

Part C Lodgment of Documents and Notification of Liabilities**57 ISSUING A DEFAULT ASSESSMENT, MAKING ESTIMATES AND BRINGING TAX-RELATED LIABILITIES TO ACCOUNT**

The policy in this chapter is to be followed by Tax Office staff. We have made every effort to ensure it is technically accurate, but in the interests of clarity it has been written in 'plain English' and should not be read or interpreted like legislation. If you feel that something in the chapter is wrong or misleading, please advise the Tax Office.

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57.1 PURPOSE

57.1.1 This chapter deals with the Commissioner's ability, in certain circumstances, to address a failure to lodge an 'approved form', to bring to account 'tax-related' liabilities, and to make default assessments or estimates.

57.2 LEGISLATION

57.2.1 Section 167 of the *Income Tax Assessment Act 1936* (ITAA 1936) allows the Commissioner to make a default or arbitrary assessment of the amount upon which, in his judgment, income tax ought to be levied and that amount then becomes the taxpayer's taxable income.

57.2.2 Section 73 of the *Fringe Benefits Tax Assessment Act 1986* (FBTAA) allows the Commissioner to make a default assessment of the fringe benefits taxable amount and of the amount of Fringe Benefits Tax (FBT) to which, in his opinion, the employer is liable.

57.2.3 Section 22 of the *Tax Administration Act 1953* (TAA) allows the Commissioner at any time to make an assessment of the net amount of indirect tax, such as Goods and Services Tax (GST), Luxury Car Tax (LCT) and Wine Equalisation Tax (WET) for a tax period.

57.2.4 Sections 31-8 and 31-10 of the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act) set out the lodgment requirement and lodgment due date of GST returns.

57.2.5 Section 162-75 of the GST Act provides for the requirement to notify GST instalment amounts to the Commissioner in the 'approved form' on or before the due date for payment.

57.2.6 Section 222AGA of the ITAA 1936 provides that, where there is reason to suspect that a person has become liable to make a tax related payment under a remittance provision (ie PAYG withholding) and the liability remains undischarged after the due date, the Commissioner may make a reasonable estimate of the unpaid amount of the liability.

57.2.7 Part 2-5 of Schedule 1 to the TAA identifies the Pay as you go (PAYG) withholding provisions.

57.2.8 Section 16-150 of Schedule 1 to the TAA imposes an obligation on an entity that must pay to the Commissioner an amount (even if it is a nil amount) to notify the Commissioner of the amount which it has withheld

under Division 12, 13 and 14 of Schedule 1 to the TAA in the 'approved form' on or before the day on which the amount is due to be paid.

- 57.2.9 Section 45-20 of Schedule 1 to the TAA requires entities that are liable to pay a PAYG instalment for a tax period (even if it is a nil amount) to notify the Commissioner of the amount of the instalment income for that period and in the 'approved form'.
- 57.2.10 Under section 45-112 of Schedule 1 to the TAA the Commissioner is required to notify the amount of the instalment for a quarterly payer who pays on the basis of GDP-adjusted notional tax.
- 57.2.11 Section 221AZKD of the ITAA 1936 requires an instalment payer that chooses to defer payment of a final instalment for the 1999-2000 year to notify the Commissioner of the amount of the instalment on or before the due date for payment and in the 'approved form'.
- 57.2.12 Section 104 of the FBTA requires an employer to notify the Commissioner in the approved form of the amount of the instalment on or before the due date for payment.
- 57.2.13 Section 250-10 of Schedule 1 to the TAA provides a summary of tax - related liabilities.
- 57.2.14 Section 255-1 of Schedule 1 to the TAA provides the meaning of tax - related liability.

57.3 INTRODUCTION

- 57.3.1 Under various provisions of taxation laws the Commissioner can:
- (i) make an assessment of the taxable income upon which income tax ought to be levied,
 - (ii) make an assessment of the fringe benefits taxable amount and the amount of fringe benefits tax payable,
 - (iii) make an assessment of the net amount of GST, LCT and WET for a tax period,
 - (iv) make an estimate of amounts outstanding under a remittance provision,
- and bring to account, where appropriate:
- (v) deferred company instalments (DCIN),
 - (vi) fringe benefits tax instalments (FBTI), and
 - (vii) Pay as you go (PAYG) instalments.
- 57.3.2 Circumstances under which the Commissioner may make a default assessment and/or make an estimate and/or bring to account a tax-related liability include:
- (i) where any person is in default in furnishing a return, statement or other approved form,
 - (ii) certain cases where a person has presented information in a return, statement or other approved form that is incomplete or incorrect,

- (iii) where there is reason to believe that a person who has not furnished a return, statement or other approved form has derived a taxable income, acquired a fringe benefit taxable amount, become liable to make a tax-related payment under a remittance provision, or has become liable for other tax-related liabilities that should be reported on an approved form
- (iv) where prosecution action has not resulted in effective compliance with the requirement to lodge returns, statements or other approved forms, and
- (v) where the Commissioner believes that this course of action is the most appropriate in the circumstances.

