TR 2010/D10 - Income tax: objections against income tax assessments

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This document has been finalised.

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Taxation Ruling

Income tax: objections against income tax assessments

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What this Ruling is about

1. This Ruling explains what constitutes a valid objection against an income tax assessment as provided for under section 175A of the *Income Tax Assessment Act 1936* (ITAA 1936) and Part IVC of the *Taxation Administration Act 1953* (TAA). In particular it is about:

- the distinction between objections and amendment requests;
- who can object;
- what comprises a valid objection;
- objection against a private ruling;
- limitations on objection rights;
- multiple objections against an assessment;
- withdrawal of objections;
- the requirement to make an objection decision;
- the effect of an objection decision;
- amendment of assessments before an objection decision;
- review of, or appeal against, an objection decision; and
- amendment after an objection decision or to give effect to a decision on review or appeal.

2. All references to legislation in this Ruling are to the TAA unless otherwise indicated.

Class of entity/arrangement

3. This Ruling applies to all entities that receive an income tax assessment or private ruling in relation to any given year of income, and wish to object against that assessment or ruling because they consider the assessment or ruling to be incorrect.

Background

4. The former objection and appeal provisions contained in the tax laws, in particular in Part V of the ITAA 1936, were repealed in 1992. These were replaced by a single set of generic objection and appeal provisions in Part IVC of the TAA. The various tax laws administered by the Commissioner contain provisions giving taxpayers rights to object. In each case the relevant procedure for making an objection is governed by Part IVC of the TAA. Part IVC of the TAA applies to objections where the taxation decisions to which the objections relate were notified on or after 1 March 1992.

5. Amendments which came into operation from 1 July 1992 extended the period within which a taxpayer could object against an assessment from 60 days to four years. These amendments were introduced as part of improvements to self assessment. Further amendments in 1999 introduced a two-year objection period for shorter period of review (SPOR) taxpayers but maintained the four-year objection period for non-SPOR taxpayers.

6. As a result of the Government's response to the *Report on Aspects of Income Tax Self Assessment* announced in December 2004, further changes to provisions relating to the amendment of income tax assessments and objections against assessments were introduced by the *Tax Laws Amendment (Improvements to Self Assessment) Act (No.2) 2005*. The amendments apply to assessments for the 2004-05 and subsequent income years.

Legislative changes

7. Section 170 of the ITAA 1936 outlines when the Commissioner may amend an assessment. The period within which the Commissioner can amend an assessment has been shortened from four to two years for most taxpayers (the 'standard amendment period'). In certain circumstances the Commissioner can amend an assessment within four years or has an unlimited time within which to amend an assessment. Time limits for lodging objections have also been altered to correspond to the new amendment periods.

8. Before the 2004-05 income year, a non-taxable notice or advice was not an assessment as it did not state any liability. An assessment of nil liability ('nil assessment') for the 2004-05 and later income years is an assessment, as defined, and attracts limited objection rights. Taxpayers do not have the right to object against a nil assessment unless they are seeking an increase in their liability (subsection 175A(2) of the ITAA 1936).

Previous Ruling

9. This Ruling updates Taxation Ruling TR 96/12. Accordingly, TR 96/12 is withdrawn from the date of issue of this Ruling.

10. TR 96/12 continues to apply in relation to objections lodged against assessments for the 2003-04 year of income and earlier years.

Ruling

Objection against an income tax assessment

11. A taxpayer who is dissatisfied with an income tax assessment made in relation to the taxpayer may object against it in the manner set out in Part IVC of the TAA (subsection 175A(1) of the ITAA 1936).

12. An assessment to which section 175A of the ITAA 1936 applies includes an amended assessment and an assessment made under section 169 of the ITAA 1936. It also includes assessments where there is no tax payable, referred to in this Ruling as 'nil assessments'. However, it does not extend to the ascertainment of a tax loss.

13. The right to object against an assessment in section 175A of the ITAA 1936 has been extended to some other liabilities; for example, Medicare levy.

Distinction between an objection and an amendment request

14. There are differences of substance between an objection lodged by a taxpayer against an assessment under section 175A of the ITAA 1936 and a taxpayer requesting an amendment of an assessment under section 170 of the ITAA 1936. An objection is a formal avenue of dispute resolution which attracts appeal rights, while a request for amendment of an assessment is a procedure which does not attract appeal rights and may be used to correct a mistake or omission where there is no dispute about the facts or the law.[1]

[1] See Law Administration Practice Statement PS LA 2008/19 Request for amendment of income tax assessments.

Who can object

15. Taxpayers who are dissatisfied with their assessment can object against it (subsection 175A(1) of the ITAA 1936).

16. A taxpayer is 'dissatisfied' for the purpose of section 175A of the ITAA 1936 if the Commissioner makes an assessment that is adverse to the taxpayer and the taxpayer has grounds for challenging that assessment.

17. This would be so even if by objecting, the taxpayer is challenging their assessment on the basis that their taxable income or tax payable is too low. The assessment may be adverse to the taxpayer because the income they want to have included in the assessment is not income in another year, or is not income of another taxpayer (*Henderson v. Federal Commissioner of Taxation* (1970) 119 CLR 612; 70 ATC 4016; (1970) 1 ATR 596; *Issacs v. Federal Commissioner of Taxation* (2006) 151 FCR 427; 2006 ATC 4330; (2006) 63 ATR 390).

18. Trustees in bankruptcy can object whereas the bankrupt individual does not have standing to object (*McCallum v. Federal Commissioner of Taxation* (1997) 75 FCR 458; 97 ATC 4509; (1997) 36 ATR 256).

19. Liquidators appointed under the *Corporations Act 2001* can object in the name, and on behalf, of the relevant company.

20. A company that has been dissolved cannot object as the taxpayer company has ceased to exist on dissolution.

What comprises a valid objection

21. In order to be valid, an objection against an assessment must relate to some element of:[2]

- the amount of the taxable income or net income as the case may be (or that there is no taxable income or net income) of the taxpayer; or
- the tax payable on that taxable income or net income as the case may be (or that no tax is payable).

22. An objection must also meet the requirements of section 14ZU in order to be valid. An objection will be validly made if it:

- is made in an approved form;
- is lodged within the period prescribed by section 14ZW; and
- states fully and in detail the grounds relied upon by the taxpayer.

[2] The exception to this requirement is assessments made under section 169 of the ITAA 1936, which also attract objection rights under Part IVC of the TAA. These are considered in paragraphs 58 and 70 of this Ruling.

Approved form

23. An objection must:

- be in the form approved in writing by the Commissioner;
- contain a signed declaration;
- contain the required information; and
- be given in the manner that the Commissioner requires.

Time limits for lodging objections

24. For objections against assessments for the 2004-05 and subsequent income years, the time within which a taxpayer must lodge an objection will generally correspond with the amendment period applicable to the taxpayer's assessment under subsection 170(1) of the ITAA 1936.

Late lodgment of objections

25. Where the relevant period for the making of an objection has expired, a taxpayer may nevertheless lodge an objection, together with a written request asking that the objection be dealt with as if it had been lodged in time. Where such a request is refused, the taxpayer may apply to the Administrative Appeals Tribunal for review of that decision (subsection 14ZX(4)).

Grounds relied on

26. The grounds stated in an objection will be sufficient if they:

- clearly indicate to the Commissioner that the taxpayer is objecting to the assessment;
- are precise enough to direct the Commissioner to the aspects of the assessment considered to be incorrect; and
- give reasons as to why the taxpayer considers the assessment to be incorrect.

Objection against a private ruling

27. A taxpayer to whom a private ruling applies may also object against it if they are dissatisfied with it. However, it is not possible to object against a private ruling if there is an assessment for the taxpayer for the income year to which the ruling relates. If this is the case, the taxpayer can only object against the assessment.

Limitation on objection rights

28. If an objection relates to an original assessment, a taxpayer may object to any element of, or particular in, that assessment with which they are dissatisfied. However, if the original assessment is a nil assessment, a taxpayer cannot object to it unless they are seeking an increase in their tax liability.

29. If an objection relates to an amended assessment, the taxpayer is limited in their objection to only the elements or particulars that were amended, and matters relating to those elements or particulars.

Multiple objections against an assessment

30. Regardless of whether an objection relates to an original or amended assessment, section 175A of the ITAA 1936 permits a taxpayer to lodge multiple objections in relation to some element of, or a particular in, that assessment, up to the moment when the Commissioner makes an objection decision.

31. Once the Commissioner has made an objection decision under section 14ZY, the Commissioner is *functus officio* in relation to that element or particular in that assessment.

32. However, where the objection decision has been made in relation to a particular in an original assessment, a taxpayer may object against that assessment again in relation to a different particular.

Withdrawal of objections

33. If a taxpayer withdraws an objection, the Commissioner does not need to make a decision on the objection. An objection on the same issue or issues may be lodged again at a later time, provided it is lodged within the stipulated time limits.

Requirement to make an objection decision

34. The Commissioner is required to decide a validly made objection, and determine whether to:

- allow the objection wholly;
- allow the objection partly; or
- disallow the objection.

35. If the Commissioner has not made an objection decision within 60 days of:

- the day on which the objection was lodged
- the day on which a decision is made to extend the time for lodging the objection; or

- the day on which the Commissioner receives information relating to the taxation objection in response to a written notice.

The taxpayer may give the Commissioner a written notice requiring the Commissioner to make an objection decision (subsections 14ZYA(1) and 14ZYA(2)).

36. The Commissioner is deemed to have made an objection decision disallowing an objection if the Commissioner has not made an objection decision within 60 days after being given a notice by the taxpayer (subsection 14ZYA(3)).

Effect of an objection decision

37. Once the Commissioner has made an objection decision, the objection process in relation to that particular or element is completed, insofar as the Commissioner is concerned.

38. Taxpayers who are further dissatisfied with that objection decision must seek redress before the Administrative Appeals Tribunal (AAT) or the Federal Court in accordance with the requirements in section 14ZZ.

39. An objection decision in relation to an assessment for a particular income year is only applicable to that year, and does not create a precedent for subsequent income years.

40. Similarly, any amendment to an assessment to give effect to an objection decision only applies to:

- the taxpayer whose issue was the subject of the objection; and
- the income year(s) the subject of the objection.

