

# Revenue Rulings

## Interest and Penalty Tax

Revenue Ruling TAA.007 (version 2)

Ruling history	
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### Preamble

The *Taxation Administration Act 1997* (TAA) was introduced on 1 July 1997 to provide a single, overarching framework for the consistent administration of Victoria's taxation laws. Taxation laws, as currently defined in the TAA, include the *Duties Act 2000*, the *Land Tax Act 2005* (the LTA), the *Payroll Tax Act 2007*, the *Congestion Levy Act 2005*, *Part 9B of the Planning and Environment Act 1987* and *Part 6 of the Livestock Disease Control Act 1994*.

The TAA also provides for the reciprocal enforcement of taxation laws in other jurisdictions under Part 9, Division 2A of the TAA.

The purpose of this Revenue Ruling is to explain how the Commissioner of State Revenue (the Commissioner) will impose administrative penalties and calculate interest under Part 5 of the TAA.

Interest and penalty provisions play an integral role in tax administration because they:

- deter non-compliance by making it unprofitable
- establish a uniform and consistent response to non-compliance
- underscore the advantage of compliance and the consequences of non-compliance, and
- compensate the Victorian Government for being denied the use of funds to which it is entitled.

As outlined in the SRO's Customer Charter, the Commissioner will ordinarily start from the presumption that taxpayers have dealt with their tax affairs honestly. The penalty imposed in respect of a default is intended to reflect the degree of the taxpayer's culpability. This is important because the taxation laws frequently place an onus on taxpayers

to self assess or to notify the Commissioner of certain circumstances.

The TAA provides a fixed penalty scale and also allows the Commissioner to adjust the penalty rate up or down the scale to reflect the level of culpability. The Commissioner may:

- a) determine that no penalty tax applies if he is satisfied that there were mitigating circumstances, i.e. that reasonable care was taken or a Tax Default or Notification Default (as explained later in this Revenue Ruling) occurred for reasons beyond the taxpayer's control,
- b) reduce the rate of penalty tax where there has been a voluntary disclosure, or
- c) increase the rate of penalty tax where there has been:
  - i) intentional disregard of a taxation law, or
  - ii) hindrance to an investigation.

In deciding whether to impose or remit penalty tax and interest in a particular tax matter, the Commissioner will be guided by the principles outlined in this Revenue Ruling, and will apply them as appropriate, taking into account all the circumstances of the case.

This Revenue Ruling has been revised to incorporate the Commissioner's approach to legislative amendments made since the release of the previous version of this Revenue Ruling in July 2007.

Please note that this is a general Revenue Ruling. The specific application of interest and penalty provisions to payroll tax is outlined in *Revenue Ruling PTA.036 (version 2) - 'Payroll Tax – Interest and Penalty Tax'*.

## Ruling

### Explanation of key terms in this Revenue Ruling

**Tax** means a tax, levy, duty and any other amount paid or payable under a taxation law. Tax also includes interest and penalty tax imposed in accordance with the TAA.

A **taxpayer** is a person who has, or may have, a liability to pay tax. The taxpayer may or may not have received a notice of assessment of the tax liability. A reference to taxpayer in this Revenue Ruling includes a person who is authorised to act as the taxpayer's representative.

**Tax Default** means a failure by a taxpayer to pay the whole or part of the tax that the taxpayer is liable to pay in accordance with a taxation law. A Tax Default occurs when the taxpayer has made a late payment of the correct tax (a 'Late Payment Tax Default'), or paid less than the correct amount of tax (a 'Tax Shortfall Tax Default').

**Unpaid tax** refers to a tax liability under a taxation law, which has not been discharged. If, at the time the Tax Default occurred, there has been an overpayment of tax that is within the time permitted for a refund, the overpayment can be offset against unpaid tax so that interest or penalty tax is assessed on the net amount of unpaid tax. The offsetting of an overpayment against an underpayment must not extend beyond the statutory time limit under the relevant refund provisions.

A **Notification Default** is a failure by a taxpayer:

- to notify the Commissioner of an error or omission in his or her land tax assessment as required under section 104A of the LTA within 60 days of the land tax assessment being issued (an 'Error or Omission Notification Default'), or
- who is a trustee to notify the Commissioner of certain circumstances as required under section 46K of the LTA within one month of the event occurring (a 'Trust Notification Default').

