

INTRODUCTION OF THE *TAXATION ADMINISTRATION ACT 2003*

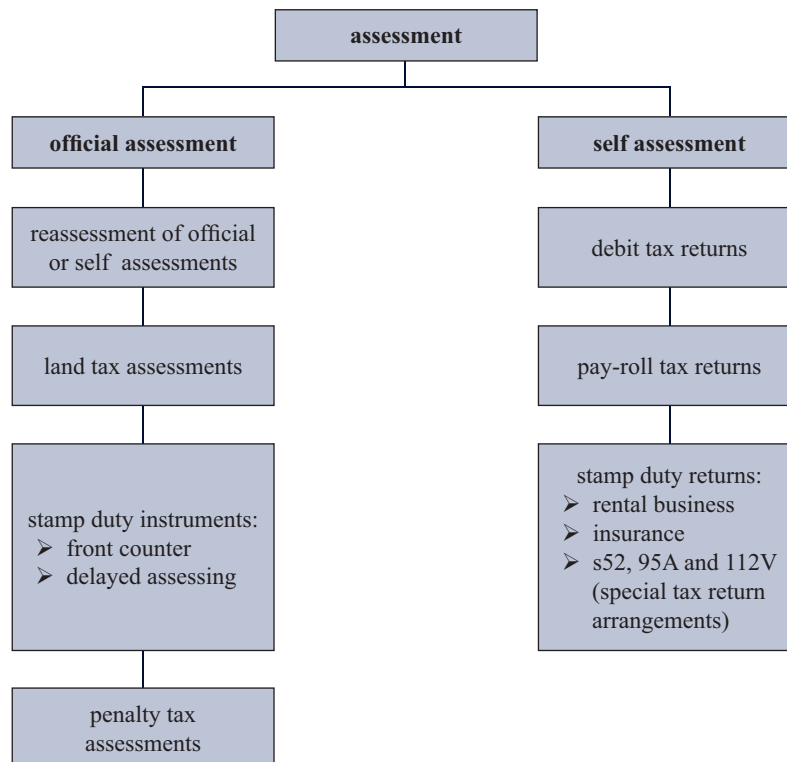
From 1 July 2003, administration of a number of State taxes will be administered under one Act, the *Taxation Administration Act 2003*.

The Acts affected include the *Debits Tax Act 2002*, *Debits Tax Assessment Act 2002*, *Land Tax Act 2002*, *Land Tax Assessment Act 2002*, *Metropolitan Region Improvement Tax Act 1959*, Section 41 of the *Metropolitan Region Town Planning Scheme Act 1959*, *Pay-Roll Tax Act 2002*, *Pay-Roll Tax Assessment Act 2002*, *Stamp Act 1921* and any other Act prescribed in Regulations to the *Taxation Administration Act 2003*.

The Acts that impose stamp duty, pay-roll tax, debits tax and land tax have been substantially altered to allow the *Taxation Administration Act 2003* to provide a uniform administrative approach for the above Acts.

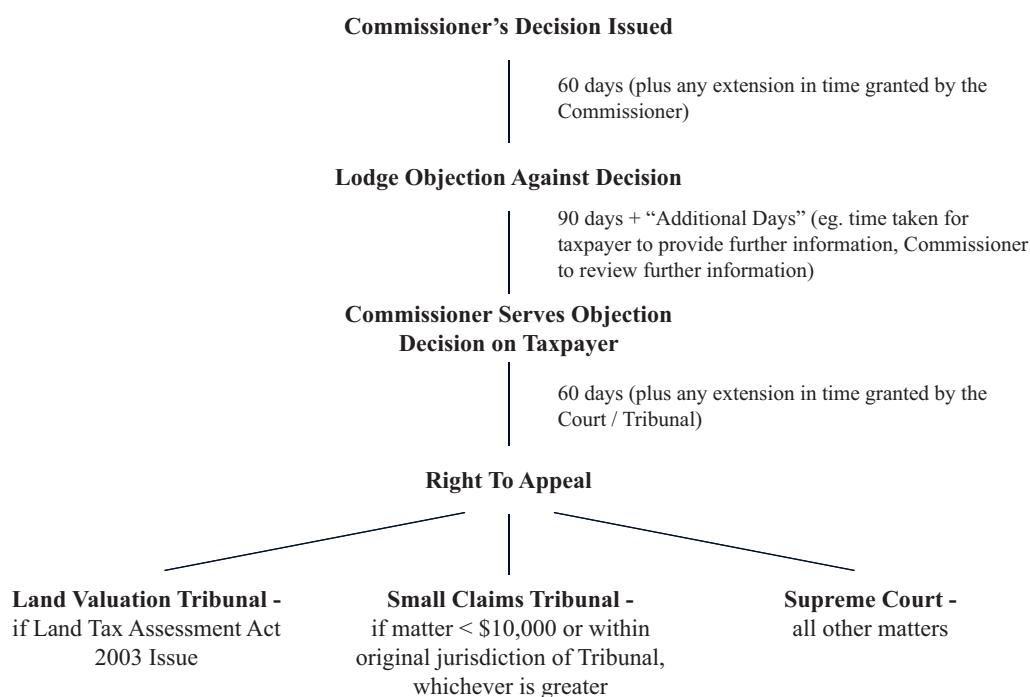
Summary of the Key Administrative Changes

