TR 95/D20 - Income tax: objections against income tax assessments

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Draft Taxation Ruling
Income tax: objections against income tax assessments

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IT 2455

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What this Ruling is about

1. This Ruling explains what constitutes a valid objection against an income tax assessment and replaces Taxation Ruling IT 2295. In particular, it explains what an 'assessment' is and the requirement that the grounds of objection must be stated 'fully and in detail', it addresses the issue of how many objections can be lodged against an assessment, and makes a distinction between amendment requests and objections.

Class of person/arrangement

2. This Ruling applies to all persons who have received an income tax assessment in relation to any given year of income, and consider that assessment to be incorrect in one or more particulars.

Background

3. The former objection and appeal provisions contained in the various taxation laws, in particular in Part V of the ***Income Tax Assessment Act 1936*** ('ITAA'), were repealed in 1992. These laws were replaced by a single set of generic objection and appeal provisions as enacted in Part IVC of the ***Taxation Administration Act 1953*** ('TAA'). The various tax laws administered by the Commissioner contain provisions giving taxpayers rights to object but the relevant procedure is now governed by the detailed provisions found in Part IVC of the TAA.

4. The new provisions, which came into force on 1 March 1992, are similar in many respects to the repealed provisions of Part V of the ITAA. They apply to objections where the assessments, determinations, notices or decisions to which the objections relate were notified, or were first notified, as the case may be, on or after 1 March 1992.

5. Further amendments which came into operation from 1 July 1992 extended the period within which a taxpayer can object against an assessment from 60 days to 4 years. These amendments were introduced as part of the improvements to self assessment.

6. Taxpayers dissatisfied with a taxation decision (i.e., an assessment, determination, notice or decision) who wish to object against it are required to object in the manner set out in Division 3 of Part IVC of the TAA (see paragraph 7 below). Section 175A of the ITAA gives taxpayers the right to object against an income tax 'assessment'. (There are other provisions in the ITAA and elsewhere that also give a right of objection against other taxation decisions; e.g., section 160AL of the ITAA - foreign tax and other credits; subsection 221YHAAE(1) of the ITAA - provisional tax avoidance scheme notices, etc.)

7. The procedural requirements of section 14ZU (in Division 3 of Part IVC) of the TAA for a taxpayer making a taxation objection require that the objection must:

(a) be in writing;

(b) be lodged with the Commissioner within the period set out in section 14ZW (subject to any request for an extension of time); and

(c) state fully and in detail, the grounds that the taxpayer relies upon.

Ruling

8. Section 175A of the ITAA and section 14ZU of the TAA, when read together, contain two substantive requirements in respect of valid objections against assessments. They are that an objection can only be made against an 'assessment', and the grounds relied upon must be stated 'fully and in detail'.

9. An objection will be sufficient if it:

(a) is in writing and clearly indicates to the Commissioner that the taxpayer is objecting to the assessment;

(b) is precise enough to direct the Commissioner to the aspects of the assessment considered to be incorrect; and

(c) gives reasons for considering the assessment to be incorrect.

In addition, it is necessary to lodge it with the relevant Deputy Commissioner within the period prescribed by section 14ZW of the TAA.

10. 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 (see also Taxation Ruling IT 2455 as to applications to treat late objections as duly lodged). Where such a request is refused, the taxpayer may, pursuant to subsection 14ZX(4) of the TAA, apply to the Administrative Appeals Tribunal for review of that decision.

11. With the introduction of the improvements to self assessment in 1992, the process leading to the finality of an assessment for any particular year has been extended to a 4 year period in most cases. This allows a taxpayer to seek an amendment of the relevant original assessment during that period to ensure that the correct tax is paid. Accordingly, a taxpayer is entitled to make multiple objections against the assessment during the 4 year period provided the objection is not against a particular which has been the subject of a decision of the Administrative Appeals Tribunal or the Federal Court of Australia, which by operation of the law has become final, or where the provisions of sections 14ZV and 14ZVA of the TAA apply.

12. An application by a taxpayer for amendment of an assessment pursuant to section 170 or any other provision of the ITAA is not an objection.

Date of effect

13. This Ruling applies to years commencing both before and after its date of issue. However, the Ruling does 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 the Ruling (see paragraphs 21 and 22 of Taxation Ruling TR 92/20).