Amendment of assessment before an objection decision

41. The Commissioner can amend a taxpayer's assessment at any time within the time limits in section 170 of the ITAA 1936, even if the taxpayer has lodged an objection against the assessment under Part IVC, and the objection is yet to be decided (*Epov v. FC of T (No.2)* 2007 ATC 5009; (2007) 68 ATR 8).

Review of, or appeal against, an objection decision

42. A taxpayer who is dissatisfied with the Commissioner's objection decision may either apply to the AAT for a review of that decision, or appeal to the Federal Court against the decision (section 14ZZ).

43. The taxpayer is limited to the grounds stated in the objection to which the decision relates, unless the AAT or the Court orders otherwise (paragraphs 14ZZK(a) and 14ZZO(a) respectively).

44. The taxpayer has the burden of proving to the AAT or the Federal Court that an assessment is excessive (paragraphs 14ZZK(b) and 14ZZO(b) respectively).

45. A decision of the AAT or the Federal Court becomes final when the appeal period has expired and no appeal has been lodged against the decision.

Amendment of assessment after an objection decision

46. There is no time limit on the Commissioner's ability to amend an assessment pursuant to item 6 in the table in subsection 170(1) of the ITAA 1936:

- to give effect to a decision on review or appeal; or
- as a result of an objection made by a taxpayer, or pending a review or appeal.

Date of effect

47. Subject to the qualifications mentioned below, it is proposed that when the final Ruling is issued it will apply both before and after its date of issue to objections against income tax assessments for the 2004-05 and later years of income. It is proposed that the final Ruling will only apply to second and further objections lodged after 15 December 2010 to an assessment in relation to a particular issue where the Commissioner has already decided an objection against the assessment in relation to that issue for that year. However, the Ruling will not apply to taxpayers to the extent that it conflicts with the terms of a settlement of a dispute agreed to before the date of issue of this Ruling (see paragraphs 75 and 76 of Taxation Ruling TR 2006/10). The Ruling will not replace the views in Taxation Ruling TR 96/*12* Income tax: objections against income tax assessments with respect to income years up to and including 2003-04.

Commissioner of Taxation
15 December 2010

Appendix 1 – Explanation

This Appendix is provided as information to help you understand how the Commissioner's preliminary view has been reached. It does not form part of the proposed binding public ruling.

Objection against an income tax assessment

48. Subsection 175A(1) of the ITAA 1936 provides that a taxpayer who is dissatisfied with an assessment made in relation to the taxpayer may object against it in the manner set out in Part IVC of the TAA.

What is an income tax assessment?

49. The term 'assessment' for the purposes of subsection 175A(1) of the ITAA 1936[3] is defined by subsection 6(1) of the ITAA 1936. Paragraph (a) of the definition provides that 'assessment' means the ascertainment of:

- the amount of taxable income (or that there is no taxable income); and
- the tax payable on that taxable income (or that no tax is payable).

50. Subsection 251R(7) of the ITAA 1936 provides that the expressions 'income tax' and 'tax' include Medicare levy and Medicare levy surcharge.[4] Therefore these amounts form part of an 'assessment' for the purposes of subsection 175A(1) of the ITAA 1936 and attract objection rights under Part IVC of the TAA.[5]

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[3] The term 'assessment' in relation to a tax-related liability, is defined in section 995-1 of the *Income Tax Assessment Act 1997* (ITAA 1997). The table within this definition lists provisions of taxation laws that define 'assessment'. Item 1 in this table refers to the income tax definition of assessment in subsection 6(1) ITAA 1936. This Ruling does not deal with assessments of administrative penalty under Division 298 of Schedule 1 of the TAA.

[4] Medicare levy is imposed on a taxpayer's taxable income by section 5 of the *Medicare Levy Act 1986* (MLA). Medicare levy surcharge is imposed on a taxpayer's taxable income by sections 8B to 8G of the MLA and on reportable fringe benefits by section 10 of the *A New Tax System (Medicare Levy Surcharge – Fringe Benefits) Act 1999*. Medicare levy and Medicare levy surcharge are assessed under the ITAA 1936: subsection 251R(1) of the ITAA 1936. Section 251X of the ITAA 1936 requires an income tax notice of assessment issued under section 174 of the ITAA 1936 to specify the total of Medicare levy and Medicare levy surcharge payable by a taxpayer for the year of income.

[5] See paragraph 77 below concerning the right to object under section 175A of the ITAA 1936 against assessments of other liabilities that may be included on an income tax notice of assessment.

51. For taxpayers who are trustees of a unit trust or trust estate, paragraphs (b) to (d) of the definition in subsection 6(1) of the ITAA 1936 provides that 'assessment' means the ascertainment of:

- the net income of the trust or the trust estate (or that there is no net income); and
- the tax payable on that net income (or that no tax is payable).

52. Paragraphs (a) to (d) do not contain an exhaustive definition of the term 'assessment' for the purposes of subsection 6(1) of the ITAA 1936. There are other paragraphs in the definition which also provide taxpayers with objection rights under Part IVC of the TAA by virtue of subsection 175A(1) of the ITAA 1936. These definitions will not be considered in detail for the purpose of this Ruling. A full list of the other paragraphs comprising the definition of 'assessment' in subsection 6(1) of the ITAA 1936 is set out in Appendix 2.

53. In addition, there is a small group of assessments that fall within the scope of subsection 175A(1) of the ITAA 1936 which is not covered by the definition of 'assessment' in subsection 6(1) of the ITAA 1936. These are found in sections 126, 132 and 148 of the ITAA 1936, and are assessed under section 169 of the ITAA 1936. These assessments also attract objection rights under Part IVC of the TAA.

54. The definition of 'assessment' in paragraphs (a) to (d) of subsection 6(1) of the ITAA 1936 includes the ascertainment that taxpayers have no taxable income or no net income as the case may be, because their total allowable deductions equal or exceed their total assessable income. The definition also covers instances where there is an ascertainment that there is taxable income or net income as the case may be, but no tax is payable, for example, because the taxable income is below the tax-free threshold or because tax offsets (or rebates) reduce the tax otherwise payable to nil. These are referred to as 'nil assessments' in this Ruling.

55. The meaning of 'assessment' does not extend to the ascertainment of the amount of a tax loss.[6] The scheme of the tax legislation is such that an amount of a tax loss may be deductible in a later income year under specific provisions of the *Income Tax Assessment Act 1997* (ITAA 1997).[7] It is those provisions that set out how the amount of a tax loss shall be calculated and the extent to which it can be deducted in the later income year. The determination of the deductibility of an amount of tax loss under the relevant provisions is part of the process of ascertaining the amount of taxable income (or that there is no taxable income) and the tax payable (or that there is no tax payable) of the later income year. It follows that a taxpayer may dispute the amount of a tax loss that is allowable as a deduction in a later income year by objecting to the income tax assessment made in the later income year, subject to subsection 175A(2) of the ITAA 1936 regarding nil assessments.[8]

56. An assessment is, however, not simply the notice which issues to a taxpayer. In *Batagol v. Federal Commissioner of Taxation* (1963) 109 CLR 243; (1963) 13 ATD 202 (*Batagol*), Kitto J noted that assessment means (CLR at 252; ATD at 204):

> …the completion of the process by which the provisions of the Act relating to liability to tax are given concrete application in a particular case with the consequence that a specified amount of money will become due and payable as the proper tax in that case.[9]

57. An assessment must:

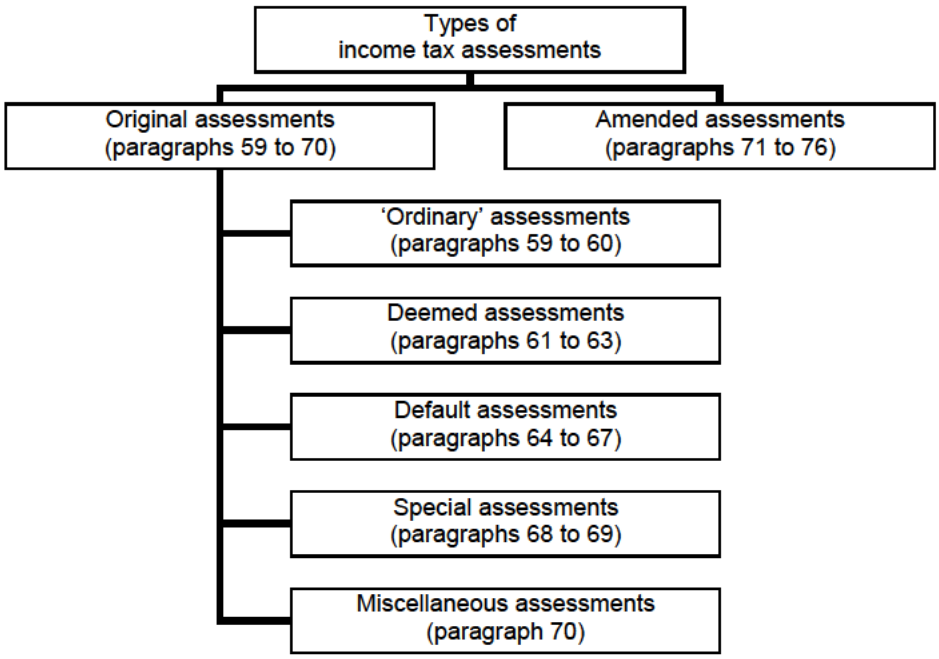
- be the result of an 'act or operation of the Commissioner' (*R v. Deputy Commissioner of Taxation, ex parte Hooper* (1926) 37 CLR 368, at 373 per Isaacs J);
- lead to an ascertainment, on consideration of all relevant circumstances, including sometimes the Commissioner's opinion, of the taxpayer's taxable income and their tax payable (*R v. Deputy Commissioner of Taxation, ex parte Hooper* (1926) 37 CLR 368);

[6] See paragraph 2.51 and example 2.5 in the Explanatory Memorandum to the *Tax Laws Amendment (Improvements to Self Assessment) Act (No. 2) 2005.*
[7] The term 'tax loss' is defined in subsection 995-1(1) of the ITAA 1997.
[8] Subsection 175A(2) of the ITAA 1936 is discussed at paragraphs 134 to 135 below.
[9] The effect of the changes to the definition of 'assessment' in subsection 6(1) of the ITAA 1936 made by the *Tax Laws Amendment (Improvements to Self Assessment) Act (No.2) 2005* is that there now can be an assessment that no tax is payable, that is, a nil assessment.

