

Objections, Reviews and Appeals

Guideline

2007

This Guideline contains information on how to lodge an objection, how to request a review of an objection determination¹ and how to lodge an appeal against an objection determination.

Objections

What is an objection?

You have a right to lodge an objection when you are dissatisfied with tax assessments or certain decisions of the Commissioner of State Revenue (the Commissioner). While you may disagree with the basis of a particular tax, this is not a sufficient ground for an objection. However, you are able to object to the legal correctness of the assessment and/or the reasons for the decision.

Before you lodge an objection

Before you lodge an objection you should contact the relevant State Revenue Office (SRO) contact person and discuss the decision or assessment with them. You should also ensure that, in addition to any information that has been requested by the SRO as part of the assessing or investigation process, any other information relevant to the transaction/specific issue has been provided.

You should initially take these actions as it may not be necessary for you to go to the trouble and inconvenience of preparing and lodging an objection. That is, it may be possible to resolve the issue at this stage of the assessment or decision making process - refer further to the section below headed "Is objection the best alternative?"

When can you make an objection?

You can lodge an objection if you are dissatisfied with:

- a notice of assessment, or
- any other decision of the Commissioner under a taxation law as defined in the *Taxation Administration Act 1997* ('the TAA'), or
- a decision of the Commissioner on an application for a first home owner grant under the *First Home Owner Grant Act 2000* ('the FHOG Act').

You should lodge an objection with the Commissioner in the first instance rather than writing to the Treasurer or another Member of Parliament. This way, your further review and appeal rights are protected, and the SRO has the opportunity to carry out an independent review of the decision or assessment. This review may result in changes being made to the original decision or assessment.

¹ The phrase 'objection determination' refers to the Commissioner's decision on your objection. Your objection may be disallowed, partly allowed or allowed in full.

When you cannot lodge an objection

There are some circumstances where you cannot lodge an objection. Some examples are:

- a compromise assessment (for example, where it is not possible or practicable to obtain exact figures, a taxpayer and the Commissioner may agree on a figure as approximating the dutiable value for a transfer of dutiable property under the *Duties Act 2001* (the Duties Act) or the wages paid for the financial year under the *Pay-roll Tax Act 1971*);
- a reassessment as a result of the determination of an objection;
- a decision by the Commissioner to refuse a request for a refund;
- a verbal decision or a private ruling; or
- a refusal by the Commissioner to accept an objection lodged outside the time limit set down in the TAA or the the FHOG Act (this is further explained below under the section headed "What is the time limit to lodge an objection?").

If you are uncertain whether you have the right to object you should contact our office (contact details are listed below under the section headed "More Information").

Who reviews your objection?

When you lodge an objection, the SRO's Research Analysis and Legislative Review (RALR) Unit will conduct an internal review of the decision or assessment. The RALR Unit is separate from the work area that made the original decision or assessment and will conduct an independent review of that decision or assessment. The requirement for an independent review is explicitly stated in both the TAA and the FHOG Act and means that any person (or subordinate of that person) involved in making the original decision or assessment is prevented from reviewing that decision or assessment if an objection is lodged.

How do you make an objection?

You must lodge your objection in writing either in letter form or by email.

The grounds for objection should be stated fully and in detail. It is not enough to say the assessment is wrong, that you don't agree with the decision or you wish to complain about the level of tax. We need enough details to allow us to determine which aspects of the assessment, or decision, you object to and the reasons you believe them to be incorrect so that we can address those issues.

What is the time limit to lodge an objection?

Your objection must be lodged within 60 days of service of notice on you (or the person acting on your behalf/representative) of an assessment or notification of a decision of the Commissioner.

If exceptional circumstances prevent you from lodging your objection within 60 days you can request an extension of time to lodge your objection. However, extensions can only be granted at the discretion of the Commissioner. Your request for an extension must be in writing and fully state the circumstances concerning the reasons for failure to lodge the objection within time.

Why are some objections not valid?