Explanations

Objection against an 'assessment'

14. The term 'assessment' is defined in subsection 6(1) of the ITAA to mean:

(a) the ascertainment of:

(i) the amount of taxable income; or

(ii) in the case of a taxpayer being the trustee of a unit trust that is a corporate unit trust within the meaning of section 102J - the net income of the trust as defined by section 102D; or

(iii) in the case of a taxpayer being the trustee of a unit trust that is a public trading trust within the meaning of section 102R - the net income of the trust as defined by section 102M; or

(iv) in the case of any other taxpayer that is the trustee of a trust estate but excluding a taxpayer that is the trustee of a fund or unit trust referred to in paragraph (a), (b) or (c) of the definition of 'eligible entity' in subsection 267(1) - 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;

and of the tax payable on that taxable income or net income;

(aa) the ascertainment of the amount of interest payable under section 102AAM; or

(b) the ascertainment of the amount of additional tax payable under a provision of Part VII.

15. An assessment is however not simply the notice which issues to a taxpayer. In *Batagol v. FC of T* (1963) 109 CLR 243; [1964] ALR 480; 13 ATD 202 Kitto J noted that assessment means (CLR at 252; ALR at 487; 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.'

16. An assessment is a 'definitive ascertainment of the taxpayer's taxable income and of the tax payable thereon, not one which is merely tentative' - *F J Bloemen Pty Ltd v. FC of T* (1981) 147 CLR

360; 81 ATC 4280; 11 ATR 914 per Mason and Wilson JJ (CLR at 372 - 373; ATC at 4286; ATR at 921).

17. A deemed assessment (e.g., under section 166A of the ITAA) is accepted as an assessment for the purposes of lodging an objection. However, a refund notice, notice of credit applied, or other document indicating that there is no tax payable (i.e., a nil assessment) are not assessments for the purposes of objection, as they do not fix an assessable income or tax payable in terms of section 166 of the ITAA.

18. In order to be a valid objection against an assessment, the objection must relate to:

(a) some element in the calculation of taxable income or net income of a trust estate in respect of which the trustee is liable to pay tax, e.g., that a particular receipt was of a capital nature, that a particular receipt was exempt income, that a particular outgoing was an allowable deduction, etc.; or

(b) some element in the calculation of the tax payable, e.g., that the rate of tax applied was incorrect, that a rebate should have been allowed, that an imputation credit should be allowed, etc.; or

(c) some element in the ascertainment of the amount of interest payable by the recipient of a distribution from a non-resident trust, e.g., the amount of the distribution, the applicable rate of tax, the foreign tax credit attributable to the taxpayer's portion of the distributed amount, etc.; or

(d) that the amount of additional tax under Part VII of the ITAA ought to be varied, e.g., that the circumstances giving rise to the additional tax were such that no additional tax was warranted, or that it should have been remitted to a greater extent.

19. A notice of assessment which issues to a taxpayer will generally contain information beyond what is generally comprehended in the definition of 'assessment'. Where applicable, it will contain details of provisional tax, tax instalment deductions, prescribed payments or foreign tax credits and other credits provided for in the ITAA. It may also contain details of arrears of tax including additional tax and interest payable by way of penalty in respect of late payments. None of these items are part of the process of making of an 'assessment' and cannot be made the subject of an objection pursuant to section 175A of the ITAA.

'Fully and in detail'

20. Section 14ZU of the TAA, inter alia, requires that all grounds of an objection, stated fully and in detail, are contained in the Notice of Objection. In this context it is appropriate to repeat observations made by the High Court many years ago in the case of *R v. DC of T (WA): ex parte Copley* (1923) 30 ALR 86; [1923] R & McG 47 (*Copley*). The High Court had to consider 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. 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 (l) that the taxpayer contends that the assessment is not in accordance with the law, and (2) the grounds on which that contention is based.'

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.'

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.'

21. Subsequently in *H R Lancey Shipping Co Pty Ltd v. FC of T* (1951) 9 ATD 267; [1951] ALR 507 (*Lancey*) Williams J expressed 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.'

22. It is unnecessary to qualify further or expand in detail on what the High Court has said in the *Copley* and *Lancey* cases. The substance of the decisions indicates that an objection will be sufficient if it:

(a) clearly indicates to the Commissioner that the taxpayer is objecting to the assessment;

(b) is precise enough to direct the Commissioner to the aspects of the assessment considered to be incorrect; and

(c) gives reasons for considering the assessment to be incorrect.

