

QUEENSLAND TREASURY – Office of State Revenue

Royalty Administration Modernisation Program Consultation Paper

October 2019

1. Purpose

To provide an opportunity to comment on the Royalty Administration Modernisation (RAM) Program being undertaken by the Office of State Revenue (OSR).

2. Royalty administration

OSR is responsible for administering the State's tax legislation, being the *Betting Tax Act 2018* (Betting Tax Act), *Duties Act 2001* (Duties Act), *Land Tax Act 2010* (Land Tax Act) and *Payroll Tax Act 1971* (Payroll Tax Act).

The tax legislation prescribes how the relevant tax applies, including when liability arises, who is liable, rates of tax, and exemptions and concessions. The legislative framework to support administration of the tax legislation is provided by the [Taxation Administration Act 2001](#) (TAA), which deals with administrative matters including the making of assessments and reassessments, payment and recovery of tax, refunds of overpaid tax, interest and penalties where tax is underpaid, review rights and powers of investigation.

The TAA is a longstanding and comprehensive revenue administration framework applying modern revenue management principles, similar in scope and subject matter to legislation administered by other state, territory and federal revenue offices.

When enacted, the TAA originally applied to the Duties Act, but has progressively been extended to the Payroll Tax Act on 1 July 2005, Land Tax Act on 30 June 2009¹ and Betting Tax Act on 1 October 2018.

OSR has been responsible for administering mineral and petroleum royalties since 1 July 2011, under the *Mineral Resources Act 1989* (Mineral Resources Act) and the *Petroleum and Gas (Production and Safety) Act 2004* (Petroleum and Gas Act) (together 'the royalty legislation').

Since 2011, a number of provisions modelled on the TAA have been included in the royalty legislation, including provisions dealing with confidentiality, the making of assessments and reassessments, investigation powers, garnishee powers, record keeping, interest and penalties, evidentiary matters and the service of documents.

However, as the TAA has not been fully adopted for the royalty legislation in the same way it applies for the tax legislation, there are administrative inconsistencies between taxes and royalty, and areas where royalty payers and OSR would benefit from full adoption of the TAA's framework.

¹ The *Land Tax Act 1915* was repealed and replaced with the Land Tax Act. The TAA was applied to the Land Tax Act from commencement on 30 June 2010.

The RAM Program proposes to apply the TAA to mineral and petroleum royalties to deliver a comprehensive and robust revenue administration framework consistent with that applying for state taxes.

3. Scope of RAM Program

The RAM Program is being undertaken separately to the review of petroleum royalty arrangements announced in the 2019–20 Queensland Budget.

The RAM Program will apply the TAA to mineral and petroleum royalties by including the royalty provisions of the royalty legislation as revenue laws under the TAA, and making any necessary consequential amendments to the TAA and the royalty legislation to support this change.^{2 3}

The royalty legislation will continue to specify when and how royalty liability arises, including royalty rates, concessions and exemptions. These matters are outside the scope of the RAM Program, which focuses on royalty administration.

The intention is to adopt the TAA for mineral and petroleum royalties with minimal amendment, making only those changes that are necessary to properly support royalty administration within the existing TAA framework. As is the case with the TAA's revenue laws, any administrative provisions specifically necessary for royalty will remain in the royalty legislation.

Adoption of the TAA for royalty will deliver a number of benefits for royalty payers consistent with those applying for taxpayers, as summarised below and set out in more detail under 'Adoption of TAA for Royalty'.

- Merits review for royalty decisions: On adoption of Part 6 TAA, royalty payers will have access to rights of objection, and external review through the Queensland Civil and Administrative Tribunal (QCAT) or appeal to the Supreme Court for assessments and royalty valuation decisions (i.e. gross value royalty decisions for mineral royalty and petroleum royalty decisions for petroleum royalty).

² Unlike the tax legislation to which the TAA applies, the royalty legislation, (other than the *Petroleum and Gas (Royalty) Regulation 2004*), is not standalone legislation as it is included in legislation that is jointly administered by the Deputy Premier, Treasurer and Minister for Aboriginal and Torres Strait Islander Partnerships (Minister) to the extent it relates to royalties and the Minister for Natural Resources, Mines and Energy to the extent it relates to other matters. The TAA will therefore only apply to the royalty provisions of the Mineral Resources Act and the Petroleum and Gas Act.

³ As royalty is not payable under the *Geothermal Energy Act 2010* until 1 July 2030, the RAM Program does not include application of the TAA to geothermal energy royalty.

- **Reassessments:** The current unlimited time for making reassessments increasing royalty liability will be decreased to five years, matching the time for making reassessments reducing liability. The legislation will also specify when a reassessment must be made to give effect to a review or other decision, and when the general reassessment timeframes will not apply.
- **Refunds of overpaid royalty:** The timeframes for holding overpaid royalty will be clarified to provide greater certainty for royalty payers, while allowing a royalty payer's direction to be given effect where a prepayment of an anticipated future liability is made, such as at the commencement of a royalty investigation.

The RAM Program will also include amendments to achieve greater consistency between the return lodgement arrangements for mineral and petroleum royalties, which will clarify when quarterly petroleum royalty returns must be lodged, and allowing the lodgement of only an annual petroleum royalty return for smaller petroleum operations.

It is proposed the RAM Program initiatives apply from 1 July 2020.

4. Written submissions

Written submissions on the consultation paper are invited by 22 November 2019 and should be made to Director Strategic Policy Projects at:

Email: ramprogram@treasury.qld.gov.au

OR

Post: GPO Box 5806 Brisbane QLD 4001

In making your submission, please state if you wish all or parts of the submission to remain confidential. If this is not expressly stated, your response may be published or quoted in public documents.

A written response to submissions received will be provided following government's consideration.