**Penalty tax** is the tax imposed under section 29 of the TAA if a Tax Default or Notification Default occurs.

**Interest** is imposed under section 24 of the TAA if a Tax Default occurs. Interest has two components: the 'market rate' and the 'premium rate' of interest.

## Penalty Tax

### When is penalty tax imposed?

Penalty tax can be imposed on Tax Defaults and Notification Defaults. Penalty tax is not imposed if it amounts to less than \$20.

### Tax Default

The Commissioner has classified Tax Defaults into two categories: Tax Shortfall Tax Defaults and Late Payment Tax Defaults.

A **Tax Shortfall Tax Default** occurs when no tax, or less than the full tax assessed, has been paid.

A Tax Shortfall Tax Default may include:

- a failure to register and pay tax as required under a taxation law
- the understatement of a tax liability and the associated underpayment of tax
- the incorrect application of an exemption resulting in an underpayment of tax
- a failure to notify the Commissioner of the cessation of an exemption resulting in an underpayment of tax, or
- a failure to notify the Commissioner of a breach of the conditions attached to a private ruling.

A **Late Payment Tax Default** occurs when:

- a registered taxpayer pays the correct tax for a return period after the due date for payment, but before the Commissioner has issued an assessment for tax for that period
- a taxpayer lodges a document/statement after the time permitted by legislation and pays the correct tax at the time of lodgement
- a taxpayer fails to pay an assessment (for tax or penalty tax) by the due date shown on the notice of assessment, or
- a taxpayer fails to pay an instalment by the due date under an instalment arrangement.

A Late Payment Tax Default will generally not attract penalty tax but will attract interest at the sum of the market and premium rates.

However, the Commissioner may impose penalty tax for Late Payment Tax Defaults if the same registered taxpayer pays tax late more than twice within a financial year. The rate of penalty tax imposed will depend on whether the Commissioner considers that the taxpayer has demonstrated

a failure to take reasonable care or intentional disregard of a taxation law. Penalty tax may also be assessed on late annual reconciliation payments. Please refer to *Revenue Ruling PTA.036 (version 2) - 'Payroll Tax – Interest and Penalty Tax'* for further information about penalty tax and payroll tax.

### Notification Default

Notification Defaults only arise in relation to land tax. The Commissioner has classified Notification Defaults into two categories:

- Error or Omission Notification Defaults, and
- Trust Notification Defaults.

#### An **Error or Omission Notification Default**

occurs where a taxpayer who receives a land tax assessment fails to notify the Commissioner within 60 days from the date of issue of the notice of assessment that they own land in Victoria which is not specified in the assessment, or have received an exemption for which they are not eligible.

#### *Example 1*

*Annabel received her 2010 land tax assessment. The assessment omitted one of Annabel's investment properties and Annabel failed to notify the Commissioner of that omission within 60 days of her 2010 assessment being issued. The Commissioner subsequently became aware of this omission and issued Annabel a 2010 land tax reassessment imposing an additional \$1000 in land tax. The reassessment included penalty tax of \$250 imposed at the rate of 25 per cent on the additional amount of land tax assessed because a Notification Default had occurred.*

If land is owned jointly, notification may be made by any one of the joint owners named in the assessment within 60 days from the date of issue of the joint assessment.

A **Trust Notification Default** occurs where a trustee fails to notify the Commissioner, in writing, within one month of any of the following events:

- the trustee acquires or disposes of land in Victoria
- the trust to which the land is subject becomes a different category of trust
- the trustee has notified the Commissioner of beneficial interests in land subject to a fixed trust (under section 46B of the LTA) and there are changes to the beneficial interests in land,

or the trustee has notified the Commissioner of the unit holdings of a unit trust scheme (under section 46C of the LTA) and there are changes to the unit holdings in the scheme, or

- the administration of a deceased estate that includes land is complete.

Penalty tax is imposed on the additional land tax that would have been assessed had the Notification Default not occurred. If no additional land tax is assessed, no penalty tax will be imposed.

### Penalty Tax Rates

The starting point for the imposition of penalty tax is 25 per cent of the Unpaid tax. The Commissioner may then remit, increase or reduce the rate of penalty tax from 25 per cent depending on the particular circumstances.

