



## COMMISSIONER'S PRACTICE TAA 20.1

### REMISSION OF PENALTY TAX – FOR LATE PAYMENT

#### Commissioner's Practice History

Commissioner's Practice	Issued	Dates of effect	
		From	To
TAA 20.0	1 July 2008	1 July 2008	28 February 2011
TAA 20.1	18 March 2011	1 March 2011	13 December 2012

This Commissioner's practice outlines how penalty tax imposed as a result of the late payment of duty or tax will be notified and the circumstances in which it will be remitted.

#### 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*, 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 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.

#### Self Assessed (Return Based) Tax

The taxation Acts provide that certain taxes (including pay-roll tax, insurance duty, and hire of goods duty) are required to be lodged periodically by return. 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.

### Official Assessment

Section 15 of the TAA provides that the Commissioner must make an official assessment of tax payable by a person where a person is not required to make a self assessment or where a taxation Act specifically requires the Commissioner to do so. An official assessment may be made on either the Commissioner's or taxpayer's initiative, irrespective of whether the taxpayer is required to make a self assessment.

### Reassessment

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 (e.g. section 16(1) of the *Pay-roll Tax Assessment Act 2002*) or pursuant to directions given in review proceedings before the State Administrative Tribunal or Court of Appeal.

Matters relating to time periods for which assessments and reassessments of tax may be made are dealt with in Commissioner's Practice TAA 16.

### Issue of Assessment Notice

Section 23(1) of the TAA generally requires that the Commissioner issue an assessment notice when he makes an assessment by way of self assessment, official assessment or reassessment.

### Payment Periods

Section 45 of the TAA provides that the due date for payment of tax is established in accordance with the relevant taxation Act. Where the taxation Act does not make provision for the date of payment, the tax is due for payment on the date specified in the assessment notice.

Tax is required to be paid on original (return based) self assessments and original official assessments in accordance with the sections of the taxation Acts respectively set out in appendices 1 and 2.

The due date for payment of a reassessment is the later of:

- the date established in accordance with the relevant taxation Act; or
- 28 days after the date that the assessment notice was issued.

### Imposition of Penalty Tax

Section 27 of the TAA provides that if the tax or duty assessed is not paid by the due date, the taxpayer is liable to pay penalty tax for late payment equal to 20% of the amount outstanding on the due date.

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

### Remission of Penalty Tax – Return Based Taxes (Original and Reassessments)

1. Where a self assessed (return based) tax is not paid by the due date:
  - 1.1 A penalty tax assessment notice (“assessment advice”) is to be issued if self assessed (return based) tax is not paid within 7 days after the due date. The 7 days is allowed for the Office of State Revenue to process payments received by the due date.
  - 1.2 A single penalty is payable once in respect of each transgression under the TAA in respect of 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 respect of the same transgression as a result of late payment.
  - 1.3 Each “occurrence” of a transgression is covered by this Commissioner’s practice and Commissioner’s Practice TAA 18. 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.
  - 1.4 The following penalty tax remission rates are to apply where payments are not received within 7 days after the due date.

<b>QUARTERLY / MONTHLY RETURNS</b>	
<b>Transgression</b>	<b>Penalty tax remitted to:</b>
First occurrence in 12 months	2.5% of the outstanding amount
Second occurrence in 12 months	5% of the outstanding amount
Third or greater occurrence in 12 months	10% of the outstanding amount

  

<b>ANNUAL RETURNS</b>	
Each occurrence	5% of the outstanding amount

### Remission of Penalty Tax – Non Return Based Tax (Original and Reassessments)

2. Where duty payable in respect of a transaction record, instrument or dutiable statement under the *Duties Act 2008* or the *Stamp Act 1921* or tax payable under the *Land Tax Assessment Act 2002* is not paid by the due date:
  - 2.1 A penalty tax assessment notice will be issued if the duty or tax assessed is not paid within seven days after the due date. The seven days is allowed for the Office of State Revenue to process payments received by the due date.

- 2.2 The penalty tax of 20% of the outstanding amount imposed by section 27 of the TAA will be remitted to 5%.

Further Remission of Penalty Tax

3. Further remission of the late payment penalty tax to nil will only be considered in exceptional circumstances, which may include, but are not limited to where:
  - 3.1 payment of tax is received on the same day as the penalty tax assessment notice was issued, and a check of the taxpayer's history shows a good payment record;
  - 3.2 genuine financial difficulties caused payment to be delayed by up to seven days after the date specified in the assessment advice and a check of the taxpayer's history shows a good payment record;
  - 3.3 payment is made within seven days after the date specified in the assessment advice and the taxpayer was overseas, away on holiday, sick, hospitalized, etc. and a check of the taxpayer's history shows a good payment record;
  - 3.4 late payment of tax was caused by postal system delays (e.g. Christmas/Easter), payment is made within seven days after the date specified in the assessment advice and a check of the taxpayer's history shows a good payment record;
  - 3.5 the taxpayer is deceased and assets of the estate are frozen due to probate;
  - 3.6 payment was inadvertently directed to the wrong Authority (e.g. Australian Taxation Office, Landgate or another State or Territory revenue office) and such payment was made within the required time;
  - 3.7 the lodging party has misappropriated client funds held on trust for the payment of an assessment.
4. Where other circumstances are given in support of a request for further remission of penalty tax that do not fall within paragraph 3, the request must be referred to the relevant Branch Manager with a recommendation for determination.
5. All determinations in respect of requests for further remission of late payment penalties should be supported by a file note giving the reasons for the allowance or refusal.
6. 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.