5. Adoption of TAA for royalty

General

Since 2011 OSR has progressively adopted the following TAA administrative principles in the royalty legislation.

- Assessments and reassessments
- Unpaid royalty interest
- Royalty penalty
- Application of payments
- Refunds
- Record keeping
- Confidentiality obligations
- Garnishee and administrator obligations
- Powers of investigation
- Offences and self-incrimination matters
- Evidentiary certificates
- Service of documents

Therefore, adoption of the TAA for royalty will not represent a substantive administrative change for these matters. Rather, the proposed changes will result in provisions being omitted from the royalty legislation where the TAA applies, with reference being had to the TAA provisions instead. Where there are royalty specific arrangements that need to be legislatively recognised, the TAA will make general provision and any specific provisions will be included in the royalty legislation.

There are however several areas where adoption of the TAA will change current royalty administration arrangements and deliver benefits to royalty payers.

The following section of the consultation paper provides an overview of the matters addressed in each Part of the TAA, and provides further detail regarding the royalty administration reforms resulting from adoption of the TAA for royalty.

Part 1 TAA - Preliminary

Overview

Part 1 TAA establishes the relationship between the TAA and each revenue law it applies to. The TAA currently applies to the Betting Tax Act, Duties Act, Land Tax Act and Payroll Tax Act, with each being listed as a revenue law in section 6 TAA.

The revenue laws deal with the imposition of liability, including the rates, thresholds, concessions and exemptions. The TAA deals with administrative matters.

In interpreting a revenue law, it needs to be read together with the TAA as if they formed one Act to provide a complete legislative framework for imposing and administering the particular revenue.⁴

While the TAA applies generally to support the administration of each revenue law, there are some cases where the revenue law overrides the TAA if the generic administrative provision is not appropriate. Also, administrative provisions that are specific to a particular revenue law are dealt with in that revenue law rather than in the TAA.

Part 1 for Royalty

The royalty provisions of the Mineral Resources Act and Petroleum and Gas Act will be included as revenue laws under section 6 TAA.⁵ This means that only certain provisions of these Acts will be a revenue law for the TAA i.e. those provisions of the legislation administered by the Deputy Premier, Treasurer and Minister for Aboriginal and Torres Strait Islander Partnerships (Minister).

Currently, the TAA uses terms that have a tax specific connotation, such as *tax*, *taxpayer* and *tax laws*. To streamline application and interpretation of the TAA for royalty, these terms will be extended to include royalty. For instance,

- the royalty provisions of the Mineral Resources Act and Petroleum and Gas Act will be *tax laws*
- the defined term *primary tax* will be amended to include royalty imposed under the Mineral Resources Act and Petroleum and Gas Act
- a *taxpayer* will include a person who has, had or may have a liability under a *tax law*.

⁴ Section 3(3) TAA

⁵ This includes the royalty provisions of the *Mineral Resources Regulation 2013* (Mineral Resources Regulation) and *Petroleum and Gas (Royalty) Regulation 2004* (Petroleum and Gas Regulation).

Relevantly, adoption of these definitions will not alter the substance or nature of royalty and will not render them a tax. This will be made clear in the legislation.

As is the case for the tax legislation, royalty specific obligations and entitlements will continue to be dealt with in the royalty legislation. For instance, consistent with the approach taken in the tax legislation, return lodgement obligations, including who is required to lodge a return and when lodgement is required, will continue to be specified in the royalty legislation. On the other hand, the consequences of failing to lodge a return as required, including the imposition of interest and the power to make a default assessment, will be addressed in the TAA as these are matters that apply generally for the revenue laws.

Part 2 TAA – Commissioner of State Revenue

Overview

The Commissioner of State Revenue (Commissioner) has responsibility for administering and enforcing the tax laws and may delegate those powers to an appropriately qualified public service employee.

Part 2 for Royalty

Currently the Minister has legislative responsibility for royalty administration. Practically, however, all powers have been delegated to OSR's Commissioner, who has day to day responsibility for royalty administration.

As is the case for the taxes administered by OSR, on adoption of the TAA for royalty the Commissioner will have legislative responsibility for all royalty matters, including making assessments and royalty valuation decisions, recovering unpaid debts, and instituting legal proceedings.

Part 3 TAA – Assessments of tax

Overview

The making of an assessment underpins the ascertainment of tax liability and is the basis on which subsequent rights and obligations flow (e.g. reassessment of liability, the making of refunds and the exercise of review rights through objection and external review). All tax liability (i.e. primary tax, penalty tax and unpaid tax interest accrued at the time of assessment) is included in an assessment. Any remission of penalty tax and assessed interest is effected by reassessment.

Assessments are made by the Commissioner but are also deemed to be made by self assessment on lodgement of a return. The same rights of review are available for self assessments as for Commissioner assessments. A self assessor can reassess liability only if permitted to by a revenue law.

The Commissioner can make a default assessment to determine liability in certain cases, including where a self assessor does not make a self assessment (i.e. a return is not lodged) or the Commissioner is not satisfied with the information provided for making an assessment.

With the taxpayer's written agreement, the Commissioner can also make a compromise assessment if it would be difficult or impractical to properly determine liability, in which case the liability is the amount agreed. As a compromise assessment is made by agreement, there are no review rights arising.

Generally, the times within which reassessments may be made are the same regardless of whether the reassessment is made to increase or decrease tax liability. Specifically, a reassessment to increase or decrease liability for a period must generally be made within five years of the assessment notice for the original assessment being given (the limitation period). However, any reassessment necessary to give effect to an objection or external review decision of QCAT or the Supreme Court must be made regardless of the limitation period. A revenue law can also extend the reassessment timeframe in specified circumstances.

In addition to reassessments being made outside the limitation period to support review decisions, there are other exceptions provided under the TAA which allow reassessments to be made outside the limitation period.

