



COMMISSIONER'S PRACTICE TAA 18.0

REMISSION OF PENALTY TAX - LATE LODGMENT AND NON- LODGMET OF RETURNS, TRANSACTION RECORDS, INSTRUMENTS AND DUTIABLE STATEMENTS

Commissioner's Practice History

Commissioner's Practice	Issued	Dates of effect	
		From	To
TAA 18.0	1 July 2008	1 July 2008	3 May 2010

This Commissioner's practice outlines the circumstances in which penalty tax will be remitted in respect of an assessment issued as a consequence of the late or non-lodgment of returns, transaction records, instruments and dutiable statements, including any reassessment as a consequence of the late or non-lodgment of a transaction record evidencing an increase in consideration after duty has been endorsed.

This practice covers both voluntarily and involuntarily lodgments:

Tax type		Remission
Self-assessed (return based) taxes	Registered taxpayers	Para 4 - 8
	Unregistered taxpayers	Para 9 - 18
Transaction records, instruments and statements required to be lodged under the <i>Stamp Act 1921</i> or the <i>Duties Act 2008</i>	Liable party	Para 19 - 24

Background

The *Taxation Administration Act 2003* ("TAA") provides the administrative framework for a number of taxation Acts administered by the Commissioner, including the *Stamp Act 1921*, the *Pay-roll Tax Assessment Act 2002*, the *Land Tax Assessment Act 2002*, the *Debts Tax Assessment Act 2002*, and the *Duties Act 2008*. Matters covered by the TAA include the issue of assessment notices and the imposition of penalty tax.

Liability to tax is set out in each of the relevant taxation Acts. In some instances a tax liability is self assessed with the taxpayer required to lodge returns disclosing liability. In other instances, the relevant taxation Act provides that a liable party is required to lodge certain documentation on which the Commissioner is required to make an official assessment of liability.

Self Assessed (Return Based) Taxes

Section 14 of the TAA provides that a self assessment is an assessment made by the taxpayer in a return under a taxation Act or an assessment made by a responsible party in a return or otherwise in accordance with a special tax return arrangement.

The taxation Acts provide that certain taxes (including pay-roll tax, insurance duty, debits tax, hire of goods duty and tax under special tax return arrangements) are required to be disclosed in periodic returns lodged by the taxpayer. Returns are required to be lodged in accordance with the respective sections of the taxation Acts set out in appendix 1.

Official Assessment

Section 15 of the TAA provides that the Commissioner must make an official assessment of tax where a person is not required to make a self assessment or where a taxation Act specifically requires the Commissioner to do so.

The *Duties Act 2008* ("Duties Act") provides that a party liable to transfer duty is required to lodge a transaction record. Transaction records are required to be lodged in accordance with the respective sections of the Duties Act set out in appendix 2.

The *Stamp Act 1921* ("Stamp Act") provides that certain instruments and dutiable statements are required to be lodged with the Commissioner. Dutiable instruments are required to be lodged in accordance with the respective sections of the Stamp Act set out in appendix 3.

Original Assessment

An original assessment is defined in the Glossary to the TAA. In the case of self assessed (return based) tax, an original assessment is an assessment made by a taxpayer in respect of a return lodged. Where no self assessment has been made, an original assessment is the first official assessment of tax made by the Commissioner.

Reassessment

A reassessment is an assessment made subsequent to an original assessment, and excludes an original assessment.

Termination of Conditional Agreements/Contracts

Sections 19(2) and 23(2) of the Duties Act provide that there is no requirement to lodge a transaction record evidencing a general conditional agreement if the agreement is terminated on relevant grounds (defined in section 87(3) of the Duties Act) before it is required to be lodged.

Section 17BA(4) of the Stamp Act provides that there is no requirement to lodge a general conditional contract with the Commissioner if the contract is terminated on relevant grounds (defined in section 14 of the Stamp Act) before it is required to be lodged under section 17BA(1), (2) or (3).

