



COMMISSIONER'S PRACTICE TAA 3.0

REMISSION OF PENALTY TAX FOR FAILURE TO LODGE RETURNS AS REQUIRED

Commissioner's Practice History

Commissioner's Practice	Issued	Dates of effect	
		From	To
TAA 3.0	1 July 2003	1 July 2003	22 December 2003

Background

Returns are required to be lodged in accordance with the following sections of the taxation Acts:

TAXATION ACT	LODGEMENT REQUIREMENT	LODGEMENT TIME PERIOD
Pay-roll Tax Assessment Act 2002 ("PTAA")	Sections 26, 27, 28 and 29	Monthly - 7 days after end of month Annual - 21 days after end of assessment year
Debits Tax Assessment Act 2002 ("DTAA")	Section 9	14 days after end of month
Stamp Act 1921 ("Stamp Act")	Section 112K(1)(a) and (2)(a)	Monthly - 15 days after end of month Annual - 31 August following end of assessment year
Taxation Administration Act 2003 ("TAA")	Section 52	Monthly - 15 days after end of return period

Section 26(1)(b) of the TAA creates a liability to pay penalty tax where a taxpayer does not lodge an instrument as required by section 17B of the Stamp Act. "Instrument" is defined in the TAA Glossary to include a return.

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.

This Commissioner's Practice outlines how penalty tax incurred as a result of the late lodgement of a return will be notified and remitted.

Commissioner's Practice

Circumstances where no remission is to occur

1. Where an assessment of tax is made in circumstances that involved an attempt to evade tax or mislead the Commissioner, an investigator will report accordingly to the Assistant Commissioner (Compliance). If the Assistant Commissioner (Compliance) is satisfied that such action has been attempted, no remission of the 100% penalty tax will occur.

Remission of penalty tax

2. Penalty tax will be remitted as follows where an assessment is made as a result of late or non-lodgement of returns:

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

3. An "occurrence" is a transgression which is covered by this Commissioner's Practice for a particular tax type (eg. pay-roll tax, debits tax, stamp duty rental). The relevant offence will be determined by reviewing the previous 12 month period and ascertaining the number of transgressions which occurred. The 12 month period is a "rolling" period always viewed from the most recent transgression.

4. Where exceptional or serious circumstances are considered to warrant penalty tax remissions to amounts in excess of those specified in paragraph 2, an investigator or other officer may report the circumstances and make a recommendation for determination to the Assistant Commissioner (Compliance), who in consultation with the Assistant Commissioner (Revenue Services), may approve an alternative remission.

Further remission of penalty tax

5. Where a return was inadvertently lodged with another authority (eg. Australian Taxation Office, Department of Land Administration 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.
6. The further remission of penalty tax below the amounts specified in paragraph 2 will be considered only in exceptional circumstances which may include, but are not limited to:
 - 6.1 the late or non-lodgement of a return occurred as a result of advice issued by the Office of State Revenue;
 - 6.2 the late or non-lodgement of a return was occasioned by the death or serious illness of the liable party or responsible party;
 - 6.3 an investigator or other officer reports that there are other exceptional reasons which may warrant a further remission of the penalty tax and recommends to the Manager Self Assessments that the penalty tax be remitted in part or in full.
7. Where other circumstances are given in support of requests for the further remission of penalty tax that do not fall within paragraph 6, the request must be referred to the Manager Self Assessments with a recommendation for determination.
8. All determinations of requests for further remission of penalty tax should be supported by a file note giving reasons for the allowance or refusal.

Date of Effect

This Commissioner's Practice takes effect from 1 July 2003.

Bill Sullivan
COMMISSIONER OF STATE REVENUE

1 July 2003