



COMMISSIONER'S PRACTICE TAA 19.1

REMISSION OF PENALTY TAX – REASSESSMENTS

Commissioner's Practice History

Commissioner's Practice	Issued	Dates of effect	
		From	To
TAA 19.0	1 July 2008	1 July 2008	17 September 2012
TAA 19.1	18 September 2012	18 September 2012	31 December 2018

This Commissioner's Practice outlines how penalty tax raised under section 26 of the *Taxation Administration Act 2003* ("TAA") will be remitted in circumstances where the Commissioner makes a reassessment of duty or tax because a previous assessment was incorrect.

Application of Previous Practices

Where penalty tax has been previously raised by the Commissioner in circumstances where a previous assessment was incorrect prior to 1 July 2008, penalty tax will be remitted in accordance with the relevant version of the relevant practice that was in place at that time (i.e. TAA 6 and TAA 2).

Background

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

Liability to tax is set out in each of the relevant taxation Acts. In some instances tax liability is self assessed with the taxpayer remitting returns disclosing liability. In other instances the relevant taxation Act provides that the Commissioner is required to make an official assessment of liability.

Section 16 of the TAA provides the power for the Commissioner to make a reassessment of a tax liability.

A reassessment represents an assessment made subsequent to an original assessment. A reassessment may be made on the Commissioner's initiative, on application by the taxpayer, or the Commissioner may be specifically required to undertake a reassessment under a taxation Act or pursuant to directions given in review proceedings before the State Administrative Tribunal or Court of Appeal.

Section 16(2)(a) of the TAA provides that the Commissioner may make a reassessment if it appears that a previous assessment is or may be incorrect for any reason.

Section 16(4) of the TAA allows for a reassessment to consolidate two or more separate assessments into a single assessment. This section is relevant to the reassessment of return based taxes, which often involve the reassessment of tax over more than one return period, particularly where the reassessment is the result of an audit.

Section 17(2)(b) of the TAA allows a reassessment to be made at any time where there are reasonable grounds for suspecting that there has been an evasion of tax, or that a previous assessment was made on the basis of false or misleading information.

Application of Other Practices

Section 16(5) of the TAA provides that where an assessment has been made based upon a particular practice of the Commissioner that was generally applied to assessments of that kind when the assessment was made, the Commissioner is prevented from making a reassessment on the basis that the practice was erroneous. Accordingly, where a return or transaction record was assessed prior to the commencement of this practice, the relevant provisions contained in the relevant version of the practice at the time of assessment will remain in place.

Matters relating to time periods for assessments and reassessments are dealt with in Commissioner's Practice TAA 16.

Commissioner's Practice TAA 18 provides information on how penalty tax will be remitted as a result of late or non-lodgment of returns, transaction records, instruments and dutiable statements required to be lodged under the taxation Acts. Commissioner's Practice TAA 18 also deals with remission of penalty tax raised in respect of a reassessment resulting from the late or non-lodgment of a transaction record evidencing an increase in consideration after duty has been endorsed.

Imposition of Penalty Tax

Section 26(1) of the TAA creates a liability to pay penalty tax in various circumstances where taxation obligations are not met, including where:

- there is a material mis-statement or omission in an instrument submitted to the Commissioner by or for the taxpayer under a taxation Act;

- the taxpayer fails to provide information required under a taxation Act or intentionally or unintentionally provides information that is incorrect, incomplete or misleading; and/or
- where the taxpayer makes an under-estimation to avoid, delay or reduce the payment of tax.

Section 26(2) and (3) of the TAA authorises the Commissioner to assess an amount of penalty tax equal to 100 per cent of the primary tax where reasonable grounds exist for suspecting that a taxpayer is liable to penalty tax.

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 will be followed when deciding whether or not to remit penalty tax.

Commissioner's Practice

1. This Commissioner's Practice provides general 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, with each matter, the merits of each particular case will be considered by the Commissioner.

Remission of Penalty Tax – Return Based Taxes

2. Where a reassessment is raised for pay-roll tax, insurance duty, hire of goods duty, or tax under a special tax return arrangement on the Commissioner's initiative because the previous assessment was incorrect, penalty tax will be remitted on the basis of a separate rate for each financial year for which tax was not assessed or was under-assessed, with the penalty tax percentage increasing in severity according to the time period of avoidance.
3. Where a taxpayer has inadvertently failed to declare correct amounts by return and has voluntarily disclosed the position in writing to the Office of State Revenue, penalty tax will be remitted in accordance with the "voluntary" category specified in the table at Appendix 1.
4. Where an investigation or audit by the Commissioner identifies that a taxpayer has inadvertently failed to declare correct amounts, penalty tax will be remitted in accordance with the "involuntary" category specified in the table at Appendix 1.
5. Where the Commissioner is of the opinion that a taxpayer has deliberately failed to declare correct amounts, no penalty tax will be remitted and penalty tax will be imposed in accordance with the "evasion" category specified in the table at Appendix 1.