Application of Other Practices

Commissioner's Practice TAA 17 provides information on how penalty tax will be remitted upon the late or non-lodgment of acquisition statements relating to landholder duty and dutiable statements relating to land rich companies and corporations, required to be lodged under the Duties Act and Stamp Act respectively.

Commissioner's Practice TAA 19 provides information on how penalties will be remitted where the Commissioner makes a reassessment of duty or tax under a taxation Act because a previous assessment was incorrect.

Matters relating to the time periods in which assessments and reassessments of tax or duty may be made are contained in Commissioner's Practice TAA 16.

Imposition of Penalty Tax

Section 26(1)(b) and (c) of the TAA creates a liability to pay penalty tax where a taxpayer does not lodge a transaction record, instrument, dutiable statement or return that is required to be lodged under a taxation Act, or where there is another contravention of a taxation Act that results in the taxpayer avoiding or delaying the submission of information required for the assessment of tax.

Section 26(2) of the TAA authorises the Commissioner to assess an amount of penalty tax where reasonable grounds exist for suspecting that a taxpayer is liable to penalty tax.

Section 26(3) of the TAA provides that the amount of penalty tax payable is equal to 100% of the primary tax liability.

Section 29 of the TAA provides the Commissioner with the power to remit penalty tax wholly or in part.

Section 30 of the TAA provides that the Commissioner is required to publish the policy that he will follow when deciding whether or not to remit penalty tax.

Commissioner's Practice

1. This Commissioner's practice provides guidelines concerning the remission of penalty tax. However, this practice is not intended to restrict the exercise of the Commissioner's discretion under the taxation Acts and the merits of each particular case will be considered by the Commissioner.

Circumstances Where No Remission is to Occur

2. Where an assessment of tax is made in circumstances that involved an attempt to evade tax or mislead the Commissioner, an investigator or other officer will report the matter to their divisional Director. If the Director is satisfied that such action has been attempted, no remission of the penalty tax will occur.

3. No remission of penalty tax will occur where:
 - 3.1. a memorandum has been created under section 20(2) of the TAA because there are reasonable grounds for suspecting that the relevant transaction record, instrument or statement was not lodged for assessment in an endeavour to evade duty or mislead the Commissioner; or
 - 3.2. in any other case, there are reasonable grounds for suspecting that a return, transaction record, instrument or statement has not been lodged within the required time in an endeavour to evade tax or duty or mislead the Commissioner.

Remission of Penalty Tax

Late or non-lodgment of returns by registered taxpayers

4. For the purpose of this practice “registered taxpayer” means a taxpayer liable to pay-roll tax, hire of goods duty or insurance duty who is registered in accordance with the relevant provisions of the relevant taxation Act, and a financial institution which has previously lodged a return.
5. Where an original assessment is raised in respect of pay-roll tax, hire of goods duty, insurance duty or tax under a special tax return arrangement as the result of the late lodgment or non-lodgment of a return by a registered taxpayer, penalty tax will be remitted as follows:

QUARTERLY / MONTHLY RETURNS	
Transgression	Penalty tax remitted to:
First occurrence in 12 months	5% of the tax payable
Second occurrence in 12 months	10% of the tax payable
Third or greater occurrence in 12 months	20% of the tax payable

ANNUAL RETURNS	
Each occurrence	10% of the tax payable

6. A single penalty is payable once in respect of each transgression under the TAA in respect of a late lodgment of a return and late payment of tax. For example, where penalty tax has been raised as a result of late lodgment, penalty tax will not also be raised in regard to the same transgression for late payment.

7. Each "occurrence" of a transgression is covered by this Commissioner's practice and Commissioner's Practice TAA 20. An "occurrence" will be determined by reviewing the previous 12 month period and ascertaining the number of transgressions that have occurred. The 12 month period is a "rolling period" which extends back and is viewed from the most recent occurrence.
8. Where exceptional or serious circumstances exist which would not warrant penalty tax remission to the extent specified in paragraph 5, an investigator or other officer shall report the circumstances and make a recommendation to their divisional Director, who may approve an alternative remission.

