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REPORT TO PARLIAMENT IN ACCORDANCE WITH SECTION 135 OF THE TAXATION ADMINISTRATION ACT 2003

Part 2 of the *Revenue Laws Amendment Act 2013* amended the *Taxation Administration Act 2003* and the *Duties Act 2008* to provide a framework for issuing interim assessments of transfer duty and landholder duty. These amendments commenced operation on 25 September 2013.

Section 135(1) of the *Taxation Administration Act* requires the Minister to carry out a review of the operation and effectiveness of the interim assessment provisions as soon as practicable after the third anniversary of their commencement. Section 135(2) provides the Minister shall cause a report based on the review to be tabled in each House of Parliament no later than 12 months after that date.

Background

The interim assessment provisions were introduced to enable the Commissioner of State Revenue to assess a major portion of the duty on high value complex transfer duty and landholder duty transactions at an earlier stage, allowing more timely recognition of the associated revenue. They are not aimed at routine property or business acquisitions, nor do they operate to impose an increased tax burden on the community.

Prior to the enactment of the interim assessment provisions, an assessment notice was not issued until the Commissioner had considered and resolved complex legal and valuation arguments presented by the taxpayer, and determined the total dutiable value of a transaction. For complex transactions, it was not uncommon for this process to take up to five years, even where the bulk of the value could be determined at an early stage. No interest accrued to government while these assessments were being progressed.

There was also a suggestion that, in some cases, tactics were used to delay the Commissioner from issuing an assessment, prolonging the benefit of the use of the funds that would otherwise have been applied to pay duty.

At the time of introduction, the interim assessment provisions were expected to bring forward recognition of \$260 million over the forward estimates period, which comprised \$200 million in 2013-14 and \$20 million in each succeeding out-year. The amount of revenue brought forward over this period, as detailed below, has exceeded the estimated amount.

To complement the interim assessment provisions, amendments were also made to the *Taxation Administration Act* to allow the Commissioner to require a taxpayer to provide a valuation from a qualified person. The Commissioner was also authorised to recover valuation costs if the valuation was not provided or if, on final assessment¹, the Commissioner's valuation exceeded the taxpayer's valuation by 15 per cent or more 'valuation provisions'.



¹ Final assessment includes one based on a value determined in proceedings before the State Administrative Tribunal or the Court of Appeal.

To further support the integrity of property valuations, a specific penalty tax provision was also inserted in the Taxation Administration Act to discourage significantly understated values from being presented to the Commissioner ‘valuation penalty provisions’.

Interim assessment framework

The interim assessment provisions give the Commissioner the power to issue an interim assessment for a portion of the transfer duty payable on a dutiable transaction or the landholder duty payable on a relevant acquisition.

These powers can only be exercised if more than six months has elapsed since the documents evidencing the transaction or acquisition were required to be lodged with the Commissioner, or the Commissioner believes it will not be possible to obtain all of the information necessary to determine the dutiable value of the transaction or acquisition within that period.

An interim assessment must be followed by a complete assessment when the Commissioner has sufficient information, or when a compromise agreement regarding the duty payable on the transaction or acquisition is made.²

The interim assessment reforms included a requirement that the Minister report to Parliament on their operation and effectiveness after the third anniversary of their commencement.

Operation

Since 25 September 2013, the Commissioner has issued 57 interim assessments as detailed in the following table.

	Number of Interim Assessments	Value of Interim Assessments	Revenue Brought Forward*
2013-14	26	\$235,058,873	\$196,660,953
2014-15	13	\$41,958,333	\$40,242,449
2015-16**	17	\$371,129,092	\$369,667,999
2016-17***	1	\$52,513,151	\$52,513,151
	57	\$700,659,449	\$659,084,552

* Where the complete assessment was issued in the same financial year as the interim assessment, the value of the interim assessment has not been included in the value of revenue brought forward on the basis that the interim assessment did not cause revenue to be brought forward into an earlier financial year

** Includes one high value interim assessment

*** The figures for 2016-17 are to 25 September 2016

² A compromise agreement can be made under section 20A (1)(a) of the Taxation Administration Act. Commissioner’s Practice TAA 21 Compromise Assessments sets out guidelines on how this power is administered by the Commissioner

The Commissioner takes a conservative approach when applying the interim assessment provisions. An interim assessment is generally only issued on the portion of the transaction value that is not in dispute. This limits the scope for the duty payable on an interim assessment to exceed that payable on a complete assessment.

To assist taxpayers and their representatives, Commissioner's Practice TAA 27 was published which outlines the circumstances in which the Commissioner will make an interim assessment of a portion of duty prior to making a complete assessment. In addition to the statutory requirements, the Commissioner will generally only exercise the interim assessment powers where the primary liability for tax under the interim assessment is expected to be more than \$500,000.

