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AAT assumes taxation jurisdiction

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Jurisdiction to review decisions of the Commissioner of Taxation upon objections to taxation assessments has been transferred from the Taxation Boards of Review to the AAT with effect from 1 July 1986. The existing avenue of appeal to a Supreme Court from decisions of the Commissioner relating to objections has been retained. This major change substantially implements the recommendations of the Administrative Review Council in its Report No. 17, Review of Taxation Decisions by Boards of Review (AGPS, 1983), transmitted to the government in mid-1983. The legislation has created a separate Taxation Appeals Division within the AAT, to which members of the AAT are assigned after consultation between the Treasurer and the Attorney-General. The existing Boards of Review have been abolished and those of their chairmen and members who held office immediately before 1 July 1986 became full-time senior members of the AAT by virtue of the legislation as if they had been appointed to it under the provisions of the AAT Act (see 'Personalialia' on p.152 for those who became AAT members in this manner). Appeals from, or references by, the AAT on questions of law are now direct to the Federal Court, and not by way of State Supreme Courts as was the case with the Taxation Boards of Review.

The AAT faces the task of dealing with a large backlog of requests for review which built up partly as a result of the tax avoidance boom of the 1970s and early 1980s. Transitional arrangements have been made to provide for matters already part heard to continue to be heard by an AAT constituted by one more of the former members of the Board of Review considering the matter. It is hoped that the AAT's more flexible procedures, in particular its procedures for holding preliminary conferences and directions hearings, will assist in speeding up the processing and determination of the backlog of cases. The AAT, unlike the Boards of Review, may be constituted by one member if the occasion requires, which should also contribute to more rapid processing of requests for review. The question whether extra resources can be made available to assist both the Australian Taxation Office and the AAT to reduce the backlog is still under consideration by the government.

Some modifications to the AAT's normal procedures have been made in relation to taxation matters. As was the case in relation to the reference of objections to the Boards of Review, requests to the Commissioner of Taxation for reference of objections to the AAT will be examined first by the Commissioner, which provides an opportunity for reconsideration of decisions. Contrary to the Council's views in its report, but consistently with the practice of the Boards of Review, all taxation review decisions are to be conducted in private unless the taxpayer requests a public hearing; the identity of the taxpayer will not be revealed in the published reasons for decision. Taxpayers will not be able to obtain statements of reasons from the Commissioner for decisions disallowing objections, but from 1 July 1988 the Commissioner will be required to provide the AAT with a statement of reasons at the time when a matter is referred to the AAT, and a copy of those reasons will be made available to the taxpayer.

Some other changes to existing practice are interesting. The AAT and the Supreme Courts have been given a discretion, in appropriate cases, to permit a taxpayer to widen the grounds for review beyond those stated in the objection. The Commissioner has been given power to extend the time within which an objection may be lodged, and a refusal to do so is reviewable by the AAT. In keeping with the previous provisions, the legislation prohibits the exercise of powers under the provisions of the AAT Act and of the Administrative Decisions (Judicial Review) Act which could have enabled the AAT or the Federal Court to prevent or restrain the recovery of tax pending review of an objection under the new provisions.

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R E G U L A R R E P O R T S

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Administrative Review Council

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CURRENT WORK PROGRAM

Access. A report on Stage One of the project, Notification of Decisions and Rights of Review, was considered at the June meeting of Council. Further consideration is currently being given to the report and it is expected that the Council will again consider the matter at its September meeting.

Stage Two of the Access project recently commenced and a research team comprising Mr Tom Brennan (consultant), Mr Bill Hughes (project officer) and Mr Paul Travis (an officer of the Department of Social Security), recently visited Townsville, Brisbane and Sydney in relation to the study. The areas of particular interest were the operation of