- be definitive in character, rather than tentative or provisional[10] (*Federal Commissioner of Taxation v. S Hoffnung & Co Ltd* (1928) 42 CLR 39; (1928) 1 ATD 310; *FJ Bloemen Pty Ltd and Simons v. Federal Commissioner of Taxation* (1981) 147 CLR 360; 81 ATC 4280; (1981) 11 ATR 914); and
- be served on the taxpayer by way of a notice of assessment. This is the completion of the process where the 'Commissioner ... serves a notice that he has assessed the taxable income then the tax becomes due and payable' (*Batagol*, per Kitto J).

Types of assessments

58. Income tax assessments may occur as original assessments and amended assessments. There are a number of different kinds of original assessments; namely, ordinary assessments, deemed assessments, default assessments, special assessments and miscellaneous assessments. These are discussed in paragraphs 59 to 70 of this Ruling, as follows.



[10] The Commissioner is authorised to issue alternative assessments in respect of the same income, benefit or transaction for one or more taxpayers (See *Federal Commissioner of Taxation v. Stokes* (1996) 72 FCR 160; (1996) 97 ATC 4001; (1996) 34 ATR 478). Alternative assessments are not regarded as tentative or provisional, and are definitive in character. Law Administration Practice Statement PS LA 2006/7 Alternative Assessments outlines the Commissioner's practice for issuing alternative assessments.

Original assessments

'Ordinary' assessments

59. The Commissioner makes an assessment of income tax under section 166 of the ITAA 1936 for taxpayers who receive a formal notice of assessment. We refer to such assessments as 'ordinary assessments' in this Ruling.

60. Section 166 of the ITAA 1936 provides:

> From the returns, and from any other information in his possession, or from any one or more of these sources, the Commissioner shall make an assessment of the amount of the taxable income (or that there is no taxable income) of any taxpayer, and of the tax payable thereon (or that no tax is payable).

Deemed assessments

61. Under section 166A of the ITAA 1936, companies and various other entities who are subject to a 'full' self-assessment system (under which they self-assess their income and the amount of tax they have to pay) are deemed to have been assessed by the Commissioner.

62. The Commissioner is not required to issue a formal notice of assessment after the entity has lodged its income tax return. Instead the Commissioner is taken to have made an assessment and the return itself is deemed to be a notice of assessment of the entity's taxable income (or that there is no taxable income) and of the amount of tax payable thereon (or that no tax is payable). The assessment is deemed to be made on the day the return is lodged.

63. A deemed assessment under section 166A of the ITAA 1936 is an assessment for the purposes of lodging an objection. The objection period commences from the date notice of the deemed assessment is deemed to be served on the taxpayer under section 166A, that is, the date of lodgment.

Default assessments

64. In certain circumstances, the Commissioner may make an assessment of the amount on which, in the Commissioner's judgment, tax ought to be levied. That amount then becomes the taxpayer's taxable income for the purposes of section 166 of the ITAA 1936. This is referred to as a 'default' assessment (section 167 of the ITAA 1936).

65. A default assessment may be made where a taxpayer has failed to furnish a return, or where the Commissioner is dissatisfied with the return furnished, or has reason to believe that a person who has not furnished a return has derived taxable income.

66. Depending on whether an assessment has issued prior to the default assessment issuing, a default assessment may be issued as an original or amended assessment, subject to the time limits in section 170 of the ITAA 1936. The taxpayer can object against a default assessment.

67. Paragraphs 8 to 16 of Law Administration Practice Statement PS LA 2007/24 Making default assessments: section 167 of the Income Tax Assessment Act 1936 and other similar provisions provide direction to tax officers on making default assessments.

Special assessments

68. Section 168 enables the Commissioner to make special assessments. Special assessments are commonly issued in the case of businesses entering liquidation, deceased persons and persons not resident in Australia.

69. Subsection 168(1) of the ITAA 1936 allows the Commissioner, at any time during any year or after its expiration, to make an assessment of the taxable income derived (or that there is no taxable income) in that year or any part of it by any taxpayer and of the tax payable thereon (or that no tax is payable). Where the income in respect of which such an assessment is made is derived in a period of less than a year, subsection 168(2) of the ITAA 1936 provides that the assessment is to be made as if the beginning and end of that period were the beginning and end respectively of the income year.

Miscellaneous assessments

70. Section 169 of the ITAA 1936 authorises the Commissioner to assess a taxpayer where a liability to pay tax (including a nil liability) arises under the tax laws.[11] The right to assess under section 169 is separate and distinct from the ordinary right to assess under section 166 of the ITAA 1936 and the Commissioner is not compelled to elect to assess under one provision or the other.[12]

Amended assessments

71. An amended assessment is an assessment that has been amended under section 170 of the ITAA 1936.

[11] See for example, under sections 126, 132 and 148 of the ITAA 1936 and sections 295-605 and 345-100 of the ITAA 1997.
[12] *Cadbury-Fry-Pascall Pty Ltd v. Federal Commissioner of Taxation* (1944) 70 CLR 362; (1944) 7 ATD 471 per Latham CJ-; *Lever Bros Pty Ltd v. Federal Commissioner of Taxation* (1948) 77 CLR 78; (1948) 8 ATD 388, for example per Williams J.

72. Under section 173 of the ITAA 1936, except as otherwise provided, every amended assessment is an assessment for the purposes of the ITAA 1936. Therefore the right to object against an assessment under section 175A of the ITAA 1936 includes the right to object against an amended assessment, subject to the limitations referred to in paragraphs 134 to 154 below.

73. If amended assessments are issued for different income years, a single objection can be made where the amended assessments raise common facts and issues.[13]

Relationship of an amended assessment to the original assessment

74. Numerous cases over the years have attempted to explain the position of an amended assessment vis-à-vis the original assessment, such as *Commissioner of Taxation v. S. Hoffnung & Co. Ltd.* (1928) 42 CLR 39; (1928) 1 ATD 310, *Federal Commissioner of Taxation v. Trautwein (*1936) 56 CLR 211; (1936) 4 ATD 92, *Deputy Commissioner of Taxation v. Faint* [1988] 2 Qd R 494, *Federal Commissioner of Taxation v. The Swan Brewery Company Limited* (1991) 30 FCR 553; 91 ATC 4637; (1991) 22 ATR 295, *Federal Commissioner of Taxation v. Stokes* (1996) 72 FCR 160; (1996) 97 ATC 4001; (1996) 34 ATR 478, and *NMRSB Limited & Ors v. Federal Commissioner of Taxation* (1998) 81 FCR 378; 98 ATC 4188; (1998) 38 ATR 308.

75. From the discussions in these cases, it is apparent that an amended assessment does not cancel, revoke, extinguish or replace the original assessment. Rather, its role is to alter the original assessment by amending it in a particular or particulars, with a view to imposing a fresh liability, or at least, by adjusting the components or elements that went to determining the taxable income or tax payable amounts previously notified.

76. It is clear from these authorities that at any given time, there is only one assessment in operation for a given income year, which fixes with certainty the taxpayer's taxable income (or that there is no taxable income) and the tax payable thereon (or that there is no tax payable). Thus, an amendment of an existing assessment is not a new assessment (see *Stokes v FC of T* 96 ATC 4393; (1996) 32 ATR 500 per Davies J, citing with approval what Latham CJ said in *Cadbury-Fry-Pascall Pty Ltd* v. *Federal Commissioner of Taxation* (1944) 70 CLR 362; (1944) 7 ATD 471; at CLR 381; ATD 482).[14]

[13] In *McDermott Industries (Aust) Pty Ltd v. FC of T* 2003 ATC 4410; (2003) 52 ATR 423 the Federal Court held that in these circumstances a single application to the Court in respect of the appealable objection decision was competent.

[14] The Full Federal Court in *Federal Commissioner of Taxation v. Stokes* (1996) 72 FCR 160; (1996) 97 ATC 4001; (1996) 34 ATR 478 expressed a similar view.

Objections against assessments of other liabilities

77. The right to object against an income tax assessment as provided for by subsection 175A(1) of the ITAA 1936 has been extended to assessments of the following liabilities:

- HEC assessment debt in connection with the Higher Education Contribution Scheme;[15]
- a compulsory repayment amount in connection with the Higher Education Loan Program;[16] and
- an FS assessment debt in connection with the Student Financial Supplement Scheme.[17]

Extending the right to object to these liabilities is achieved by making Part IV of the ITAA 1936 (in which section 175A is located) apply to them as if they were income tax.[18]

Distinction between objections and amendment requests

78. There are differences of substance between an objection against an assessment under section 175A of the ITAA 1936 and an amendment of an assessment under section 170 of the ITAA 1936.

79. Where taxpayers are within the time limits for amending an assessment, they may request an amendment to correct a mistake or omission where there is no dispute about the facts or the law.[19] Amendments are generally processed faster. In contrast, an objection is a formal avenue of dispute resolution that involves full consideration of the facts and the application of the law to those facts.

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[15] The term 'HEC assessment debt' is defined in section 34 of the *Higher Education Funding Act 1988* (HEFA). An HEC assessment debt is assessed under section 106T of that Act. Section 106V of the HEFA permits the Commissioner to specify the amount in an income tax notice of assessment issued under section 174 of the ITAA 1936.

[16] The term 'compulsory repayment amount' is defined in subsection 1(1) in Schedule 1 to *the Higher Education Support Act 2003* (HESA). A compulsory repayment amount is assessed under section 154-35 of that Act. Subsection 154-40(1) of the HESA permits the Commissioner to specify the amount in an income tax notice of assessment issued under section 174 of the ITAA 1936.

[17] The term 'FS assessment debt' is defined in section 3 of the *Student Assistance Act 1973* (SAA) and in section 19AB of the *Social Security Act 1991* (SSA). An FS assessment debt is assessed under section 12ZM of the SAA or under section 1061ZZFH of the SSA or under section 15.23 of the Social Security Student Financial Supplement Scheme 1998 (SFSS). Section 12ZO of the SAA, section 1061ZZFI of the SSA and section 15.24 of the SFSS permit the Commissioner to notify the amount of an FS assessment debt in an income tax notice of assessment issued under section 174 of the ITAA 1936.

[18] **HEC assessment debt:** subsection 106U(1) of the HEFA*;* **Compulsory repayment amount:** section 154-60 of the HESA*;* **FS assessment debt:** section 12ZN of the SAA, section 1061ZZFG of the SSA and section 15.22 of the SFSS.