Other Matters

7. Penalty tax is payable by the date specified in the assessment notice in accordance with section 45(2) of the TAA.
8. 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 seven days after the date specified in the assessment advice, legal action to recover the outstanding amounts will be commenced.

**Date of Effect**

This Commissioner's practice takes effect from 1 March 2011.

Bill Sullivan  
COMMISSIONER OF STATE REVENUE

18 March 2011

## Appendix 1

### ORIGINAL RETURN BASED ASSESSMENTS - PAYMENT REQUIREMENTS

TAXATION ACT	RETURN	PAYMENT REQUIREMENT	PAYMENT TIME PERIOD	
<i>Pay-roll Tax Assessment Act 2002</i>	Pay-roll tax – monthly return	Section 6	7 days after end of the month	
	Pay-roll tax – quarterly return		7 days after the end of the quarter	
	Pay-roll tax - annual return		21 days after end of the assessment year	
<i>Stamp Act 1921</i>	Hire of goods – monthly return	Section 112L(1)(b) and (3)(b)	21 days after end of the month	1
	Insurance duty – monthly return	Section 94(1) and (3)	21 days after end of the month	
<i>Duties Act 2008</i>	Insurance duty – monthly return	Section 221	21 days after end of the month	
<i>Taxation Administration Act 2003</i>	Special tax return arrangement	Section 50(1)(a) and 52(4)	15 days after end of the return period	

<sup>1</sup> Hire of goods duty was abolished from 1 January 2007; however, obligations still exist in relation to pre 1 January 2007 matters.

Appendix 2

ORIGINAL OFFICIAL ASSESSMENTS - PAYMENT REQUIREMENTS

TAXATION ACT	DUTIABLE TRANSACTION	PAYMENT REQUIREMENT	PAYMENT TIME PERIOD	
<i>Land Tax Assessment Act 2002</i>	Assessment	Section 6	49 days after date of the assessment notice	
<i>Duties Act 2008</i> (for instruments executed on or after 1 March 2011)	Generally (unless alternative payment provisions are provided for)	Section 25(1)	1 month after the date of the assessment notice	
	<ul style="list-style-type: none"> <li>•General conditional agreement</li> <li>•Farming land conditional agreement</li> <li>•Mining tenement conditional agreement</li> <li>•Transfer of dutiable property; agreement for the transfer of dutiable property; declaration of trust over dutiable property; or vesting of dutiable property by statute law or court order, where a transfer form relating to the transaction must be lodged with –               <ul style="list-style-type: none"> <li>○ Landgate (under the <i>Transfer of Land Act 1893</i> or the <i>Registration of Deeds Act 1856</i>); or</li> <li>○ the Department of Mines and Petroleum (under the <i>Mining Act 1978</i>).</li> </ul> </li> </ul>	Section 25(2)	12 months after the day on which liability for duty arose	
	<ul style="list-style-type: none"> <li>•Issue of title conditional agreement</li> <li>•Subdivision conditional agreement</li> </ul>	Section 25(3)	3 years after the day on which liability for duty arose	

## Appendix 2

### ORIGINAL OFFICIAL ASSESSMENTS - PAYMENT REQUIREMENTS

<p><i>Duties Act 2008</i> (for instruments executed on or before 28 February 2011)</p>	Generally (unless alternative payment provisions are provided for)	Section 25(1)	1 month after the date of the assessment notice	
	<ul style="list-style-type: none"> <li>• Farming land conditional agreement</li> <li>• Mining tenement conditional agreement</li> <li>• Farming land where completion is subject to a primary production activity</li> </ul>	Section 25(1)(a)	12 months after the day on which liability for duty arose	
	<ul style="list-style-type: none"> <li>• Off-the plan conditional agreement</li> <li>• Subdivision conditional agreement</li> </ul>	Section 25(1)(b)	2 years after the day on which liability for duty arose  (providing the property is not on sold prior to the transaction record being endorsed for duty)	
<p><i>Stamp Act 1921</i></p>	Generally (unless alternative payment provisions are provided for)	Section 17A(2)	1 month after the date of the assessment notice	
	<ul style="list-style-type: none"> <li>• Farming land conditional contract</li> <li>• Mining tenement conditional contract</li> </ul>	Section 17AA(1)	The later of: <ul style="list-style-type: none"> <li>• 12 months after the date on which the contract was first executed; or</li> <li>• 1 month after the date of the assessment notice</li> </ul>	
	<ul style="list-style-type: none"> <li>• Off-the plan conditional contract</li> <li>• Subdivision conditional contract</li> </ul>	Section 17AA(2)	The later of: <ul style="list-style-type: none"> <li>• 2 years after the date on which the contract was first executed; or</li> <li>• 1 month after the date of the assessment notice</li> </ul>	