

LAWS6107 – Tax Litigation

Contents

Introduction	5
Powers of the Commissioner	5
How do tax disputes arise?	7
ATO rulings	8
General rules	8
Public rulings	12
Private rulings	13
Objections to a private ruling	17
Court judgment vs inconsistent ruling	19
Oral rulings	19
Other ATO advice	21
Information gathering.....	22
Freedom of information (FOI).....	22
Commissioner's powers to obtain information	32
Limits to access powers while proceedings are on foot.....	38
Section 353-15 visits vs criminal search warrants.....	41
Consequences of non-disclosure by taxpayer	45
Privileges.....	49
Legal professional privilege.....	49
Self-incrimination – Court proceedings	59
Public interest	63
Settlements.....	64
Accountants' concession.....	66
International information sharing	69
Assessments	78
Definition	78
Validity and evidentiary effect.....	80
Returns.....	83
Assessments – regular	85
Assessments – deemed.....	85
Assessments – default.....	86
Assessments – alternative	89
Assessments – other	89
Assessments – amended.....	90
Notice	98
Assessments – TAA 1953, Sch 1 – GST, penalties, etc	100
Penalties.....	105
GST decisions	112
Objections.....	113

Part IVC – Division 3.....	114
Disputing an objection decision.....	121
Review of decisions in the ART	122
ART Act 2024	123
Appeals from the ART to the Federal Court	140
Part IVC – Division 4.....	145
Appeals to the Federal Court.....	155
Standing	156
Part IVC – Division 5.....	156
Initial steps	159
Interlocutory steps	163
Particulars and interrogatories.....	163
Interlocutory applications	167
Discovery.....	169
Notices to produce.....	173
Notices to admit.....	174
Subpoenas	176
Sabre orders.....	178
Security for costs	179
Preparing evidence.....	182
Onus and burden of proof	183
Affidavits.....	184
Rules of evidence and objections to evidence	186
Confidential evidence / information.....	195
Expert evidence	197
Evidence on commission and foreign evidence	201
Hearing.....	204
Witnesses.....	206
Use of legal authorities.....	208
Alternative / unique hearing modes	209
Changing your case during the hearing	211
Appeals	212
Full Court.....	212
High Court	214
Other (non-Part IVC) Federal tax proceedings	216
Interlocutory proceedings.....	216
Debt recovery	216
Seeking a stay of proceedings	217
Bankruptcy.....	217
Hardship	218

Collection of foreign tax.....	218
Garnishee powers.....	219
Director penalty notices (DPN).....	222
Estimate notices	222
Promotor penalties.....	223
Departure prohibition orders (DPO) and departure authorisation certificates (DAC)	231
Injunctions	236
ADJR Act.....	237
Judiciary Act 1903 – section 39B.....	243
Mandamus.....	248
Declarations.....	248
Preference litigation	249
Constitutional challenges	249
NSW State tax litigation.....	250
Stamp duty	251
Land tax	251
Land tax valuation disputes.....	251
Payroll tax.....	252
TAA 1996 (NSW)	252
Review proceedings in the NSW Civil and Administrative Tribunal (NCAT)	253
NCAT procedure	253
NCAT Appeal Panel	254
Supreme Court proceedings	255
NCAT vs Supreme Court.....	255
Model litigant obligations.....	256
Alternative dispute resolution.....	259
Informal ADR	259
Pre-assessment ADR.....	259
ADR during Tribunal proceedings.....	259
ADR during Court proceedings	262
Settlement offers.....	267
International matters	271
DTAs	271
Written advocacy.....	273
During the hearing	273

Assessments

Definition

ITAA 1936 – Part I – Preliminary	
6(1)	<p>Interpretation</p> <p>“assessment” means:</p> <ul style="list-style-type: none"> (a) the ascertainment: <ul style="list-style-type: none"> (i) of the amount of taxable income (or that there is no taxable income); and (ii) of the tax payable on that taxable income (or that no tax is payable); and (iii) of the total of a taxpayer’s tax offset refunds for a year of income (or that the taxpayer can get no such refunds for the year of income); <p>Note 1: A taxpayer does not have a taxable income if the taxpayer’s deductions equal or exceed the taxpayer’s assessable income (s 4-15(1) of the ITAA 1997).</p> <p>Note 2: A taxpayer may have no tax payable on an amount of taxable income if that income is below the tax-free threshold or if the taxpayer’s tax offsets reduce the taxpayer’s basic income tax liability to nil.</p> <p>...</p> <ul style="list-style-type: none"> (k) the ascertainment of the amount payable under s 177P(1) (DPT). <p>...</p> <p>“tax” means:</p> <ul style="list-style-type: none"> (a) income tax imposed by the Income Tax Act 1986, as assessed under this Act; or (b) income tax imposed as such by any other Act, as assessed under this Act.

ITAA 1997 – Div 995 – Definitions							
995-1	<p>Definitions</p> <p>(1) In this Act, except so far as the contrary intention appears:</p> <p>...</p> <p>“assessment”:</p> <ul style="list-style-type: none"> (a) of an assessable amount, means an ascertainment of the assessable amount; and (b) in relation to a tax-related liability not covered by para (a), has the meaning given by a taxation law that provides for the assessment of the amount of the liability. <p>Note: The table lists provisions of taxation laws that define assessment.</p> <table border="1"> <thead> <tr> <th>Item</th><th>Taxation law</th><th>Provision</th></tr> </thead> <tbody> <tr> <td>1</td><td>ITAA 1936</td><td>6(1)</td></tr> </tbody> </table>	Item	Taxation law	Provision	1	ITAA 1936	6(1)
Item	Taxation law	Provision					
1	ITAA 1936	6(1)					

Per the statutory definitions now in place, a **nil assessment** is still an assessment (previous caselaw held this was not the case (*Ryan [2000]*)).

From a technical perspective, the “assessment” is the actual act / operation of ascertaining a liability of a taxpayer (as distinct from the paper / NoA setting out the outcome of that assessment).

<p>Hooper [1926] HCA 3</p> <p>What is an “assessment”?</p>	<p>Facts</p> <ul style="list-style-type: none">▪ The taxpayer received a notice from the Commissioner that his return was being amended to allow certain deductions (i.e. reducing his liability).▪ The taxpayer sought to object to that notice. <p>Held</p> <ul style="list-style-type: none">▪ Despite being labelled as an “assessment”, the amending document was not an assessment which gave the taxpayer additional rights of objection and appeal because it did not impose any liability in addition to that which had been imposed by the earlier assessment.▪ Per Isaacs J: <i>An “assessment” is not a piece of paper; it is an official act or operation, it is the Commissioner’s ascertainment in consideration of all relevant circumstances, including sometimes his own opinion, of the amount of tax chargeable to a given taxpayer. When he has completed his ascertainment of the amount he sends by post a notification thereof called “a notice of assessment” ... But neither the paper sent nor the notification it gives is the “assessment”. That is and remains the act or operation of the Commissioner.</i>
--	--

The fact that there may be a document labelled an assessment is not enough to satisfy the statutory description of an assessment unless it is **an ascertainment which imposes a liability** (hence why the word “ascertainment” is now included in the statutory definitions).

There are various ‘types’ of income tax assessment:

- Deemed
- Default
- Nil
- Original
- Amended
- Alternative
- Special
- Miscellaneous

As well as other types of assessment:

- Penalties
- GST
- DPT

Validity and evidentiary effect

An assessment must be “**definitive**”, as opposed to tentative, provisional or subject to revision (S Hoffnung [1928]; Stokes [1996]).

<p>Futuris [2008] HCA 32</p> <p>Commissioner issued two amended assessments for the same year, partially covering the same income (with an intention to later make a compensatory adjustment once the dispute was resolved)</p> <p>Assessments were valid</p> <p>Essentially only two grounds on which you can challenge validity: tentative or provisional, or conscious maladministration</p>	<p>Facts</p> <ul style="list-style-type: none">The Commissioner issued an amended assessment to the taxpayer under Div 19A of the ITAA 1936, including an additional \$20m in assessable income, which the taxpayer appealed against.The Commissioner later issued another amended assessment for the same year under Part IVA, this time including \$82m in assessable income (which included the original \$20m).Rather than deduct this amount from the amount of the tax benefit in the second amended assessment, the Commissioner decided to await the outcome of the Div 19A proceedings and make a compensatory adjustment under s 177F(3) in relation to the \$20m if necessary later.The taxpayer claimed under s 39B of the Judiciary Act 1903 that the second amended assessment was invalid and should be quashed. This was on the basis that in failing to make a reduction for the \$20m already included in the first amended assessment, the Commissioner had deliberately overstated the taxpayer's taxable income for that year, resulting in the Commissioner purporting to issue an assessment which he knew was incorrect and that was an unauthorised exercise of the power to assess. It was not a valid assessment. <p>Alternatively, the second amended assessment was invalid as it was not definitive of the taxpayer's liability and was issued subject to revision.</p> <p>Held</p> <ul style="list-style-type: none">In favour of the Commissioner.In the process of making the second amended assessment errors by the Commissioner of the nature claimed (if indeed there were errors) fell within the scope of s 175 of the ITAA 1936 (validity of assessment not affected by errors).The full court was correct in holding that the second amended assessment was not tentative or provisional.Section 175 should not be construed as encompassing deliberate failures to administer the law according to its terms. Such failures manifest jurisdictional error and attract the jurisdiction to issue the constitutional writs. However, there was no such failure of due administration with respect to the second amended assessment. There was more than an assumption on the Commissioner's part that any “double counting” could be made good by subsequent compensating adjustment determination in reliance on s 177F(3).
---	--

<p>Bosanac [2016] FCA 448</p> <p>Two categories of invalidity</p> <p>Assessment not incontestable just because it would make you bankrupt (your trustee could pursue your appeal rights)</p>	<p>Facts</p> <ul style="list-style-type: none"> ▪ The Commissioner issued assessments to the husband and wife after they failed to lodge returns for several years. ▪ The Commissioner included amounts in the wife's assessable income paid into the taxpayers' joint bank accounts as undisclosed income of the wife, as well as the proceeds of the sale of a property in her name which she claimed later was her principal place of residence. ▪ The taxpayers opposed the summary judgment on the basis that the assessments in question were invalid because they were made as a result of maladministration – knowing that the husband was the only income earner, but that the valuable family home was registered in the name of the wife, the Commissioner artificially contrived to inflate the income of the wife in order to derive the benefit of the value of the home. ▪ Further, the taxpayers argued that the discretion to order summary judgment should not be exercised where the effect of such judgment would result in the taxpayers' bankruptcy, effectively preventing them from challenging the assessments in proceedings under Pt IVC. ▪ Finally, the taxpayer argued that the summary judgment would make the amended assessments incontestable and therefore unconstitutional. <p>Held</p> <ul style="list-style-type: none"> ▪ It is clear that the present state of the law is that the two categories in which s 175 would not operate in favour of the Commissioner are confined to assessments which are provisional only or assessments which constitute a conscious maladministration in the assessment process. ▪ In a summary judgment application, it is arguable that the (limited) form of recklessness, which bears a close affinity with deliberate conduct, (that is, wilfully turning a blind eye) may be sufficient to constitute conscious maladministration – but the taxpayers had not established that here. ▪ In a practical sense, the contestability of an assessment remains open to a trustee of a bankrupt and where that trustee elects not to contest an assessment it is open for the Court to grant a bankrupt relief and to intervene in some fashion. There was no incontestability in the relevant sense.
---	---

An assessment must also reflect a "**genuine attempt**" or genuine intention by the Commissioner to ascertain the liability (i.e. the Commissioner cannot later claim that a document is a valid assessment, if the facts indicate there was never any intention to make an assessment at the time it was issued) (*Briggs* [1987]; *Stokes* [1996]).