Objection letters or emails not lodged within time or that do not contain clear grounds for an objection may not be accepted as an objection in accordance with the legislation. If your objection is not valid, we will still examine your claims and inform you of the result; however as this 'review' is not part of a formal objection process you will not have any further rights of review or appeal.

How will you know the SRO is considering your objection?

When we receive your objection, we will send you an acknowledgment letter and give you a contact name and telephone number in case you wish to make any enquiries about the progress of your objection.

Do you still have to pay the tax while your objection is considered?

No, however penalty tax will be applied if the tax has not been paid by the due date with interest continuing to accrue on any tax and penalty tax outstanding after the date for payment (interest is not calculated on interest that has already been imposed).

Therefore, whilst your objection is being considered you have the choice of either:

- paying the outstanding amount, and, if your objection is successful, receiving a refund of the overpaid amount together with interest on the overpaid amount paid at the market interest rate detailed in the TAA (currently 4.8 per cent per annum); or
- choosing not to pay the outstanding amount, but if your objection is unsuccessful, interest will be imposed on the outstanding amount at the interest rate detailed in the TAA (currently 12.8 per cent per annum made up of the market interest rate of 4.8 per cent per annum plus the premium interest rate of 8 per cent per annum).

How long will it take to have your objection decided?

The SRO seeks to determine 90 per cent of objections within 30 days of receipt and 100 per cent within 60 days of receipt. Note that these time periods do not include any allowances for time delays caused whilst the SRO is awaiting legal advice or information from taxpayers, their representatives or third parties.

It should also be recognised that more complex objections may take longer to determine. The number of objections received and on hand may also impact on the achievement of the turnaround times noted above.

How will you know the result?

We will inform you in writing of the decision and the reasons for it. Your objection may be fully allowed, partly allowed or disallowed.

Which party has to prove their case at the objection stage?

The onus of proof is on the taxpayer to prove their case.

What happens if your objection is fully allowed?

You do not need to do anything. We will issue a formal Notice of Determination. If a reassessment is necessary, we will issue a notice of reassessment together with any amount of refund of overpaid tax and applicable interest.

What if your objection is disallowed or only partly allowed?

We will issue a formal Notice of Determination explaining the determination and the reasons for it. If you are dissatisfied with this decision, the Tasmanian legal system provides you with the right of review by the Administrative Appeals Division of the Magistrates Court (the AAD) or by the Supreme Court of Tasmania (the Supreme Court)². More information about your rights if aggrieved by the determination of your objection appears below under the section headed 'Reviews and Appeals'.

² Requests for review under the FHOG Act are directed to the AAD in the first instance, whereas under the TAA, the taxpayer has the choice of seeking a review by the AAD or lodging an appeal directly with the Supreme Court.

Is objection the best alternative?

There are some situations in which it may be more appropriate to request a reassessment instead of lodging a formal objection. Sometimes a simple recalculation is all that is required. An example could be where you may not have informed us of a correct wage figure for your payroll tax assessment. Other examples include where your land tax assessment may include a parcel of land that you sold during the year but the Commissioner has not received advice of the sale, or where information pertinent to establishing dutiable value under the Duties Act has not been lodged prior to the assessment issuing. In these situations it could be more appropriate for you to send us the correct information and request a recalculation of your liability.

You should be aware that a request for reassessment does not provide you with any rights of review or appeal by the AAD or Supreme Court. Therefore if you wish to preserve your further rights of judicial review, then you should lodge a formal objection.

If you would like to discuss lodging an objection or requesting a reassessment you should contact the SRO.

More information:

State Revenue Office
4th Floor 80 Elizabeth Street
HOBART Tas 7000

Post:
GPO Box 1374
HOBART Tas 7001

Phone: (03) 6233 2286 (03) 6233 3887

(03) 6233 2694 (03) 6233 4658

Facsimile: (03) 6234 3357

Email: revenuereview@treasury.tas.gov.au

Internet: www.sro.tas.gov.au

Land Values, Capital Values, Adjustment Factors and Estimated Trends in Capital Values

The Commissioner relies on the Valuer-General for the provision of land values and adjustment factors in relation to land tax and capital values and estimated trends in capital values in relation to duties matters.