[19] See section 170 of the ITAA 1936, which sets the time limits for amending assessments.

80. Law Administration Practice Statement PS LA 2008/19 Request for amendment of income tax assessments provides direction to tax officers in identifying a request for an amendment and distinguishing it from an objection.

Who can object

81. Taxpayers who are dissatisfied with an income tax assessment made in relation to them may object against it in the manner set out in Part IVC of the TAA (subsection 175A(1) of the ITAA 1936).

82. Subsection 14ZL(1) states that Part IVC applies if a provision of an Act (such as subsection 175A(1) of the ITAA 1936) provides that a 'person' who is dissatisfied with an assessment may object against it in the manner set out in that Part. In *McCallum v. Federal Commissioner of Taxation* (1997) 75 FCR 458; 97 ATC 4509; (1997) 36 ATR 256 (*McCallum*), Lehane J held in effect that the 'person' referred to in Part IVC of the TAA is the taxpayer referred to in section 175A of the ITAA 1936 who is dissatisfied with an assessment made in relation to that taxpayer.

Meaning of 'dissatisfied'

83. The term 'dissatisfied' refers to a decision by the Commissioner which is adverse to the taxpayer. In the context of objections against income tax assessments, a taxpayer `dissatisfied' would seem, as Gummow J indicated in *CTC Resources NL v. Federal Commissioner of Taxation* (1994) 48 FCR 397; 94 ATC 4072; (1994) 27 ATR 403 (*CTC Resources*), to mean a person in receipt of an assessment which leads to the creation of a debt in favour of the Commonwealth which has an immediate and direct effect in a legal sense upon the taxpayer.[20]

84. A person is not relevantly 'dissatisfied' if their motivation for objecting against their assessment is merely abstract or hypothetical. In *CTC Resources* Gummow J stated at FCR 408; ATC 4082; ATR 414, in the context of an objection decision relating to a private ruling, that a 'mere curiosity or interest in having a formal ruling by the Commissioner for some collateral commercial purpose of the applicant is not sufficient to amount to 'dissatisfaction' in the relevant sense.

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[20] *CTC Resources* at FCR 405 ; ATC 4079; ATR 411. This has been confirmed by Hill J in *Corporate Business Centres International Pty Ltd v. Federal Commissioner of Taxation* (2004) 137 FCR 108; 2004 ATC 4430; (2004) 55 ATR 476 where he further noted that Gummow J in *CTC Resources* was not looking to state an exhaustive test of what the word 'dissatisfied' meant. In *McCallum v. Federal Commissioner of Taxation* (1997) 75 FCR 458; 97 ATC 4509; (1997) 36 ATR 256 Lehane J (with Whitlam J agreeing), relied upon Gummow J's statement in *CTC Resources* in concluding that a bankrupt is likely to lack standing to apply to the AAT for a review of an objection decision because the bankrupt would be unable to show that they are relevantly 'dissatisfied' with the objection decision.

85. In the same case, Hill J said at FCR 432; ATC 4100; ATR 435:

> ... the word ['dissatisfied'] must bear more than its ordinary dictionary meaning of `displeased with' or `not contented with'. More is required than mere lack of satisfaction with the objection decision. It can hardly be said that a university lecturer, learning of the disallowance of an objection by a public company of which he or she was neither a director or shareholder, could, because he or she was not happy with the objection decision, refer the matter to the Court...

Increase in taxpayer's liability

86. A taxpayer may have standing to object against an assessment on the basis that the taxable income or the tax payable is too low. Subsection 175A(2) of the ITAA 1936 suggests that a taxpayer can object against a nil assessment on this basis. The assessment as it stands may be considered to be adverse to the taxpayer where the taxpayer wishes to challenge an element in the assessment, for example, whether their assessable income was calculated correctly. This may ultimately lead to an increase in the taxpayer's tax liability, but this fact alone does not prevent the taxpayer from objecting against an assessment on the basis that they are 'dissatisfied' with the original assessment.[21]

87. This position finds support in the Full Federal Court's decision in *Issacs v. Federal Commissioner of Taxation* (2006) 151 FCR 427; 2006 ATC 4330; (2006) 63 ATR 390. This case concerned the exercise of the Commissioner's discretion under section 139E in Division 13A of the ITAA 1936 (employee share scheme provisions), and whether this discretion formed part of the process of making the relevant income tax assessment. In considering this issue, the Court made the following observations in relation to the taxpayer's objection to have his assessment increased:

> It is unusual, to say the least, that a taxpayer claims to be dissatisfied because the Commissioner has issued an assessment that requires too little tax to be paid. Nevertheless, **the Commissioner accepts that it is competent for a taxpayer to object against an assessment on the ground that the assessment is for too little tax** (see *Henderson v. Commissioner of Taxation* (1970) 119 CLR 612). Clearly enough a taxpayer would not adopt such a course except for some collateral reason. Such a reason would be that the taxpayer wished to contend that the income that the taxpayer wants to have included as assessable income of the taxpayer in a particular year of income, is not income of that taxpayer in another year of income, or is not income of another taxpayer.[22] [emphasis added]

[21] *Henderson v. Federal Commissioner of Taxation* (1970) 119 CLR 612; 70 ATC 4016; (1970) 1 ATR 596; *Re Murphy and Commissioner of Taxation* [2004] AATA 1265; *Waverley Council v. FC of T* 2009 ATC 10-095; (2009) 73 ATR 243.
[22] *Issacs v. Federal Commissioner of Taxation* (2006) 151 FCR 427 at 433; 2006 ATC 4330 at 4335; (2006) 63 ATR 390 at 395.

88. It may be more convenient for the taxpayer to seek an amendment (within the relevant time limits) to rectify an error or omission which may ultimately lead to an increase in the taxpayer's tax liability. This is especially so where there is no dispute about the facts or the application of the tax laws to the facts.[23] An example of such a situation may be when a taxpayer discovers they have accidentally claimed a deduction in the wrong income year. Amendment requests are generally processed faster.

Taxpayer error

89. A taxpayer may be dissatisfied with an income tax assessment and therefore may object against it even though the assessment is in accordance with the taxpayer's own erroneous income tax return.

90. In *AAT Case 5540* (1990) 21 ATR 3083, P M Roach said (at ATR 3090):

> ...I am not persuaded that an applicant whose taxable income is assessed in accordance with his own erroneous return has no right of objection to an excessive assessment. Such a person is 'dissatisfied with the assessment' and in my view entitled to object. He does not have to be able to point to some 'wrongdoing' (as it were) on the part of the Commissioner. It is sufficient that he is dissatisfied with the assessment, even though he is the sole cause of that dissatisfaction.

91. Again, it may be more convenient for a taxpayer to seek an amendment to their assessment (within the relevant time limits) to rectify the error or omission, instead of lodging an objection.[24]

Effect of insolvency on a taxpayer's right to object[25]

92. Subsection 175A(1) of the ITAA 1936 provides that a 'taxpayer' who is dissatisfied with an assessment made in relation to the taxpayer may object against it in the manner set out in Part IVC of the TAA. For the purposes of subsection 175A(1) of the ITAA 1936, subsection 6(1) of the ITAA 1936 provides that, unless the contrary intention appears, the term 'taxpayer' means 'a person deriving income or deriving profits or gains of a capital nature'. Ordinarily that person will be the entity in relation to whom an income tax assessment is made.

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[23] See paragraphs 78 to 80 above.
[24] See paragraphs 78 to 80 above.
[25] This Ruling does not consider non-bankruptcy arrangements for individuals or non-liquidation arrangements for companies.

93. However, in the case of an individual who is subject to proceedings under the *Bankruptcy Act 1966*, or a company that is subject to insolvency proceedings under the *Corporations Act 2001* (CA), a party other than the individual or company in relation to whom an income tax assessment was made may have a statutory right to lodge an objection against the assessment.

Individual insolvency

94. The Court in *McCallum* held that lodging an objection against an income tax assessment should be regarded as a legal proceeding for the purposes of paragraph 134(1)(j) of the *Bankruptcy Act 1966*.[26] That provision permits a trustee of a bankrupt estate to bring, institute or defend any action or other legal proceeding relating to the administration of the estate.

Company insolvency

95. Subsection 471A(1) of the CA provides that while a company is being wound up in insolvency or by the Court, a person cannot perform or exercise a function or power as an officer of the company. Subsection 471A(1A) of the CA makes exceptions for a liquidator appointed for the purposes of the winding up of the company, or with the liquidator's written approval or with the approval of the Court.

96. Paragraph 477(2)(a) of the CA provides that a liquidator may bring or defend any legal proceeding in the name of and on behalf of the company. The term 'legal proceeding' is not defined for the purposes of that paragraph. For the reasons given in *McCallum,* the Commissioner is of the view that 'legal proceeding' in paragraph 477(2)(a) of the CA should be construed as including lodging an objection against an income tax assessment.

97. This conclusion is supported by the decision of the Federal Court in *Pearson & Ors v. FC of T & Anor* 2001 ATC 4104; (2001) 46 ATR 367. This case considered whether certain parties had standing to appeal an objection decision disallowing a company's objection to an income tax assessment where the company had gone into liquidation after lodging the objection and the liquidator did not consent to the appeal being made by any of those parties. Spender J at ATC 4110; ATR 373 noted that, pursuant to paragraph 477(2)(a) of the CA it was the liquidator who had the responsibility for challenging the appealable objection decision.

[26] Per Lehane J at 4520-4521 with whom Whitlam J agreed at 4519. The decision in *McCallum* was applied in *Robertson v. Federal Commissioner of Taxation* (2004) 137 FCR 513; 2004 ATC 4209; (2004) 55 ATR 106.

98. Therefore, even though a liquidator is not the relevant 'taxpayer' for the purposes of subsection 175A(1) of the ITAA 1936, a liquidator has standing to lodge an objection in the name, and on behalf, of the company. Following the appointment of a liquidator, the board of directors, the secretary or the public officer of the company do not have standing to lodge an objection on behalf of the company.

Effect of dissolution on a company's right to object

99. Any objection lodged under section 14ZU, by or on behalf of a company that has been dissolved, will generally be invalid as the taxpayer company ceased to exist on dissolution. Therefore, there is no legal person in existence who may be dissatisfied with an assessment or who may lodge an objection against the assessment.