1. The assessment procedure under the *Taxation Administration Act 2003* is illustrated below:



2. A taxpayer has the right to object against any assessment without incurring penalties.
3. The Commissioner has a reassessment power that can either **increase** or **decrease** tax payable on reassessment of the matter. The Commissioner can also make a reassessment on his/her own initiative, if it appears that a previous assessment is or may be incorrect for any reason.
4. The Commissioner cannot change an assessment where the assessment was based on a particular interpretation of a **law or practice** of the Commissioner that applied at the time the assessment was originally raised. As a result of this rule, the Commissioner will issue a number of new Practice statements after 1 July 2003 explaining the application of many of his discretionary powers contained in the above Acts.

5. The Commissioner will be able to assess a **copy** of an instrument.
6. A taxpayer can request a Statement of Grounds of Assessment from the Commissioner. The Commissioner will be required to serve a Statement of Grounds on the Commissioner within 30 days after receiving such a request from a taxpayer.
7. Penalty tax is being limited to **100%** of the primary tax payable in a matter.
8. Relief from penalty tax may be granted either before or after an assessment is raised.
9. The Commissioner must publish guidelines before imposing penalty tax.
10. The following flowchart depicts the new objection/ appeal process against a Commissioner's decision on a matter (eg Notice of assessment etc):



- (a) Objection against “non-reviewable” decisions can now be made to the Small Claims Tribunal. A “non-reviewable” decision includes a decision relating to:
 - (i) an approved tax payment arrangement;
 - (ii) a reassessment;
 - (iii) a waiver of tax;
 - (iv) writing off a tax liability; and
 - (v) other specific provisions identified in a Taxation Act where no right of objection exists.
- (b) If the Commissioner has not served his objection decision on the taxpayer within 120 days, the taxpayer has a right to require the Commissioner to refer the matter to the Supreme Court for directions as to timing etc.

- (c) Only a “taxpayer” can object against a decision made by the Commissioner. Broadly, a “taxpayer” is the party statutorily liable to pay tax. Any person who has a contractual liability rather than a statutory liability to a State tax will need to ensure that they have a contractual right to direct the “taxpayer” under the contract to lodge any objection against a decision made by the Commissioner.
- (d) The Court appears to have the ability to **increase** tax payable on an appeal review (by reason of the use of the word “vary” in section 43(1)(b) of the *Taxation Administration Act 2003*).
11. Tax payable on a reassessment must be paid within **30 days** of the date specified in the reassessment notice.
 12. The Commissioner may enter into a “tax payment arrangement” with a taxpayer with respect to repayment of an outstanding tax debt.
 13. The Commissioner may extend the time for payment of tax or allow for payment of tax in instalments, for example for payments of tax under off-the-plan, conditional contracts or house and land packages.
 14. In certain circumstances, the Commissioner may credit a refund amount payable to a taxpayer against the taxpayer’s existing and future tax liabilities.
 15. Any application for refund made by a taxpayer must be made within **five years** of the date when the over-payment was made by the taxpayer to the Commissioner.
 16. The Commissioner may issue a garnishee notice upon any person who owes money to a taxpayer with an outstanding debt to the Commissioner. This may impact on the priority of some commercial arrangements eg secured debt and factoring arrangements.
 17. A person may request the Commissioner to issue a certificate that land is not encumbered by a charge securing unpaid land tax or unpaid stamp duty. An on-transferee or a mortgagee of land should require the owner or purchaser of the land to provide a certificate from the Commissioner stating that there is no charge for stamp duty on the land. This will protect the on-transferee or mortgagee from a situation where a transfer has been stamped and registered but the cheque for payment of the transfer is subsequently dishonoured. If you don’t obtain the certificate then the on transferee or mortgagee will take the land subject to a charge to the Commissioner for the unpaid stamp duty and that charge is a first charge on the land.
 18. Tax records are expected to be kept by a taxpayer for at **least five years** after the date they were made by the person or the date on which the transaction to which they relate was entered into.
 19. The Commissioner will have wide powers of investigation, including a power to enter a residential premises in certain circumstances (eg warrant, consent).
 20. The Commissioner is obliged to keep documents for which legal professional privilege is claimed separate from all other documents (i.e. in sealed containers) and not to review these documents. Therefore, the importance of using legal advisors has been recognised by the *Taxation Administration Act 2003*.
 21. Directors are liable for **any** “offence” committed by a body corporate.
 22. A general defence to a prosecution for an offence under the *Taxation Administration Act 2003* is available where the defendant can prove that they could not, by exercise of reasonable diligence, have complied with the requirement to which the charge relates.
 23. A uniform penalty of \$20,000 applies for many “offences” under the Act.
 24. There is a wide reaching confidentiality provision contained in the *Taxation Administration Act 2003* that sets out those parties that are subject to confidentiality with respect to disclosure of information.

As the changes above are a summary only, please contact us for further details on any of these changes.

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