Late or Non-Lodgment of Returns by Unregistered Taxpayers

9. For the purposes of this practice an "unregistered taxpayer" means a person liable to pay-roll tax, hire of goods duty or insurance duty who is not registered in accordance with the relevant provisions of the taxation Act, and a financial institution which has not previously lodged a return.
10. Where an original assessment is issued for pay-roll tax, hire of goods duty, debits tax or insurance duty as a consequence of the late or non-lodgment of a return by an unregistered taxpayer, penalty tax will be remitted on the basis of a separate rate for each financial year that liability was not declared, with the penalty tax percentage increasing in severity according to the degree of lateness.
11. Where registration is effected due to voluntary disclosure by the taxpayer, penalty tax will be remitted in accordance with the "voluntary" category specified in paragraph 17.
12. Where registration is effected as a result of an investigation by the Commissioner, penalty tax will be remitted in accordance with the "involuntary" category specified in paragraph 17.
13. Where registration is effected as a result of an investigation and the Commissioner is of the opinion that the taxpayer deliberately failed to register, penalty tax will not be remitted and will be raised in accordance with the "evasion" category specified in paragraph 17.
14. Where a taxpayer volunteers his or her failure to declare a liability for taxation, but the Commissioner is of the opinion that the taxpayer has previously deliberately concealed that liability, the amount of penalty tax will be calculated under the "evasion" category specified in paragraph 17.
15. Where the Commissioner is of the opinion that a taxpayer has declared a liability because it was apparent that an investigation was imminent, the amount of penalty tax will be remitted under the "involuntary" category specified in paragraph 17, unless paragraph 14 applies, in which case the "evasion" category applies.

16. In the case of pay-roll tax, except where the Commissioner is of the opinion that a taxpayer deliberately failed to register, penalty tax will be remitted under the "voluntary" category specified in paragraph 17 where an individual employer's wages are below the relevant threshold and the employer is required to register for grouping reasons only.
17. Where penalty tax is to be remitted, the amount of penalty tax will be calculated as a percentage of the primary tax increasing in severity in accordance with the relevant year of assessment:

FINANCIAL YEAR OF ASSESSMENT	VOLUNTARY ² %	INVOLUNTARY ² %	EVASION %
Contact Year ¹	Nil	5	100
Preceding Year 1	5	10	100
Preceding Year 2	10	20	100
Preceding Year 3	15	30	100
Preceding Year 4	20	40	100
Preceding Year 5	25	50	100
Preceding Year 6	*	*	100
Preceding Year 7	*	*	100
Preceding Year 8	*	*	100
Preceding Year 9	*	*	100

1. For the purposes of this Commissioner's practice, "Contact Year" is the financial year during which information is disclosed, that is, the date when:

- the information required to make the assessment is received by the Commissioner (outside of an audit/enquiry conducted by the Commissioner); or
- the Commissioner commences an audit/enquiry.

Commencement of an audit/enquiry is deemed to be the date an officer first contacts the taxpayer or their representative. However, if evidence is available to establish that the taxpayer has delayed producing information to an investigator for the purposes of delaying any resulting assessment, the investigator or other officer shall report the circumstances and make a recommendation in accordance with paragraph 18 that the "contact year" will be the financial year in which all the information necessary to make the determination is made available.

2. Except where there are grounds for suspecting that an evasion of tax has occurred, an original assessment will generally be made for the period covering the contact year plus the five previous financial years, and any financial years following the contact year, in accordance with Commissioner's Practice TAA 16.

18. Where exceptional or serious circumstances exist which would not warrant penalty tax remission to the extent specified in paragraph 17, an investigator or other officer shall report the circumstances and make a recommendation to their divisional Director, who may approve an alternative remission.