23. In practice it will be the case that many objections are lodged by tax agents, accountants or solicitors, and in such circumstances it is expected that the grounds of objection will be stated clearly, fully and in detail. On the other hand, some taxpayers personally prepare and lodge their own income tax returns and generally attend to their own income tax affairs. These taxpayers will not be discriminated against or penalised because they may not use precise legal terminology in expressing dissatisfaction with an assessment. 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 the reasons for the alleged error, will be treated as satisfying the requirement that the grounds of objection be stated fully and in detail. In *Szajntop v. FC of T* (1993) 93 ATC 4307; 25 ATR 469 (*Szajntop*), Black CJ and Burchett J noted in a joint judgment that (ATC at 4312; ATR at 474):

> 'The requirement that the grounds be stated fully and in detail has not been taken to mean that the grounds have to be lengthy or complicated.'

24. In considering the grounds contained in a taxpayer's notice of objection, regard will also be had to the context in which the notice is lodged, other information mentioned in the notice or in the Commissioner's possession, and the relevant taxpayer's returns - see for example *Szajntop* and *Case X89* 90 ATC 643; *AAT Case 6404* (1990) 21 ATR 3795.

25. A taxpayer's grounds of objection do not necessarily need to have good prospects of success. It is adequate for them simply to be a valid ground of objection. In *Szajntop* Black CJ and Burchett J noted that (ATC at 4312; ATR 474):

> 'The question in this case is not whether the taxpayer had a ground of objection that might succeed but whether she had any valid ground of objection at all, that is, any intelligible ground of objection that was stated fully and in detail.'

26. Although the observations of the Courts make it clear that a taxpayer is not restricted to any particular form of words in lodging an objection against an assessment, it is equally clear that vague or general challenges to an assessment would not qualify as valid objections. Without more, a statement for example that an assessment is wrong in fact and law is not considered to be a statement of grounds fully and in detail. Sometimes letters from taxpayers are really complaints against the taxation system generally - they are not considered to be valid objections. In *Lancey's* case Williams J noted that (ATD at 273):

> 'Vague grounds such as that the assessment is excessive are not, in my opinion, a compliance with the Act.'

27. A taxpayer may object against an assessment notwithstanding the fact that the assessment is in accordance with their own erroneous return. In *Case X2* 90 ATC 105; *AAT Case 5540* (1990) 21 ATR 3083 P M Roach said (ATC at 111 - 112; ATR at 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.'

Multiple objections against an assessment

28. Taxpayers who make an objection under section 175A of the ITAA have, pursuant to paragraph 14ZW(1)(aa) of the TAA, a period of four years after notice of a taxation decision has been served on them within which to lodge their objection. This elongated period specifically raises the matter of whether more than one objection may be made against an assessment, or whether a taxpayer's right to object is exhausted by a single objection.

29. Although this question has not been considered directly or conclusively by any judicial authority, it is the view of the ATO that both the provisions found in the ITAA and TAA and observations made by the courts support the view that a taxpayer is entitled to object against an original assessment as many times as necessary during the period allowed to get the correct tax position for any relevant year. The only exceptions would be the case of an objection against a particular which has been previously considered by the Administrative Appeals Tribunal (Tribunal) or the Federal Court of

Australia, or where the provisions of sections 14ZV and 14ZVA of the TAA apply.

30. Section 175A of the ITAA provides (in whole) 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 *Taxation Administration Act 1953*.'

This provision makes no express limitation on the number of objections that can be lodged in relation to an assessment.

31. Other than sections 14ZV and 14ZVA, there is no other provision in Part IVC of the TAA which directly deals with any limitation as to the right to object against an assessment. Section 14ZV provides that where an objection is made against an amended assessment or an amended determination, the taxpayer is only entitled to further object to the alterations or additions made by the amended assessment or determination. There is no fresh or unlimited right of objection against an amended assessment in respect of a matter not connected with the particular that has been the subject of the amended assessment. This limitation would clearly apply if a taxpayer sought to further object against an amended assessment. But this limitation has no application to an original assessment.

32. Section 14ZVA of the TAA imposes another limitation to objection rights against an assessment. Section 14ZVA only becomes relevant where a taxpayer has sought a private ruling and has received an adverse ruling against which the taxpayer has lodged an objection. In an objection against an assessment affected by a private ruling, the taxpayer is limited to a right to object on grounds that neither were, nor could have been, grounds for objection against the private ruling.