- The reassessment period may be extended if within the limitation period a taxpayer requests a reassessment to decrease liability.
- A reassessment may be made outside the limitation period where liability is to be increased as a result of a deliberate tax default or if notice of an investigation commencing is given within the limitation period. For instance, if a taxpayer is advised in October 2025 that an investigation is commencing into assessments made for the period from October 2020 (i.e. the notice is provided within the limitation period), any reassessments necessary to increase liability for the period may be made on conclusion of the investigation even though those reassessments will be made after the limitation period.

The intention of the reassessment framework is that the objection and external review processes are the principal ways in which taxpayers can seek a review of a tax liability if they disagree with the liability assessed. However, as there will be some cases where taxpayers may not immediately become aware that an assessment was made on an incorrect basis, whether by the Commissioner or by self assessment, the Commissioner has a discretion to make reassessments to reduce liability in those cases.

However, this discretionary power to make reassessments outside the objection and external review processes is not intended to provide de facto review rights and any reassessments made in these circumstances must, except in limited circumstances, be made in accordance with the legal interpretations and assessment practices applied by the Commissioner at the time of making the original assessment. The Commissioner's decision about what constituted the legal interpretations and assessment practices at the relevant time is non-reviewable (see further discussion about non-reviewable decisions in Part 6 *Objections, reviews and appeals against assessments*). In addition, the Commissioner cannot be compelled to make a reassessment decreasing liability outside the objection and external review processes.

Taxpayers must advise the Commissioner if they become aware an assessment was not or is no longer correct and liability was underassessed.

Part 3 for Royalty

The TAA's assessment framework has largely been replicated in the royalty legislation. In particular, an assessment is the basis for determining royalty liability, default assessments may be made where lodgement obligations are not met, an assessment notice must be given on the making of an assessment, and a royalty payer must notify the Minister if they become aware liability has been underassessed.

Full adoption of Part 3 TAA will reform royalty assessment arrangements as follows.

- Formally adopting the self assessment framework recognises the current requirement that all royalty payers lodge returns and that an assessment is made based on the information in the return. An assessment will be deemed to be made on lodgement of the return for the liability stated in the return, and an assessment notice for that amount will be deemed to have been given to the royalty payer for whom the assessment is taken to have been made.
- Enabling the making of compromise assessments under an agreement with the royalty payer will assist where there are particular complexities in determining liability. As previously noted, there are no review rights for compromise assessments as they are made by agreement.
- The timeframes for reassessing royalty liability to increase and decrease liability will be aligned, generally requiring reassessments to be made within five years of the original assessment being made. Currently, reassessments increasing royalty liability can be made at any time whereas reassessments decreasing royalty liability are limited to five years after the original assessment was made.

- To support adoption of the review framework in Part 6 TAA, reassessments must be made to give effect to an objection and external review decision. For petroleum royalty, the Petroleum and Gas Act currently prevents a quarterly assessment being reassessed once the annual assessment for the relevant period has been made. In those cases, any adjustment of liability for the year is effected by reassessing the annual assessment. However, this requirement will be modified on adoption of the TAA to allow reassessment of a quarterly assessment despite the annual assessment having been made if it is necessary to give effect to a review decision.
- Reassessments made outside the objection and external review processes will be made in accordance with the assessment practices and legal interpretations that applied when the original assessment was made.
- If a review decision for a particular assessment affects the liability for subsequent assessments, such as where the negative wellhead value for a petroleum royalty quarterly assessment changes and the changed amount needs to be carried forward to the next quarterly assessment, the necessary reassessments will also be made.
- Remission of penalty tax, assessed interest, royalty civil penalty and the late lodgement fee will be effected by reassessment. For petroleum royalty, this may also require reassessment of a quarterly assessment even though the annual assessment for the relevant period has been made.
- Specific provision will be made in the royalty legislation for when reassessments may or must be made in relation to royalty valuation decisions. This reassessment framework has been developed in tandem with the review framework that will apply for royalty valuation decisions on adoption of the TAA and is further discussed in *Part 6 Objections, reviews and appeals against assessments*.

Part 4 TAA – Payments and refunds of tax and other amounts

Overview

Part 4 TAA establishes payment methods, timeframes for making payments, how payments are allocated to tax liabilities and how debts may be recovered. In some cases, times for payment are specific to particular taxes and the relevant revenue law therefore establishes the payment time.

Where payment of tax would cause the taxpayer significant financial hardship, the Commissioner may extend the time for payment. Effectively, an extension will suspend debt recovery proceedings until the extended date for payment passes but does not affect the accrual of interest on the unpaid amount.

Given the benefit that an extension of time to pay tax provides taxpayers, no rights of review are available for decisions about making or terminating an arrangement extending time for payment.

The TAA specifies the circumstances where taxpayers may be entitled to refunds of amounts overpaid under a tax law and the conditions and time limits for making those refunds. Specific provisions for making refunds may also be included in a revenue law.

In tandem with the approach taken for reassessments decreasing liability, where taxpayers cannot compel the making of a reassessment outside the objection and external review processes, refund rights are generally linked to the making of a reassessment decreasing liability. In this way, taxpayers who dispute their tax liability cannot compel the making of a refund where there is no right to a reassessment.

The Commissioner may hold a refund amount for application against a taxpayer's current tax law liability or a future liability arising within specified timeframes and the windfall gains provisions ensure the benefit of any refund is passed on to the person who bore the incidence of the tax.

Part 4 also provides the Commissioner with the power to recover unpaid tax law liabilities as debts due to the State, with the total amount of a debt being recoverable jointly and severally from one or more of the taxpayers liable for the amount. The ordinary time for paying tax can be brought forward if the Commissioner reasonably believes the tax may otherwise not be recoverable.