By reason of s 175 of the ITAA 1936 and s 350-10 of Sch 1 to the TAA 1953 (formerly s 177 of the ITAA 1936), the validity of an assessment is essentially unable to be challenged.

However, a taxpayer may use Part IVC proceedings to challenge the correctness of the amount and the particulars of an assessment.

ITAA 1936 – Part IV – Returns and assessments

175

Validity of assessment

The validity of any assessment shall not be affected by reason that any of the provisions of this Act [i.e. the ITAA 1936, the ITAA 1997, Sch 1 to the TAA 1953 and Part IVC of the TAA 1953] have not been complied with.

TAA 1953 – Sch 1 – Part 4-90 – Evidence

Division 350 – Evidence

350-10

Evidence

Conclusive evidence

(1) *The following table has effect:*

Item	The production of...	Is conclusive evidence that...
2	<i>a notice of assessment under a taxation law</i>	<p>(a) <i>the assessment was properly made; and</i></p> <p>(b) <i>except in proceedings under Part IVC of this Act on a review or appeal relating to the assessment – the amounts and particulars of the assessment are correct</i></p>
5	<i>a public ruling or private ruling</i>	<i>the ruling was properly made</i>

...

Prima facie evidence

(3A) *A document that is provided to the Commissioner under a taxation law, and that purports to be made or signed by or on behalf of an entity, is prima facie evidence that the document was made by the entity or with the authority of the entity.*

Note

- This used to be s 177 in the ITAA 1936.
- Covers both income tax and GST.

Returns

ITAA 1936 – Part IV – Returns and assessments	
161	<p>Annual returns</p> <p><u>Requirement to lodge a return</u></p> <p>(1) <i>Every person must, if required by the Commissioner by legislative instrument, give to the Commissioner a return for a year of income within the period specified in the instrument.</i></p> <p>Note: The Commissioner may defer the time for giving the return (s 388-55, Sch 1, TAA 1953).</p> <p>(1A) <i>The Commissioner may, in the instrument, exempt from liability to furnish returns such classes of persons not liable to pay income tax as the Commissioner thinks fit, and a person so exempted need not furnish a return unless the person is required by the Commissioner to do so.</i></p> <p>(2) <i>If the taxpayer is absent from Australia, or is unable from physical or mental infirmity to make such return, the return may be signed and delivered by some person duly authorized.</i></p> <p>...</p>
161A	<p>Form and content of returns</p> <p><u>General rule</u></p> <p>(1) <i>The return must be in the approved form.</i></p> <p><u>Electronic returns</u></p> <p>(2) <i>An approval given by the Commissioner of a form of return may require or permit the return to be given on a specified kind of data processing device, or by way of electronic transmission, in accordance with specified software requirements.</i></p>
161AA	<p>Contents of returns of full self-assessment taxpayers</p> <p><i>A full self-assessment taxpayer must, in a return for a year of income, specify:</i></p> <p>(a) <i>its taxable income or its net income for that year of income (or that it has no taxable income or net income for that year); and</i></p> <p>(b) <i>the amount of the tax payable on that taxable income or net income (or that no tax is payable); and</i></p> <p>(ba) <i>the total of its tax offset refunds for that year of income (or that it can get no such refund for that year of income); or</i></p> <p>(c) <i>the amount of interest (if any) payable by the taxpayer under s 102AAM [interest by taxpayer on distributions from certain non-resident trust estates] for that year of income;</i></p> <p>...</p>

162	<p>Further returns and information</p> <p><i>A person must, if required by the Commissioner, whether before or after the end of the year of income, give the Commissioner, within the time required and in the approved form:</i></p> <p class="list-item-l1">(a) <i>a return or a further or fuller return for a year of income or a specified period, whether or not the person has given the Commissioner a return for the same period; or</i></p> <p class="list-item-l1">(b) <i>any information, statement or document about the person's financial affairs.</i></p>
163	<p>Special returns</p> <p><i>Every person, whether a taxpayer or not, if required by the Commissioner, shall, in the approved form and within the time required by the Commissioner, furnish any return required by the Commissioner for the purposes of this Act.</i></p>

169A	<p>Reliance by Commissioner on returns and statements</p> <p class="list-item-l1">(1) <i>Where a return of income of a taxpayer of a year of income is furnished to the Commissioner (whether or not by the taxpayer), the Commissioner may, for the purposes of making an assessment in relation to the taxpayer under this Act, accept, either in whole or in part, a statement in the return of the assessable income derived by the taxpayer and of any allowable deductions or rebates to which it is claimed that the taxpayer is entitled and any other statement in the return or otherwise made by or on behalf of the taxpayer.</i></p> <p class="list-item-l1">(2) <i>Despite sub (1), if, in a document given with a return of income of a taxpayer of a year of income and signed by or on behalf of the taxpayer, a question is raised:</i></p> <p class="list-item-l2">(a) <i>that is relevant to the liability of the taxpayer in respect of the year of income; and</i></p> <p class="list-item-l2">(b) <i>on which the taxpayer is not entitled to apply for a private ruling under Div 359 in Sch 1 to the TAA 1953;</i></p> <p style="padding-left: 2em;"><i>the Commissioner must give attention to that question.</i></p> <p class="list-item-l1">(3) In determining whether an assessment is correct, any determination, opinion or judgment of the Commissioner made, held or formed in connection with the consideration of an objection against the assessment shall be deemed to have been made, held or formed when the assessment was made.</p> <p>Note</p> <ul style="list-style-type: none"> • For example, the Commissioner can remedy an out of time amended assessment by later forming an opinion of fraud or evasion (e.g. at the objection stage), which will be deemed to have been held at the time of issuing the assessment.
------	---

Assessments – regular

166	<p>Assessment</p> <p><i>From the returns, and from any other information in the Commissioner's possession, or from any one or more of these sources, the Commissioner must make an assessment of:</i></p> <ul style="list-style-type: none">(a) <i>the amount of the taxable income (or that there is no taxable income) of any taxpayer; and</i>(b) <i>the amount of the tax payable thereon (or that no tax is payable); and</i>(c) <i>the total of the taxpayer's tax offset refunds (or that the taxpayer can get no such refunds).</i>
-----	--

Assessments – deemed

166A	<p>Deemed assessment</p> <p>...</p> <p>(3) <i>If:</i></p> <ul style="list-style-type: none">(a) <i>at a particular time, a full self-assessment taxpayer gives a return in respect of a year of income for which the taxpayer is a full self-assessment taxpayer; and</i>(b) <i>before that time, no return has been given, and no assessment has been made, in relation to the taxpayer in respect of the income of the year of income;</i> <i>the following provisions apply:</i>(c) <i>the Commissioner is taken to have made an assessment of:</i><ul style="list-style-type: none">(i) <i>the taxable income or net income (or an assessment that there is no taxable income or net income); and</i>(ii) <i>the tax payable on that income (or that no tax is payable); and</i>(iii) <i>the total of the taxpayer's tax offset refunds for the year of income (or that the taxpayer can get no such refunds);</i> <i>in accordance with what the taxpayer specified in the return;</i>(d) <i>the assessment is taken to have been made on the day on which the return is lodged;</i>(e) <i>on and after the day on which the Commissioner is taken to have made the assessment, the return is taken to be a notice of the assessment:</i><ul style="list-style-type: none">(i) <i>under the hand of the Commissioner; and</i>(ii) <i>served on the taxpayer on the day on which the Commissioner is taken to have made the assessment.</i>
	<p>Note</p> <ul style="list-style-type: none">• This applies to companies.

Assessments – default

<p>167</p> <p>Default assessment</p> <p><i>If:</i></p> <ul style="list-style-type: none"> (a) any person makes default in furnishing a return; or (b) the Commissioner is not satisfied with the return furnished by any person; or (c) the Commissioner has reason to believe that any person who has not furnished a return has derived taxable income; <p><i>the Commissioner may make an assessment of the amount upon which in his or her judgment income tax ought to be levied, and that amount shall be the taxable income of that person for the purpose of s 166.</i></p> <p>Note</p> <ul style="list-style-type: none"> • Section 167 is not a separate assessment power, it is simply a different mechanism via which to apply s 166.
--

<p>Dalco [1990] HCA 3</p> <p>Default assessments</p> <p>Onus of proof</p> <p>Demonstrating an assessment is “excessive” or “wrong”</p>	<p>Facts</p> <ul style="list-style-type: none"> ▪ The Commissioner issued amended default assessments under s 167 in respect of the years ended 30 June 1976, 1977, 1978 and 1980, in which profits ostensibly received by companies and trusts controlled by the taxpayer were assessed as being the taxpayer’s income. ▪ The taxpayer had lodged returns for the years in question showing his own assessable income, which income was considered insufficient to maintain his apparent lifestyle and activities. <p>Held</p> <ul style="list-style-type: none"> ▪ To demonstrate an assessment is excessive, it is not sufficient to identify an error in the Commissioner’s calculations, or show that income was incorrectly attributed to the taxpayer by the Commissioner. ▪ It is necessary for the taxpayer to positively demonstrate that their income was less than the figure against which tax was assessed. ▪ The taxpayer must positively prove their “actual taxable income” from all sources and, in doing so, must demonstrate that the amount of tax levied by the assessment exceeds their actual substantive liability. There is no burden on the Commissioner to show that the assessments were correctly made. The taxpayer must do more than simply identify errors in the Commissioner’s assessment methodology. ▪ The approach may differ where the dispute has been confined to a specific point by the parties (by agreement): <p><i>If the Commissioner and a taxpayer agree to confine an appeal to a specific point of law or fact on which the amount of the assessment depends, it will suffice for the taxpayer to show that he is entitled to succeed on that point. Absent such a confining of the issues for determination, the Commissioner is entitled to rely upon any deficiency in proof of the excessiveness of the amount assessed to uphold the</i></p>
---	--