Income Tax and Fringe Benefits Tax

- 57.3.3 The requirements for a default assessment are the same as for any assessment:
- (i) the assessment must be the result of an act or operation of the Commissioner,
 - (ii) it must lead to an assessment, after consideration of all relevant facts, of the amount of tax payable by a given taxpayer,
 - (iii) the assessment must be definitive in character, rather than tentative or provisional, and
 - (iv) at the completion of the process, the Commissioner must serve the taxpayer with a notice of assessment which provides details of the taxable income or a fringe benefits taxable amount.
- 57.3.4 In the event of an objection against an assessment, the Commissioner needs to be satisfied that the basis of the assessment is supportable, considering all the information and evidence available.
- 57.3.5 In an appeal against an objection decision on a default assessment, the onus is on the taxpayer to show that the assessment is, on the balance of probabilities, excessive.

Activity Statement Liabilities

- 57.3.6 There is no legal impediment to the Commissioner revising an activity statement or, where a taxpayer fails to lodge an activity statement, initiating a process which will post tax-related liabilities to the taxpayer's account, provided that:
- (i) the correct amount of a tax-related liability can be ascertained, or
 - (ii) there is a provision in the legislation which allows the Commissioner to raise an estimate or a default assessment.
- 57.3.7 If the Commissioner is able to ascertain the correct amount of a tax-related liability or can establish a liability by other means (eg by making an estimate of a PAYG withholding amount), the Commissioner may pursue any amounts outstanding as a result.
- 57.3.8 If the entity has more than one tax obligation to be notified on an activity statement the Commissioner can raise or revise any one or more of those liabilities, as they are separate obligations in taxation law.
- 57.3.9 An entity may only object against an 'indirect tax' assessment, but not against revisions to other items on the activity statement.

57.4 POLICY

- 57.4.1 In cases where compliance action has not resulted in lodgment of an approved form (refer to the policy chapter entitled 'Actioning non-lodgment') the Commissioner may, depending upon the nature of the outstanding obligations, raise a default assessment and/or make an estimate, and/or bring to account a tax-related liability for the relevant tax period.
- 57.4.2 There may also be situations where it is preferable to consider those options rather than take action to enforce lodgment of an 'approved form'. For example, in situations where:
- (i) there is a risk that taxpayers would remove themselves or their assets from Australia,
 - (ii) there is evidence that a non-lodger has derived a taxable income, has a PAYG withholding obligation or other tax-related obligation and there is a risk that moneys that are available to satisfy the tax debt would become irrecoverable if collection action were delayed,
 - (iii) a taxpayer's compliance record is so poor that it suggests that the person's level of compliance would not change as a result of prosecution, or
 - (iv) a taxpayer's compliance record and other information available to the Commissioner suggests that prosecution action is neither warranted nor cost effective. (Refer to the policy chapter entitled '*Referral for prosecution action – Lodgment of documents*').
- 57.4.3 The raising of a default assessment and/or the issue of an estimate does not technically satisfy the requirement for the taxpayer to lodge the approved form. In appropriate cases the Commissioner may still take prosecution or other action to obtain lodgment of the approved form.

Income Tax and Fringe Benefit Tax

- 57.4.4 The Commissioner may make a default assessment of a person's taxable income or a fringe benefits taxable amount upon any basis that is reasonable and, as much as is practical, takes into account their particular circumstances. This includes the use of available external information, indirect audit methodologies, statistical information or extrapolation from previous years' returns.
- 57.4.5 Generally, the Commissioner will advise a taxpayer of the intention to issue a default assessment and the basis upon which it has been calculated. This provides a taxpayer with an opportunity to put forward an alternative basis of calculation or to rebut the assumptions upon which estimates are based. Any reply received should be given appropriate weight in making a default assessment. However, the Commissioner is not bound to accept a taxpayer's unsupported reply if it conflicts with independent evidence.
- 57.4.6 The Commissioner may consider a number of factors in determining whether to exercise the power to make a default assessment. Some of these relevant factors include:
- (i) the facts of the case;
 - (ii) the availability and reliability of information as to a taxpayer's likely income or fringe benefits taxable amount;

- (iii) the choice of the most cost-effective method of changing a taxpayer's poor compliance.