In addition, to satisfy a taxpayer's debt, the Commissioner may issue a garnishee notice to a third party requiring them to pay to the Commissioner monies they are holding for the taxpayer.

Part 4 for Royalty

A number of provisions similar to those in Part 4 TAA currently apply for royalty, including garnishee and administrator provisions, payment allocation rules, and the ability to bring forward the date for paying royalty.

Full adoption of Part 4 TAA will reform royalty arrangements as follows.

- Currently an overpayment of royalty can be held for an unlimited time for application to a royalty payer's future royalty liability. These refund arrangements will be modified to allow a royalty refund to be held for application to a future royalty liability for up to six months or the date the next royalty return is lodged, whichever occurs later, or for an unlimited period if the royalty payer requests it, such as where a pre-payment of an anticipated future liability is made at the beginning of an investigation to reduce any interest accruing.

This is different to the 60 day time period currently applying under the TAA for taxes, and recognises that royalty is payable periodically and royalty liabilities are generally greater than for most state taxes.

- Windfall gains provisions will require the benefit of a royalty refund to be passed on to the person who bore the incidence of the royalty. This means that, where a royalty payer has recovered an amount of royalty from another person, they must reimburse that person for the amount the royalty payer receives by way of refund from the Commissioner.
- The Commissioner will be able to enter into a payment arrangement to allow royalty to be paid later than otherwise required, including by instalments, where satisfied that requiring payment by the due date would cause significant financial hardship. Small liabilities up to a prescribed amount⁶ can also be waived, extinguishing the liability to pay the amount.
- To bring it into line with other self assessed royalty amounts, the due date for the civil penalty (which applies if a person varies the monthly royalty payment amount for a quarter and underpays) will be changed to require it be paid on the day the relevant return is due.
- Recovery proceedings will not be affected by the making of a reassessment but the amount being recovered must be adjusted accordingly.

Part 5 TAA – Interest and penalty tax

Overview

Under Part 5 TAA, unpaid tax interest is imposed on tax that is unpaid during a period of late lodgement, failure to provide information where it defers the making of an assessment, and late payment.⁷ Also, where a reassessment increases the tax payable, interest is imposed on the increased amount from the original due date.

In addition to the imposition of interest on unpaid tax amounts, Part 5 TAA provides for the imposition of penalty tax as an alternative to the prosecution of a taxpayer for an offence. Penalty tax is imposed when a default assessment is made or where an assessment increases liability. Penalty tax is 75 per cent of the tax assessed for a default assessment or reassessment of a default assessment, and 75 per cent of the additional tax assessed for other reassessments.

Interest and penalty tax may be fully or partially remitted.

⁶ Currently the prescribed amount is \$20.

⁷ The unpaid tax interest rate is prescribed in the *Taxation Administration Regulation 2012* as an annual rate equal to the sum of the bank bill yield rate, rounded to the nearest second decimal point, and 8 per cent.

Rights of review are available where a taxpayer is dissatisfied with the Commissioner's decision in relation to an assessment that includes unpaid tax interest and penalty tax.

Interest is payable by the Commissioner where a taxpayer is entitled to a refund of tax or late payment interest following a reassessment to give effect to a successful objection or external review decision.

Part 5 for Royalty

Unpaid royalty interest similar to unpaid tax interest is currently payable where royalty is not paid on time. As royalty liability is determined by lodgement of a return (which will be a self assessment under the TAA), interest begins to accrue the day after the royalty return is due if not lodged and paid on time, and continues to accrue until the royalty is fully paid. This is consistent with the way unpaid tax interest is imposed for self assessed taxes under the TAA.

Although the TAA provides for the weekly accrual of late payment interest following the making of an assessment, the royalty specific arrangement whereby late payment interest accrues daily will be continued.

Adoption of Part 5 TAA will therefore not result in any substantive change to current royalty arrangements.

Royalty penalty currently applies in the same circumstances as penalty tax, also with no substantive change on adoption of the TAA.

Full adoption of Part 5 TAA will mean that interest will be payable to a royalty payer following successful review of an assessment or royalty valuation decision. This means that, where a reassessment is made to give effect to an objection decision by OSR, or an external review decision by QCAT or the Supreme Court, interest will be payable to the royalty payer at the prescribed rate on the overpaid royalty until it is refunded.⁸

⁸ The rate is prescribed in the *Taxation Administration Regulation 2012* as an annual rate equal to the bank bill yield rate, rounded to the nearest second decimal point.

Part 6 TAA – Objections, reviews and appeals against assessments

Overview

Part 6 TAA establishes three categories of decisions for review purposes:

- decisions reviewable by way of objection, and review to QCAT or appeal to the Supreme Court (external review)
- decisions reviewable under the *Judicial Review Act 1991* (JR Act)
- non-reviewable decisions.

The objection process provides an internal review of assessments, including self assessments, by an independent decision maker within OSR. That is, if the original decision was made by a delegate of the Commissioner, the objection cannot be determined by that same person. Any decision or conduct forming part of the process or leading up to the making of an assessment is reviewable as part of the review of that assessment. For instance, a decision to require the making of a valuation to enable a duties assessment to be made would be reviewable as part of an objection against the assessment ultimately made.

Where a taxpayer is dissatisfied with an objection decision, they may seek a review of the decision by QCAT or appeal to the Supreme Court, subject to first having paid any tax or late payment interest relating to the assessment.

Where there are rights of objection or external review under the TAA, whether or not they are exercised, there is no separate right of review under the JR Act. Decisions that are not either assessment decisions, decisions disallowing in whole or in part an objection, or non-reviewable decisions may be subject to review under the JR Act.