6. 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 the table at Appendix 1.
7. Where the Commissioner is of the opinion that a taxpayer has declared a liability because an investigation has commenced, where commencement occurs on the first date an officer contacts the taxpayer or their representative about the proposed investigation, the amount of penalty tax will be remitted under the “involuntary” category specified in the table at Appendix 1, unless paragraph six applies, in which case the “evasion” category applies.
8. Where penalty tax is to be remitted, the amount of penalty tax payable will be calculated as a percentage of the increase in primary tax payable, in accordance with the relevant year of assessment in the table at Appendix 1.
9. Where circumstances exist which are considered exceptional or serious which would not warrant penalty remission to the extent specified in the table at Appendix 1, an investigator or other officer shall report the circumstances and make a recommendation for determination to their divisional Director, who may approve an alternative remission.

Remission of Penalty Tax – Reassessment of Transaction Records

10. Where a taxpayer voluntarily discloses an underpayment of a duty in respect of a transaction record, instrument or dutiable statement under the *Duties Act 2008* or *Stamp Act 1921* in writing to the Office of State Revenue, penalty tax will be remitted in accordance with the “voluntary” category specified in paragraph 15.
11. Where the Commissioner identifies that a taxpayer has inadvertently failed to pay the correct amount of duty in respect of a transaction record, instrument or dutiable statement under the *Duties Act 2008* or *Stamp Act 1921*, the penalty tax will be remitted in accordance with the “involuntary” category specified in paragraph 15.
12. Where the Commissioner is of the opinion that a taxpayer has deliberately failed to pay the correct amount of duty in respect of a transaction record, instrument or dutiable statement under the *Duties Act 2008* or *Stamp Act 1921*, penalty tax will not be remitted, and penalty tax will be raised in accordance with the “evasion” category specified in paragraph 15.
13. Where the taxpayer volunteers his or her failure to pay the correct amount of duty in respect of a transaction record, instrument or dutiable statement under the *Duties Act 2008* or *Stamp Act 1921* and 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 15.

14. Where the Commissioner is of the opinion that a taxpayer has declared a liability to pay the correct amount of duty in respect of a transaction record, instrument or dutiable statement under the *Duties Act 2008* or *Stamp Act 1921* because it was apparent that an investigation was imminent, the amount of the penalty tax will be calculated under the “involuntary” category specified in paragraph 15.
15. Where penalty tax is to be remitted, the amount of penalty tax payable will be calculated as a percentage of the increase in primary tax payable.

	VOLUNTARY PER CENT	INVOLUNTARY PER CENT	EVASION PER CENT
RATE	5	30	100

Remission of Penalty Tax – Reassessment of Land Tax and Metropolitan Region Improvement Tax

16. Where a reassessment is made due to subsequent disclosure by the taxpayer of a contravention of an information requirement under the *Land Tax Assessment Act 2002* (“LTAA”) or on the Commissioner’s initiative because the previous assessment was incorrect, otherwise than in circumstances where the “evasion” category specified in paragraph 22 applies, penalty tax will be remitted on the basis of a separate rate for each financial year for which tax was not assessed or was under-assessed, with the penalty tax percentage:
 - 16.1 increasing in severity according to the time period of avoidance; and
 - 16.2 capped at 25 per cent in the case of the “voluntary” category specified in paragraph 22 and at 50 per cent in the case of the “involuntary” category specified in paragraph 22.
17. Where a taxpayer who has contravened a requirement to provide information to the Commissioner under sections 9A(1) or (2), 23A(3), 23(3), 24A(4), 25A(4), 26(2), 26A(7), 27(3), 27A(4), 28(5) or 39A(9) of the LTAA voluntarily discloses a liability for land tax in connection with that contravention, penalty tax will be remitted in accordance with the “voluntary” category specified in paragraph 22.
18. Where the Commissioner is of the opinion that a taxpayer has disclosed a liability for land tax in the circumstances described in paragraph 17 because it was apparent that an investigation was imminent, penalty tax will be remitted in accordance with the “involuntary” category specified in paragraph 22.
19. Where a taxpayer contravenes a requirement to provide information to the Commissioner under sections 9A(1) or (2), 23A(3), 23(3), 24A(4), 25A(4), 26(2), 26A(7), 27(3), 27A(4), 28(5) or 39A(9) of the LTAA, penalty tax will be remitted in accordance with the “involuntary” category specified in paragraph 22.

20. Where the Commissioner identifies that a taxpayer has unintentionally provided incorrect, incomplete or misleading information, or that a previous assessment was made on the basis of incorrect, incomplete or misleading information that was unintentionally provided by the taxpayer, penalty tax will be remitted in accordance with the “involuntary” category specified in paragraph 22.
21. Where the Commissioner has reasonable grounds for suspecting that a taxpayer has intentionally provided incorrect, incomplete or misleading information, or that a previous assessment was made on the basis of incorrect, incomplete or misleading information that was intentionally provided by the taxpayer, no penalty tax will be remitted and penalty tax will be raised in accordance with the “evasion” category specified in paragraph 22.
22. Subject to paragraph 23, where penalty tax is to be remitted, the amount of penalty tax payable will be calculated as a percentage of the increase in primary tax payable, in accordance with the relevant year of assessment.

