Tax Dispute Resolution Timelines - Australia

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# Key contacts

# National Procedures

## Last Updated

1 February 2023

## 1. When is the first appeal deadline following disagreement of the assessment made by the tax authorities?

Generally, four years after the notice of assessment was given to the taxpayer or, in the case of amended assessments, the later of 60 days after the date the amended assessment was given to the taxpayer and four years after the date the notice of original assessment was given to the taxpayer. The Commissioner of Taxation (**"Commissioner"**) can allow an objection to be lodged out of time.

## 2. What is the appealing procedure?

**Objection:** If a taxpayer is dissatisfied with an assessment, it may object to it by lodging an objection with the Australian Taxation Office (ATO) in writing. The Commissioner may allow or disallow the objection in whole or in part.

**Tribunal or judicial appeals:** If the taxpayer is dissatisfied with the Commissioner's objection decision, it may appeal to either the Administrative Appeals Tribunal (AAT) or the Federal Court of Australia (**"Federal Court"**) for a review of the decision. If the taxpayer commences proceedings in the AAT, it has the right to appeal, on a question of law, to the Federal Court. Once the decision of the Federal Court is delivered, the taxpayer has limited rights of appeal on matters of law to the Full Federal Court. In certain circumstances, it may be granted special leave to appeal to the High Court of Australia from the decision of the Full Federal Court.

## 3. What is the average time for reaching a final national decision?

1 - 3 years

The time associated with the tax litigation process will depend on the complexity of the matter.

If the taxpayer appeals through every level, the average proceedings generally take approximately six months to one year at the initial objection stage, between one and two years at the AAT stage, and between one and two years at each of the court stages (including the appeal to the Full Federal Court).

**Judicial proceedings:** If complex factual and legal issues are involved, a matter at the Federal Court can take up to two and a half years from the commencement of the litigation to be resolved, bearing in mind the time required to gather relevant documents and information, prepare any supporting affidavits, draft submissions, participate in mediation, conduct the hearing and obtain judgment. Then, even if a taxpayer is successful at first instance, the ATO may appeal to the Full Federal Court and then the High Court. If the taxpayer appeals through every level in the hierarchy of the courts, the judicial appeal process can take up to six years.

## 4. How do the national tax dispute resolution proceedings interact with the international tax dispute resolution proceedings?

**Start:** The time limit specified in the article dealing with mutual agreement procedure (MAP) in each of Australia's tax treaties varies. If the taxpayer is pursuing domestic remedies in either jurisdiction and is concerned about exceeding the time limits for presenting a MAP case, it may lodge a protective MAP request with the Australian competent authority.

**Conduct of the proceedings:** If the matter is subject to administrative or judicial review in an Australian court or tribunal, the Australian competent authority may choose to defer progressing the taxpayer's MAP request until a determination is made. The Australian competent authority will abide with any decision or order made by the AAT and the Federal Court. The Australian competent authority will seek to demonstrate to the other jurisdiction's competent authority that the adjustment, as considered in the decision or order, is consistent with the relevant tax treaty and that the other country should provide double taxation relief.

**Completion of the proceedings:** The taxpayer will need to withdraw its objection in writing if: (i) the competent authorities agree to restore the taxpayer to its original tax position; or (ii) the competent authorities resolve the MAP request by wholly or partly maintaining the adjustment and the taxpayer agrees with this outcome. If the taxpayer is dissatisfied with the competent authorities' agreement, it can continue to pursue its domestic remedies in Australia. In this circumstance, the ATO will finalize the taxpayer's MAP case without implementing the agreement that was reached by the competent authorities.

**Other actions:** Generally, if the competent authorities do not reach an agreement within two years (three years for certain tax treaties), the relevant tax treaty may contain a provision allowing a taxpayer to request arbitration of any unresolved issues.

## 5. Are administrative appeal procedures compulsory or optional prior to a judicial procedure?

Optional

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# Contributors

## Contact(s)

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