There are a limited number of decisions that are deemed to be non-reviewable. In addition to being outside the scope of the TAA's review processes, these decisions cannot be challenged, reviewed or called into question in any other way, including under the JR Act or otherwise. Generally, non-reviewable decisions are those that may be made in the Commissioner's absolute discretion to confer a benefit on a person. Examples of non-reviewable decisions include a decision by the Commissioner not to extend the time for lodging an objection, a decision in relation to an extension of time to pay tax, and a decision not to make a reassessment decreasing liability where the taxpayer has not exercised a right of objection.

As noted for Part 3, the TAA requires any reassessment necessary to give effect to an objection or external review decision to be made, regardless of whether the limitation period has expired.

In addition, as noted for Part 5, interest is payable by the Commissioner where tax has been overpaid following a successful objection or external review decision.

Part 6 for Royalty

Full adoption of Part 6 TAA will provide royalty payers with access to the TAA's comprehensive review framework.

Currently royalty payers may challenge a royalty matter through judicial review under the JR Act, rather than through a merits review process. On adoption of the TAA, royalty payers will have the ability to challenge a royalty assessment by objection in the first instance, followed by a QCAT review or Supreme Court appeal. As is the case for the taxes administered by OSR, judicial review rights will not be available where there is a right of objection or external review under the TAA.

To recognise royalty specific matters, the TAA's review framework will be expanded to also allow objections against the making or amendment of a royalty valuation decision, and external review where a person is dissatisfied with the objection decision. Extending review rights to royalty valuation decisions recognises the significance of these valuation decisions to royalty liabilities, that assessments to give them effect may not be made until some time in the future when liabilities actually arise, and that decisions can apply for multiple return periods. It also recognises there are currently rights of internal review for these royalty valuation decisions under the Mineral Resources Regulation and Petroleum and Gas Regulation, as well as review rights under the JR Act.

There will be no separate rights of review under the TAA for assessments to the extent they are made to give effect to a royalty valuation decision, as this would otherwise effectively permit two reviews of the royalty valuation decision. However, any other matters included in the assessment will remain subject to review under Part 6 TAA.

To recognise the extension of the TAA's review framework to royalty valuation decisions, Part 3 TAA and the royalty valuation decision provisions of the Mineral Resources Regulation and Petroleum and Gas Regulation will be amended to ensure consistent policy outcomes for adjusting prior period liabilities are achieved. The intention is that the circumstances where reassessments may be made in relation to royalty valuation decisions will be consistent with the circumstances where a reassessment may be made in other cases where prior period liability is sought to be adjusted.

In relation to adjustment of liability outside the objection and external review processes, the royalty valuation decision provisions will generally limit the period for reassessing a prior period liability to give effect to a royalty valuation decision to five years, subject to being able to reassess after this time if an investigation commences or a request for a royalty valuation decision is received within the five year period.

The Commissioner cannot be compelled to make a royalty valuation decision to the extent it would decrease liability assessed for a prior period. This ensures the royalty valuation decision provisions cannot provide an alternative basis to the objection and external review processes to compel prior period liability adjustment. The Commissioner will nevertheless have a discretion to make a royalty valuation decision in these circumstances if satisfied it is appropriate.

In addition, a royalty valuation decision may be amended within five years of royalty becoming payable under it. This period will also be subject to extension on a similar basis to that applying for making reassessments i.e. a royalty valuation decision may be amended after this time if an investigation commences or a request for an amendment is received within the five year period. Where a royalty valuation decision is amended, any reassessment necessary to give it effect must be made, even if the limitation period has then expired.

A decision not to amend a royalty valuation decision outside the formal objection and external review framework will be non-reviewable. This recognises that, where a person is dissatisfied with a royalty valuation decision, an objection is the appropriate basis for reviewing the decision. The Commissioner will nevertheless have a discretion to amend a royalty valuation decision outside this formal review process if satisfied it is appropriate.

Where a review of a royalty valuation decision or amended royalty valuation decision is successful, any reassessment necessary to give it effect must be made. For instance, if a person is dissatisfied with a gross value royalty decision that applies for multiple return periods, they may lodge an objection against the decision. Assessments of royalty liability may be made while the objection is being decided. However, if the objection is allowed and the gross value for the mineral is reduced as a result, reassessments to reflect the objection decision must be made for any return periods to which the gross value royalty decision applies.

Consistent with the requirement applying for taxes, any royalty and late payment interest outstanding for an assessment must be paid before seeking external review of that assessment. However, this will not apply where the external review relates to making or amending a royalty valuation decision as these decisions do not directly impose a royalty liability in the same way an assessment does.

As noted for Part 5, in tandem with adoption of the objection and external review framework, royalty payers will be entitled to be paid interest where a reassessment is made following a successful objection or external review.

Consequential amendments to the JR Act will reflect the TAA's application for royalty and the availability of the TAA's review rights. Currently Schedule 2 of the JR Act excludes certain tax related decisions from the requirement to provide a statement of reasons. The same types of royalty decisions are also intended to be excluded.

To ensure the benefit of the TAA's review mechanisms is available for royalty payers as soon as possible, Part 6 will apply to any assessment or review decision made from commencement of the TAA applying for royalty.

Part 7 TAA - Investigations

Overview

Part 7 TAA provides the following powers may be exercised by investigators, and in some cases the Commissioner, for the administration and enforcement of a tax law or a recognised law of another jurisdiction:

- to require the provision of information or documents
- to require a person to attend before the Commissioner or an investigator to provide information, orally or in writing, or to produce documents
- to enter places, subject to specified conditions, and exercise various powers
- to seize or retain documents or other things.

Part 7 TAA also includes reciprocal powers provisions, which facilitate interstate co-operation by enabling a revenue office in one jurisdiction to exercise its investigation powers within its borders to assist in the administration of another jurisdiction's revenue legislation. This is relevant where a taxpayer operates across jurisdictions and one jurisdiction requires access to documents held in another jurisdiction but cannot exercise compulsive powers under its own legislation to access those documents.