	<p><i>assessment, though the taxpayer is limited to the grounds of his objection.</i></p> <p>...</p> <p><i>If this were a case where all the material facts were known and the amount of taxable income depended on the legal complexion of those facts, the taxpayer would succeed upon establishing that the Commissioner erroneously included in the assessed taxable income an amount which, on those facts, ought not to have been included. But where, as here, the taxpayer has not proved that his actual taxable income is less than the amount assessed, the Court does not know all the material facts and it cannot find that the amount assessed is wrong. A taxpayer who shows on the facts that are known a mere error by the Commissioner in assessing the amount of the taxpayer's taxable income does not show that his objection should have been allowed or that the appeal against the assessment must be allowed.</i></p>
<p>Gashi [2013] FCAFC 30</p> <p>Regular assessments vs default assessments</p> <p>Commissioner is not constrained by the normal calculation process (income less deductions), and may use some other methodology (e.g. asset betterment)</p> <p>Identifying an error in the asset betterment methodology is not enough to demonstrate "excessiveness"</p>	<p>Facts</p> <ul style="list-style-type: none"> ▪ The taxpayers were a husband and wife in respect of whom the Commissioner made assets betterment assessments for the income years 2000 to 2006. ▪ To achieve the estimated income the Commissioner took a snapshot of the total assets and liabilities of the taxpayers as at 30 June each year, and after additions for increases in net asset figures, and taking into consideration known expenditure and outlays for subsistence, he "distributed" the total undisclosed income in each year 50/50 as between the 2 taxpayers. ▪ These calculations resulted in amended assessments for each taxpayer resulting in tax and penalties of approximately \$3m. ▪ During the relevant period Mr Gashi had bought and sold a number of properties, many of whom he had registered in his wife's name, made numerous transfers of funds overseas to his brother and bought and sold motor vehicles. ▪ On appeal, Mr Gashi argued that the primary judge erred in law in relation to the finding as to only one extant assessment, specifically, that in any year where the Commissioner issued multiple assessments those assessments were invalid and that he was entitled to challenge the validity of the assessments in the Pt IVC proceedings. He also contended that the trial judge erred in law in holding that the movement in the value of assets held by Mr Gashi in the relevant years was ordinary income within the meaning of s 6-5(1). His third ground of appeal was that the primary judge erred in law in holding that he had not discharged his burden of proving that the assessments were excessive. <p>Held</p> <ul style="list-style-type: none"> ▪ Taxpayer's appeal dismissed. ▪ In proceedings under Pt IVC, the court does not have jurisdiction to determine if assessments are "invalid" because they are tentative, provisional or made in bad faith or

	<p>conscious maladministration resulting in jurisdictional error on the part of the Commissioner.</p> <ul style="list-style-type: none"> ▪ The primary judge did not make a finding as to the nature of Mr Gashi's income for each of the relevant years and, in particular, did not hold that the movement in the value of assets held by Mr Gashi in the relevant years was ordinary income within the meaning of s 6-5(1). Indeed, that was not the task of the primary judge. The task for the primary judge was to determine if Mr Gashi discharged his onus under s 14ZZO of proving that the assessments in issue were excessive. The primary judge found he had failed to do so. ▪ Default assessments (s 167) differ from regular assessments (s 166): <p><i>The power under s 167 is necessarily different to that in s 166. Under s 166, the power is to "make an assessment of the amount of the taxable income". The phrase "taxable income" is defined to mean "assessable income" minus "deductions". Under s 167 of the ITAA 1936, that process of calculating taxable income as assessable income minus deductions is not possible (in whole or in part) because of one of the pre-conditions to the exercise of the power (i.e. a failure by a person to lodge a tax return, the tax return is deficient or the Commissioner has reason to believe that a person who has not lodged a return has derived taxable income). It is for those reasons that the balance of s 167 empowers the Commissioner to make an assessment of the amount upon which income tax ought to be levied and for that amount to be deemed to be the taxpayer's taxable income.</i></p> <p><i>The assessment of the "amount" in s 167 is not constrained by a process of subtracting "deductions" from "assessable income". Instead, in making his judgment of the "amount" that becomes taxable, the Commissioner may use what is known as the "asset betterment" method. Section 167 involves an exercise of the Commissioner's power to determine the principal fact to which the ITAA 1936 should be applied, namely the "amount of income upon which ... income tax ought to be levied". That is not the process of assessment under s 166. The asset betterment method of calculation as a basis for assessment under s 167 is legitimate.</i></p> <ul style="list-style-type: none"> ▪ Mr Gashi did not discharge the onus he bore under s 14ZZO in establishing that each of the assessments was excessive. Even if a taxpayer was able to prove that an item in the asset betterment statement was wrong or should not have been included, but did not adequately explain the source or sources for the otherwise unexplained increase in wealth, the taxpayer would not discharge the onus under s 14ZZO.
<p>Zappia [2017] FCAFC 185</p> <p>Default assessments</p> <p>Commissioner not bound by facts stated in the objection decision</p>	<p>Facts</p> <ul style="list-style-type: none"> ▪ On 30 June 2010, a \$2m deposit was made into the taxpayer's bank account. The Commissioner treated the deposit as the taxpayer's income. Default assessments were issued for the 2010 income year (for the deposit) and the 2011 income year (for the interest earned on the deposit). The Commissioner rejected the taxpayer's objection that the \$2m was not her income.

	<ul style="list-style-type: none"> ▪ On appeal, the taxpayer sought leave to rely on contentions in an amended Notice of Appeal that the Commissioner was bound by facts found in the objection decision. Specifically, the taxpayer sought to rely on the “fact” that the deposit was held on trust for a company. <p>Held</p> <ul style="list-style-type: none"> ▪ Appeal dismissed. ▪ Statements made by the Commissioner in an objection decision do not establish the facts upon which tax was to be levied. ▪ The recital of “facts” in an objection decision does not bind the Commissioner, or the operation of the taxing statute, where a taxpayer is required to discharge the burden imposed by s 14ZZO to prove that an assessment is excessive. In this case, the taxpayer did not discharge that burden.
--	--

Assessments – alternative

The Commissioner can validly issue alternative assessments to:

- Different taxpayers in respect of the same income / same year (e.g. *Richard Walter* [1995])
- To the same taxpayer in respect of the same income, in different income years

The assessments are valid, though the Commissioner may only collect the tax once (*Hyder* [2022]).

It is less clear whether alternative assessments can be issued to same taxpayer for the same year (e.g. on two different bases). The second assessment is perhaps better characterised as amending the first (however, see *Chevron* [2017]).

Assessments – other

168	<p>Special assessment</p> <p>(1) <i>The Commissioner may at any time during any year, or after its expiration, make an assessment of:</i></p> <ul style="list-style-type: none"> (a) <i>the taxable income derived (or that there is no taxable income) in that year or any part of it by any taxpayer; and</i> (b) <i>the tax payable thereon (or that no tax is payable); and</i> (c) <i>the total of the taxpayer's tax offset refunds for that year or that part of it (or that the taxpayer can get no such refunds).</i> <p>(2) <i>Where the income, in respect of which such an assessment is made, is derived in a period less than a year, the assessment shall be made as if the beginning and end of that period were the beginning and end respectively of the year of income.</i></p>
169	<p>Assessments on all persons liable to tax</p> <p><i>Where under this Act any person is liable to pay tax (including a nil liability), the Commissioner may make an assessment of the amount of such tax (or an assessment that no tax is payable).</i></p>

169AA	<p>Consolidated assessments</p> <p>(1) <i>This section applies if 2 or more persons (the recipients) are in receipt of income, or of profits or gains of a capital nature, for or on behalf of:</i></p> <p class="list-item-l1">(a) <i>a non-resident; or</i></p> <p class="list-item-l1">(b) <i>a person absent from Australia.</i></p> <p>(2) <i>The Commissioner may, if it appears to him or her to be expedient to do so:</i></p> <p class="list-item-l1">(a) <i>consolidate all or any of the assessments of the income, profits or gains; and</i></p> <p class="list-item-l1">(b) <i>declare one of the recipients to be the agent of the non-resident or absent person in respect of the consolidated assessment; and</i></p> <p class="list-item-l1">(c) <i>require the agent to pay income tax on the amount assessed.</i></p> <p>(3) <i>If the Commissioner does so, the agent is liable to pay the tax.</i></p>
-------	---

Assessments – amended

170	<p>Amendment of assessments</p> <p><u>General rules</u></p> <p>(1) <i>The Commissioner may amend an assessment as follows:</i></p>						
	<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: center; padding: 2px;">Item</th> <th style="text-align: center; padding: 2px;">Time limit</th> <th style="text-align: center; padding: 2px;">Qualification</th> </tr> </thead> <tbody> <tr> <td style="text-align: center; padding: 2px;">1</td> <td style="text-align: center; padding: 2px;"> <u>Individuals</u> <i>The Commissioner may amend an assessment of an individual for a year of income within 2 years after the day on which the Commissioner gives notice of the assessment to the individual.</i> </td> <td style="text-align: center; padding: 2px;"> <i>This item does not apply:</i> <p class="list-item-l1">(a) <i>if the individual carries on a business at any time in that year unless the individual is a small business entity or medium business entity for that year; or</i></p> <p class="list-item-l1">(b) <i>if the individual is a partner in a partnership that carries on a business at any time in that year unless the partnership is a small business entity or medium business entity for that year; or</i></p> <p class="list-item-l1">(c) <i>to an individual in the capacity of a trustee of a trust estate at any time in that year (see item 3); or</i></p> <p class="list-item-l1">(d) <i>if the individual is a beneficiary of a trust estate at any time in that year unless the trust is a small business entity or medium business entity for that year or the trustee of the trust (in that capacity) is a full self-assessment taxpayer for that year; or</i></p> </td> </tr> </tbody> </table>	Item	Time limit	Qualification	1	<u>Individuals</u> <i>The Commissioner may amend an assessment of an individual for a year of income within 2 years after the day on which the Commissioner gives notice of the assessment to the individual.</i>	<i>This item does not apply:</i> <p class="list-item-l1">(a) <i>if the individual carries on a business at any time in that year unless the individual is a small business entity or medium business entity for that year; or</i></p> <p class="list-item-l1">(b) <i>if the individual is a partner in a partnership that carries on a business at any time in that year unless the partnership is a small business entity or medium business entity for that year; or</i></p> <p class="list-item-l1">(c) <i>to an individual in the capacity of a trustee of a trust estate at any time in that year (see item 3); or</i></p> <p class="list-item-l1">(d) <i>if the individual is a beneficiary of a trust estate at any time in that year unless the trust is a small business entity or medium business entity for that year or the trustee of the trust (in that capacity) is a full self-assessment taxpayer for that year; or</i></p>
Item	Time limit	Qualification					
1	<u>Individuals</u> <i>The Commissioner may amend an assessment of an individual for a year of income within 2 years after the day on which the Commissioner gives notice of the assessment to the individual.</i>	<i>This item does not apply:</i> <p class="list-item-l1">(a) <i>if the individual carries on a business at any time in that year unless the individual is a small business entity or medium business entity for that year; or</i></p> <p class="list-item-l1">(b) <i>if the individual is a partner in a partnership that carries on a business at any time in that year unless the partnership is a small business entity or medium business entity for that year; or</i></p> <p class="list-item-l1">(c) <i>to an individual in the capacity of a trustee of a trust estate at any time in that year (see item 3); or</i></p> <p class="list-item-l1">(d) <i>if the individual is a beneficiary of a trust estate at any time in that year unless the trust is a small business entity or medium business entity for that year or the trustee of the trust (in that capacity) is a full self-assessment taxpayer for that year; or</i></p>					