100. The effect of the dissolution of a company part-way through the Part IVC objection, review or appeal process is discussed in Taxation Ruling IT 2353 *Income tax: effect of company dissolutions on taxation disputes*. IT 2353 also addresses the objection rights of a dissolved company that is subsequently reinstated under the CA.

What comprises a valid objection

101. A valid objection against an assessment must relate to some element of:

- the amount of the taxable income or net income as the case may be (or that there is no taxable income or net income) of the taxpayer; for example, whether a particular outgoing is an allowable deduction, or
- the tax payable on that taxable income or net income as the case may be (or that no tax is payable); for example, whether a tax offset should be allowed.

102. A notice of assessment may contain more information than what is contemplated in the definition of 'assessment.'[27] For example, it may contain details of credits for pay as you go (PAYG) amounts withheld or PAYG instalments. Such items do not form part of the process of making of an 'assessment' and cannot be made the subject of a valid objection for the purposes of section 175A of the ITAA 1936.[28]

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[27] Except for certain liabilities that specifically attract objection rights under subsection 175A(1) of the ITAA 1936: see paragraph 77 above.

[28] *Webb v. Federal Commissioner of Taxation (No. 2)* (1993) 47 FCR 394; 93 ATC 5123; (1993) 27 ATR 459. However, a person dissatisfied with these items may ask the ATO to take a 'second look', in the interests of procedural fairness and in line with the Taxpayers' Charter. This is not to suggest that this is the only recourse taxpayers have. For example, taxpayers can also pursue recovery of an assessment amount in a court of competent jurisdiction (*Perdikaris v. DFC of T* (2008) 172 FCR 412; 2008 ATC 20-075; (2008) 73 ATR 875).

How valid objections are to be made

103. Under section 14ZU an objection against an assessment will be validly made if it:

(a) is made in the approved form;

(b) is lodged within the period set out in section 14ZW; and

(c) states in it, fully and in detail, the grounds relied on by the taxpayer.

In the approved form

104. A person making a taxation objection must make it in the 'approved form' (paragraph 14ZU(a)).

105. For the purposes of paragraph 14ZU(a) of the TAA, the expression 'approved form' is defined in subsection 6(1) of the ITAA 1936:

> In this Act, unless the contrary intention appears . . . ***approved form*** has the meaning given by section 388-50 in Schedule 1 to the *Taxation Administration Act 1953*.[29]

106. In accordance with the approved form requirements in section 388-50 in Schedule 1, a taxation objection must:

- be in the form approved in writing by the Commissioner;
- contain a signed declaration;
- contain the required information; and
- be given in the manner that the Commissioner requires.

107. The standard approved form templates *Objection form (tax professionals)* (NAT 13044) and *Objection form (not for tax professionals)* (NAT 13471) are available on the ATO's website at http://www.ato.gov.au. These forms contain details of the declaration requirements for objections as well as details regarding how to lodge objections.[30]

[29] The definition of 'this Act' in subsection 6(1) of the ITAA 1936 includes Part IVC of the TAA, in so far as that Part relates to the ITAA 1936, the ITAA 1997 or Schedule 1 of the TAA.

[30] These forms have been approved in writing by the Commissioner in accordance with subsection 388-50(1) of Schedule 1.

108. It is not necessary to use a printed form or electronic template published by the Commissioner. An objection by letter or other paper document will be in the approved form for the purposes of paragraph 14ZU(a) provided it:

- is in writing;
- contains the requisite information;
- contains the necessary signed declaration; and
- is lodged in the required manner.[31]

Time limits for lodging objections

109. A person making a taxation objection must lodge it with the Commissioner within the period set out in section 14ZW (paragraph 14ZU(b)).

110. As a result of the *Tax Laws Amendment (Improvements to Self Assessment) Act (No.2) 2005,* which commenced on 1 January 2006, the time limits for lodging objections were altered to correspond with the new amendment periods in section 170 of the ITAA 1936 (paragraph 14ZW(1)(aa)).

111. If the standard amendment period of two years applies to an assessment, an objection must be lodged with the Commissioner within two years after the notice of assessment is given to the taxpayer. In all other cases, the objection must be lodged within four years after the notice of assessment is given to the taxpayer. These time limits apply to objections against assessments for the 2004-05 and subsequent income years.

112. The objection period for an amended assessment also generally mirrors the objection period for the original assessment:

- if the amendment period for the original assessment is two years (the standard amendment period), an objection against an amended assessment must be lodged within whichever of the following periods ends last:
  - two years after notice of the original assessment was served on the taxpayer; or
  - 60 days after notice of the amended assessment was served on the taxpayer.[32]

[31] This Ruling constitutes approval in writing by the Commissioner under subsection 388-50(1) of Schedule 1 for such objections to be in the approved form.
[32] Subsection 14ZW(1BA).

- for all other taxpayers, an objection against an amended assessment must be lodged within whichever of the following periods ends last:
  - four years after notice of the original assessment was served on the taxpayer; or
  - 60 days after notice of the amended assessment was served on the taxpayer.[33]

113. Therefore, if a notice of amended assessment was served less than 60 days before the end of the two-year or four-year objection period for the original assessment of an income year, the taxpayer would still have 60 days in which to object to the amended assessment. If the notice of amended assessment was served more than 60 days before the end of the two-year or four-year period, the taxpayer could object to either the amended assessment or the original assessment for the remainder of the two-year or four-year objection period applying to the original assessment. This is illustrated below using the standard amendment period.

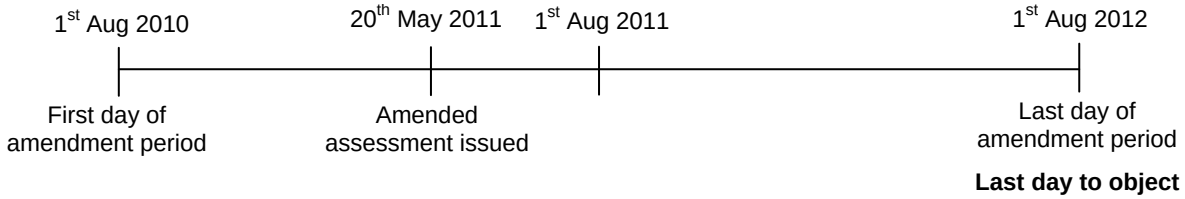
Example 1 – Objecting to an amended assessment within time limits

Scenario 1- Amended assessment received more than 60 days before the end of the amendment period

114. *Skye receives an original assessment on the 1st of August 2010. On the 20th of May 2011 the Commissioner issues an amended assessment to Skye including an extra $100 of interest income.*

115. *Skye is an individual taxpayer subject to the standard amendment period of two years in subsection 170(1) of the ITAA 1936.*

116. *The last day for Skye to object to her amended assessment is the 1st of August 2012.*



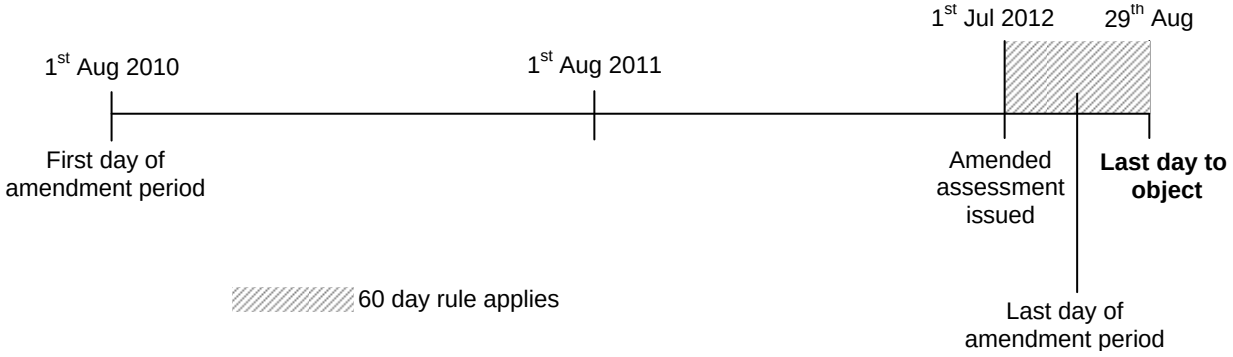
Scenario 2 – Amended assessment received less than 60 days before the end of the amendment period

117. *Bill receives an original assessment on the 1st of August 2010. On the 1st July 2012 the Commissioner issues an amended assessment to Bill disallowing a $500 deduction for work-related expenses.*

[33] Subsection 14ZW(1B).

118. *Bill is an individual taxpayer subject to the standard amendment period of two years in subsection 170(1) of the ITAA 1936.*

119. *The last day for Bill to object to his amended assessment is the 29th August 2012, which is the later of either two years from the original assessment or 60 days from the amended assessment.*



120. Where an assessment has been amended more than once, the notice, for the purpose of determining the objection period, is the notice of the original assessment in relation to the year of income (subsection 14ZW(1C)).

Late lodgment of objections

121. Where the relevant period for lodging an objection has expired, a taxpayer may lodge the objection together with a written request asking the Commissioner to deal with the objection as if it had been lodged within that period (subsection 14ZW(2)).

122. The request must state fully and in detail the circumstances concerning, and the reasons for, the taxpayer's failure to lodge the objection with the Commissioner within the required period (subsection 14ZW(3)). The onus is on the taxpayer to demonstrate to the Commissioner the discretion should be exercised to deal with the objection as though it was lodged within time.

123. After considering the request, the Commissioner must decide whether to grant an extension of time or refuse it (subsection 14ZX(1)) and must give the taxpayer written notice of the decision (subsection14ZX(2)).

124. Where such a request is refused, the taxpayer may apply to the Administrative Appeals Tribunal (AAT) for review of that decision (subsection 14ZX(4)).

125. Guidance for tax officers in making decisions on requests to deal with late taxation objections as if they were lodged within time is provided in Law Administration Practice Statement PS LA 2003/7 Taxation objections – late lodgment.

Grounds relied on must be stated fully and in detail

126. Taxpayers making a taxation objection must state in the objection, fully and in detail, the grounds that they rely on (paragraph 14ZU(c)).