The TAA's reciprocal powers provisions operate to allow Queensland's OSR to exercise investigation powers in Queensland on request by another jurisdiction where that other jurisdiction can legislatively reciprocate those arrangements for Queensland's revenue laws.

Part 7 for Royalty

Other than the reciprocal powers provisions, Part 7 TAA has been fully applied for royalty purposes.

Therefore, the only change on formal adoption of Part 7 TAA will be the ability to undertake royalty investigations in relation to another jurisdiction's royalty legislation using the powers conferred by the TAA. Such an investigation can only be conducted where the interstate legislation has been prescribed as a recognised law under section 10 *Taxation Administration Regulation 2012*. Relevantly, a law may only be prescribed in this way if the other jurisdiction makes similar provision for the conduct of investigations under their legislation for the purpose of a Queensland revenue law.

Part 8 TAA – Confidentiality and collection of information

Overview

In administering the tax laws, the Commissioner is provided with a range of information, some of a general nature and some of a specific nature which may relate to the personal, business or commercial affairs of taxpayers. Given the nature of the information and the fact the Commissioner may compel its provision, appropriate limitations on the disclosure of the information by the Commissioner, staff, former staff and others acquiring the information are necessary. The disclosure of information for appropriate purposes is also necessary.

Part 8 TAA imposes the obligation of confidentiality for information disclosed to or obtained by an official under or in relation to a tax law (confidential information). It also specifies the circumstances in which confidential information may be disclosed and the consequences if information is disclosed in breach of the provisions. The confidentiality obligations are dependent on the particular class of information, imposing greater limitations on the disclosure of 'personal confidential information', which is defined as information that identifies, or is likely to identify, the person or discloses matters about the person's affairs.

Personal confidential information may only be disclosed by the Commissioner in the circumstances set out in the TAA, which include:

- to the person to whom the information relates, or to another person where express or implied consent is provided
- it is expressly permitted or required under another Act
- to the extent necessary for the Commissioner to administer legislation
- in relation to a legal proceeding for a tax law
- to the Minister or department for developing or monitoring tax policies.

Other confidential information, which is more in the nature of general information, may be disclosed by the Commissioner if satisfied it is appropriate in the circumstances.

Part 8 specifies when a person engaged in the administration or enforcement of a tax law can refuse to disclose confidential information to a court or QCAT for certain proceedings or to a party to the proceeding. It also specifies when certain information relating to the transfer of freehold or leasehold interest in Queensland real property may be reported to the Commonwealth Commissioner of Taxation.

As the purpose of Part 8 is to protect the confidentiality of certain information and is not intended as a general enabling provision for the dissemination of information by the Commissioner, the Commissioner's decision not to disclose confidential information is non-reviewable.

Also, personal confidential information under Part 8 TAA is exempt from disclosure under the *Right to Information Act 2009*.⁹

Part 8 for Royalty

On formal adoption of the TAA for royalty, confidential information relating to the royalty legislation will be subject to the confidentiality obligations in Part 8. Consequently, royalty information that is personal confidential information within the meaning of the TAA will become exempt from disclosure under provisions of the *Right to Information Act 2009* in the same way taxpayer personal confidential information is presently exempted under that Act. There is currently no specific exemption for royalty information in the *Right to Information Act 2009*, requiring consideration of whether release of the information under that Act would be in the public interest.

As confidentiality provisions modelled on those in the TAA currently apply under the royalty legislation for royalty related information, and as the TAA provisions dealing with collection of information for disclosure to the Commonwealth will have no application for royalty, there will be no other substantive change for royalty administration on adoption of Part 8 TAA.

Part 9 TAA – Record keeping

Overview

The Commissioner's ability to ensure compliance with the tax laws depends, amongst other things, on the power to conduct investigations, which in turn depends on the retention of records by taxpayers to enable their tax law liability to be determined. Part 9 TAA requires taxpayers to keep, or cause to be kept, the records necessary for that purpose. This includes making records as well as retaining existing records.

Records must be kept in a way that ensures they can be readily produced to the Commissioner if needed. They must also be written in English with amounts expressed in Australian currency, or in an easily convertible form. Where this is not done, the Commissioner may require their translation or may recover the costs where the Commissioner arranges for the conversion.

⁹ See schedule 3 section 12 *Right to Information Act 2009*

Records must be kept until the later of five years after the record was made or obtained, five years after completion of the transaction or matter to which the record relates, or two years after the end of a period during which a person must continue to satisfy conditions in relation to liability under a revenue law. For example, as a taxpayer claiming a home concession for transfer duty must move into the home within one year of settlement and then not dispose of the home within one year, the taxpayer's record keeping obligation will continue for two years after the taxpayer has satisfied both of those obligations.

Part 9 for Royalty

Record keeping provisions consistent with those in Part 9 TAA currently apply under the royalty legislation. The only exception is the TAA requirement to keep a tax record for two years after satisfying certain conditions relating to a revenue law liability, which has no relevance for royalty.

Therefore, there will be no substantive change for royalty record keeping obligations on formal adoption of Part 9 TAA.

Part 10 TAA – Enforcement and legal proceedings

Overview

Part 10 provides for a number of offences which have general application across the tax laws (general offences), with pecuniary penalty units applying where a person:

- fails to give a notice to the Commissioner as required
- fails to provide information or give a document as required
- provides a document or makes a statement that is false or misleading
- obstructs the Commissioner or investigator exercising a power under a tax law, or a person assisting them
- impersonates an investigator.

The TAA also includes offences which relate to failure to comply with obligations imposed under particular TAA provisions. These offences are included in the Part of the TAA which contains the particular obligation, including an obligation to:

- reimburse a person where a tax refund is received by a taxpayer and an amount has been recovered as tax from the other person
- attend before the Commissioner or investigator as required by written notice
- keep and make available tax records as required.