Late lodgment of transaction records, instruments and dutiable statements

19. If a transaction record, instrument or dutiable statement required to be lodged under the Duties Act or the Stamp Act is lodged voluntarily, penalty tax will be remitted in accordance with the "voluntary" category specified in paragraph 23.
20. Where it is apparent that a taxpayer has lodged a transaction record, instrument or dutiable statement because an investigation was imminent, the penalty tax rate will be remitted in accordance with the "involuntary" category specified in paragraph 23, unless paragraph 24 applies, in which case penalty tax will not be remitted, and the penalty tax will be raised in accordance with the "evasion" category specified in paragraph 23.

Impounded transaction records, instruments and dutiable statements

21. If a transaction record, instrument or dutiable statement required to be lodged under the Duties Act or the Stamp Act is impounded by an investigator or other officer as a consequence of an investigation or enquiry undertaken by the Commissioner, penalty tax will be remitted in accordance with the "involuntary" category specified in paragraph 23, unless paragraph 24 applies, in which case no penalty tax will be remitted, and the penalty tax will be raised in accordance with the "evasion" category specified in paragraph 23.

Remission of penalty rates

22. Penalty tax will be calculated as a percentage of:
 - 22.1 the primary tax payable in the case of an original assessment; or
 - 22.2 the increase in primary tax payable in the case of a reassessment raised as a consequence of the late lodgment of a transaction record evidencing an increase in consideration after duty has been endorsed.

23. Where penalty tax is to be remitted, it will be remitted at a rate increasing in severity according to the degree of lateness by which the transaction record, instrument or dutiable statement is lodged or impounded:

LODGED	VOLUNTARY %	INVOLUNTARY %	EVASION %
Within 7 days of the required lodgment date	Nil	Nil	100%
Within one calendar month of the required lodgment date	1.25%	2.5%	100%
Within 4 months of the required lodgment date	2.5%	5%	100%
Within 7 months of the required lodgment date	5%	10%	100%
Within 10 months of the required lodgment date	7.5%	15%	100%
After 10 months of the required lodgment date	10%	20%	100%

24. Where an investigator or other officer has impounded a transaction record, instrument or dutiable statement and has evidence, or has reason to believe, that the failure to lodge the instrument for assessment was a deliberate attempt to evade duty or mislead the Commissioner, or where false or misleading information has been provided, he or she shall report the circumstances and make a recommendation for determination to their relevant divisional Director. If the Director is satisfied that such action has been attempted, no remission of penalty tax will occur.

Further remission of penalty tax

25. As a general rule, further remission of penalty tax will not be allowed on the basis of a liable party's claim to have been ignorant of a liability to taxation or that full cooperation was provided in establishing liability, as these factors are already taken into account in the remission under paragraphs 5, 17 and 23.
26. Where a return, transaction record, instrument or dutiable statement was inadvertently lodged with another authority (e.g. Australian Taxation Office, Landgate or another State or Territory revenue office), the penalty tax will be further remitted to the amount (if any) which would have applied had it been received at the Office of State Revenue on the date on which it was received by the other authority.
27. Further remission of penalty tax to a rate less than that specified in paragraphs 5, 17 and 23 will be considered only in exceptional circumstances, which may include, but are not limited to where:

- 27.1 the late or non-lodgment of a return occurred as a result of advice issued by the Office of State Revenue;
 - 27.2 the default was associated with illegal activity of the lodging party or any other person acting on behalf of the liable party where the liable party was not involved in the activity;
 - 27.3 the late or non-lodgment of a return was occasioned by the death or serious illness of the liable party or responsible party;
 - 27.4 an investigator or other officer reports that there are other exceptional reasons which may warrant a further remission of the penalty tax;
 - 27.5 a taxpayer or the taxpayer's representative has made written representations providing details of other exceptional circumstances.
28. The remission of penalty tax in circumstances outlined in paragraphs 27.1 to 27.3 is generally to be remitted in full, unless reasons for a partial remission are submitted to the relevant Branch Manager, who agrees that penalty tax will only be partially remitted.
 29. In the case of paragraphs 27.4 to 27.5, the relevant Branch Manager may remit the penalty tax in part to an amount equal to interest at 10% per annum or, if the circumstances are such that a full remission is warranted, remit the penalty tax in full.
 30. Where other circumstances are given in support of requests for the further remission of penalty tax that do not fall within paragraph 27, the request must be referred to the relevant Branch Manager with a recommendation for determination.
 31. All determinations of requests for further remission of penalty tax must be supported by a file note giving reasons for the allowance or refusal.
 32. The penalty tax payable will be included in the taxpayer's assessment advice or notice of assessment and must be paid on or before the due date for payment.
 33. If full payment of the tax and penalty tax is not received, or an instalment arrangement or extension of time has not been granted under section 47 of the TAA within 7 days after the specified due date in the assessment advice, legal action to recover the outstanding amounts will be commenced.