127. In *R v. DC of T (WA; ex parte Copley* (1923) 30 ALR 86; [1923] R & McG 47 (*Copley*), the High Court considered whether certain letters constituted valid objections under subsection 37(1) of the *Income Tax Assessment Act 1915-1918*. Despite some differences between the wording of subsection 37(1) and the present legislation, the observations of the court apply with equal force to the current law as both provisions are intended to have the same effect. Knox CJ said (ALR at 87):

> I think it is effective notice of objection under the Act if the written communication is expressed in words that are reasonably calculated to convey to the understanding of the person to whom it is addressed (1) that the taxpayer contends that the assessment is not in accordance with the law, and (2) the grounds on which that contention is based.

128. Higgins J made these observations (ALR at 87):

> The word 'objection' used in the section is not technical, and we are to apply the ordinary meaning. The section does not say that the word 'objection' must be used; and in my opinion if the fault alleged is stated directly and not inferentially stated in such a manner that the Commissioner may know in what respect his assessment is attacked that is enough. The word 'submit' as used in the letter seems to me to include an objection but with the addition of deference and courtesy.

129. Starke J said (ALR at 88):

> It has been laid down in this Court that an objection need not be in formal language, or in language that lawyers would adopt, and that must be so, because the Act has frequently to be acted upon by persons who have no knowledge of the law and who are very often a considerable distance from legal assistance.

130. Subsequently in *H R Lancey Shipping Co Pty Ltd v. FC of T* (1951) 9 ATD 267 (*Lancey*), Williams J expressed a similar view. His Honour said (ATD at 273):

> The grounds of objection need not be stated in legal form, they can be expressed in ordinary language, but they should be sufficiently explicit to direct the attention of the respondent to the particular respects in which the taxpayer contends that the assessment is erroneous and his reasons for this contention.

131. Based on the *Copley* and *Lancey* cases, an objection will meet the requirements of paragraph 14ZU(c) if it:

- clearly indicates to the Commissioner that the taxpayer is objecting to the assessment;
- is precise enough to direct the Commissioner to the aspects of the assessment considered to be incorrect; and
- gives reasons as to why the taxpayer considers the assessment to be incorrect.

132. The requirement that the grounds be stated fully and in detail does not mean that the grounds have to be lengthy or complicated.[34] As a general rule, a letter or document from a taxpayer, or their authorised agent, which indicates that an assessment is wrong in a particular respect and suggests reasons for the alleged error, will be treated as satisfying the requirement that the grounds of objection be stated fully and in detail.

133. In considering the grounds contained in a taxation objection, the Commissioner will also have regard to:

- the context in which the objection is lodged;
- other information mentioned in the objection or in the Commissioner's possession; and
- the relevant taxpayer's returns.[35]

134. A taxpayer's grounds of objection need not necessarily have good prospects of success. It merely needs to be a clear ground of objection that is stated fully and in detail.[36]

135. Although a taxpayer is not restricted to any particular form of words in stating the grounds of their objection against an assessment, vague or general challenges to an assessment will not qualify as valid objections. Without more, a statement, for example, that an assessment is wrong in fact and law, or is excessive is not a statement of grounds fully and in detail.[37]

136. General letters of complaint against the taxation system are also not valid objections.

Objection against a private ruling

137. A taxpayer to whom a private ruling applies may object against it in the manner set out in Part IVC if they are dissatisfied with it (subsection 359-60(1) of Schedule 1).[38]

138. However, it is not possible to object against a private ruling if there is an assessment for the taxpayer for the income year to which the ruling relates (paragraph 359-60(3)(a) of Schedule 1). If this is the case, the taxpayer can only object against the assessment.

139. Where a private ruling covers a number of income years, the taxpayer is able to object against the ruling in respect of the income years for which the taxpayer has not yet been given an assessment.

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[34] *Szajntop v. Federal Commissioner of Taxation* (1993) 42 FCR 318 at 323; 93 ATC 4307 at 4312; (1993) 25 ATR 469 at 474 (*Szajntop*).
[35] See for example *Szajntop* and *AAT Case 6404* (1990) 21 ATR 3795; 90 ATC 643.
[36] *Szajntop*, FCR at 323; ATC at 4312; ATR at 474.
[37] *Lancey's* case, ATD at 273.
[38] Section 359-60 of Schedule 1 applies to things done on or after 1 January 2006.

Limitations on objection rights

Nil assessments and carry forward loss situations

140. Under subsection 175A(2) of the ITAA 1936 taxpayers cannot object against a nil assessment unless they are seeking an increase in their liability.

141. The meaning of 'assessment' does not extend to the ascertainment of the amount of a tax loss. Taxpayers can only object against a tax loss in the year that they are able to deduct the loss. The deductibility of a tax loss is determined in the year that the taxpayer has income against which to offset the loss, in accordance with normal deduction principles.

Amended assessments

142. Section 14ZV provides that if an objection is made against an assessment that has been amended in any particular, the taxpayer's right to object against the amended assessment is limited to a right to object against alterations or additions in respect of, or matters relating to, that particular. The intent of section 14ZV is to limit the grounds of objection against an amended assessment to those which could not have been raised against the original assessment.

143. Taxpayers still retain their objection rights in respect of other particulars in the original assessment, subject to the time limits for lodging an objection discussed in paragraphs 109 to 114 above.

What is a 'particular'

144. What amounts to a 'particular' in the context of the limitation in section 14ZV has been judicially considered. The leading cases are *Federal Commissioner of Taxation v. Jackson* (1990) 27 FCR 1; 90 ATC 4990; (1990) 21 ATR 1012 (*Jackson*) and *Epov v. FC of T (No.2)* 2007 ATC 5009; (2007) 68 ATR 8 (*Epov*). In *Jackson*, the Full Federal Court considered the requirements of the predecessor provision[39] to section 14ZV in the context of amending assessments by relying on determinations under Part IVA of the ITAA 1936. In *Epov*, the Full Federal Court considered the operation of section 14ZV in the context of the Commissioner's power to amend an assessment under section 170 of the ITAA 1936.

[39] The predecessor provision, subsection 185(2) of the ITAA 1936, was worded in substantially the same terms as the current section 14ZV of the TAA.

145. Hill J, in delivering the leading judgment in *Jackson*, quoted with approval the Full Federal Court's judgment in *FC of T v. Offshore Oil N.L* 80 ATC 4457; (1980) 11 ATR 189 (per Deane, Franki and Lockhart JJ), which was a decision concerning the former wording in subsection 185(2) of the ITAA 1936, the predecessor provision to section 14ZV . Hill J observed at FCR 15; ATC 5001-2; ATR 1025:

> Lockhart J., with whose judgment Franki J. also expressed agreement, said at p.4466 that the words 'any particular' refer to 'the constituent elements in the assessment of taxable income, treating them as separate sources of liability'. In a passage of some significance, his Honour said at pp.4466-4467:
>
> > An amended assessment may not increase the amount of taxable income; but, by the process of amendment, change the constituent elements going to make up the reassessed taxable income. New sources of income may be introduced, new deductions allowed, old deductions previously allowed now disallowed or vice versa. The possibilities are numerous. In the result, the taxable income may be more or less than it was under the original assessment or remains the same.

146. Hill J went on to apply the term 'particular' in the context of the process by which a taxpayer's taxable income (and therefore the tax payable) is calculated:

> The process of calculation of taxable income involves commencing with assessable income and subtracting therefrom allowable deductions, not treating net amounts as assessable income.[40]

147. In *Epov*, the Full Federal Court re-iterated the well-established position that the phrase 'in any particular' means 'in some specific or definite respect':

> The courts have held the phrase 'in any particular' to mean 'in some specific or definite respect': *Hughes v. Phillips* (1948) 75 CLR 436 at 443 (per Dixon J). In other words if a taxpayer wished to object to an assessment, then he or she could do so. If they did not and the [Commissioner] served an amended assessment, the taxpayer's grounds for objection were limited to the specific items addressed in the amended assessment. The object of s 14ZV was to prevent a taxpayer treating the amended assessment as an assessment with unlimited rights of objection under Part IVC of the TAA….[41]

[40] *Jackson*, at FCR 17; ATC 5003; ATR 1027.
[41] *Epov*, at ATC 5015; ATR 17.

148. Therefore, a 'particular,' in the context of section 14ZV refers to a specific or definite constituent element in the assessment of the taxable income (or that there is no taxable income) or tax payable thereon (or that there is no tax payable). Such elements are treated as separate sources of liability and therefore amount to a separate 'particular' for the purposes of section 14ZV. This is clear from the statement by Lockhart J in *FC of T v. Offshore Oil N.L* 80 ATC 4457 at 4466; (1980) 11 ATR 189 at 200, quoted with approval by Hill J in *Jackson*.

149. Further, where an amended assessment is issued as a result of the application of Part IVA of the ITAA 1936, and the amended assessment does not alter the amount of taxable income or tax payable, this still amounts to a change in the constituent element(s) in the assessment. Such an alteration would still be regarded as a change in the 'particulars' of the assessment so as to attract fresh objection rights in respect of each changed element in the process of applying Part IVA of the ITAA 1936. See the decisions in *Jackson* and *Puzey v. Federal Commissioner of Taxation* (2003) 131 FCR 244; 2003 ATC 4782; (2003) 53 ATR 614.

150. So in effect, a 'particular' for the purposes of section 14ZV is any element or detail that has been added or altered in the amended assessment which forms the component parts ('constituent elements') *in the process* of calculating a taxpayer's taxable income or tax payable, irrespective of whether this altered element ultimately leads to a change in the amount of taxable income or tax payable. Each of the component parts in this process should be viewed as representing separate sources of liability, the sum of which make up the whole of the taxpayer's assessment, being an amount of taxable income (or that there is no taxable income) and the tax payable on that taxable income (or that there is no tax payable).

What are matters 'relating to' a particular

151. Under section 14ZV, a person dissatisfied with a particular in an amended assessment may also object against matters 'relating to' that particular.

152. The phrase 'relating to' is synonymous with phrases such as 'connected with' and 'in respect of'. In order for something to be 'related to' another thing, there needs to be more than a mere connection between the two things. The connection or relationship needs to be a relevant one. What is 'relevant' depends on the statutory purpose and context in which the phrase appears.

153. The Commissioner is of the view that in the context of section 14ZV, the requisite connection needs to be between the particular that has been amended and matters that relevantly relate to this specific particular to the extent that those matters can be regarded as being bound up with, or involved in, the particular that has been amended. This means that a taxpayer who is dissatisfied with the inclusion of additional income in the amended assessment could object to the amended assessment on the basis that they be allowed a corresponding deduction for the expenses incurred in deriving that additional income. This deduction could exceed the amount of additional income included in the amended assessment.