There are a number of steps that the Commissioner will take to determine whether to remit, increase or reduce the rate of penalty tax from 25 per cent:

1. Penalty tax will be remitted if the Commissioner is satisfied that the taxpayer took reasonable care to comply with the taxation law, or that the Tax Default or Notification Default occurred solely because of circumstances beyond the taxpayer's control. This means no penalty tax will be assessed.
2. The rate of penalty tax will be increased to 75 per cent if the Commissioner is satisfied that the taxpayer's intentional disregard of a taxation law contributed to the Tax Default or Notification Default.
3. The rate of penalty tax will be increased by 20 per cent (either from 25 per cent to 30 per cent or from 75 per cent to 90 per cent) if, during an investigation into a known or suspected Tax Default or Notification Default, the taxpayer concealed information or hindered the Commissioner from becoming aware of the nature and extent of the Tax Default or Notification Default.
4. In situations where the taxpayer has made a voluntary disclosure to the Commissioner, the rate of penalty tax will be reduced by:
  - o 80 per cent (either from 25 per cent to 5 per cent or from 75 per cent to 15 per cent) if the taxpayer made a voluntary disclosure to the Commissioner before

an investigation into a known or suspected Tax Default or Notification Default.

- o 20 per cent (either from 25 per cent to 20 per cent or from 75 per cent to 60 per cent) if the taxpayer made a voluntary disclosure to the Commissioner during an investigation into a known or suspected Tax Default or Notification Default.

### Reasonable care

All taxpayers are expected to take reasonable care to ensure they meet their tax obligations. However, the standard of reasonable care may vary depending on a taxpayer's circumstances. The Commissioner recognises that a Tax Default or Notification Default may occur despite a taxpayer's best intentions and effort to comply with taxation laws.

In relation to tax matters covered by this Revenue Ruling, reasonable care requires taxpayers to keep complete and accurate records, make diligent efforts to understand and comply with the relevant laws, seek advice on uncertain or complex matters, be honest in their dealings with the State Revenue Office (the SRO) and promptly notify the SRO of all relevant circumstances.

As a starting point, the Commissioner will consider the taxpayer's circumstances to establish what level of care can reasonably be expected from the taxpayer, including:

- a) the taxpayer's knowledge of tax legislation and the information available on the taxation issue, particularly where the Tax Default or Notification Default relates to new legislative provisions which have been in place for less than 12 months
- b) the taxpayer's access to expert advice
- c) the complexity of the law relating to the Tax Default or Notification Default
- d) the taxpayer's commercial experience and whether standard accounting or commercial practices in the taxpayer's field or business contributed to the taxpayer's misapplication of a taxation law
- e) any individual circumstances that may have contributed to the taxpayer's misunderstanding or inability to meet their tax obligations in a timely manner, and
- f) whether the Tax Default was due to an isolated, honest, or unintended mistake having regard to the taxpayer's compliance history.

The following actions, alone or in combination, may indicate that a taxpayer had taken reasonable care:

- a) the taxpayer had taken reasonable steps to be aware of his or her taxation obligations by seeking professional advice or requesting a private ruling from the SRO, and had applied the advice or private ruling in good faith
- b) the taxpayer had applied any relevant Revenue Rulings in good faith, and
- c) the taxpayer had maintained appropriate and proper records.

A taxpayer would not be considered to have taken reasonable care despite following the advice of their representative if the taxpayer was aware of the falsity of documents being prepared for assessment by the SRO or had suspected or knew of fraudulent activities conducted to mislead or deceive the SRO.

### Example 2

*Investment Co was considering purchasing a property. Investment Co was aware that a new provision of the Duties Act 2000 may apply to charge an additional amount of duty if it purchased the property. As there was no case law or Revenue Rulings to provide guidance on the application of the new provision, before proceeding, Investment Co sought written legal advice from a law firm, Smith & Associates.*

*Smith & Associates provided written advice that the provision would not apply to the transaction. Based on this advice, Investment Co purchased the property and paid duty on the basis that the provision did not apply.*

*The SRO determined that the new provision applied to the transaction and subsequently assessed Investment Co, resulting in additional duty of \$5,000 being assessed along with penalty tax.*

*Being dissatisfied with this outcome, Investment Co lodged an objection to the imposition of the penalty tax and provided the Commissioner with evidence that it received advice from Smith & Associates.*

*In this case, the Commissioner would fully remit the penalty tax because Investment Co took reasonable care to comply with its tax obligations by seeking and obtaining legal advice in relation to a provision which was untested and had only been recently introduced.*

### Example 3

Bob has owned an investment property (Property 1) for five years and has always paid his land tax assessments. In 2010, Bob purchased an additional investment property (Property 2). In February 2011, Bob received his 2011 land tax assessment. The assessment included Property 1 but not Property 2.