Land Tax

Land values used in land tax notices of assessment are obtained from the Valuer-General. Only the Valuer-General has the authority to ascertain land values and consider objections relating to valuations or reviews in respect of adjustment factors.

A land owner can object to a valuation made by the Valuer-General under section 28 of the *Valuation of Land Act 2001* (the Valuation of Land Act).

Additionally, under section 50B of the Valuation of Land Act, a Council or a land owner can seek a review of the adjustment factor/s applied to their property/ies by the Valuer-General.

Therefore, if you are objecting to a valuation or seeking a review of adjustment factors, you should write directly to the Valuer-General at the address noted below.

You have 60 days after service of notice of the valuation of your land or publication of the adjustment factor determination in the *Gazette* to object or seek a review. You are still required to pay any outstanding land tax while your objection is being considered. The Valuer-General will consider your objection, inform you of the decision and any rights of appeal you may have.

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If, as a result of the objection, there has been an alteration to the land value, the Valuer-General will notify the Commissioner and your land tax liability will be reassessed based on this new value. You will be sent a new land tax notice of assessment and, if applicable, a refund of any overpaid land tax together with interest at the rate detailed in the TAA calculated from the date of payment of the original land tax up to the date of the refund.

Duties

Capital values, Land Value Adjustment Factors or Estimated Trends in Capital Values³, as provided by the Valuer-General, are used in assessments made under the Duties Act where the stated consideration is considered to be inadequate for the unencumbered value of the property. However, in some circumstances a valuation of the property as at the date of the relevant transaction will be required in order to establish the unencumbered value of the dutiable property being transferred.

Objections lodged against duty assessments based on a dutiable value determined by the application of the Land Value Adjustment Factors/Estimated Trends in Capital Values will only be considered when accompanied by a declaration⁴ prepared by a competent valuer⁵.

Where the Commissioner is not satisfied with the declared value, the Commissioner may seek a valuation from a competent valuer and pass the costs of that valuation on to you (generally, this would only occur where the valuation obtained by the Commissioner returns a value substantially higher than the stated consideration).

In the absence of a declaration, the Commissioner cannot treat the particular matter as a valid objection.

More information

Office of the Valuer-General
Department of Primary Industries and Water
144 Macquarie Street
HOBART Tas 7000

Telephone: (03) 6233 3715

Reviews and Appeals

What is a review or an appeal?

You have the right to request an external review or appeal through the legal system if you are dissatisfied with the Commissioner's determination of your objection.

The external judicial review is completely independent from the SRO.

When can you request a review or lodge an appeal?

If you are dissatisfied with the Commissioner's determination of your objection, or 90 days have passed since you lodged your objection and the Commissioner has not yet determined your objection⁶, you may seek an

³ Land Value Adjustment factors are used where the subject property is vacant land (apart from in the year of a Fresh Valuation – where a Fresh Valuation is made, there is no Adjustment Factor), whereas the Estimated Trends in Capital Value are used where the property includes improvements (refer to the separate Public Guideline, "Duties Act 2001 - Section 248: Determining the Dutiable Value of a Dutiable Transaction involving Vacant Land" for an explanation of the criteria that the Commissioner will adopt in deciding whether property is vacant land).

⁴ In the first instance, the Commissioner may accept a declaration by a competent valuer, which was prepared for security or for other purposes rather than insisting that you incur what may end up being an unnecessary expense of having a valuation conducted (that is, where the resulting valuation supports the stated consideration).

⁵ For the purposes of section 248 of the Duties Act, a reference to a "competent valuer" means a person whose qualifications satisfy the criteria set down in section 4 of the *Land Valuers Act 2001* or, alternatively, a person who, subject to section 4(2) of that Act, was a registered valuer at the time of the repeal of the former *Valuers Registration Act 1974*.

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external review from the AAD or appeal directly to the Supreme Court. As noted above, requests for review under the FHOG Act are directed to the AAD in the first instance, whereas under the TAA, the taxpayer has the choice of seeking a review by the AAD or lodging an appeal directly with the Supreme Court.

