



## COMMISSIONER'S PRACTICE TAA - 4.1

### REMISSION OF PENALTY TAX FOR LATE PAYMENT - COMMISSIONER'S ASSESSMENTS

#### Commissioner's Practice History

Commissioner's Practice	Issued	Dates of effect	
		From	To
TAA 4.0	1 July 2003	1 July 2003	30 June 2004
TAA 4.1	1 July 2004	1 July 2004	30 June 2008

This Commissioner's practice outlines how penalty tax imposed as a result of the late payment of a stamp duty or land tax assessment made by the Commissioner will be remitted in certain circumstances.

#### Background

The *Stamp Act 1921* ("Stamp Act"), *Land Tax Assessment Act 2002* ("LTAA") and *Taxation Administration Act 2003* ("TAA") require tax to be paid as follows.

Section 17A(2) of the Stamp Act provides that stamp duty is payable within one month after the date of an assessment notice

Section 17A(3) of the Stamp Act specifies that subsection (2) does not apply in a particular case if a provision of the Stamp Act specifies that in that particular case duty is payable at, or within, a different time or period.

Section 17AA(1) of the Stamp Act provides that stamp duty on a "farming land conditional contract", as defined in section 9 of the Stamp Act, or a "mining tenement conditional contract", as defined in section 11 of the Stamp Act, is payable within 12 months after the date on which the contract was first executed, or one month after the date of the assessment notice, whichever is the later.

Section 17AA(2) of the Stamp Act provides that duty on an "off-the-plan conditional contract", as defined in section 10 of the Stamp Act, or a "subdivision conditional contract", as defined in section 12 of the Stamp Act, is payable within 2 years after the date on which the contract was first executed, or one month after the date of the assessment notice, whichever is the later.

Section 6 of the LTAA specifies that land tax is payable on an original assessment within 49 days after the date of the assessment notice;

Section 24(5) of the TAA requires that the due date for payment specified in an assessment notice in relation to an original assessment must be at least 14 days after the date of the assessment notice.

Section 24(5a) of the TAA requires that the due date for payment specified in an assessment notice in relation to a reassessment must be at least 28 days after the date of the assessment notice.

Section 47 of the TAA allows the Commissioner to approve an application to grant an extension of time to pay tax or to pay tax by instalments.

Section 23(1) of the TAA requires the Commissioner to issue an assessment notice when he makes an assessment.

Section 27 of the TAA provides that if the assessed amount is not paid by the due date, the taxpayer is liable to pay penalty tax 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.

Penalty tax is payable by the date specified in the penalty tax assessment notice in accordance with section 45(2) of the TAA.

### Commissioner's Practice

#### Remission prior to penalty tax assessment being made

1. Where stamp duty or land tax is not paid by the due date, the penalty tax of 20% of the outstanding amount imposed by section 27 of the TAA will be remitted to 5%.
2. A penalty tax assessment notice will be issued if the stamp duty or land tax assessed 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.

#### Further remission of 5% penalty tax

3. Further remission of the 5% late payment penalty to nil will only be considered in exceptional circumstances, which may include, but are not limited to:

- 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 7 days after the date specified in the penalty tax assessment notice and a check of the taxpayer's history shows a good payment record;
  - 3.3 payment is made within 7 days after the date specified in the penalty tax assessment notice and the taxpayer was overseas, away on holiday, sick, hospitalised 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 (eg. Christmas/Easter), payment is made within 7 days after the date specified in the penalty tax assessment notice 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 the lodging party has misappropriated client funds held on trust for the payment of a stamp duty assessment;
  - 3.7 payment was inadvertently directed to the wrong Authority (eg. Australian Taxation Office, Department of Land Information or another State or Territory revenue office) and such payment was made within the required time.
4. Where other circumstances are given in support of requests for the further remission of penalty tax that do not fall within paragraph 3, the request must be referred to the Manager Assessments with a recommendation for determination.
  5. All determinations of requests for further remission of late payment penalties should be supported by a file note giving reasons for the allowance or refusal.

#### Other matters

6. The payment date specified in the penalty tax assessment notice will be 21 days after the date of the notice.
7. 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 penalty tax assessment notice, legal action to recover the outstanding amount will be commenced.

**Date of Effect**

This Commissioner's practice takes effect from 1 July 2004.

Bill Sullivan  
COMMISSIONER OF STATE REVENUE

1 July 2004