In September 2011, the Commissioner became aware that Property 2 had been omitted from Bob's 2011 assessment and issued a 2011 reassessment, which assessed both Property 1 and Property 2 and included penalty tax at the rate of 25 per cent calculated on the additional amount of land tax assessed.

Bob lodged an objection to the penalty tax component of the 2011 reassessment on the grounds that he took reasonable care because:

- when he purchased Property 2 in 2010 his conveyancer lodged a Notice of Acquisition (NOA) with the SRO and
- he has always simply paid his assessments when they arrived and he does not know how land tax is calculated or of his notification obligations, and
- he has always paid his assessments on time.

In these circumstances, Bob did not take reasonable care as he did not make any effort to check that his 2011 assessment was correct. The fact that Bob lodged a NOA in 2010 does not displace the onus on Bob to take reasonable care by checking his 2011 assessment and notifying the Commissioner of the omission.

### Example 4

David owned two properties: his family home (Property 1) which he used and occupied as his principal place of residence (PPR) and an investment property (Property 2). Since their purchase, David had received annual land tax assessments specifying Property 1 as PPR-exempt and assessing land tax on Property 2.

Due to a change in his employment situation, in January 2011 David moved interstate to work and began to rent Property 1 to tenants. As a result, David was not entitled to the PPR exemption on Property 1 for the 2012 land tax year. In March 2012, David received his 2012 land tax assessment, which also outlined his obligation to notify the SRO of any error or omission in that assessment, within

60 days. The assessment correctly assessed land tax on Property 2 but incorrectly specified Property 1 as PPR exempt. David paid the 2012 assessment but did not contact the SRO or take any other steps to check whether he was still entitled to the PPR exemption.

In July 2012, the Commissioner became aware that David was no longer entitled to the PPR exemption on Property 1 and issued a reassessment for 2012, which assessed land tax on both Property 1 and Property 2 and included penalty tax for the notification default at the rate of 25 per cent calculated on the additional amount of land tax assessed.

David lodged an objection to the penalty tax component of the 2012 reassessment on the grounds that he took reasonable care because his failure to notify the Commissioner of the error in his assessment was due to him not knowing that he was no longer entitled to the PPR exemption on Property 1.

In these circumstances, the assessment notice had informed David of the requirement to notify the SRO of any errors or omissions. It was reasonable to expect him to be aware of this obligation and to take steps to check whether Property 1 should still be exempt from land tax given he was no longer living there. As he did not make any enquiries, he was found not to have taken reasonable care.

### Circumstances beyond the taxpayer's control

Circumstances beyond the taxpayer's control may include (depending always upon the individual case):

- a) postal or delivery delays due to strikes or natural disasters (but not where the taxpayer could have arranged other means of delivery because of knowledge of the likelihood of such a delay)
- b) fires, floods or other natural disasters
- c) unavailability of key personnel due to sudden resignation, ill-health or death
- d) computer system breakdowns, including third party systems, and
- e) changes to applicable taxation laws resulting from court decisions.

The Commissioner will not be satisfied that there were circumstances outside the taxpayer's control unless the taxpayer took all reasonable steps to avoid or mitigate the Tax Default or Notification Default.

### **Intentional disregard of a taxation law**

Intentional disregard of a taxation law means a deliberate act or omission which causes a Tax Default or Notification Default. This may be determined on the basis of direct evidence of a taxpayer's intention (e.g. admission by a taxpayer) or can be inferred from the surrounding circumstances and conduct of the taxpayer. Conduct that may demonstrate intentional disregard of a taxation law includes:

- tax avoidance or evasion
- knowingly making false or misleading statements or records, or omitting or concealing relevant facts or records
- failing to act in accordance with a private ruling or well-established principle of tax law
- repeated Tax Defaults or Notification Defaults on the same or closely related matters, and
- knowingly failing to notify the Commissioner in accordance with statutory requirements.