154. However, these 'related' matters could not have been featured in the original assessment. If they were in the original assessment and remained unaltered by the amended assessment, the taxpayer can only challenge these in an objection against the original assessment.

155. The following example illustrates the operation of section 14ZV:

Example 2 – Objection against an amended assessment

156. *The Commissioner issued an original assessment to Tania including interest income of $200. Later the Commissioner issued an amended assessment to Tania including additional interest income of $130. Tania may object to the amended assessment only on grounds relating to that additional interest income of $130.*

157. *Tania retains her right to object separately to the original assessment on grounds that relate to the interest income of $200 or on grounds that relate to other particulars of the original assessment that were not the subject of the amended assessment. For example, if Tania is still within the time limits for lodging an objection against her original assessment, she may lodge a separate objection against her original assessment concerning her entitlement to a tax offset which was previously denied by the Commissioner in her original assessment.*

158. *Tania objects against the amended assessment on the grounds that the additional interest income should only be $50 not $130 and that she should be entitled to a deduction of $20 for the bank fees paid on the interest account. The Commissioner allows the objection in part and issues a second amended assessment showing the income reduced to $50 but disallowing the $20 deduction.*

159. *Tania objects against the deduction decision in the second amended assessment. As she is still within the time limit to do so, she also objects to her original assessment after realising that the Commissioner disallowed a deduction of a similar kind in her original assessment.*

160. *Tania can include both of her objections in the same approved form. The approved form requirements are discussed in paragraphs 104 to 108 above.*

Private rulings

161. A taxpayer affected by a private ruling where an assessment has issued in respect of the scheme[42] covered by the ruling cannot object to the private ruling but must lodge an objection against the assessment.[43]

162. However, section 14ZVA imposes a further limitation on objection rights against an assessment where the assessment reflects the application of a private ruling against which the taxpayer has previously objected. In such a case, the taxpayer is limited to a right to object against the assessment on grounds that neither were, nor could have been, grounds for objection against the private ruling.

163. To the extent to which an assessment relates to facts that are materially different from those dealt with in the private ruling, or deals with the application of provisions not dealt with in the private ruling (for example, the application of Part IVA of the ITAA 1936), the limitation imposed on the taxpayer's right to object against the assessment by section 14ZVA of the TAA does not apply.

Multiple objections against an assessment

164. Section 175A of the ITAA 1936 makes no express limitation on the number of objections that can be lodged in relation to an assessment.

165. Therefore taxpayers may lodge as many objections as they wish in relation to some element of, or a particular in, an assessment, up to the moment when the Commissioner makes an objection decision under section 14ZY. The Commissioner will deal with all these objections together and make a single objection decision in relation to that element or particular.[44]

166. However, the statutory scheme of Part IVC is such that the Commissioner is *functus officio*[45] once he makes a decision under section 14ZY in relation to an objection against some element of, or a particular in, an assessment.

---

[42] The term 'scheme' is used in the context of the private rulings system in Division 359 of Schedule 1 and is not intended to refer to tax avoidance schemes.
[43] See paragraphs 131 – 133 above.
[44] As to the effect of the Commissioner's decision on an objection, refer to paragraphs 175 to 180 below.
[45] The *functus officio* doctrine provides that a person who is vested with decision-making powers may, as a general rule, exercise those powers only once in relation to the same matter. This doctrine is subject to the statute under which the decision is made. See *Minister for Immigration and Ethnic Affairs v. Bhardwaj* (2002) 209 CLR 597; 187 ALR 117; [2002] HCA 11.

167. Where an objection decision has been made in relation to a particular in an original assessment a taxpayer may object against that assessment in relation to a different particular. What amounts to a 'particular' has been considered in paragraphs 138 to 144 above, and applies in this context.

Example 3 – multiple objections against a single element or particular in an assessment

168. *Before lodging her 2007-08 income tax return, Rajitha rang the ATO and was told that she could not claim a deduction for her home office expenses. She lodged her return without claiming the deduction. Later Rajitha reads an article in the paper and concludes that people in her situation are entitled to claim a deduction for their home office expenses.*

169. *In September 2009, Rajitha lodges an objection against her 2007-08 income tax assessment concerning her entitlement to a deduction for home office expenses.*

170. *In October 2009, Rajitha becomes aware of a recent court decision where a person in a similar situation was held to be entitled to a deduction for home office expenses. Rajitha promptly writes to the ATO, objecting to her 2007-08 income tax assessment, now on the basis that the outcome of the court decision equally applies to her factual scenario.*

171. *As the Commissioner has not yet made a decision on the original objection lodged by Rajitha in September 2009, he can treat her subsequent objection as part of Rajitha's original objection.*

172. *The Commissioner subsequently allows in part Rajitha's objection to her 2007-08 assessment concerning a deduction for home office expenses. He disallows Rajitha's claim under section 8-1 of the ITAA 1997 for a deduction for the full cost of the computer she purchased.*

173. *Rajitha has exhausted her objection rights in relation to her 2007-08 assessment in respect of her home office expenses. That is, she cannot object against the denial of the deduction for the cost of the computer, even if she were to now attempt to claim a deduction based on the decline in value of the computer. Rajitha can however seek a review of the Commissioner's decision by the AAT, or appeal the decision to the Federal Court if she is dissatisfied with the decision concerning the deduction for the computer.*

174. *Rajitha still has objection rights in relation to other elements or particulars concerning her 2007-08 assessment. For example, she may wish to dispute the calculation of her taxable income on the basis that certain amounts should be exempt. She may want to challenge the calculation of the Medicare levy, on the basis that her taxable income should be lower than what is showing on the notice of assessment. Each of these aspects represents a different issue or particular in Rajitha's 2007-08 assessment, attracting separate objection rights up until the Commissioner makes his decision on that issue.*

Withdrawal of an objection

175. The Commissioner is under no obligation to make a decision on an objection after he has been notified by the taxpayer of the withdrawal of the objection. Sweeney J in *Higgs v. Federal Commissioner of Taxation* (1984) 2 FCR 556; 84 ATC 4680; (1984) 15 ATR 1055 observed that once the Commissioner is notified of a withdrawal, the objection in question is considered to no longer exist. Sweeney J observed at FCR 559; ATC 4682; ATR 1058:

> While there is no express provision in the Assessment Act dealing with the withdrawal of objections, it would be absurd to read [former equivalent to section 14ZY] as requiring the respondent to consider an objection, and either disallow it, or allow it wholly or in part, and serve the taxpayer with written notice of his decision, when the taxpayer had communicated to him that the objection was withdrawn (see *Dymocks Book Arcade Ltd (1936)* 3 A.T.D. 373 at pp.373-374 per McTiernan J.).
>
> In my opinion, the applicant was at liberty to withdraw his objections and communicate that withdrawal to the respondent (see *Boal Quay Warfingers Ltd v. King Lynn Conservancy Board* (1971) 3 All E.R. 597).
>
> When he did so, there was no occasion for the respondent to make any decision because **there were then no objections on foot.** His acknowledgement of receipt of the letter of withdrawal did not amount to a decision of any kind. [emphasis added]

176. An objection on the same issue(s) may be lodged again at a later time, provided the objection is within the time limits stipulated in section 14ZW (see paragraphs 109 to 114 above) or the Commissioner makes a decision to treat a late objection as if it had been lodged within time (see paragraphs 115 to 119 above).

Requirement to make an objection decision

177. If an objection has been lodged with the Commissioner within the required period, the Commissioner must decide (per subsection 14ZY(1)) whether to:

- allow it wholly; or
- allow it in part; or
- disallow it.

178. The Commissioner's decision is called an 'objection decision' (subsection 14ZY(2)). The Commissioner must cause to be served on the taxpayer written notice of the Commissioner's objection decision (subsection 14ZY(3)).

179. If the Commissioner has not made an objection decision within 60 days of:

(a) the day on which the objection was lodged;

(b) the day on which a decision is made to extend the time for lodging the objection; or

(c) the day on which the Commissioner receives information relating to the taxation objection in response to a written notice.

the taxpayer may give the Commissioner a written notice requiring the Commissioner to make an objection decision (subsections 14ZYA(1) and 14ZYA(2)).

180. The Commissioner is taken to have made an objection decision disallowing an objection if the Commissioner has not made an objection decision within 60 days after being given a notice by the taxpayer (subsection 14ZYA(3)).

Effect of an objection decision

181. Once the Commissioner has made an objection decision, the objection process is completed, to the extent that the Commissioner is concerned.

182. Neither the ITAA 1936, ITAA 1997 nor the TAA contains an express provision empowering the Commissioner to revoke or overturn an objection decision once it is made.

183. Thereafter, taxpayers who are dissatisfied with an objection decision must seek redress before the AAT or the Federal Court in accordance with the requirements in section 14ZZ discussed in paragraphs 184 to 187.

184. An objection decision made in relation to an assessment for a particular income year does not create a precedent for subsequent income years (*Heavy Minerals Pty Ltd v. Federal Commissioner of Taxation* (1966) 115 CLR 512; (1966) 14 ATD 282). If taxpayers require certainty in respect of subsequent income years, they should apply for a private ruling. Taxation Ruling TR 2006/11 *Income tax, fringe benefits tax and product grants and benefits: Private Rulings* discusses the process for obtaining a private ruling.

185. An objection decision is distinct from a decision to amend the assessment. This is the case even though the amendment can be spoken of as being undertaken as part of the process of implementing the decision to allow the objection. The Commissioner is subject to the general time limits in section 170 of the ITAA 1936 when amending a taxpayer's assessment other than for issues that form part of the objection.

186. For example, in *Case W119* 89 ATC 944, one of the issues for consideration in the case was the power of the AAT to increase, or to direct the increase of, assessments as a consequence of determining the correctness of the assessments. The AAT, in concluding that the Commissioner's power to amend an assessment *can* arise as a result of considering an objection, clearly noted that such an amendment is brought about by reason of the *decision of the Commissioner* on his own initiative, and is not brought into existence by reason of any decision on the objection to wholly allow, partly allow or to disallow the objection. The AAT referred to the Full Federal Court's decision in *Fletcher v. Federal Commissioner of Taxation* (1988) 19 FCR 442; 88 ATC 4834; (1988) 19 ATR 1765.