A person cannot refuse to provide information or documents on the grounds it may be incriminating. This ensures the Commissioner can obtain all information necessary to properly determine tax liability. However, the use of the information in criminal proceedings is limited to those cases where the falsity or misleading nature of the information or document is relevant e.g. where the information or document provided is false.

Where information or documents are obtained under a recognised law of another jurisdiction, the use of the information or documents in criminal proceedings will be restricted in the same way as if they had been obtained under the TAA.

If a person fails to comply with an obligation under the tax laws, action may need to be taken to enforce compliance. Also, legal proceedings arise where a taxpayer lodges an appeal against, or seeks a review of, an assessment decision. Part 10 TAA includes provisions relevant to these legal proceedings, including who can conduct the proceeding, how proceedings for offences are taken, the sanctions which may be imposed, and the evidentiary value of certain matters. For example, production of a document signed by the Commissioner purporting to be a copy of an assessment notice is conclusive evidence of the proper making of the assessment and for an external review proceeding is evidence that the amount and all particulars of the assessment are correct. For other proceedings, it is conclusive evidence the amount and all particulars of the assessment are correct.

In addition, executive officers of a corporation must take reasonable steps to ensure the corporation does not commit certain offences (executive liability offences), being knowingly acquiring confidential information without lawful authority, wilfully damaging records, giving false or misleading documents, or providing false or misleading information. Failure to do so constitutes an offence by the executive officer.

The TAA specifies how the actions or inactions of a person's representative are relevant for offence proceedings against the person.¹⁰

Part 10 for Royalty

The royalty legislation currently includes provisions consistent with those in the TAA in relation to the following matters:

- the general offences and many of the specific offences under the TAA
- most executive liability offences
- self-incrimination
- evidentiary certificates.

¹⁰ Section 139 TAA

On formal adoption of the TAA for royalty, legal proceedings may be brought in the name of the Commissioner and the full range of evidentiary provisions will apply, including provisions dealing with the validity of assessments. It is noted that the royalty legislation already includes provisions specifying the matters that can be included in an evidentiary certificate.¹¹ In addition, the validity of royalty assessments made before 1 July 2014 has been legislatively confirmed.¹²

The time for commencing offence proceedings will be clarified as five years after the commission of the offence. This provides greater certainty for royalty payers and OSR compared to currently where, for example, the Petroleum and Gas Act allows proceedings to commence within two years of the offence coming to the Minister's notice. Where a person is convicted of an offence, the court may order compliance with a royalty related obligation.

Failure to ensure compliance with an information or lodgement requirement in relation to royalty matters will no longer be an executive liability offence.

The TAA will also make clear a person's responsibility for the acts and omissions of their representatives.¹³

Part 11 TAA – Giving and lodging documents

Overview

The tax laws require documents to be given to the Commissioner in a variety of circumstances. The tax laws also provide for the giving of documents by the Commissioner to other persons. The way and time for giving documents is relevant for a number of other matters. For example, the time within which a person may object to an assessment is determined by the time the person is given the assessment notice. In addition, the time a return is given to the Commissioner is relevant for determining whether unpaid tax interest is payable.

Therefore, the TAA clarifies how and when documents must be given to or by the Commissioner, including electronically using OSR's online systems, such as OSRconnect and OSR Online.

Part 11 for Royalty

Except for sections 143A and 143B TAA, which relate to electronic communication notices, provisions consistent with those in Part 11 TAA have been included in the royalty legislation. Given the majority of royalty payers already communicate with OSR electronically, the electronic communication provisions should have little if any practical effect for royalty.

¹¹ Section 333QB Mineral Resources Act and section 599I Petroleum and Gas Act.

¹² Section 844 Mineral Resources Act and section 1001 Petroleum and Gas Act.

¹³ See section 139 TAA.

Therefore, formal adoption of Part 11 TAA will not result in any substantive change for royalty administration.

Royalty specific arrangements for giving documents will continue, including OSR accessing address information from the Department of Natural Resources and Mines' (DNRME) register, and lodgement of mineral royalty returns with DNRME offices.

Part 11A TAA – Registration of charitable institutions and Part 12 TAA – Miscellaneous provisions

Overview

Part 11A TAA specifies the process for institutions to seek registration as charitable institutions to enable them to claim an exemption from state taxes.

Part 12 TAA includes a range of miscellaneous provisions, including provisions dealing with:

- protection of officials from civil liability
- the time for complying with an information requirement
- extensions of time for complying with information and lodgement requirements
- approval of forms
- the use of approved information systems for a tax law
- regulation making powers.

Parts 11A and 12 for Royalty

Part 11A TAA will have no relevance or practical effect for royalty.

In relation to Part 12 TAA, similar provisions apply for royalty purposes in some cases. Adoption of the remaining provisions is not expected to raise issues for royalty payers.

6. Other reforms

Petroleum royalty - lodgement of returns

Under the Petroleum and Gas Act, petroleum producers are required to lodge quarterly returns if petroleum is produced, disposed of or stored in the period i.e. the obligation to lodge a quarterly return is conditional on whether petroleum has been produced, disposed of or stored in the period. An annual return is also required to reconcile annual liability.

This can be contrasted to mineral royalty where the obligation to lodge a return, and the return frequency, is linked to the type of tenure held as follows.

- A mining operation with at least one mining lease (ML) must lodge quarterly returns, regardless of whether there is any royalty liability for the period. However, the Minister may permit the person to lodge annually if the liability is small.
- A mining operation with only mining claims and no MLs must ordinarily lodge an annual return. However, the Minister may require quarterly returns to be lodged where the liability is large.

To achieve greater consistency between mineral and petroleum royalties and to provide increased certainty for producers and OSR, the following returns lodgement framework for petroleum royalty, modelled on the mineral royalty framework, is proposed. These provisions will be included in the Petroleum and Gas Regulation and existing returns provisions will be omitted from the Petroleum and Gas Act.