			<p>(e) if it is reasonable to conclude that any person entered into or carried out a scheme (either alone or with others) for the sole or dominant purpose of the individual obtaining a scheme benefit in relation to income tax from the scheme for that year; or</p> <p>(f) in any other circumstance prescribed by the regulations.</p> <p><i>This item is subject to items 5 and 6.</i></p>
	2	<p><u>Companies</u></p> <p><i>The Commissioner may amend an assessment of a company that is a small business entity or medium business entity for the year of income to which the assessment relates within 2 years after the day on which the Commissioner gives notice of the assessment to the company.</i></p>	<p><i>This item does not apply:</i></p> <p>(a) if the company is a partner in a partnership that carries on a business at any time in that year unless the partnership is a small business entity or medium business entity for that year; or</p> <p>(b) to a company in the capacity of a trustee of a trust estate at any time in that year (see item 3); or</p> <p>(c) if the company is a beneficiary of a trust estate at any time in that year unless the trust is a small business entity or medium business entity for that year or the trustee of the trust (in that capacity) is a full self-assessment taxpayer for that year; or</p> <p>(d) if it is reasonable to conclude that any person entered into or carried out a scheme (either alone or with others) for the sole or dominant purpose of the company obtaining a scheme benefit in relation to income tax from the scheme for that year; or</p> <p>(e) in any other circumstance prescribed by the regulations.</p> <p><i>This item is subject to items 5 and 6.</i></p>
	3	<p><u>Trustees</u></p> <p><i>The Commissioner may amend an assessment of a person (in the capacity of a trustee of a trust estate) for a year of income if the</i></p>	<p><i>This item does not apply:</i></p> <p>(a) if the person (in that capacity) is a partner in a partnership that carries on a business at any time in that year unless</p>

		<p>trust is a small business entity or medium business entity for that year.</p> <p><i>The Commissioner may amend the assessment within 2 years after the day on which he or she gives notice of the assessment to the person.</i></p>	<p>the partnership is a small business entity or medium business entity for that year; or</p> <p>(b) if the person (in that capacity) is a beneficiary of another trust estate at any time in that year unless the other trust is a small business entity or medium business entity for that year or the trustee of the other trust (in that capacity) is a full self-assessment taxpayer for that year; or</p> <p>(c) if it is reasonable to conclude that any person entered into or carried out a scheme (either alone or with others) for the sole or dominant purpose of the person (in that capacity) obtaining a scheme benefit in relation to income tax from the scheme for that year; or</p> <p>(d) in any other circumstance prescribed by the regulations.</p> <p><i>This item is subject to items 5 and 6.</i></p>
3A		<p><u>Extension to 4 years if amendment requested</u></p> <p><i>The Commissioner may amend an assessment of an individual, a company or a person (in the capacity of a trustee of a trust estate) for a year of income within 4 years after the day on which the Commissioner gives notice of the assessment to the taxpayer if:</i></p> <p>(a) <i>the individual, company or trust is a small business entity or a medium business entity for the year; and</i></p> <p>(b) <i>the individual, company or trustee applies for an amendment in the approved form before the end of that 4 year period; and</i></p> <p>(c) <i>the Commissioner could amend the assessment within 2 years under item 1, 2 or 3; and</i></p> <p>(d) <i>the period within which the Commissioner could amend</i></p>	<p><i>This item is subject to items 5 and 6.</i></p>

		<p><i>the assessment under item 1, 2 or 3 has ended.</i></p> <p><i>The Commissioner may amend the assessment to give effect to the decision on the application.</i></p>	
4	<p><u>All other cases</u></p> <p><i>If item 1, 2 or 3 does not apply, the Commissioner may amend an assessment within 4 years after the day on which he or she gives notice of the assessment to the taxpayer.</i></p> <p>E.g. large companies.</p>	<p><i>This item is subject to items 5 and 6.</i></p>	
5	<p><u>Fraud or evasion</u></p> <p><i>The Commissioner may amend an assessment at any time if he or she is of the opinion there has been fraud or evasion.</i></p>	<p><i>None.</i></p>	
6	<p><u>Objection or litigation</u></p> <p><i>The Commissioner may amend an assessment at any time:</i></p> <p>(a) <i>to give effect to a decision on a review or appeal; or</i></p> <p>(b) <i>as a result of an objection made by the taxpayer or pending a review or appeal.</i></p>	<p><i>None.</i></p>	

Note 1: This section applies to assessments where no tax is payable (definition of assessment in s 6(1)).

Note 2: This section also applies to amended assessments (s 173). However, there are limits on how amended assessments can be amended (see below).

Note 3: The amendment period mentioned in item 1, 2, 3 or 4 may be extended (subs (5) to (7)).

Limit on amending amended assessments under sub (1)

(2) *The Commissioner cannot amend an amended assessment under item 1, 2, 3 or 4 of the table in sub (1) if the limited amendment period for the original assessment concerned has ended.*

Note: The Commissioner can amend amended assessments at any time under item 5 or 6 of the table in sub (1).

(2A) *The Commissioner cannot amend an amended assessment under item 3A of the table in sub (1) if the period of 4 years after the day on which the Commissioner gives notice of the original assessment concerned has ended.*

Refreshed period for amending amended assessments

(3) *If the Commissioner amends an assessment (the earlier assessment) as set out in column 2 of the following table, he or she may, under this subsection, amend the assessment (the later assessment) that results from that amendment in the way set out in column 3 within:*

	<p>(a) if item 1, 2, 3 or 3A of the table in sub (1) applies to the original assessment concerned (which may or may not be the earlier assessment) – 2 years after the day on which he or she gives notice of the later assessment to the taxpayer; or</p> <p>(b) otherwise – 4 years after that day.</p>									
	<table border="1"> <thead> <tr> <th><i>Item</i></th><th><i>In this case:</i></th><th><i>The position is:</i></th></tr> </thead> <tbody> <tr> <td>1</td><td><i>The Commissioner amends the earlier assessment about a particular in a way that reduces a taxpayer's liability and the Commissioner accepts a statement made by the taxpayer in making the amendment</i></td><td><i>The Commissioner may amend the later assessment about that particular in a way that increases the taxpayer's liability</i></td></tr> <tr> <td>2</td><td><i>The Commissioner amends the earlier assessment about a particular in a way that:</i> <i>(a) increases a taxpayer's liability; or</i> <i>(b) reduces a taxpayer's liability (other than in a case covered by item 1)</i></td><td><i>The Commissioner may amend the later assessment about that particular in a way that reduces the taxpayer's liability</i></td></tr> </tbody> </table>	<i>Item</i>	<i>In this case:</i>	<i>The position is:</i>	1	<i>The Commissioner amends the earlier assessment about a particular in a way that reduces a taxpayer's liability and the Commissioner accepts a statement made by the taxpayer in making the amendment</i>	<i>The Commissioner may amend the later assessment about that particular in a way that increases the taxpayer's liability</i>	2	<i>The Commissioner amends the earlier assessment about a particular in a way that:</i> <i>(a) increases a taxpayer's liability; or</i> <i>(b) reduces a taxpayer's liability (other than in a case covered by item 1)</i>	<i>The Commissioner may amend the later assessment about that particular in a way that reduces the taxpayer's liability</i>
<i>Item</i>	<i>In this case:</i>	<i>The position is:</i>								
1	<i>The Commissioner amends the earlier assessment about a particular in a way that reduces a taxpayer's liability and the Commissioner accepts a statement made by the taxpayer in making the amendment</i>	<i>The Commissioner may amend the later assessment about that particular in a way that increases the taxpayer's liability</i>								
2	<i>The Commissioner amends the earlier assessment about a particular in a way that:</i> <i>(a) increases a taxpayer's liability; or</i> <i>(b) reduces a taxpayer's liability (other than in a case covered by item 1)</i>	<i>The Commissioner may amend the later assessment about that particular in a way that reduces the taxpayer's liability</i>								
<p>Note 1: The earlier assessment may be the original assessment or an amended assessment.</p> <p>Note 2: The Commissioner can amend the later assessment at any time under item 5 or 6 of the table in sub (1).</p> <p>Note 3: The amendment period mentioned in para (3)(a) or (b) may be extended (subs (5) to (7)).</p>										
<p>(4) The Commissioner cannot amend an assessment under item 2 of the table in sub (3) about a particular if he or she has previously amended an assessment under item 1 of that table about that particular.</p>										
<p><u>Extensions – applications by taxpayer</u></p> <p>(5) The Commissioner may amend an assessment even though the limited amendment period has ended if, before the end of that period, the taxpayer applies for an amendment in the approved form. The Commissioner may amend the assessment to give effect to the decision on the application.</p>										
<p><u>Extensions – giving effect to private rulings</u></p> <p>(6) The Commissioner may amend an assessment even though the limited amendment period has ended if:</p> <p>(a) the taxpayer applies for a private ruling under Div 359 in Sch 1 to the TAA 1953 before the end of that period; and</p> <p>(b) the Commissioner makes a private ruling under that Div because of the application.</p> <p>The Commissioner may amend the assessment to give effect to the ruling.</p>										
<p><u>Extensions – Federal Court orders or taxpayer consent</u></p> <p>(7) If:</p>										