Who reviews your case?

You can request a review through the AAD or lodge an appeal with the Supreme Court of Tasmania. The processes for each are different and you will need to lodge your request for review or appeal with the correct court.

Administrative Appeals Division (Magistrates Court)

The AAD provides an external review of decisions made by various Tasmanian Government agencies. You can ask the AAD to review your case on most matters. If you are dissatisfied with the decision of the AAD you may have further rights of appeal to the Supreme Court of Tasmania on questions of law (that is, you are not able to appeal to the Supreme Court in relation to questions of fact). For more information on your rights you should contact the Magistrates Court directly (see list by location below).

Supreme Court of Tasmania

In certain circumstances, you may wish to go directly to the Supreme Court instead of the AAD to have your case reviewed (as noted previously, FHOG matters are directed to the AAD in the first instance).

If the Supreme Court makes a decision and you are dissatisfied with that decision, you may have further rights of appeal. For more information on your rights you should contact the Supreme Court direct.

Time limits for requesting a review

You need to lodge your request for review within 60 days after the date of service on you of the Notice of Determination of your objection, or after 90 days from the date you lodged your objection if the Commissioner has failed to determine your objection within that time period.

If exceptional circumstances prevent you from lodging your request for review within the required time you can request an extension of time to lodge your request, however extensions can only be granted at the discretion of the AAD or the Supreme Court of Tasmania.

Which party has to prove their case at the review or appeal stage?

The onus of proof is on the taxpayer.

Are you restricted to the grounds you objected on if you seek a review or lodge an appeal?

Yes, you are limited to the grounds of your objection (unless the AAD or Supreme Court decides otherwise – refer below).

Similarly, the Commissioner is limited to the reasons for the determination of the objection in defending the objection determination.

Can you introduce new information if you seek a review or lodge an appeal?

No new information can be introduced at this stage of the process unless the AAD or Supreme Court agrees to allow further details to be introduced. This applies to both the taxpayer and to the Commissioner.

⁶ You must provide 14 days written notice to the Commissioner of your intention to refer your objection to the AAD or the Supreme Court for decision if your objection concerns the Commissioner's failure to determine your objection.

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How do you request a review or lodge an appeal?

You should contact the registrar of the AAD or of the Supreme Court of Tasmania to find out how to lodge your request for review or lodge an appeal as the case may be.

More information

Reviews – contact details

Administrative Appeals Division
(Magistrates Court)

General:

Internet: www.courts.tas.gov.au/magistrate/aad

Email: magistrates.court@justice.tas.gov.au

Specific Courts:

Burnie

38 Alexander Street
BURNIE TASMANIA 7320

Phone: (03) 6434 6398
Fax: (03) 6434 6224
Post: PO Box 690
BURNIE TAS 7320

DX: 70228 Burnie

Devonport

8 Griffith Street
DEVONPORT TASMANIA 7310

Phone: (03) 6421 7892
Fax: (03) 6421 7881
Post: PO Box 208
DEVONPORT TAS 7310

DX: 70331 Devonport

Hobart

23-25 Liverpool Street
HOBART TASMANIA 7000

Phone: (03) 6233 3623
Fax: (03) 6233 5068
Post: GPO Box 354D
HOBART TAS 7001

DX: 138 Hobart

Launceston

73 Charles Street
LAUNCESTON TASMANIA 7250

Phone: (03) 6336 2605
Fax: (03) 6331 1538
Post: PO Box 551
LAUNCESTON TAS 7250

DX: 70121 Launceston

Appeals – contact details

Supreme Court of Tasmania
Salamanca Place
HOBART TASMANIA 7001

Phone: (03) 6233 6385
Internet: www.courts.tas.gov.au/supreme

Enquiries:

Telephone: (03) 6234 4658
Facsimile: (03) 6234 3357
E-mail: revenuereview@treasury.tas.gov.au
Internet: www.sro.tas.gov.au

By Correspondence:

The Commissioner, State Revenue Office
GPO Box 1374, HOBART Tas 7001

In Person: 4th Floor, 80 Elizabeth Street, Hobart

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