33. In considering this issue, the legal status of the original assessment and an amended assessment needs to be considered. The position of an amended assessment is governed by law as set out above. It has also been considered judicially in several cases (vide *Trautwein v. FC of T* (1936) 56 CLR 63 and *FC of T v. Offshore Oil NL* (1980) 49 FLR 159; 80 ATC 4457; 11 ATR 189 (*Offshore Oil*)). What then is the position of the original assessment? That position seems to have been stated with some clarity by the Full Federal Court (Neaves, Lee and Olney JJ) in *FC of T v. The Swan Brewery Co Ltd* (1991) 30 FCR 553; 91 ATC 4637; 22 ATR 295 in the following terms (FCR at 560; ATC at 4642; ATR at 302):

> 'An assessment cannot be a combination of several determinations notified in separate notices dealing with discrete aspects of the process of assessment relating to the calculation of taxable income and the tax payable thereon. However, the amendment of an assessment is expressly restricted to the

> alteration of, or addition to, the assessed taxation liability by amendment or alteration of a distinct particular or component of the assessment. It follows that more than one amendment may be made to the assessment notified by separate notices.'

34. In *Offshore Oil* Deane J in the Full Federal Court observed that 'where the time for objection to each original assessment had passed' the taxpayer's right to further objection was governed by the law relating to objections against the relevant amended assessments. This statement would support the view that where the time to object against an original assessment has not passed, the taxpayer is not bound by the restricted right of objection against an amended assessment and can proceed to object against the original assessment on any particular that had not been previously the subject of a decision of the Tribunal or Federal Court.

35. If an objection against an original assessment has been made and the objection decision is either before the Tribunal or the Federal Court, the taxpayer can seek to extend the scope of the objection (vide sections 14ZZK and 14ZZO of the TAA and see *Lighthouse Philatelics Pty Ltd v. FC of T* (1991) 103 ALR 156; 91 ATC 4942; 22 ATR 707 (*Lighthouse Philatelics*)).

36. Decisions of the Tribunal or the Federal Court in respect of objection decisions become final in certain circumstances. In particular, they become final where no appeal is lodged against a decision of the Tribunal (subsection 14ZZL(2)) to the Federal Court, or against an order of the Federal Court constituted by a single Judge to the Full Federal Court (para 14ZZQ(2)(a)) and where no application for special leave to appeal to the High Court is made against an order by the Full Federal Court (para 14ZZQ(2)(b)). In these situations the decisions become final and the taxpayer will not be able to object again in respect of the matters dealt with by the Tribunal or the Court. The doctrine of *res judicata* will also be relevant to prevent a taxpayer from raising an issue already decided judicially.

Alternative views

37. An alternative view is that a taxpayer may lodge only a single objection against a given assessment, and that such objection exhausts entirely the taxpayer's rights of objection in relation to that assessment. This alternative view draws some support from observations made by the Full Federal Court in *Lighthouse Philatelics* - in particular the following statement (ALR at 165; ATC at 4949; ATR at 715):

> 'The power under s.188A arises only when a taxpayer has failed in the prescribed 60 days to lodge an objection at all. In such a case the Commissioner, or the Tribunal in the event of a review

> of the Commissioner's refusal to extend time, may permit an extension of time for lodgment of an objection. A taxpayer who has lodged an objection within time but who wished to rely upon new grounds, perhaps, as here, totally in substitution for grounds included in an objection duly lodged, would have no right to apply to the Commissioner under ss. 188 and 188A. Yet, the Commissioner would seek to persuade us that the legislative intention was that in such a case those taxpayers who lodged objections in time should be more harshly treated than those who did not, in that the latter could obtain leave to appeal out of time, but the former were bound forever by their original grounds or such amendments as did not amount to fresh objections.'

38. The *Lighthouse Philatelics* case concerned the law prior to the amendment allowing taxpayers to object against assessments any time within a four year period. The Court in that case was effectively expanding the taxpayer's objection to allow new grounds to be added. This view is not seen as being contrary to the principal view expressed in this ruling that a taxpayer may deal with further grounds in multiple objections within the time limit of the four year period.

39. A further view is that a taxpayer may lodge multiple objections, but not on the same issue. In other words, a taxpayer would only have a single right to object to any particular issue. This view, however, is not considered to have any clear legal support from either case or statute law. The only restrictions that are relevant are those referred to in paragraph 36.

