



## COMMISSIONER'S PRACTICE TAA 5.1

### REMISSION OF PENALTY TAX FOR LATE PAYMENT - SELF ASSESSMENTS

#### Commissioner's Practice History

Commissioner's Practice	Issued	Dates of effect	
		From	To
TAA 5.0	1 July 2003	1 July 2003	22 December 2003
TAA 5.1	23 December 2003	23 December 2003	30 June 2008

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

#### Background

The tax on returns is required to be paid in accordance with the following sections of the taxation Acts:

TAXATION ACT	PAYMENT REQUIREMENT	PAYMENT TIME PERIOD
Pay-roll Tax Assessment Act 2002 ("PTAA")	Section 6	Monthly - 7 days after end of month Annual - 21 days after end of assessment year
Debits Tax Assessment Act 2002 ("DTAA")	Section 6	14 days after end of month
Stamp Act 1921 ("Stamp Act")	Section 112L(1)(b) and (3)(b)	Monthly - 15 days after end of month Annual - 31 August following end of assessment year
Taxation Administration Act 2003 ("TAA")	Section 50(1)(a) and 52(4)	Monthly - 15 days after end of return period

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 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.

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

Section 45(3) of the TAA requires tax that is payable as a result of a reassessment to be paid within 30 days after the date of the assessment notice.

### Commissioner's Practice

#### Remission of penalty tax

1. A single penalty is payable once in respect of each transgression under this Commissioner's practice and Commissioner's Practice TAA 3.1 (eg. where penalty tax has been raised as a result of late payment, penalty tax will not be raised as a result of a failure to lodge returns).
2. Each "occurrence" of a transgression is covered by this Commissioner's practice and Commissioner's Practice TAA 3.1. 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.
3. A penalty tax assessment notice ("assessment advice") is to be issued if the stamp duty, pay-roll tax or debits tax is not paid within 7 days after the due date.
4. The following penalty tax remission rates are to apply where payments are not received 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.

MONTHLY RETURNS	
Transgression	Penalty tax remitted to:
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

ANNUAL RETURNS	
Each occurrence	5% of the outstanding amount

Further remission of penalty tax

5. Further remission of the late payment penalty to nil will only be considered in exceptional circumstances, which may include, but are not limited to:
  - 5.1. where genuine financial difficulties caused payment to be delayed by up to 7 days after the date specified in the assessment advice and a check of the taxpayer's history shows a good payment record;
  - 5.2. where payment is made within 7 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;
  - 5.3. where 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 assessment advice and a check of the taxpayer's history shows a good payment record;
  - 5.4. where the taxpayer is deceased and assets of the Estate are frozen due to probate;
  - 5.5. where 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.
6. Where other circumstances are given in support of requests for the further remission of penalty tax that do not fall within paragraph 5, the request must be referred to the Manager Self Assessments with a recommendation for determination.
7. All determinations of requests for further remission of late payment penalties should be supported by a file note giving the reasons for the allowance or refusal.
8. 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

8. The penalty tax payable will be included in the taxpayer's assessment advice and must be paid on or before the due date for payment of the return in the month following such notification.

9. 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 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 16 July 2004.

Bill Sullivan  
COMMISSIONER OF STATE REVENUE

23 December 2003