Other matters

34. The remission of penalty tax to nil may not remove the occurrence of the transgression for the purposes of determining whether a transgression has occurred in the previous twelve month period.
35. Penalty tax will not be reduced below \$10 except where the penalty tax is fully remitted.

Date of Effect

This Commissioner's practice takes effect from 1 July 2008.

Bill Sullivan
COMMISSIONER OF STATE REVENUE

1 July 2008

Appendix 1

SELF ASSESSED (RETURN BASED) TAX - LODGMENT REQUIREMENTS

TAXATION ACT	RETURN	LODGMET REQUIREMENT	LODGMET TIME PERIOD	
<i>Pay-roll Tax Assessment Act 2002</i>	Pay-roll tax - monthly returns	Section 26	7 days after end of the month	
	Pay-roll tax - quarterly returns	Section 29(4c)(a)	7 days after end of the quarter	
	Pay-roll tax - annual return	Section 29	21 days after end of assessment year	
	Pay-roll tax - interstate wages return	Section 27	2 months after the end of the assessment year	
	Pay-roll tax - further return	Section 28	In accordance with the time specified in notice	
<i>Debits Tax Assessment Act 2002</i>	Debits tax - monthly return	Section 9	14 days after the end of the month	1
<i>Stamp Act 1921</i>	Hire of goods - monthly return	Section 112L(1)(a) and (3)(a)	21 days after the end of the month	2
	Insurance - monthly return	Section 94(1) and (3)	21 days after the end of the month	
<i>Duties Act 2008</i>	Insurance - monthly return	Section 220	21 days after the end of the month	
<i>Taxation Administration Act 2003</i>	Special tax return arrangement	Section 52	15 days after the end of the return period	

¹ Debits tax was abolished from 1 July 2005, however, obligations still exist in relation to pre-1 July 2005 matters.

² Hire of goods duty was abolished from 1 January 2007, however, obligations still exist in relation to pre 1 January 2007 matters.

Appendix 2

DUTIABLE TRANSACTIONS - LODGMENT REQUIREMENTS

TAXATION ACT	DUTIABLE RECORD	LODGMET REQUIREMENT	LODGMET TIME PERIOD	
<i>Duties Act 2008</i>	Instrument, copy of instrument or transfer duty statement evidencing a dutiable transaction (unless alternative lodgment period specified)	Section 23(1)(c)	2 months after the day on which liability for the duty on the transaction arises	
	Instrument or copy of instrument evidencing a general conditional agreement:			1
	<ul style="list-style-type: none"> • that becomes unconditional within 1 month after the date that liability to duty 	Section 23(3)(a)(i)	2 months after the day on which liability for duty on the agreement arose	
	<ul style="list-style-type: none"> • that becomes unconditional between 1 and 10 months after the date on which liability for duty under the agreement arose 	Section 23(3)(b)(ii)	2 months after the day on which the agreement became unconditional	
	<ul style="list-style-type: none"> • that becomes unconditional more than 10 months after the date on which liability for duty under the agreement arose 	Section 23(3)(b)(i)	12 months after the day on which liability on the agreement arose	
	<ul style="list-style-type: none"> • that does not become unconditional and is not terminated within 12 months after the date on which duty on the agreement arose 			
	<ul style="list-style-type: none"> • where the vendor under the agreement is related to the purchaser 	Section 23(3)(a)(ii)	2 months after the day on which liability for duty on the agreement arose	
Notification of an on-sale of: <ul style="list-style-type: none"> • Off-the-plan conditional agreement • Subdivision conditional agreement 	Section 25(3)	2 months of entering into the transaction Person liable under the original agreement required to make the notification		