	<p>(a) the Commissioner has started to examine the affairs of a taxpayer in relation to an assessment; and</p> <p>(b) the Commissioner has not completed the examination before the end of the limited amendment period or that period as extended;</p> <p>the limited amendment period may be extended as follows:</p>									
	<table border="1"> <thead> <tr> <th>Item</th><th>In this case:</th><th>The position is:</th></tr> </thead> <tbody> <tr> <td>1</td><td> <p><i>The Commissioner, before the end of the limited amendment period or that period as extended, applies to the Federal Court of Australia for an order extending the limited amendment period</i></p> </td><td> <p><i>The Court may order an extension of the limited amendment period for a specified period if it is satisfied that it was not reasonably practicable, or it was inappropriate, for the Commissioner to complete the examination within the limited amendment period, or that period as extended, because of:</i></p> <p>(a) any action taken by the taxpayer; or</p> <p>(b) any failure of the taxpayer to take action that would have been reasonable for the taxpayer to take</p> </td></tr> <tr> <td>2</td><td> <p><i>The Commissioner, before the end of the limited amendment period or that period as extended, requests the taxpayer to consent to extending the limited amendment period</i></p> </td><td> <p><i>The taxpayer may, by notice in writing, consent to extending the limited amendment period for a specified period</i></p> </td></tr> </tbody> </table>	Item	In this case:	The position is:	1	<p><i>The Commissioner, before the end of the limited amendment period or that period as extended, applies to the Federal Court of Australia for an order extending the limited amendment period</i></p>	<p><i>The Court may order an extension of the limited amendment period for a specified period if it is satisfied that it was not reasonably practicable, or it was inappropriate, for the Commissioner to complete the examination within the limited amendment period, or that period as extended, because of:</i></p> <p>(a) any action taken by the taxpayer; or</p> <p>(b) any failure of the taxpayer to take action that would have been reasonable for the taxpayer to take</p>	2	<p><i>The Commissioner, before the end of the limited amendment period or that period as extended, requests the taxpayer to consent to extending the limited amendment period</i></p>	<p><i>The taxpayer may, by notice in writing, consent to extending the limited amendment period for a specified period</i></p>
Item	In this case:	The position is:								
1	<p><i>The Commissioner, before the end of the limited amendment period or that period as extended, applies to the Federal Court of Australia for an order extending the limited amendment period</i></p>	<p><i>The Court may order an extension of the limited amendment period for a specified period if it is satisfied that it was not reasonably practicable, or it was inappropriate, for the Commissioner to complete the examination within the limited amendment period, or that period as extended, because of:</i></p> <p>(a) any action taken by the taxpayer; or</p> <p>(b) any failure of the taxpayer to take action that would have been reasonable for the taxpayer to take</p>								
2	<p><i>The Commissioner, before the end of the limited amendment period or that period as extended, requests the taxpayer to consent to extending the limited amendment period</i></p>	<p><i>The taxpayer may, by notice in writing, consent to extending the limited amendment period for a specified period</i></p>								
	<p>(8) The limited amendment period for an assessment may be extended more than once under sub (7).</p> <p><u>Other amendment periods</u></p> <p>(9) Notwithstanding anything contained in this section, when the assessment of the taxable income of any year includes an estimated amount of income, or of profits or gains of a capital nature, derived by the taxpayer in that year from an operation or series of operations the profit or loss on which was not ascertainable at the end of that year owing to the fact that the operation or series of operations extended over more than one or parts of more than one year, the Commissioner may at any time within 4 years after ascertaining the total profit or loss actually derived or arising from the operation or series of operations, amend the assessment so as to ensure its completeness and accuracy on the basis of the profit or loss so ascertained.</p> <p>(9D) This section does not prevent the amendment of an assessment at any time if the amendment is made, in relation to a contract that after the making of the assessment is found to be void ab initio, to ensure that Part 3-1 or 3-3 of the ITAA 1997 (about CGT) is taken always to have applied to the contract as if the contract had never been made.</p>									

(10) *Nothing in this section prevents the amendment, at any time, of an assessment for the purpose of giving effect to any of the provisions of this Act set out in this table.*

Item	Provision	Description
4	47(2B)	<i>Distributions by liquidator</i>
17	100A	<i>Present entitlement arising from reimbursement agreement</i>
22	Div 9C	<i>Assessable income diverted under certain tax avoidance schemes</i>
28	271-105	<i>Amounts subject to family trust distribution tax not assessable</i>

(10AA) *Nothing in this section prevents the amendment, at any time, of an assessment for the purpose of giving effect to any of the provisions of the ITAA 1997 set out in this table.*

Item	Provision	Description
5	26-25(3)	<i>Deduction for interest or royalty if WHT paid</i>
30	104-10(3) or (6) 104-25(2) 104-45(2) 104-90(2) 104-110(2) 104-205(2) 104-225(5) 104-230(5)	<i>The time of a CGT event is decided by there being a contract entered into</i>

...

(12) *Nothing in this section prevents the amendment, at any time, of an assessment to increase the liability of a taxpayer if:*

- (a) *the Commissioner amends a DPT assessment to decrease the liability of the taxpayer to diverted profits tax; and*
- (b) *that increase is attributable to that decrease.*

Definitions

(14) *In this section, unless the contrary intention appears:*

...

“limited amendment period”, for an assessment, means the period within which the Commissioner may amend the assessment:

- (a) *under item 1, 2, 3 or 4 of the table in sub (1); or*
- (b) *under para (3)(a) or (b).*

“medium business entity”, for a year of income, means an entity (within the meaning of the ITAA 1997) who:

	<p>(a) <i>is not a small business entity for the year of income; and</i></p> <p>(b) <i>would be a small business entity for the year of income if:</i></p> <ul style="list-style-type: none"> (i) <i>each reference in Subdiv 328-C (about what is a small business entity) of that Act to \$10m were instead a reference to \$50m; and</i> (ii) <i>the reference in para 328-110(5)(b) of that Act to a small business entity were instead a reference to an entity (within the meaning of that Act) covered by this definition.</i> <p>...</p> <p>Note</p> <ul style="list-style-type: none"> • Cases seem to suggest that even if the Commissioner only finds \$1 of evasion, the entire year is open to amendment (i.e. amendment not limited 'to the extent of' the evasion). • The taxpayer bears the burden of disproving fraud. • It is theoretically possible (based on <i>Fletcher</i> [1988]) for the ART to form an opinion of fraud or evasion even if the Commissioner has not (although it has not happened yet). • The Income Tax Assessment (1936 Act) Regulations 2025, Reg 14, sets out circumstances in which, if you are a 2 year taxpayer, you can become a 4 year taxpayer (e.g. Div 7A type situations, income offshore, non-arm's length transactions). • There used to be a 6 year POR for Part IVA purposes, but now it falls into the regular rules (i.e. 4 years).
173	<p>Amended assessment to be an assessment</p> <p><i>Except as otherwise provided every amended assessment shall be an assessment for all the purposes of this Act.</i></p> <p>Note</p> <ul style="list-style-type: none"> • I.e. there is only ever one assessment for each income year. The amended assessment replaces the original assessment.

<p>Chhua [2018] FCAFC 86</p> <p>An assessment is not invalid even if it is out of time – that is simply a matter that goes to 'excessiveness'</p>	<p>Facts</p> <ul style="list-style-type: none"> ▪ The Commissioner issued amended assessments to the taxpayer in reliance on Item 5 of s 170(1) (fraud or evasion opinion). ▪ The taxpayer challenged the excessiveness of the assessments under Part IVC, and also sought judicial review under s 39B of the Judiciary Act 1901, alleging that the Commissioner made a jurisdictional error in forming the opinion of fraud or evasion. ▪ The taxpayer sought orders quashing the Commissioner's opinion and the assessments that were the product of it. <p>Held</p> <ul style="list-style-type: none"> ▪ Section 175 of the ITAA 1936 gave the Commissioner a broad jurisdiction that included the making of mistakes and errors. Errors of law which constituted non-compliance with the provisions of the tax law, including s 170 of the ITAA 1936, were errors within jurisdiction.
--	--

	<ul style="list-style-type: none"> ○ Confirms the current view that an out of time amended assessment by the Commissioner is still valid, but the fact it was out of time is a matter that goes to excessiveness. ○ If you prove it was out of time, you will win on that ground alone, without even establishing any of your income for that year. ▪ The High Court in <i>Futuris</i> exhaustively defined the two jurisdictional errors against which s 175 offered no protection – bad faith and tentativeness. Any attempt to expand the grounds upon which a taxpayer may challenge the validity of an assessment and obtain relief under s 39B of the Judiciary Act could not overcome <i>Futuris</i>.
--	--

Notice

171	<p>Where no notice of assessment served</p> <p>(1) <i>Where a taxpayer has duly furnished to the Commissioner a return of income, or of profits or gains of a capital nature, and no notice of assessment in respect thereof has been served within 12 months thereafter, the taxpayer may in writing by registered post request the Commissioner to make an assessment.</i></p> <p>(2) <i>If within 3 months after the receipt by the Commissioner of the request a notice of assessment is not served upon the taxpayer, any assessment issued thereafter in respect of that income, or of those profits or gains, shall be deemed to be an amended assessment, and for the purpose of determining whether such amended assessment may be made, the taxpayer shall be deemed to have been served on the last day of the 3 months with a notice of assessment in respect of which income tax was payable on that day [i.e. the POR clock starts].</i></p>
174	<p>Notice of assessment</p> <p>(1) <i>As soon as conveniently may be after any assessment is made, the Commissioner shall serve notice thereof in writing by post or otherwise upon the person liable to pay the tax.</i></p> <p>(3) <i>In sub (1), tax includes additional tax under Part VII.</i></p> <p>Note</p> <ul style="list-style-type: none"> • An assessment will have no effect until the notice of assessment has been served, where service is required. It is not until service that the tax can be said to become due and payable, or it can be said that an “ascertainment” has occurred (<i>Beavis Bros</i> [1987]; <i>Batagol</i> [1963]). • Service of a document is deemed to be effected where it has been sent by properly addressing, prepaying and posting a document as a letter (s 29(1) of the AIA 1901). • Service is not required for full self-assessment taxpayers (s 166A) (service is instead “deemed”).