Distinction between an amendment request and an objection

40. The Commissioner's general power to amend assessments is found in section 170 of the ITAA. Whilst the Commissioner has a discretion to exercise this power subject to the provisions of that section, the power is generally used in circumstances where it warrants an amendment to an assessment. Subsection 170(7) of the ITAA also ensures that any time constraints found in that section have no application to amendments made by the Commissioner to give effect to a decision upon any appeal or review of an objection decision, or an amendment by way of reduction in any particular in pursuance of an objection made by a taxpayer or pending any appeal or review.

41. The principal difference of substance between an objection and a request for amendment is that an objection is a request by a taxpayer who is dissatisfied with an assessment, for the Commissioner to turn his mind to the facts and make a decision as to the application of the law in the specific case. A request for amendment on the other hand,

is usually made to merely correct an error in an assessment where there is no real dispute in respect of the relevant issue or the facts.

42. The absence of a statutory right to object against an assessment or the absence of grounds stated fully and in detail, will mean that the particular notice from a taxpayer cannot be an objection, although it may, and often will be a request for amendment. This will often be the case where a taxpayer has made an error/omission in preparation of their return, and later writes seeking correction of that error.

Examples

43. Examples of possible wording in dispute letters could be as follows. Note that all examples assume that documents are lodged within the statutory time limitations found in the tax laws.

Example 1

'I forgot to claim a rebate for my spouse, the relevant details being...Would you please amend my assessment to allow the claim'

44. The first sentence of this example merely states that the taxpayer omitted a claim from the return. Both on its face and in its tenor, this is a request for amendment.

Example 2

'I request the further remission of additional tax imposed for incorrect return in my 1992 assessment for the following reasons...'

45. The definition of assessment in subsection 6(1) specifically includes 'the ascertainment of the amount of additional tax payable under a provision of Part VII.' This taxpayer has indicated that the assessment is considered to be excessive in a particular respect (viz incorrect return penalty) and the grounds for that view. It cannot be said that the taxpayer has not indicated dissatisfaction when they clearly ask for one part of the assessment to be reduced. The fact that the taxpayer has used the polite word 'request' rather than 'object', 'appeal' or 'protest' does not detract from the fact that the requirements for an objection have been met. This is a valid objection.

Example 3

'I hereby request an amendment to my income tax assessment for the above year. I consider that the assessment was incorrect in

that I should have been allowed a deduction of $1,000 for meals. Following incorrect advice from the Tax Office I did not include this claim in my return. The reasons why this claim is allowable are...'

46. This example on its face is a request for amendment and would be treated as such. A decision by the Commissioner on the law is not called for in the request - the Commissioner is simply asked to amend in keeping with the taxpayer's wishes, and reasons are advanced as to why this should be done. If the request for amendment was refused, the taxpayer would be entitled to object on the same issue provided the objection was made within the time limits found in section 14ZW of the TAA.

Example 4

'I still do not understand, where my taxable income and profit is, which was taxed $10,000 by you. I will never have that much money in my life, unless I sell everything. I drew $10,000 from the shop in the last 26 years and $3,000 in January. You must deny, I ever had any income, paid any taxes and drew money for a house, otherwise you would leave in peace.

'I wish you explained me fully, all your accusation one day. What a justice.!'

47. Poor expression is no bar to the lodgment of a valid objection. This example shows that the taxpayer is dissatisfied with the assessment, and reveals with sufficient particularity the grounds of that dissatisfaction (i.e., that the taxpayer's business did not make as large a profit as alleged and the assessment is excessive). This is a valid objection.

Example 5

'I hereby wish to object to your assessment in full. The income tax return which I lodged indicated that there was no tax payable at all. Your assessment was raised from a betterment statement produced by one of your officers on completely erroneous information.'

48. This example would be read as incorporating the income tax return lodged. The ground being put forward by the taxpayer is that the betterment statement should be ignored, that their income was a particular amount disclosed in the return, and that the assessment is excessive because it assessed an amount greater than the amount disclosed. It may be that the taxpayer would be unlikely to succeed without directly and positively challenging the betterment statement,

but this does not mean that the ground has not been stated fully and in detail. This is a valid objection.

Previous Rulings

49. This Ruling replaces Taxation Ruling IT 2295, which is now withdrawn.

Your comments

50. If you wish to comment on this draft Ruling, please send your comments by: 13 October 1995

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case references

- Batagol v. FC of T (1963) 109 CLR 243; [1964] ALR 480; (1964) 13 ATD 202
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