FINANCIAL YEAR OF ASSESSMENT	VOLUNTARY PER CENT	INVOLUNTARY PER CENT	EVASION PER CENT
Current 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	25	50	100
Preceding Year 7	25	50	100
Preceding Year 8	25	50	100
Preceding Year 9	25	50	100

23. Where penalty tax is imposed on a reassessment involving an amalgamation of a taxpayer’s landholdings which were previously incorrectly assessed on multiple accounts for the taxpayer, the penalty tax payable will be calculated on the increase in primary tax payable taking into account the amount of the taxpayer’s primary liability already assessed on each of the relevant accounts for the respective assessment year.
24. Where penalty tax is imposed on a reassessment made to withdraw an exemption previously allowed under sections 24A, 25A or 27A of the LTAA, due to the criteria for the exemption not being met (other than where paragraph 21 applies), the penalty tax payable will be calculated at the rate specified at paragraph 22 for the current year of assessment, regardless of the assessment year for which the reassessment is made.

¹ For the purposes of this Commissioner’s practice, “Current Year” is the financial year during which the reassessment is made.

Remission of Penalty Tax – Reassessment of Transaction Records Where the First Home Owner Grant is to be Repaid

25. In some circumstances, the purchase of a property for which the first home owner grant (“FHOG”) was paid may have been assessed at the first home owner concessional rate of transfer duty under the *Duties Act 2008*. If the FHOG is required to be repaid, the Commissioner will also reassess the transaction to remove the benefit of the first home owner concessional rate and apply penalty tax under the TAA.
26. The imposition of a penalty under the *First Home Owner Grant Act 2000* in accordance with Commissioner’s Practice FHOG 3 – Imposition of Penalties, and remission of penalty tax under the TAA under this practice are to occur so that the penalty amounts are payable at a consistent percentage.
27. Where penalty tax is to be remitted, the amount of penalty tax payable will be calculated as a percentage of the increase in primary tax payable.

	INNOCENT PER CENT	NEGLIGENT PER CENT	RECKLESS PER CENT	FRAUDULENT PER CENT (may also include prosecution)
RATE	Nil	20	50	100

Further Remission of Penalty Tax

28. 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 granted under paragraphs 8, 15, 22 or 27.
29. Further remission of penalty tax to a rate less than that specified in paragraphs 8, 15, 22 or 27 will be considered only in exceptional circumstances, which may include, but are not limited to where:
 - 29.1 an investigator or other officer reports that a further remission of penalty tax is warranted and the relevant Assistant Director approves further remission of the penalty tax in part or in full; and/or
 - 29.2 a taxpayer or taxpayer’s representative makes written representations outlining exceptional circumstances and the relevant Assistant Director approves further remission of the penalty tax in part or in full.

Full Remission of Penalty Tax

30. Penalty tax will be remitted in full where:

- 30.1 the Commissioner determines that a tax liability exists in Western Australia and the Commissioner is satisfied that the tax has been fully paid in another jurisdiction in error; and
- 30.2 a liability in relation to vehicle licence duty arises as a result of an error made by the Department of Transport.

Other Matters

- 31. Penalty tax will not be reduced below \$10.00, except where the penalty tax is fully remitted.
- 32. All determinations relating to requests for further remission of penalty tax must be supported by a file note giving reasons for the allowance or refusal.

Date of Effect

This Commissioner's Practice takes effect from 18 September 2012.

Bill Sullivan
COMMISSIONER OF STATE REVENUE

18 September 2012

SUPERSEDED

Appendix 1
Remission of Penalty Tax – Return Based Taxes

FINANCIAL YEAR OF ASSESSMENT	VOLUNTARY ² PER CENT	INVOLUNTARY ² PER CENT	EVASION PER CENT
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 the information required to make the reassessment is received by the Commissioner (outside of an audit/enquiry undertaken by the Commissioner); or
- the date 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 investigating officer or other officer shall report the circumstances and make a recommendation in accordance with paragraph 9 that the “contact year” will be the financial year in which all the information necessary to make the determination is made available.

2. In the absence of any grounds to suspect there has been an evasion of tax, the Commissioner may make a reassessment of:

- pay-roll tax payable for the period covering the financial year in which the assessment is made and the five previous financial years, in accordance with section 17(3) of the TAA. For example, if an audit commenced in the 2008/09 financial year for which an assessment is subsequently issued in the 2009/10 financial year, reassessments may be made in respect of the 2009/10 financial year plus the five preceding financial years (i.e. 2004/05 – 2008/09). In the absence of reasonable grounds to suspect that the taxpayer has delayed producing information for the purpose of delaying the assessment, for the purpose of this practice “contact year” will be the 2008/09 financial year for the purpose of imposing penalties.
- tax payable (other than pay-roll tax) within five years after the date of the original assessment, in accordance with section 17(4) of the TAA.