

IT 2510 - Income Tax : Time for an appeal against a decision of the Administrative Appeals Tribunal



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TAXATION RULING NO. IT 2510

INCOME TAX : TIME FOR AN APPEAL AGAINST A DECISION OF
THE ADMINISTRATIVE APPEALS TRIBUNAL

F.O.I. EMBARGO: May be released

REF

N.O. REF: 88/4681-2

DATE OF EFFECT: Immediate

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REFERENCE NO:	SUBJECT REFS:	LEGISLAT. REFS:
I 1211568	APPEALS - TIMING OF APPEAL PERIOD COMPILATION OF ADMINISTRATIVE APPEALS TRIBUNAL APPEAL PERIOD	ADMINISTRATIVE APPEALS TRIBUNAL ACT 1975; PARAGRAPH 44(2A) (a) SUB SECTION 3(4)

PREAMBLE

An appeal to the Federal Court of Australia may be lodged on a question of law from any decision of the Administrative Appeals Tribunal ('the Tribunal'). By paragraph 44(2A) (a) of the Administrative Appeals Tribunal Act 1975 (Cth) ("the AAT Act"), such an appeal shall be instituted not later than the twenty-eighth day after the day on which a document setting out the terms of the decision is furnished to the person concerned or within such further time as the Federal Court allows.

2. The purpose of this Taxation Ruling is to consider the meaning of the word "furnished" in paragraph 44(2A) (a) of the AAT Act in order to determine the day on which the statutory twenty-eight day appeal period commences to run.

3. Subsection 3(4) of the AAT Act deals with, amongst other matters, references in that Act to the furnishing of documents to persons. Under that provision, a document posted to a person by a pre-paid letter to an address furnished by the person for the service of documents relating to an AAT proceeding is deemed to have been furnished to that person, unless the contrary is proved, at the time when the document would have been delivered in the ordinary course of post.

4. By subsection 36(1) of the Acts Interpretation Act where any period of time, dating from a given day, is prescribed or allowed for any purpose, the time is reckoned, unless the contrary intention appears, exclusive of such day. Thus, in reckoning the twenty-eight days after "the day on which a document is furnished" for the purposes of paragraph 44(2A) (a) of the AAT Act that particular day is excluded.

RULING

5. Unless the contrary is therefore proved, where the document setting out the terms of the Tribunal's decision is posted by a pre-paid letter to a taxpayer or to the Commissioner at the relevant address the twenty-eight day appeal period commences to

run on the day after the day on which the document setting out the terms of the Tribunal's decision would have been delivered in the ordinary course of post. The document setting out the terms of the Tribunal's decision is taken to mean the formal notice of its decision rather than its written reasons for decision.

6. The day on which a document would be delivered in the ordinary course of post inherently lacks precision. It is possible that a day or two could elapse after the day the Tribunal hands down its decision and before it is posted. Even if there is no such delay it could be expected that one or two days would elapse after the day of the decision before the document is delivered in the post.

7. In lodging an appeal to the Federal Court from a Tribunal decision where the decision has been sent by pre-paid letter post, it is suggested as a practical rule of thumb that the Commissioner and taxpayers alike might seek to file a notice of appeal in the Registry of the Court by the twenty-eighth day after the day specified on the Tribunal's decision. Although this is a conservative approach and is clearly a more restricted period of time than that provided for in paragraph 44(2A)(a), it is suggested only to obviate any dispute about when a document would have been delivered in the ordinary course of post, and thus, about whether the appeal was filed in time. Taxation officers should aim, as a general rule to file appeals by the twenty-eighth day after the day of the decision.

8. Where service is otherwise than by pre-paid letter post to the relevant address, the word "furnished" in paragraph 44(2A)(a) of the AAT Act should be given its ordinary meaning. The Shorter Oxford English Dictionary defines the word "furnish" to mean "to provide or supply with" and the Macquarie Dictionary definition is "to provide or supply". The verb "furnished" in paragraph 44(2A)(a) is used in its past tense, and, in its ordinary sense therefore, means provided or supplied.

9. In lodging an appeal to the Federal Court from a decision of the Tribunal where the decision is served otherwise than by pre-paid letter post, the party, whether it be the Commissioner or the taxpayer, should ensure that a notice of appeal is filed in the Registry of the Court no later than twenty-eight days after the day on which the Tribunal's decision was first received by that party.

10. It should be mentioned that, if it does happen that the statutory twenty-eight day appeal period expires before a notice of appeal is filed in the Registry of the Court, an application may be made to the Federal Court under subsection 25(2) of the Federal Court of Australia Act 1976 (and Order 53, Rule 7 of the Federal Court Rules) for an extension of time for filing the notice of appeal.

COMMISSIONER OF TAXATION
15 December 1988