### **Taxpayer's culpability when a representative or third party has contributed to the default**

If a taxpayer authorises a person to act as his or her representative in the conduct of his or her tax affairs, the Commissioner will consider any action of the taxpayer's representative to be an action of the taxpayer. Accordingly, the taxpayer will be responsible for a Tax Default or a Notification Default which arises from the action or failure of the taxpayer's representative unless it could be shown that the taxpayer had taken reasonable care. The standard of reasonable care will be evaluated according to the circumstances and the expertise of the taxpayer's representative, however, the liability for penalty tax remains with the taxpayer.

There may be circumstances where a Tax Default or Notification Default occurs as a result of the failure of a third party, who is not the taxpayer's representative, to provide timely or accurate information which is necessary to determine the taxpayer's liability for tax. The behaviour of a third party will not influence the Commissioner's consideration of a taxpayer's culpability for a Tax Default or Notification Default. The Commissioner will take into account factors such as whether the taxpayer could reasonably have been expected to know about the accuracy of the information provided by a third party. The Commissioner will also consider whether the taxpayer

did all that was possible and reasonable to assist the third party to provide the required information.

### **Penalty Tax where the SRO conducts an investigation or where a taxpayer makes a voluntary disclosure**

The Commissioner may conduct an investigation under Part 9 of the TAA to examine a taxpayer's compliance with one or more taxation laws. The investigation begins when the SRO informs the taxpayer in writing that an investigation has commenced. The investigation is completed when the SRO has provided a taxpayer with formal acknowledgement that the SRO has completed the investigation.

A voluntary disclosure must be in writing and disclose sufficient information to enable the nature and extent of the Tax Default or Notification Default to be determined.

The penalty tax rate will be reduced by:

- 80 per cent if, before the Commissioner commences an investigation into a known or suspected Tax Default or Notification Default, the taxpayer makes a voluntary disclosure to the Commissioner, or
- 20 per cent if, after the Commissioner commences an investigation into a known or suspected Tax Default or Notification Default by the taxpayer and, before it is completed, the taxpayer makes a voluntary disclosure to the Commissioner.

The penalty tax reduction for a voluntary disclosure before an investigation into a known or suspected Tax Default or Notification Default is a concession for taxpayers who co-operate fully in providing the Commissioner with information and thereby avoid the need for a full investigation. Depending on the circumstances, the reduction in the rate of penalty tax for a taxpayer who makes a voluntary disclosure before the Commissioner commences an investigation into a known or suspected Tax Default or Notification Default applies as follows:

- Penalty tax imposed at the standard rate of 25 per cent (which could not be remitted on the basis of reasonable care or circumstances outside the control of the taxpayer) would be reduced to 5 per cent, or
- Penalty tax imposed at the standard rate of 75 per cent (due to the taxpayer's intentional

disregard of a taxation law contributing to the Tax Default or Notification Default) would be reduced to 15 per cent.

#### Example 5

*Clark owned land which was used for primary production and was exempt from land tax. Prior to 31 December, the primary production activities ceased and, as a result, the land was no longer exempt from land tax. The following year, Clark received a land tax assessment which specified that the land was still exempt from land tax because the primary production exemption still applied. Clark did not notify the SRO of the error in the assessment within 60 days. Accordingly, a Notification Default occurred.*

*Following the expiration of the 60 day period, Clark advised the SRO in writing that the land was not being used for primary production. Clark then received a reassessment which assessed land tax on the land and included penalty tax imposed at the rate of 5 per cent of the additional land tax assessed in recognition of the fact that Clark made a voluntary disclosure prior to the commencement of an investigation into a known or suspected Notification Default.*

A voluntary disclosure during an investigation into a known or suspected Tax Default or Notification Default occurs when a taxpayer actively assists the investigation by obtaining, compiling and providing the information necessary to determine the nature and extent of a Tax Default or Notification Default. A taxpayer's response to the commencement of an investigation will not be considered to be a voluntary disclosure if the taxpayer does no more than respond to requests for information and allow investigators access to books and records. The reduction in penalty tax for a voluntary disclosure during an investigation provides an incentive for taxpayers, because it reduces the time and work required by an investigator to complete an investigation once it has commenced. Depending on the circumstances, the reduction in the rate of penalty tax for a taxpayer who makes a voluntary disclosure after the Commissioner commences an investigation but before it is completed applies as follows:

- Penalty tax imposed at the standard rate of 25 per cent (which could not be remitted on the basis of reasonable care or circumstances

outside the control of the taxpayer) would be reduced to 20 per cent, or

- Penalty tax imposed at the standard rate of 75 per cent (due to the taxpayer's intentional disregard of a taxation law contributing to the Tax Default or Notification Default) would be reduced to 60 per cent.