<p>Batagol [1963] HCA 51</p> <p>An assessment is not made until a notice is served</p>	<ul style="list-style-type: none"> ▪ Per Kitto J: <p><i>The word “assessment” is defined in s 6 to mean, unless the contrary intention appears, the ascertainment of the amount of taxable income and of the tax payable thereon.</i></p> <p><i>Assessment in the sense of mere calculation produces no legal effect. No step that the Commissioner may take, even to the point of satisfying himself of the amount of the taxable income and of the tax thereon, has under the Act any legal significance. But if the Commissioner, having gone through the process of calculation, serves on the taxpayer a notice that he has assessed the taxable income and the tax at specified amounts, the tax becomes by force of the Act due and payable on the date specified in the notice...</i></p> <p><i>Thus, and thus only, there is brought about an “ascertainment” of the taxable income and of the tax, in the sense that thereafter it is possible to say what could not have been said before: that amounts have been fixed so that they are to be taken for all purposes (except those of appeal) to be the result flowing from the application of the Act in the particular case.</i></p> <p><i>On this construction of the Act nothing done in the Commissioner’s office can amount to more than steps which will form part of an assessment if, but only if, they lead to and are followed by the service of a notice of assessment.</i></p>
<p>H [2010] FCAFC 128</p> <p>Notwithstanding the judgment in <i>Batagol</i>, even if a notice has not been served there is still an obligation on the taxpayer to pay tax</p>	<ul style="list-style-type: none"> ▪ Per Downes, Edmonds and Greenwood JJ: <p>39. <i>It is common ground in this proceeding that unless and until an assessment is made and notice is served of that assessment, income tax is not due, and nor is it payable... Nor does it appear to be in dispute that unless and until an assessment is made and notice is served of that assessment, the Commissioner has no legal right to recover an amount of income tax. On the other hand, the correctness of these statements is no impediment to a conclusion that prior to the making of the assessment and service of notice of that assessment, the taxpayer had an obligation to pay income tax in the future, and that obligation came into existence on 30 June of the year of income in respect of which the income was derived.</i></p> <p>40. <i>The obligation is no less an obligation because the Commissioner cannot, until he makes an assessment and serves notice of that assessment, enforce it as a debt due and payable...</i></p>

Assessments – TAA 1953, Sch 1 – GST, penalties, etc

Note: this is where the power to make GST assessments is found. For now, income tax assessments remain in the ITAA 1936, but they may be moved into this Schedule in the future.

TAA 1953 – Sch 1 – Part 4-1 – Returns and assessments									
Division 155 – Assessments									
Subdivision 155-A – Making assessments									
155-5	<p>Commissioner may make assessment</p> <p>(1) <i>The Commissioner may at any time make an assessment of an assessable amount (including an assessment that the amount is nil).</i></p> <p>(2) <i>Each of the following is an assessable amount:</i></p> <p class="list-item-l1">(a) a net amount [i.e. GST];</p> <p class="list-item-l1">...</p> <p class="list-item-l1">(c) <i>an amount of indirect tax not included in an amount covered by another para of this sub;</i></p> <p class="list-item-l1">(d) <i>a credit under an indirect tax law not included in an amount covered by another para of this sub;</i></p> <p class="list-item-l1">(f) <i>an amount of Div 293 tax payable for an income year in relation to an individual's taxable contributions for the income year;</i></p> <p class="list-item-l1">...</p> <p class="list-item-l1">(j) <i>an amount of diverted profits tax;</i></p> <p>Note: This Div has a modified operation in relation to DPT (Div 145).</p> <p>...</p>								
155-10	<p>Commissioner must give notice of assessment</p> <p>(1) <i>The Commissioner must give you notice of an assessment of an assessable amount of yours as soon as practicable after the assessment is made.</i></p> <p>Note: This section also applies to an amended assessment (s 155-80).</p> <p>(2) <i>The Commissioner may give you the notice electronically if you are required to lodge, or have lodged, the return (if any) that relates to the assessable amount electronically.</i></p>								
155-15	<p>Self-assessment</p> <p>(1) <i>The Commissioner is treated as having made an assessment under s 155-5 of an assessable amount mentioned in an item of the following table, if the document mentioned in the item is given to the recipient mentioned in the item:</i></p> <table border="1"><thead><tr><th>Item</th><th>Assessable amount</th><th>Recipient</th><th>Document</th></tr></thead><tbody><tr><td>1</td><td><i>Your net amount for a tax period</i></td><td><i>The Commissioner</i></td><td><i>Your GST return for the tax period</i></td></tr></tbody></table> <p>...</p> <p>Note: There is no self-assessment of Div 293 tax, excess transfer balance tax or first home super saver tax.</p>	Item	Assessable amount	Recipient	Document	1	<i>Your net amount for a tax period</i>	<i>The Commissioner</i>	<i>Your GST return for the tax period</i>
Item	Assessable amount	Recipient	Document						
1	<i>Your net amount for a tax period</i>	<i>The Commissioner</i>	<i>Your GST return for the tax period</i>						

	<p>(2) <i>The assessment is treated as having been made on the day the document is given to the recipient mentioned in column 2.</i></p> <p>(3) <i>The amount assessed is:</i></p> <ul style="list-style-type: none"> (a) <i>if the document is required to state the assessable amount – the amount (including a nil amount) stated; or</i> (b) <i>otherwise – the amount (including a nil amount) worked out in accordance with the information stated in the document.</i> <p>(4) <i>The document is treated as being a notice of the assessment:</i></p> <ul style="list-style-type: none"> (a) <i>signed by the Commissioner; and</i> (b) <i>given to you under s 155-10 on the day the document is given to the recipient.</i> <p>(5) <i>This section does not apply to an assessable amount if the Commissioner has already assessed the assessable amount on or before the day mentioned in para (4)(b).</i></p>
155-25	<p>Special assessment</p> <p><i>For the purposes of making, under s 155-5, an assessment of an assessable amount that relates to a period (e.g. a tax period), the Commissioner may treat part of the period as being the whole period.</i></p>
155-30	<p>Delays in making assessments</p> <p>(1) <i>You may give the Commissioner a written notice requiring the Commissioner to make an assessment of an assessable amount of yours, if, 6 months after the day on which the relevant return (if any) for the assessable amount is given to the Commissioner, the Commissioner has not given to you notice of an assessment of the assessable amount under s 155-10.</i></p> <p>(2) <i>You may object, in the manner set out in Part IVC of this Act, against the Commissioner's failure to make the assessment if the Commissioner does not make the assessment within 30 days after the day the notice is given under sub (1).</i></p> <p>(3) <i>This section does not apply to the following assessable amounts:</i></p> <ul style="list-style-type: none"> (a) <i>the Div 293 tax payable by you in relation to an income year in relation to your taxable contributions for the income year;</i> ...
<p>Subdivision 155-B – Amending assessments</p>	
155-35	<p>Amendment during period of review</p> <p><u>Amendment</u></p> <p>(1) <i>The Commissioner may amend an assessment of an assessable amount within the period of review for the assessment.</i></p> <p>Note 1: <i>An amendment of an assessment can be reviewed (Subdiv 155-C).</i></p> <p>Note 2: <i>This section also applies to amended assessments (s 155-80). However, there are limits on how amended assessments can be amended (ss 155-65 and 155-70).</i></p> <p><u>Meaning of period of review</u></p> <p>(2) <i>The period of review, for an assessment of an assessable amount of yours, is:</i></p> <ul style="list-style-type: none"> (a) <i>the period:</i>

	<p>(i) starting on the day on which the Commissioner first gives notice of the assessment to you under s 155-10; and</p> <p>(ii) ending on the last day of the period of 4 years starting the day after that day; or</p> <p>(b) if the period of review is extended under sub (3) or (4) of this section – the period as so extended.</p> <p><u>Extensions</u></p> <p>(3) The Federal Court may order an extension of the period of review for an assessment of an assessable amount of yours for a specified period, if:</p> <ul style="list-style-type: none"> (a) the Commissioner has started to examine your affairs in relation to the assessment; and (b) the Commissioner has not completed the examination within the period of review for the assessment; and (c) the Commissioner, during the period of review, applies to the Federal Court for an order extending the period; and (d) the Court is satisfied that it was not reasonably practicable, or it was inappropriate, for the Commissioner to complete the examination within the period of review, because of: <ul style="list-style-type: none"> (i) any action taken by you; or (ii) any failure by you to take action that it would have been reasonable for you to take. <p>(4) You may, by written notice given to the Commissioner, consent to the extension of the period of review for an assessment of an assessable amount of yours for a specified period, if:</p> <ul style="list-style-type: none"> (a) the Commissioner has started to examine your affairs in relation to the assessment; and (b) the Commissioner has not completed the examination within the period of review for the assessment; and (c) the Commissioner, during the period of review, requests you to consent to extending the period of review. <p>(5) An order may be made under sub (3), or consent given under sub (4), in relation to an assessment of an assessable amount more than once.</p>
155-40	<p>Amendment during period of review – certain applications taken to be notices</p> <p>(1) An application made by you for an amendment of an assessment of an assessable amount of yours is treated as being a notice of the amended assessment given to you by the Commissioner under s 155-10, if:</p> <ul style="list-style-type: none"> (a) the application is in the approved form; and (b) the Commissioner makes the amendment: <ul style="list-style-type: none"> (i) to give effect to the decision on the application; and (ii) during the period of review for the assessment; and (c) the amendment the Commissioner makes is the entire amendment for which you applied, and nothing else. <p>(2) The notice is treated as having been given to you on whichever of the following is applicable:</p> <ul style="list-style-type: none"> (a) the first day the Commissioner adjusts the balance of an RBA of yours as a result of the amendment;

	<p>(b) the day a Collector (within the meaning of the Customs Act 1901) gives an import declaration advice, or a self-assessed clearance declaration advice, to an entity in respect of the relevant taxable importation, taxable importation of a luxury car or customs dealing as a result of the amendment.</p>
155-45	<p>Amendment on application</p> <p><i>The Commissioner may amend an assessment of an assessable amount of yours at any time, if you apply for an amendment in the approved form during the period of review for the assessment. The Commissioner may amend the assessment to give effect to his or her decision on the application.</i></p> <p>Note: The Commissioner must give you notice of the amended assessment under s 155-10 (s 155-80).</p>
155-50	<p>Amendment to give effect to private ruling</p> <p><i>The Commissioner may amend an assessment of an assessable amount of yours at any time, if:</i></p> <p class="list-item-l1">(a) you apply for a private ruling during the period of review for the assessment; and</p> <p class="list-item-l1">(b) the Commissioner makes a private ruling because of the application.</p> <p><i>The Commissioner may amend the assessment to give effect to the ruling.</i></p>
155-60	<p>Amendment because of review, objection or fraud</p> <p><i>Despite anything in this Subdiv, the Commissioner may amend an assessment of an assessable amount of yours at any time:</i></p> <p class="list-item-l1">(a) to give effect to a decision on a review or appeal; or</p> <p class="list-item-l1">(b) as a result of an objection made by you, or pending a review or appeal; or</p> <p class="list-item-l1">(c) if he or she is of the opinion there has been fraud or evasion.</p>
155-65	<p>Amending amended assessments</p> <p><i>The Commissioner cannot amend an amended assessment of an assessable amount under s 155-35 if the period of review for the assessment has ended.</i></p> <p>Note: The Commissioner can amend amended assessments at any time under ss 155-45 to 155-60.</p>
155-70	<p>Refreshed period of review</p> <p class="list-item-l1">(1) This section applies if the Commissioner has made one or more amendments of an assessment of an assessable amount of yours under s 155-35 about a particular.</p> <p class="list-item-l1">(2) Despite s 155-65, the Commissioner may amend (the later amendment) the amended assessment after the end of the period of review for the assessment, if:</p> <p class="list-item-l2">(a) the Commissioner makes the later amendment before the end of the period of 4 years starting on the day after the day on which the Commissioner gave notice of the last of the amendments mentioned in sub (1) to you under s 155-10; and</p> <p class="list-item-l2">(b) the later amendment is about the particular mentioned in sub (1) of this section; and</p> <p class="list-item-l2">(c) the Commissioner has not previously amended the assessment under this section about that particular.</p>