Valuation powers

The introduction of the valuation provisions and valuation penalty provisions to complement the interim assessment provisions has resulted in a substantial improvement in taxpayer cooperation and the integrity of valuation evidence provided to the Commissioner. These provisions can also be applied in matters not involving an interim assessment.

Prior to the introduction of these provisions, it was not unusual to see variances of up to 100 per cent between the taxpayers' values and the Commissioner's values. In some cases, the additional revenue assessed on the Commissioner's valuation ranged up to \$48 million.

Since the commencement of the provisions, taxpayers have provided written valuations from qualified persons on 50 occasions.³ The Commissioner has issued assessments based on 24 of these, with another five matters likely to be accepted.

The remaining 21 cases are in various stages of the assessment process. These include six cases where the Commissioner's valuation exceeds the taxpayer's valuation by 15 per cent or more.

Significantly, growing confidence with the veracity of the valuations provided has resulted in an increasingly greater percentage of taxpayers' valuations being accepted as the basis for assessment. For example, 20 per cent of valuations provided in 2013-14 were accepted for assessment purposes compared with almost 50 per cent in 2015-16.

The provisions have also enabled some cases to be finalised without the need to use to the interim assessment powers that may have otherwise been required.

³ Includes valuations provided voluntarily by taxpayers and in response to a formal request by the Commissioner.

Time between interim and complete assessment

Measures are in place to monitor the time taken to complete a final assessment following an interim assessment being made. This ensures the timely completion of the final assessment.

Concern was raised during the debate of the Revenue Laws Amendment Bill 2013 in the Legislative Council that the interim assessment regime would contribute to a lengthening of the time taken for the assessment of complex matters to be finalised. The Commissioner expected the combination of the interim assessment provisions, valuation provisions and valuation penalty provisions would mitigate any risk that this might occur. The Parliament requested this issue be specifically addressed in this report.

Matters on hand at commencement

Interim assessments have been issued for 31 matters that were on hand when the interim assessment provisions commenced 'legacy matters'. Complete assessments have been issued for 13 of these matters, with the average time between lodgement and complete assessment being a little over three years.

Most of the remaining legacy matters are ones in which there are valuation and legal disputes but, in the circumstances of the particular case and due to the transitional arrangements for commencement of the new provisions, the new valuation provisions and valuation penalty provisions do not apply to encourage the taxpayer to cooperate and expedite finalisation of the assessment process. It is anticipated most of these legacy matters will be finalised this financial year.

Matters lodged since commencement

Given that the interim assessment provisions have existed for a short time relative to the time involved in assessing high value complex matters (previously in the order of five years), there have been a limited number of matters lodged after the commencement of the interim assessment provisions that have progressed through both interim assessment and complete assessment.

Twenty-six interim assessments have been issued for matters lodged with the Commissioner since the commencement of the provisions, with six progressing to complete assessments. Of those, four were lodged in 2013-14 with the average time to complete the assessment being approximately 20 months. The two remaining matters were lodged in 2014-15 and 2015-16 respectively and took approximately seven months and 14 months from lodgement to complete assessment.

Of the 20 matters remaining, six were lodged in 2013-14, nine in 2014-15, four in 2015-16 and one in 2016-17 up to 25 September 2016. Assessment of these matters is substantially advanced, particularly for the earlier years, and the Commissioner expects approximately 50 per cent of these to progress to complete assessments this financial year.

Despite these reforms, there remain a number of matters involving complex legal and valuation disputes, which by necessity require time and the engagement of experts to resolve.⁴

The overall experience of the Commissioner in dealing with matters lodged since the commencement of the interim assessment provisions has been that the new suite of provisions assists in motivating taxpayers to cooperate by adopting reasonable positions about transaction values. This facilitates more timely resolution of potentially highly contentious valuation issues and paves the way for proceeding to complete assessments more expeditiously.

Effectiveness of the interim assessment framework

The results of the review indicate the interim assessment framework has been successfully implemented in accordance with the intent of the Parliament. Together with the complementary valuation provisions, this measure has provided more equity for the benefit of the broader community and improved the timeliness of revenue recognition for government. Furthermore, there has been no negative feedback about the Commissioner's administration of the powers or the operation of these reforms.

⁴ Amendments were made to the Duties Act in 2015 to address one of these issues which involved the shifting of a significant portion of the value of a transaction away from dutiable property, more particularly mining tenements, to information relating to the property, which is not dutiable. While there were existing provisions to deal with this issue, arguments were made regarding their effectiveness, necessitating the amendment. It is expected the amendment will have a positive effect in addressing these arguments thereby further improving the integrity of valuations provided to the Commissioner and reducing the need to issue an interim assessment.