Revenue Rulings

Payroll Tax - Interest and Penalty Tax

Payroll Tax Act 2007

Revenue Ruling PTA.036 (Version 2)

Ruling history	
Ruling no.	PTA.036v2
Status	Current
Issued date	Aug 2010
Replaces	PTA.036
Dates of effect	
From	1 July 2010
To	-

Preamble

The *Payroll Tax Act 2007* (the Act) is a taxation law for the purposes of the *Taxation Administration Act 1997* (TAA). Any failure to pay the correct amount of payroll tax when it falls due is a tax default which is subject to interest and penalty tax under the TAA. Revenue Ruling TAA.007 outlines the State Revenue Office's (SRO) general policy on the application of interest and penalty tax.

The Act harmonises the payroll tax legislation in a number of Australian jurisdictions. As part of the payroll tax harmonisation initiative, interest and penalty tax policies in relation to payroll tax defaults have also been harmonised.

This Revenue Ruling explains in detail the application of interest and penalty tax to a range of payroll tax defaults and should be read in conjunction with Revenue Ruling TAA.007.

However, where there is an inconsistency between PTA.036 (Version 2) and TAA.007 in regard to the application of penalty tax or interest, PTA.036 (Version 2) prevails to the extent of the inconsistency.

Ruling

A. Tax default

A payroll tax default occurs when a taxpayer fails to pay tax in accordance with the Act. The TAA provides for interest and penalty tax to be applied to a tax default.

The interest rate consists of a market rate component and a premium rate component. The market rate component is to reimburse the Government for the financing costs incurred due to the late payment of tax. The premium rate component of 8% per annum is imposed to deter late payments and ensure that a defaulting taxpayer is not advantaged when compared with a taxpayer who paid on time.

Penalty tax is imposed, in addition to interest, on the amount of tax unpaid when a tax default occurs.

For the purposes of applying interest and penalty tax to payroll tax, the Commissioner of State Revenue (Commissioner) categorises tax defaults as follows:

- a late payment, or
- a tax shortfall.

1. Late payment

A tax default is regarded as a late payment when the correct tax is paid in full after the due date but before any action has been taken by the Commissioner.

As a general rule, a late payment tax default will not be charged penalty tax but will attract interest at the sum of the market rate plus the premium interest rate. Interest will apply from the due date for payment until the actual date of payment.

However, an exception to the rule is when a registered employer pays the monthly tax after the due date but before the Commissioner issues an assessment on more than two occasions within a financial year (i.e. a repeat late payer). This late payment tax default will attract market rate of interest and penalty tax of 5%.

Examples of late payment tax defaults include:

(i) a registered employer pays the correct amount of tax for a month after the due date but before the Commissioner issues an assessment for the tax owing for the month,

(ii) an assessment issued by the Commissioner is not paid by the due date shown on the notice of assessment, or

(iii) a taxpayer fails to pay an instalment by the due date under an arrangement to pay tax by instalments.

2. Tax Shortfall

Any tax default other than a late payment is regarded as a tax shortfall. As a general rule, a tax shortfall will attract:

(i) penalty tax at a rate reflecting the taxpayer's culpability (see attached table), and

(ii) interest at the market rate only.

A tax shortfall will not attract penalty tax in the following circumstances:

(i) if the Commissioner considers that an employer took reasonable care to comply with the Act. However, to impose only the market rate of interest on the tax unpaid would place this taxpayer at an advantage when compared with a taxpayer who paid tax on time. Therefore, interest will be charged at the sum of the market rate plus a premium rate of 8% per annum.

(ii) if the taxpayer made a voluntary disclosure before an investigation commenced. Interest will be charged at the sum of the market rate plus a premium rate of 8% per annum, and

(iii) if the Commissioner considers that the tax shortfall occurred due to circumstances outside the employer's control.

The following circumstances are examples of tax shortfalls:

Example 1: Registered employer - payment of monthly liability after an assessment

A registered employer fails to pay the correct monthly tax by the due date and the Commissioner has taken action by issuing an assessment for the tax owing for the month. As a general rule, the rate of penalty tax in this circumstance will be 25%. The assessment will be based on estimated taxable wages where no monthly return was lodged and will be based on the wages or liability stated on the return where the employer lodged a return but failed to pay the tax.

Example 2: Registered employer - underpayment of tax

Even though a registered employer has paid an amount of tax for a month or a financial year, the employer has paid less than the correct tax. The underpayment may be identified by a review conducted by, or on behalf of, the employer or by an investigation conducted by the SRO. The amount of penalty tax applied will reflect the taxpayer's culpability.

Example 3: Failure to register and pay payroll tax

An employer, whose taxable wages have exceeded the threshold, fails to register within the time permitted and pay the tax owing. The amount of penalty tax applied will reflect the taxpayer's culpability.