155-75	<p>Refunds of amounts overpaid</p> <p>(1) <i>This section applies if:</i></p> <p class="list-item-l1">(a) <i>an assessment of an assessable amount of yours is amended; and</i></p> <p class="list-item-l1">(b) <i>as a result of the amendment, a tax-related liability (the earlier liability) of yours is reduced.</i></p> <p>(2) <i>For the purposes of any taxation law that applies the GIC, the amount by which the tax-related liability is reduced is taken never to have been payable.</i></p> <p><i>Note 1: The GIC is worked out under Part IIA of this Act.</i></p> <p><i>Note 2: s 8AAB(4) of this Act lists the provisions that apply the charge.</i></p> <p>(3) <i>The Commissioner must apply the amount of any tax-related liability overpaid in accordance with Divs 3 and 3A of Part IIB of this Act (about running balance accounts and the application of payments and credits).</i></p> <p>(4) <i>However, if:</i></p> <p class="list-item-l1">(a) <i>a later amendment of an assessment of an assessable amount is made; and</i></p> <p class="list-item-l1">(b) <i>all or some of your earlier liability in relation to a particular is reinstated;</i></p> <p><i>this section is taken not to have applied to the extent that the earlier liability is reinstated.</i></p>
155-80	<p>Amended assessments are assessments</p> <p><i>An amended assessment of an assessable amount is an assessment for all purposes of any taxation law.</i></p> <p>Note: <i>The Commissioner must give notice of the amended assessment under s 155-10. Under s 155-40, an application for an amendment is treated as being a notice of the amendment in certain circumstances.</i></p>
<p>Subdivision 155-C – Validity and review of assessments</p>	
155-85	<p>Validity of assessment</p> <p><i>The validity of any assessment of an assessable amount is not affected by non-compliance with the provisions of this Act or of any other taxation law.</i></p> <p>Note</p> <ul style="list-style-type: none"> • This is the GST equivalent to s 175.
155-90	<p>Review of assessments</p> <p><i>You may object, in the manner set out in Part IVC of this Act, against an assessment of an assessable amount of yours if you are dissatisfied with the assessment.</i></p>

Penalties

Note:

- Taxpayers have **two sets of objection rights** in relation to penalties, firstly to the penalty assessment itself (s 298-30), and secondly to the Commissioner's decision not to remit the penalty (s 298-20)
- There are no POR time limits for penalties
- There is no s 175 equivalent for penalties (protecting penalty assessments from invalidity) – no one has challenged this yet

TAA 1953 – Sch 1 – Part 4-25 – Charges and penalties	
Division 284 – Administrative penalties for statements, unarguable positions and schemes	
Subdivision 284-A – General provisions	
284-10	Object of Division <i>The object of this Div is to provide a uniform administrative penalty regime for all taxation laws to enable administrative penalties to apply to entities that fail to meet their obligations under those laws in relation to:</i> <i>(a) making false or misleading statements; and</i> <i>(b) taking a position that is not reasonably arguable; and</i> <i>(c) entering into schemes; and</i> <i>(d) refusing to provide documents to the Commissioner.</i>
284-15	When a matter is reasonably arguable <i>(1) A matter is reasonably arguable if it would be concluded in the circumstances, having regard to relevant authorities, that what is argued for is about as likely to be correct as incorrect, or is more likely to be correct than incorrect.</i> <i>(2) To the extent that a matter involves an assumption about the way in which the Commissioner will exercise a discretion, the matter is only reasonably arguable if, had the Commissioner exercised the discretion in the way assumed, a court would be about as likely as not to decide that the exercise of the discretion was in accordance with law.</i> <i>(3) Without limiting sub (1), these authorities are relevant:</i> <i>(a) a taxation law;</i> <i>(b) material for the purposes of s 15AB(1) of the Acts Interpretation Act 1901;</i> <i>(c) a decision of a court (whether or not an Australian court), the AAT, the ART or a Board of Review;</i> <i>(d) a public ruling.</i>
284-20	Which statements this Division applies to <i>This Div applies to a statement made orally, in a document or in any other way (including electronically) for a purpose connected with a taxation law.</i>
284-25	Statements by agents <i>This Div applies to a statement made by your agent as if it had been made by you.</i>

Subdivision 284-B – Penalties relating to statements

284-75

Liability to penalty

False or misleading statements

(1) You are liable to an administrative penalty if:

- you **make a statement** to the Commissioner or to an entity that is exercising powers or performing functions under a taxation law...; and
- the statement is false or misleading in a material particular**, whether because of things in it or omitted from it.

Position not reasonably arguable

(2) You are liable to an administrative penalty if:

- you make a statement to the Commissioner or to an entity that is exercising powers or performing functions under an income tax law...; and
- in the statement, you treated an income tax law... as applying to a matter or identical matters in a particular way that was not reasonably arguable**; and
- item 4, 5, 6 or 6A of the table in s 284-90(1) applies to you.

Failure to give a return

(3) You are liable to an administrative penalty if:

- you fail to give a return, notice or other document to the Commissioner by the day it is required to be given**; and
- that document is necessary for the Commissioner to determine a tax-related liability ... of yours accurately**; and
- the Commissioner determines the tax-related liability without the assistance of that document**.

Note: You are also liable to an administrative penalty for failing to give the document on time (Subdiv 286-C).

...

Exceptions – reasonable care, safe harbour

- You are not liable to an administrative penalty under sub (1) ... for a statement that is false or misleading in a material particular if you, and your agent (if relevant), took reasonable care in connection with the making of the statement.**
- You are not liable to an administrative penalty under sub (1) ... if:**
 - you engage a registered tax agent or BAS agent**; and
 - you give the registered tax agent or BAS agent all relevant taxation information**; and
 - the registered tax agent or BAS agent makes the statement**; and
 - the false or misleading nature of the statement did not result from:**
 - intentional disregard by the registered tax agent or BAS agent of a taxation law...; or**
 - recklessness by the agent as to the operation of a taxation law...**
- If you wish to rely on sub (6), you bear an evidential burden in relation to para (6)(b).**

...

284-80	<p>Shortfall amounts</p> <p>(1) You have a shortfall amount if an item in this table applies to you. That amount is the amount by which the relevant liability, or the payment or credit, is less than or more than it would otherwise have been.</p> <p>...</p> <p>Note</p> <ul style="list-style-type: none"> Essentially, you have a shortfall if: <ul style="list-style-type: none"> A tax-related liability of yours is less than it would be if the statement were not false or misleading, or your position was not reasonably arguable An amount to be paid to you by the Commissioner is more than it would be if the statement were not false or misleading, or your position was not reasonably arguable
284-85	<p>Amount of penalty</p> <p>(1) Work out the base penalty amount under s 284-90. If the base penalty amount is not increased under s 284-220 or reduced under s 284-225, this is the amount of the penalty.</p> <p>(2) Otherwise, use this formula:</p> $\text{BPA} + [\text{BPA} \times (\text{Increase \%} - \text{Reduction \%})]$
284-90	<p>Base penalty amount</p> <p>(1) The base penalty amount under this Subdiv is worked out using this table and subs (1A) to (2), and s 284-224 if relevant:</p> <p><u>False or misleading statement</u></p> <p>Intentional disregard = 75% of the shortfall or 60 penalty units</p> <p>Recklessness = 50% of the shortfall or 40 penalty units</p> <p>Failure to take reasonable care = 25% of the shortfall or 20 penalty units</p> <p><u>Position not reasonably arguable</u></p> <p>25% of the shortfall</p> <p><u>Failure to give a return</u></p> <p>75% of the tax-related liability</p> <p>(2) If 2 or more items in that table apply and one of them produces a greater base penalty amount than any of the others, use that item.</p> <p>(3) An entity's reasonably arguable threshold for an income year is:</p> <p>(a) ...the greater of \$10,000 or 1% of whichever of the following applies:</p> <p>(i) the income tax payable by the entity for the income year, worked out on the basis of the entity's income tax return;</p> <p>...</p> <p>[if the shortfall does not exceed the threshold = no penalty]</p>

Subdivision 284-C – Penalties relating to schemes

284-145	<p>Liability to penalty</p> <p>(1) You are liable to an administrative penalty if:</p> <ul style="list-style-type: none"> (a) you would, apart from a provision of a taxation law or action taken under such a provision (the adjustment provision), get a scheme benefit from a scheme; and (b) having regard to any relevant matters, it is reasonable to conclude that: <ul style="list-style-type: none"> (i) an entity that (alone or with others) entered into or carried out the scheme, or part of it, did so with the sole or dominant purpose of that entity or another entity getting a scheme benefit from the scheme; or (ia) for a scheme to which Part IVA of the ITAA 1936 applies because of s 177DA of that Act – an entity that (alone or with others) entered into or carried out the scheme, or part of it, did so for a principal purpose of, or for more than one principal purpose that includes a purpose of, that entity or another entity getting a scheme benefit from the scheme; or (ii) for a scheme referred to in Div 165 of the GST Act... – the principal effect of the scheme, or of part of the scheme, is that you would, apart from the adjustment provision, get the scheme benefit from the scheme directly or indirectly. <p>...</p> <p>(3) It does not matter whether the scheme, or any part of the scheme, was entered into or carried out inside or outside Australia.</p>
284-150	<p>Scheme benefits and scheme shortfall amounts</p> <p>(1) An entity gets a scheme benefit from a scheme if:</p> <ul style="list-style-type: none"> (a) a tax-related liability of the entity for an accounting period is, or could reasonably be expected to be, less than it would be apart from the scheme or a part of the scheme; or (b) an amount that the Commissioner must pay or credit to the entity under a taxation law for an accounting period is, or could reasonably be expected to be, more than it would be apart from the scheme or a part of the scheme. <p>(2) The amount of the scheme benefit that you would, apart from the adjustment provision, have got from the scheme is called your scheme shortfall amount.</p> <p>...</p>
284-155	<p>Amount of penalty</p> <p>(1) Work out the base penalty amount under s 284-160. If the base penalty amount is not increased under s 284-220 or reduced under s 284-225, this is the amount of the penalty.</p> <p>(2) Otherwise, use this formula:</p> $\text{BPA} + \left[\text{BPA} \times (\text{Increase \%} - \text{Reduction \%}) \right]$ <p>where:</p> <p>“BPA” is the base penalty amount.</p> <p>“increase %” is the percentage increase (if any) under s 284-220.</p> <p>“reduction %” is the percentage reduction (if any) under s 284-225.</p>

