, or reduces the assessment, the appellant may, if dissatisfied with the reduced assessment, continue with the appeal in respect of the reduced assessment²⁰.

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. That is, the Tribunal will determine the appeal on:

- a) the information before the decision maker at the time of deciding the objection;
- b) the notice of decision detailing the reasons for the decision;
- c) additional information included by the taxpayer in their notice of appeal; and
- d) written submissions of the parties.

¹⁴ Sections 130 – 135 of the TAA.

¹⁵ Section 105U of the TAA.

¹⁶ Section 105B(1) of the TAA.

¹⁷ Section 105C(1) of the TAA.

¹⁸ Section 105C(2) of the TAA.

¹⁹ Section 105E of the TAA.

²⁰ Section 105A(2) of the TAA.

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Conduct of appeals to the Tribunal - cont'd

However, the Tribunal may conduct a hearing if it is satisfied that a hearing is required (that is, 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 representation required for a hearing.

Tribunal appeal is de novo

An appeal to the Tribunal is an appeal *de novo*²¹. That is, the Tribunal 'stands in the shoes' of the decision maker to determine what it believes to be the correct decision on an objection. This will mean there is no requirement to show an error in the decision maker's reasoning before the Tribunal may substitute its own reasoning.

Decisions of the Tribunal

The Tribunal can:

- a) confirm the decision appealed against;
- b) vary the decision appealed against;
- c) substitute another decision that the decision maker could have made; or
- d) remit the decision to the decision maker with a direction to reconsider it²².

The Tribunal will be required to keep a record of proceedings and to give written reasons for its decisions²³. 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 venue²⁴. For example, this could occur where an extensive hearing or oral submissions/evidence are 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 only²⁵. 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.

²¹ Section 105A(3) of the TAA.

²² Section 105F of the TAA.

²³ Sections 105V(3) and (4) of the TAA.

²⁴ Section 105H of the TAA.

²⁵ Section 105G of the TAA.

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Costs	<p>Generally each party bears their own costs of an appeal to the Tribunal, but the Tribunal may award costs in favour of a party if it is satisfied that it is fair to do so, having regard to a number of factors²⁶. 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.</p> <p>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 appeal²⁷.</p> <p>This is consistent with administrative appeals tribunals in operation in other States.</p>
Appeals to the Supreme Court	<p>Generally, the previous procedures under the TAA and PTA for conducting an appeal to the Supreme Court have been maintained. However, there are several important changes to the previous procedures, which are noted below.</p>
Nature of the appeal to the Supreme Court	<p>Appeals to the Supreme Court from objection decisions, but not from decisions of the Tribunal, are appeals <i>de novo</i>²⁸.</p>
Decisions of the Supreme Court	<p>The Supreme Court can:</p> <ol style="list-style-type: none"> confirm the decision appealed against; vary the decision appealed against; substitute another decision that the decision maker could have made; or remit the decision to the decision maker with a direction to reconsider it²⁹.
Supreme Court may admit new evidence	<p>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, if the Court is 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 appeal³⁰.</p>

²⁶ Section 105W of the TAA.

²⁷ Section 105W(4) of the TAA.

²⁸ Sections 105A(3) and 105G(1) of the TAA.

²⁹ Section 105N of the TAA.

³⁰ Section 105M of the TAA.

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Supreme Court may admit new evidence - cont'd

If the decision maker amends or varies the decision in favour of the taxpayer, the Court may order the taxpayer to pay some or all of the decision maker's costs of the appeal³¹. 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 to the decision maker by the taxpayer prior to the objection being determined. Accordingly, the amount of costs that the Court may order paid 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.

Extension of time to appeal

Both the Court and Tribunal will have the power to extend time for a taxpayer to commence an appeal where satisfied that the taxpayer has a **reasonable excuse** for not commencing the appeal within the 60-day time period³². This amends the previous procedure, where the decision maker had the ability to extend the time to appeal.

Nature of the amendments

A new Part VA was inserted into the TAA to establish the Tribunal³³. In order to establish the uniform framework for objections and appeals under each of the TAA, PTA and MRA, the objection and appeal provisions in each of the TAA (Part V), PTA (Part VI) and the MRA (Part III) are repealed and instead refer to the new Part V inserted in the TAA for the procedure for all objections and appeals³⁴.

Commencement

These amendments commence on 31 March 2005 and the Tribunal comes into operation on the same date.

Revenue Circular RA001, which sets out information on the revenue circular system, is incorporated into and is to be read as one with this Circular.

Refer to the TAA and the *Taxation (Administration) Amendment (Objections and Appeals) Act* for precise details of the changes. For general information, please contact TRM on 1300 305 353.



Authorised by
the Commissioner of Taxes
March 2005

³¹ Section 105M(5) of the TAA.

³² Sections 105D and 105K of the TAA.

³³ Section 5 of the *Taxation (Administration) Amendment (Objections and Appeals) Act* 2004.

³⁴ Sections 5, 9 and 18 of the *Taxation (Administration) Amendment (Objections and Appeals) Act* 2004.