57.4.7 Where the Commissioner makes a default assessment of the amount upon which tax ought to be levied, that amount then becomes the taxpayer's taxable income or fringe benefits taxable amount.

57.4.8 Under the ITAA 1936 and the FBTAA the Commissioner shall serve notice of an assessment on the person liable to pay the tax. For the purposes of those acts and associated regulations the Commissioner may serve a notice of assessment on a person by delivering it to the person personally or, by leaving it at or posting it to their preferred address for service. Similarly, for companies, by leaving it at or posting it to their preferred address for service.

Indirect tax components of the Business Activity Statement

57.4.9 The Commissioner can make an assessment of a taxpayer's GST, WET or LCT net amount at any time. Situations in which the Commissioner may make an assessment include situations:

- (i) where an entity has not lodged a GST return for a tax period, or
- (ii) where the Commissioner has reason to believe that the amounts stated in a return are incorrect.

57.4.10 A notice of assessment will issue advising the entity of the amount assessed.

57.4.11 The mere lodgment of an activity statement by the entity notifying a GST amount does not constitute an assessment.

Other components of an activity statement

57.4.12 The Commissioner has the power to estimate the amount of PAYG withholding which remains outstanding for a particular period. While this does not require an exact calculation, it does require that the estimate be reasonable and based on sufficient detail to justify the estimate. (For more information, refer to the policy chapter entitled 'Estimating a liability').

57.4.13 The Commissioner can bring to account a PAYG instalment amount. However, the Commissioner cannot make an estimate of the instalment amount; it must be an actual amount. Where a taxpayer is an instalment amount payer, the PAYG instalment amount will be that amount notified to the taxpayer on the original activity statement.

57.4.14 DCIN and FBTI amounts will be those amounts notified to the taxpayer on the original activity statement.

57.5 TERMS USED

57.5.1 'Activity Statement' (AS). See Business activity statement and Instalment activity statement for further details.

57.5.2 'Approved Form'. Takes the meaning set out in subsection 388-50(1) of Schedule 1 to the TAA and includes requirements concerning declarations, full completion of the form, and the manner in which the form must be given. The Commissioner may combine in the same approved form more than one return, notice, statement or other document (for example, the activity statement).

- 57.5.3 'Business activity statement' (BAS) - an approved form to be lodged by those taxpayers who have an Australian Business Number and are registered or required to register for GST. Other obligations notified on the BAS may include WET, LCT, PAYG instalments, PAYG withholding, FBTI and/or DCIN.
- 57.5.4 'Default Assessment'. Under the various provisions of taxation law the Commissioner can at any time choose to make a default assessment. For example, the Commissioner can at any time make a default assessment of the net amount of Goods and Services Tax (GST) for a tax period.
- 57.5.5 'Deferred company instalments' (DCIN) – eligible entities will be able to defer part of their 1999/2000 assessed income tax liability. Where this applies, the instalment amount will be brought to account on the activity statement.
- 57.5.6 'Instalment activity statement' (IAS) means an approved form to be lodged by taxpayers who are either not registered or required to be registered for GST, or who are not required to report GST in the particular period but may have PAYG instalments, PAYG withholding, FBTI and/or DCIN obligations.
- 57.5.7 'PAYG Instalments' - Individuals and entities with business and investment income are generally required to pay PAYG instalments on that income. This system replaces the previous provisional tax and company instalment system.
- 57.5.8 'PAYG Withholding' - The withholding system consolidates and simplifies previous withholding obligations. It provides one set of provisions that apply to all withholding events to establish how and when withholding payments are to be made to the Tax Office. An annual report is also required.
- 57.5.9 'Remittance provisions' are those provisions of the ITAA 1936 and the TAA that require a debtor to remit:

prior to 1 July 2000

- (i) deductions made from reportable payments,
- (ii) tax instalment deductions made from payments of salary and wages,
- (iii) deductions from prescribed payments,
- (iv) deductions made from natural resource payments and unattributed income payments, and
- (v) dividend, interest and royalty withholding taxes.

on or after 1 July 2000

- (vi) amounts withheld under the PAYG withholding system.