#### Example 6

*The Commissioner advised Company B by letter that he had commenced an investigation into a known or suspected Tax Default in respect of Company B's compliance with the Payroll Tax Act 2007 for the current year and the preceding 3 years. After receiving the letter, Company B made a voluntary disclosure to the Commissioner in respect of the current year but not the preceding 3 years. It was found that Company B owed payroll tax for all 4 years under investigation, and that the Tax Default was due to Company B failing to take reasonable care and was not due to circumstances outside Company B's control. Penalty tax was imposed at the rate of 20 per cent in respect of the unpaid payroll tax for the current year and at 25 per cent in respect of the unpaid payroll tax for the preceding 3 years.*

#### **Limitation on the reduction of penalty tax for voluntary disclosures**

The reduction in the rate of penalty tax for a voluntary disclosure either before or during an investigation into a known or suspected Tax Default or Notification Default does not apply to payroll tax matters where there is a Tax Default and:

- a) the Tax Default involved the failure to lodge a return and pay tax by the due date under a taxation law, or
- b) the taxpayer lodged a return by the due date that disclosed a liability to pay tax but a Tax Default arose because the taxpayer did not pay that amount of tax by the due date.

The purpose of this limitation is to deny an automatic reduction in the rate of penalty tax to a taxpayer who, as a person registered to lodge payroll tax returns and pay tax on a periodic basis, fails to meet these obligations. It is the Commissioner's practice to raise an assessment of estimated tax payable when a registered taxpayer has failed to lodge a payroll tax return and pay tax for a period. However, if the taxpayer subsequently provides a payroll tax return or information showing that the estimated

liability for the period is incorrect, this information will not be regarded as a voluntary disclosure before an investigation. A reassessment will be made and penalty tax will be recalculated by applying the rate of penalty tax, used in the initial assessment, to the correct amount of tax.

**When will the Commissioner increase the rate of penalty tax?**

The penalty tax rate will be increased by 20 per cent if, after the Commissioner commences an investigation into a known or suspected Tax Default or Notification Default, the taxpayer conceals information or hinders the Commissioner during the investigation.

Concealment or hindrance of an investigation means an act or omission by a taxpayer, occurring during the course of an investigation, which prevents or hinders the Commissioner from finding the existence, nature or extent of a Tax Default or Notification Default.

Depending on the circumstances, the increase in the rate of penalty tax for a taxpayer who conceals information or hinders the Commissioner during an investigation into a known or suspected Tax Default or Notification Default applies as follows:

- Penalty tax imposed at the standard rate of 25 per cent (which could not be remitted on the basis of reasonable care or circumstances outside the control of the taxpayer) would be increased to 30 per cent, or
- Penalty tax imposed at the standard rate of 75 per cent (due to the taxpayer’s intentional disregard of a taxation law contributing to the Tax Default or Notification Default) would be increased to 90 per cent.

**Commissioner’s discretion to remit penalty tax by any amount**

Section 35 of the TAA authorises the Commissioner to remit penalty tax in part or in full in appropriate circumstances. It is this provision which enables the Commissioner to impose penalty tax at rates other than the standard rates outlined in this Ruling. When considering whether to remit penalty tax under this provision, the Commissioner will examine all the relevant circumstances and take into account any mitigating factors.

In relation to Notification Defaults, relevant circumstances may include:

- a) Whether the taxpayer has notified the Commissioner of the correct ownership details of the subject land at the time of acquisition
- b) Whether the taxpayer has notified the Commissioner of any change to the use of the subject land which may affect whether it is taxable under the LTA
- c) Whether the SRO contributed to the error or omission in the assessment
- d) The complexity of the matter
- e) The level of sophistication and commerciality of the taxpayer, and
- f) The compliance history of the taxpayer.

The penalty tax rates can be summarised as follows:

Penalty Category	No Voluntary Disclosure or Concealment or Hindrance During Investigation %	Voluntary Disclosure Before Investigation %	Voluntary Disclosure During Investigation %	Concealment or Hindrance During Investigation %
Failure to take reasonable care, no circumstances beyond the control of the taxpayer and no intentional disregard of a taxation law	25	5	20	30
Reasonable care or circumstances beyond the control of the taxpayer	0	0	0	0
Intentional disregard of a taxation law	75	15	60	90

**Interest**

**When is interest imposed?**

If a Tax Default occurs, interest is imposed on unpaid tax and unpaid penalty tax.