Amendment of assessment before an objection decision

187. Where the Commissioner is within the amendment periods for original assessments referred to in items 1 to 4 of the table in subsection 170(1) of the ITAA 1936 or the amendment period for amended assessments referred to in subsection 170(3) of that Act ('limited amendment period'), he may amend the taxpayer's assessment at any time within the limited amendment period in order to arrive at the taxpayer's correct tax position for a given year.

188. During the limited amendment period, the Commissioner is not bound to amend the assessment solely on the grounds raised by an objection. The Commissioner is entitled to make such alterations in, or additions, to the relevant assessments as he thinks necessary to correct the assessment. This process of amendment extends to include the addition of new items of income or the allowance of deductions not previously allowed (see *Jackson* per Hill J at FCR 15; ATC 5001; ATR 1025, cited with approval by the Full Federal Court in *Epov* at ATC 5015; ATR 17).

189. Further, in *Epov* at ATC 5015; ATR 17 it was held that the Commissioner's power of amendment under the limited amendment period was not stayed or otherwise rendered inoperable if a taxpayer had instituted proceedings under Part IVC.[46] Although the proceedings under Part IVC in *Epov* were Court proceedings, the Commissioner is of the view that the same principles apply where an objection to an original assessment or an amended assessment is outstanding.

Review of, or appeal against, an objection decision

190. Under section 14ZZ if a person is dissatisfied with the Commissioner's objection decision the person may either apply to the AAT for review of the decision or appeal to the Federal Court against the decision.

[46] This has been applied by the AAT in *YWXJ v. Commissioner of Taxation* [2010] AATA 326.

191. The person dissatisfied with an objection decision under section 14ZZ is usually the taxpayer who was dissatisfied with the assessment for the purposes of objecting against the assessment under subsection 175A(1) of the ITAA 1936 (subsection 14ZL(1); *McCallum*).[47] If a taxpayer is bankrupt, it is the trustee in bankruptcy who has standing to appeal against, or apply for review of the objection decision.[48]

192. Similarly, where a company is in liquidation, liquidators have standing to appeal against, or apply for review of the objection decision.[49] However, a beneficiary of a trust, where the corporate trustee has gone into liquidation, may only appeal against an objection decision in respect of an assessment of the corporate trustee in special or exceptional circumstances.[50]

193. If the Commissioner purports to make an objection decision where the taxpayer had no right to object, the AAT has no jurisdiction to review that decision.[51]

194. The taxpayer is limited to the grounds stated in the taxation objection to which the decision relates unless the AAT or the Court (as the case may be) orders otherwise (paragraphs 14ZZK(a) and 14ZZO(a) respectively, and *Lighthouse Philatelics Pty Ltd v. Federal Commissioner of Taxation* (1991) 32 FCR 148; 91 ATC 4942; (1991) 22 ATR 707).

195. It has been held that it is not necessary for the AAT to make a formal order under paragraph 14ZZK(a) permitting the scope of the review to be enlarged to include an alternative argument (*Samba v. FC of T* 2005 ATC 4526; (2005) 59 ATR 747).

196. In *Federal Commissioner of Taxation v. ANZ Savings Bank Limited* (1994) 181 CLR 466 at 476; 94 ATC 4844 at 4848; (1994) 29 ATR 11 at 17 the High Court held that an appeal to the Federal Court against an objection decision relates to the objection decision in its entirety albeit that a taxpayer is dissatisfied with only part of that decision.

197. When an objection decision is appealed directly to the Federal Court, the Court is not limited to considering the appeal against an objection decision only on administrative law grounds. In *Kajewski & Ors v. FC of T* 2003 ATC 4375; (2003) 52 ATR 455, the appeal involved questions of both fact and law and the taxpayer was entitled to challenge the entire factual and legal basis upon which the amended assessment was issued, subject only to the limitation in paragraph 14ZZO(a) referred to above in paragraph 188.

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[47] See paragraphs 81 to 91 concerning who is a person dissatisfied.
[48] Refer to paragraphs 81 to 100 above about who can object.
[49] *Pearson & Ors v. FC of T & Anor* 2001 ATC 4104; (2001) 46 ATR 367. See paragraphs 81 to 100 above about who can object.
[50] *Pearson & Ors v. Federal Commissioner of Taxation & Anor (No.2)* (2001) 166 FCR 357; 2001 ATC 4635; (2001) 48 ATR 117.
[51] *Case 21/94* 94 ATC 222; Case 25/*96* 96 ATC 311.

198. The taxpayer has the burden of proving to the AAT or the Federal Court (as the case may be) that an assessment is excessive (paragraphs 14ZZK(b) and 14ZZO(b) respectively).

When a decision becomes final

199. A decision of the AAT becomes final where no appeal to the Federal Court is lodged against the decision.[52] An order of the Federal Court constituted by a single Judge becomes final where no appeal to the Full Federal Court is lodged.[53] Where no application for special leave to appeal to the High Court is made against an order by the Full Federal Court, the Full Federal Court's order becomes final.[54] Similarly, where an application for special leave to the High Court is refused, the order of the Full Federal Court becomes final.

200. In these situations the taxpayer will not be able to object again in respect of the matters dealt with by the AAT or the Court. The doctrine of *res judicata*[55] will prevent a taxpayer from raising an issue already decided judicially.

Amendment of assessment after an objection decision

201. The Commissioner's discretion to amend a taxpayer's assessment after an objection decision has been made is found in item 6 of the table in subsection 170(1) of the ITAA 1936 which provides:

> The Commissioner may amend an assessment at any time:
>
> (a) to give effect to a decision on a review or appeal; or
>
> (b) as a result of an objection made by the taxpayer or pending a review or appeal.

202. Where an objection decision is made outside the limited amendment period, the Commissioner may only amend the assessment in respect of the particulars of the assessment that were the subject of the objection.

203. However, where an objection decision is made within the limited amendment period the Commissioner continues to have the power to amend the assessment in respect of matters unrelated to the objection until the end of that period.

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[52] Subsection 14ZZL(2).
[53] Paragraph 14ZZQ(2)(a).
[54] Paragraph 14ZZQ(2)(b).
[55] The doctrine of *res judicata* means that an issue that has been finally decided by a court cannot be reconsidered, either in the same court or in a different court.

204. Any amendment under either paragraphs (a) or (b) of item 6 in the table in subsection 170(1) of the ITAA 1936 only applies to the taxpayer whose issue was the subject of the objection, review or appeal. Likewise, the amendment only applies to the income year(s) the subject of the objection, review or appeal.

205. Other taxpayers who have a similar issue can request an amendment to their assessment (subject to the time limits). Alternatively, they can lodge an objection against the assessment. If the taxpayer is out of time for lodging an amendment or an objection, they may lodge an objection together with a written request asking the Commissioner to deal with the objection as if it had been lodged within time.[56]

[56] Refer to paragraphs 115 to 119 for details about late lodgment of objections.

Appendix 2 – Definition of Assessment

This Appendix is provided as information to help you understand how the Commissioner's view has been reached. It does not form part of the binding public ruling.

206. Subsection 6(1) of the ITAA 1936 defines 'assessment' as:

(a) the ascertainment of the amount of taxable income (or that there is no taxable income) and of the tax payable on that taxable income (or that no tax is payable); or

Note 1: A taxpayer does not have a taxable income if the taxpayer's deductions equal or exceed the taxpayer's assessable income: see subsection 4-15(1) of the *Income Tax Assessment Act 1997*.

Note 2: A taxpayer may have no tax payable on an amount of taxable income if that income is below the tax-free threshold or if the taxpayer's tax offsets reduce the taxpayer's basic income tax liability to nil.

(b) for a taxpayer being the trustee of a unit trust that is a corporate unit trust within the meaning of section 102J – the ascertainment of the net income of the trust as defined by section 102D (or that there is no net income) and of the tax payable on that net income (or that no tax is payable); or

(c) for a taxpayer being the trustee of a unit trust that is a public trading trust within the meaning of section 102R – the ascertainment of the net income of the trust as defined by section 102M (or that there is no net income) and of the tax payable on that net income (or that no tax is payable); or

(d) for any other taxpayer that is the trustee of a trust estate but excluding a taxpayer that is the trustee of a complying superannuation fund, a non-complying superannuation fund, a complying approved deposit fund, a non-complying approved deposit fund or a pooled superannuation trust – the ascertainment of so much of the net income of the trust estate as is net income in respect of which the trustee is liable to pay tax (or that there is no net income in respect of which the trustee is so liable) and of the tax payable on that net income (or that no tax is payable); or

(e) the ascertainment of the amount of interest payable under section 102AAM (about distributions from non-resident trust estates); or

(f) the ascertainment of an amount of additional tax under section 128TE; or

(g) the ascertainment of an amount of tax under section 159GZZZZH; or

(h) the ascertainment of the amount of income tax payable on the no-TFN contributions income as defined by section 295-610 of the *Income Tax Assessment Act 1997* (or that no tax is payable); or

(i) the ascertainment of an amount of FHSA misuse tax (within the meaning of the *Income Tax Assessment Act 1997*) (or that no tax is payable).

Appendix 3 – Your comments

207. You are invited to comment on this draft Ruling. Please forward your comments to the contact officer by the due date.

208. A compendium of comments is also prepared for the consideration of the relevant Rulings Panel or relevant tax officers. An edited version (names and identifying information removed) of the compendium of comments will also be prepared to:

- provide responses to persons providing comments; and
- publish on the Australian Taxation Office website at www.ato.gov.au.

Please advise if you do not want your comments included in the edited version of the compendium.

Due date:	**16 February 2011**
Contact officer:	**John Hewison**
Email address:	**AdminBrisbane@ato.gov.au**
Telephone:	**(07) 3213 6726**
Facsimile:	**(07) 3213 5061**
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Appendix 4 – Detailed contents list

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References

Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:
TR 2006/10; TR 2006/11;
IT 2353

Previous Rulings/Determinations:

TR 96/12

Subject references:
- assessment
- amendment of assessments
- income tax
- objections
- tax disputes
- validity of objections

Legislative references:
- A New Tax System (Medicare Levy Surcharge – Fringe Benefits) Act 1999 10
- Bankruptcy Act 1966 134(1)
- Corporations Act 2001 471A
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- ITAA 1915-1918 37(1)
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