- A producer that has at least one petroleum lease (PL) will be required to lodge quarterly returns and an annual return each year. Lodgement of returns will be mandatory regardless of liability. This reflects the fact that a PL is granted to enable production. However, based on the royalty revenue involved, the Commissioner may allow a producer to lodge an annual return only, removing the need for the four quarterly returns.
- A producer with only authorities to prospect and no PL must lodge an annual return, including if no royalty is payable for the period. Ordinarily there will be no obligation to lodge quarterly returns. However, the producer may be required to lodge quarterly returns and an annual return where the liability is large, or may be allowed to do so if they request.

Mineral royalty – mining operations and private royalty

For royalty purposes, the Mineral Resources Act provides for the formation of a mining operation comprising one or more mining tenures held by one or more tenure holders. Practically, all mineral royalty interactions are with a mining operation, which is the basis for calculating mineral royalty, lodging returns and determining liability for all mining tenures. Interactions are not on a tenure basis as such.

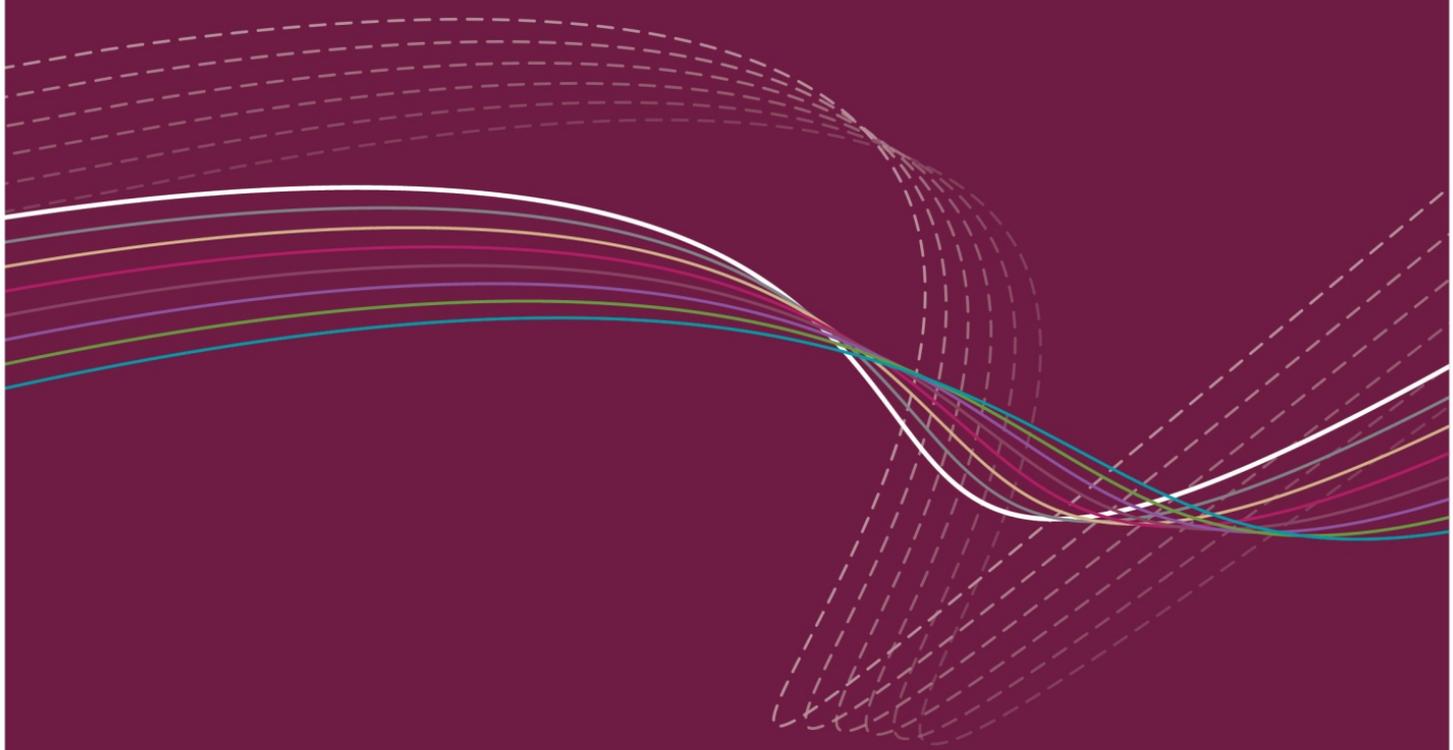
In applying the TAA to the Mineral Resources Act, it will be necessary to ensure the TAA provisions apply appropriately in the context of a mining operation. This will for instance ensure that, on adoption of the TAA assessment provisions, the basis for making an assessment for a mining operation continues to be clear. The basis for serving notices on a mining operation and making refunds where royalty is overpaid by a mining operation will also be addressed to support adoption of the TAA.

There is currently no legislative concept of a petroleum operation in the Petroleum and Gas Act. Although petroleum royalty is determined as if an operation exists, this is done under an administrative arrangement. No similar legislative amendment to the Petroleum and Gas Act is therefore required at this time.

The Mineral Resources Act specifies to whom mineral royalty is payable, being either the State or another person where the mineral is not the property of the State (private royalty).

Certain TAA provisions are relevant for administering private royalty, including Part 3 which sets out the basis for determining the total royalty payable under the Mineral Resources Act through the assessment and reassessment processes. However, there are some TAA provisions which should not apply in relation to private royalty amounts, including the UTI and royalty penalty provisions, and other provisions which simply have no relevance for private royalty liability.

The basis on which the TAA applies for administering private royalty will be addressed to ensure rights and obligations are clear.



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