¹ "General conditional agreement" is defined in section 9 of the Duties Act to mean a conditional agreement other than: (a) a farming land conditional agreement; (b) a mining tenement conditional agreement; (c) an off-the-plan conditional agreement; (d) a subdivision conditional agreement.

Appendix 2

DUTIABLE TRANSACTIONS - LODGMENT REQUIREMENTS

TAXATION ACT	DUTIABLE RECORD	LODGMET REQUIREMENT	LODGMET TIME PERIOD	
	Transaction record evidencing an increase in consideration (after duty has been endorsed)	Section 31(5)	2 months after the day on which consideration under the transaction is increased	
	Transfer duty statement, in respect to farming property that was subject to a prior exemption granted to a trustee of a discretionary trust (as transferee), evidencing either of the following events: <ul style="list-style-type: none"> • A person who is not a family member becoming entitled to trust property or otherwise benefiting from the trust • The transferor gaining control of the trust 	Section 105(2)	2 months after the event takes place	
	Transfer duty statement, in respect to property which is held by the trustee of a superannuation fund and has been transferred for nominal duty, evidencing any of the following events: <ul style="list-style-type: none"> • A person or persons other than the transferor are able to become members of the fund • The property is not held by the fund specifically for the transferor (i.e. a person other than the transferor obtains an interest in the property) • The property is no longer held by the fund to provide a retirement benefit to the transferor 	Section 123(2)	2 months after the event takes place	

Appendix 3

INSTRUMENT AND DUTIABLE STATEMENT - LODGMENT REQUIREMENTS

TAXATION ACT	DUTIABLE RECORD	LODGMET REQUIREMENT	LODGMET TIME PERIOD		
<i>Stamp Act 1921</i>	Instrument or dutiable statement, excluding a mortgage (unless alternative lodgment period specified)	Section 17B(1)	2 months after the date of first execution of the instrument		
		Section 31B(1), 31C(1), 63AE (1), 63AJ(1), 73DAA(1), 73DE(1), 77A(1)	2 months after the occurrence of the transaction or event subject to the dutiable statement		
		Section 75HA(3)	1 month after the date of the taxable event		
	Mortgage	Section 17B(1a)	2 months after the time a liability arises under section 87 of the Stamp Act		
	General Conditional Contract: <ul style="list-style-type: none"> • which becomes unconditional within one month of execution • which becomes unconditional between 1 and 11 months of execution • which becomes unconditional after 11 months of execution • which does not become unconditional and is not terminated within 12 months of execution • where the vendor and the purchaser are related 				1
		Section 17BA(1)	2 months after the date of first execution of the instrument		
		Section 17BA(2)(a)	1 month after the date of becoming unconditional		
		Section 17BA(2)(b)	12 months after the date of first execution of the instrument		
		Section 17BA(3)	2 months after the date of first execution of the instrument		

¹ Lodgment timeframes specified in respect of conditional contracts only apply to instruments executed on or after 1 July 2004.

Appendix 3

INSTRUMENT AND DUTIABLE STATEMENT - LODGMENT REQUIREMENTS

TAXATION ACT	DUTIABLE RECORD	LODGMET REQUIREMENT	LODGMET TIME PERIOD	
	Farming land conditional contract	Section 17BA(5)(a)	2 months after the date of first execution of the instrument	
	Mining tenement conditional contract	Section 17B(5)(b)		
	Off-the plan conditional contract	Section 17BA(5)(c)		
	Subdivision conditional contract	Section 17BA(5)(d)		