Interest is also imposed on a judgment debt that includes an amount of unpaid tax. A judgment debt is a judgment given, or entered, by a court for an amount of unpaid tax.

Interest is not imposed on any unpaid interest or if the amount of interest calculated on a Tax Default is less than \$20.

Because a Notification Default only results in liability to pay penalty tax and is not a Tax Default, interest is not imposed. However, a Tax Default will occur if a taxpayer fails to pay the penalty tax imposed by the due date. Accordingly, interest will accrue on any unpaid penalty tax imposed as a result of a Notification Default.

Under the TAA, interest is comprised of two components:

- a market rate component, and
- a premium rate component fixed at 8 per cent per annum.

### **Market Interest**

The purpose of imposing interest at the market rate is to reimburse the Victorian Government for the financing costs incurred due to the late payment of the tax. The market rate is established by reference to the Bank Accepted Bills rate unless there is a current order specifying a different rate, made by the Minister and published in the Government Gazette. On 1 July each year, a new Bank Accepted Bills rate is set automatically for the financial year. The market rate is the average of the daily yields for 90 day Bank Accepted Bills published by the Reserve Bank of Australia for the preceding month of May.

### **Premium Interest**

The purpose of the premium rate is to:

- a) penalise taxpayers for the late payment of tax
- b) deter similar non-compliance by other taxpayers, and
- c) make it unattractive for taxpayers to pay other debts in preference to taxation debts.

Therefore the premium rate is usually charged for Late Payment Tax Defaults (other than for repeated Late Payment Tax Defaults which attract penalty tax) and instalment payments not paid by the due date made under approved arrangements to pay arrears of tax.

### **When will the Commissioner remit interest?**

#### **Full remission**

Section 28 of the TAA allows the Commissioner to remit all or part of any interest imposed in whatever circumstances the Commissioner considers appropriate.

### **Remission of market rate of interest**

In determining whether to remit the market rate of interest, the Commissioner will consider whether there is any reason that the Victorian Government should bear the financing costs of revenue forgone as a result of a Tax Default. Such a situation may be where the SRO has contributed to the Tax Default. For example, remission of the market rate may be appropriate if the SRO has been unable to provide a taxpayer with a decision in a timely manner or has provided advice which has been shown subsequently to be incorrect.

The Commissioner may also remit the market rate of interest in exceptional circumstances.

### **Remission of the premium rate of interest**

Remission of the premium rate of interest may occur in circumstances where:

- the market rate component of interest is partially or fully remitted, or
- penalty tax has been imposed for a Tax Default and there is no need for an additional penalty in the form of premium interest.

Accordingly, the premium rate of interest is generally remitted in full where penalty tax is imposed.

Generally, the Commissioner will partially remit the premium rate of interest where a taxpayer has taken reasonable care to comply with a taxation law, as the imposition of the full premium rate of interest is not required either as a penalty or as a deterrent. However, to impose only the market rate of interest on the unpaid tax would place this taxpayer at an advantage when compared with a taxpayer who paid tax on time by borrowing at normal business rates, often around 3 per cent higher than the market rate. It is therefore equitable to remit the premium interest rate by 5 per cent (from 8 per cent to 3 per cent) for unpaid tax by those taxpayers whose culpability does not warrant penalty tax or premium interest of 8 per cent.

### **Table of Interest and Penalty Charges**

The application of interest and penalty tax to various categories of Tax Defaults and Notification Defaults is summarised in the table on page 10.

## Table of Interest and Penalty Charges

Tax Default	Taxpayer's culpability	Penalty Tax rate	Market rate p.a.	Premium rate p.a.
Late Payment	N/A	Nil	Yes	8%
Repeated Late Payment	Treated as a tax shortfall	5% - 90%	Yes	No
Tax Shortfall	Circumstances beyond taxpayer's control	Nil	Yes	No
	Taxpayer took reasonable care to comply with a taxation law	Nil	Yes	Reduced to 3%
	Failure to take reasonable care but no intentional disregard of a taxation law	5% - 30%	Yes	No
	Intentional disregard of a taxation law	15% - 90%	Yes	No

**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. All rulings must be read subject to Revenue Ruling GEN.001.**