B. Remission

The Commissioner may remit interest in part or in full in such circumstances as the Commissioner considers appropriate. Interest may be fully remitted for a late payment tax default if the Commissioner is satisfied that the late payment occurred as a result of circumstances beyond the control of the taxpayer. Examples of circumstances when interest may be remitted in full include, but are not limited to:

- official postal and DX delays, and
- natural disasters such as a fire or flood.

A taxpayer is entitled to a 20% reduction in the penalty tax if the taxpayer voluntarily makes a written disclosure during an investigation into a known or suspected tax default which enables the Commissioner to determine the nature and extent of the tax default.

The penalty tax will be increased by 20% if the taxpayer hinders or conceals information during an investigation into a known or suspected tax default.

C. Annual Reconciliation (AR) Process

At the end of each financial year, every registered employer is required to lodge an AR return for the purpose of reconciling the employer's tax liability for the financial year with the tax previously paid for that year.

When an employer finds that further tax is payable for the financial year, the AR return should be lodged by the due date together with the payment of the tax outstanding. For an employer who has overpaid payroll tax for the financial year, the lodgement of the AR return constitutes a request for the SRO to refund the overpayment.

Due date for lodging the AR return

The due date for lodging the AR return is the 21st day of July, or the next business day if the 21st falls on the weekend or a public holiday, immediately following the financial year to which the AR return relates (the AR period).

There is no tax default if the employer lodges the AR return and pays any outstanding tax by the due date. A tax default occurs when the correct amount of tax owing for the financial year has not been paid, or where the AR return has not been lodged, by the due date.

If the employer makes a payment of tax without lodging an AR return, the Commissioner is unable to determine whether the total tax paid is the correct tax payable for the year. Therefore, even though a payment of tax was made, given that no AR return is lodged, the Commissioner will issue an assessment of any estimated tax owing as though a tax default had occurred.

Treatment of tax defaults related to the AR process

(i) AR lodged or tax paid after the due date but before assessment is issued
If an employer lodges its AR return or pays the tax owing after the due date but before the Commissioner issues an assessment for the tax owing for the AR period, any tax paid after the due date or remaining unpaid will attract interest at the market rate plus premium interest at the rate of 8% per annum.

(ii) AR lodged or tax paid after assessment is issued
If an employer fails to lodge its AR return or pay the tax owing and the Commissioner issues an assessment for the tax owing for the AR period, any tax paid after the due date or remaining unpaid will attract penalty tax of 25% and interest charged at the market rate.

If the AR return is subsequently lodged, the penalty tax and interest will be adjusted accordingly based on the wages stated on the return. If the AR return subsequently lodged shows that no tax was outstanding at the due date, the interest and penalty tax will be fully remitted.

D. Payment of tax in error to another jurisdiction

A tax shortfall may arise because tax has been paid in error to the ATO or another jurisdiction. If the SRO is satisfied that the tax was paid to another party in error, no penalty tax will be imposed. Further, if the full amount of tax payable in Victoria was received by the wrong party on or before the due date, interest will be remitted in full. If the tax liability payable in Victoria is greater than the amount of tax paid to the wrong party, full remission of interest will still apply, provided the difference is paid to the SRO by a date specified by the Commissioner.

PAYROLL TAX PENALTIES & INTEREST TABLE		
	INTEREST (per annum)	PENALTY (flat)
LATE PAYMENT		
1. Monthly return lodged/tax paid after due date (7th day of the following month) but before issue of assessment	Market + 8% Premium	0
2. Assessment not paid by due date as shown on the notice of assessment	Market + 8% Premium	0
3. The Commissioner is satisfied late payment was beyond the control of the taxpayer	0	0
4. Monthly return lodged/ tax paid late on more than 2 occasions during a financial year before the issue of assessment	Market	5%
TAX SHORTFALL		
1. Monthly return not lodged and assessment issued for tax owing for the month	Market	25%
2. Voluntary disclosure before investigation commenced	Market + 8% premium	0
3. Disclosure made after investigation commenced	Market	20%
4. Assessment issued after investigation completed (and taxpayer did not take reasonable care)	Market	25%
5. Assessment issued after investigation completed (and evidence of intentional disregard of the law)	Market	75%
6. The Commissioner is satisfied that the taxpayer took reasonable care	Market + 8% premium	0
7. The Commissioner is satisfied tax shortfall was beyond the control of the taxpayer	0	0
ANNUAL RETURNS		
1. Annual return lodged before issue of assessment. Tax paid late or remains outstanding	Market + 8% Premium	0
2. Annual return not lodged and assessment issued for tax owing	Market	25%

This Revenue Ruling applies to a tax default that occurs on or after 1 July 2010.

Please note that rulings do not have the force of law. Each decision made by the State Revenue Office is made on the merits of each individual case having regard to any relevant ruling.

State Government Victoria

August 2010
Commissioner of State Revenue