	<p><u>SGEs</u></p> <p>(3) However, the amount of the penalty is twice the amount worked out under sub (1) or (2) of this section if:</p> <ul style="list-style-type: none"> (a) you are a significant global entity during an income year that consists of, or includes all or part of, the accounting period to which your scheme shortfall amount relates; and (b) it is not reasonably arguable that the adjustment provision does not apply.
284-160	<p>Base penalty amount: schemes</p> <p>(1) The base penalty amount for a scheme to which s 284-145(1) ... applies is, subject to s 284-224:</p> <ul style="list-style-type: none"> (a) 50% of your scheme shortfall amount; or (b) 25% of your scheme shortfall amount if it is reasonably arguable that the adjustment provision does not apply. <p>...</p>

Subdivision 284-D – Provisions common to Subdivs 284-B and 284-C	
284-220	<p>Increase in BPA</p> <p>(1) The base penalty amount is increased by 20% if:</p> <ul style="list-style-type: none"> (a) you took steps to prevent or obstruct the Commissioner from finding out about a shortfall amount, or the false or misleading nature of a statement, in relation to which the base penalty amount was calculated; or (b) you: <ul style="list-style-type: none"> (i) became aware of such a shortfall amount after a statement had been made to the Commissioner about the relevant tax-related liability; or (ii) became aware of the false or misleading nature of a statement made to the Commissioner or another entity after the statement had been made; and you did not tell the Commissioner or other entity about it within a reasonable time; or (c) the base penalty amount was worked out using item 1, 2 or 3 of the table in s 284-90(1) and a base penalty amount for you was worked out under one of those items previously; or <p>...</p> <ul style="list-style-type: none"> (d) the base penalty amount was worked out using item 4, 5, 6 or 6A of that table and a base penalty amount for you was worked out under that item previously; or (e) your liability to a penalty arises under s 284-75(3) and you were previously liable to a penalty under that subsection. <p>(2) The base penalty amount for your scheme shortfall amount, or for part of it, for an accounting period is increased by 20% if:</p> <ul style="list-style-type: none"> (a) you took steps to prevent or obstruct the Commissioner from finding out about the scheme shortfall amount or the part; or (b) a base penalty amount for you was worked out under s 284-160 for a previous accounting period.

284-224	<p>Reduction of BPA – law applied in an accepted way</p> <p>(1) <i>If, apart from this section, you would have a BPA because you or your agent treated a taxation law as applying in a particular way, and that way agreed with:</i></p> <ul style="list-style-type: none"> (a) <i>advice given to you or your agent by or on behalf of the Commissioner; or</i> (b) <i>general administrative practice under that law; or</i> (c) <i>a statement in a publication approved in writing by the Commissioner; your base penalty amount is reduced to the extent that it was caused by that treatment.</i> <p>(2) <i>For the purposes of sub (1) it does not matter whether the BPA also relates to:</i></p> <ul style="list-style-type: none"> (a) <i>a statement; or</i> (b) <i>a failure to give the Commissioner a return, notice or other document when required; or</i> (c) <i>a scheme.</i>
284-225	<p>Reduction of BPA – voluntary disclosure</p> <p>(1) <i>The BPA for your shortfall amount or scheme shortfall amount, for part of it or for your false or misleading statement is reduced by 20% if:</i></p> <ul style="list-style-type: none"> (a) <i>the Commissioner tells you that an examination is to be made of your affairs relating to a taxation law for a relevant period; and</i> (b) <i>after that time, you voluntarily tell the Commissioner, in the approved form, about the shortfall, the part of it or the false or misleading nature of the statement; and</i> (c) <i>telling the Commissioner can reasonably be estimated to have saved the Commissioner a significant amount of time or significant resources in the examination.</i> <p>(2) <i>The BPA for your shortfall amount or scheme shortfall amount, for part of it or for your false or misleading statement is reduced under sub (3), (4) or (4A) if you voluntarily tell the Commissioner, in the approved form, about the shortfall amount, the part of it or the false or misleading nature of the statement before:</i></p> <ul style="list-style-type: none"> (a) <i>the day the Commissioner tells you that an examination is to be made of your affairs relating to a taxation law for a relevant period; or</i> (b) <i>if the Commissioner makes a public statement requesting entities to make a voluntary disclosure by a particular earlier day about a scheme or transaction that applies to your affairs – that earlier day.</i> <p>(3) <i>The BPA for your shortfall amount, or for part of it, is:</i></p> <ul style="list-style-type: none"> (a) <i>reduced by 80% if the shortfall amount, or the part of it, is \$1,000 or more; or</i> (b) <i>reduced to nil if the shortfall amount, or the part of it, is less than \$1,000.</i> <p>(4) <i>The BPA for your scheme shortfall amount, or for part of it, is reduced by 80%.</i></p> <p>(4A) <i>The BPA for your false or misleading statement that does not result in you having a shortfall amount is reduced to nil.</i></p> <p>(5) <i>If you voluntarily tell the Commissioner, in the approved form, about your shortfall amount or scheme shortfall amount, part of it or the false or misleading nature of the statement <u>after</u> the Commissioner tells you that an examination is to be conducted of your affairs relating to a taxation law for a relevant period, the Commissioner may treat you as having done so before</i></p>

	<i>being told about the examination if the Commissioner considers it appropriate to do so in the circumstances.</i>
--	---

Division 298 – Machinery provisions for penalties	
Subdivision 298-A – Administrative penalties	
298-10	<p>Notification of liability</p> <p><i>The Commissioner must give written notice to the entity of the entity's liability to pay the penalty and of the reasons why the entity is liable to pay the penalty. The Commissioner is not required to give reasons if he or she decides to remit all of the penalty.</i></p> <p>Note: s 25D of the <i>Acts Interpretation Act 1901</i> sets out rules about the contents of a statement of reasons.</p>
298-15	<p>Due date for penalty</p> <p><i>The penalty becomes due for payment on the day specified in the notice, which must be at least 14 days after the notice is given to the entity.</i></p> <p>Note: For provisions about collection and recovery of the penalty, see Part 4-15.</p>
298-20	<p>Remission of penalty</p> <p>(1) <i>The Commissioner may remit all or a part of the penalty.</i></p> <p>(2) <i>If the Commissioner decides:</i></p> <p>(a) <i>not to remit the penalty; or</i></p> <p>(b) <i>to remit only part of the penalty;</i></p> <p><i>the Commissioner must give written notice of the decision and the reasons for the decision to the entity.</i></p> <p>(3) <i>If:</i></p> <p>(a) <i>the Commissioner refuses to any extent to remit an amount of penalty; and</i></p> <p>(b) <i>the amount of penalty payable after the refusal is more than 2 penalty units; and</i></p> <p>Note: s 4AA of the <i>Crimes Act 1914</i> provides the value of a penalty unit.</p> <p>(c) <i>the entity is dissatisfied with the decision;</i></p> <p><i>the entity may object against the decision in the manner set out in Part IVC.</i></p>
298-25	<p>GIC on unpaid penalty</p> <p><i>If any of the penalty remains unpaid after it is due, the entity is liable to pay GIC on the unpaid amount of the penalty for each day in the period that:</i></p> <p>(a) <i>started at the beginning of the day by which the amount was due to be paid; and</i></p> <p>(b) <i>finishes at the end of the last day, at the end of which, any of the following remains unpaid:</i></p> <p>(i) <i>the amount;</i></p> <p>(ii) <i>GIC on any of the amount.</i></p> <p>Note: GIC is worked out under Part IIA.</p>

298-30	<p>Assessment of penalties under Div 284 or s 288-115</p> <p>(1) <i>The Commissioner must make an assessment of the amount of an administrative penalty under Div 284 or s 288-115.</i></p> <p>(2) <i>An entity that is dissatisfied with such an assessment made about the entity may object against it in the manner set out in Part IVC of the TAA 1953.</i></p>
--------	--

GST decisions

This is separate from GST assessments (Div 155).

Division 110 – Goods and services tax																			
Subdivision 110-F – Review of GST decisions																			
110-50	<p>Reviewable GST decisions</p> <p>(1) <i>You may object, in the manner set out in Part IVC, against a decision you are dissatisfied with that is:</i></p> <p style="margin-left: 20px;">(a) <i>a reviewable GST decision relating to you; or</i></p> <p style="margin-left: 20px;">(b) <i>a reviewable GST transitional decision relating to you.</i></p> <p>(2) <i>Each of the following decisions is a reviewable GST decision:</i></p>																		
<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: left; padding: 2px;">Item</th><th style="text-align: left; padding: 2px;">Decision</th><th style="text-align: left; padding: 2px;">GST Act</th></tr> </thead> <tbody> <tr> <td style="text-align: center; padding: 2px;">1</td><td style="text-align: left; padding: 2px;"><i>refusing to register you</i></td><td style="text-align: center; padding: 2px;"><i>s 25-5(1)</i></td></tr> <tr> <td style="text-align: center; padding: 2px;">2</td><td style="text-align: left; padding: 2px;"><i>registering you</i></td><td style="text-align: center; padding: 2px;"><i>s 25-5(2)</i></td></tr> <tr> <td style="text-align: center; padding: 2px;">3</td><td style="text-align: left; padding: 2px;"><i>deciding the date of effect of your registration</i></td><td style="text-align: center; padding: 2px;"><i>s 25-10</i></td></tr> <tr> <td style="text-align: center; padding: 2px;">4</td><td style="text-align: left; padding: 2px;"><i>refusing to cancel your registration</i></td><td style="text-align: center; padding: 2px;"><i>s 25-55(1)</i></td></tr> <tr> <td style="text-align: center; padding: 2px;">5</td><td style="text-align: left; padding: 2px;"><i>canceling your registration</i></td><td style="text-align: center; padding: 2px;"><i>s 25-55(2)</i></td></tr> </tbody> </table> <p style="text-align: center; margin-top: 5px;">...</p>		Item	Decision	GST Act	1	<i>refusing to register you</i>	<i>s 25-5(1)</i>	2	<i>registering you</i>	<i>s 25-5(2)</i>	3	<i>deciding the date of effect of your registration</i>	<i>s 25-10</i>	4	<i>refusing to cancel your registration</i>	<i>s 25-55(1)</i>	5	<i>canceling your registration</i>	<i>s 25-55(2)</i>
Item	Decision	GST Act																	
1	<i>refusing to register you</i>	<i>s 25-5(1)</i>																	
2	<i>registering you</i>	<i>s 25-5(2)</i>																	
3	<i>deciding the date of effect of your registration</i>	<i>s 25-10</i>																	
4	<i>refusing to cancel your registration</i>	<i>s 25-55(1)</i>																	
5	<i>canceling your registration</i>	<i>s 25-55(2)</i>																	