

Revenue Rulings

Interest and Penalty Tax

Revenue Ruling TAA.006 Replaces TAA.005

Preamble

This ruling makes a minor amendment to, and replaces, TAA.005. It does not alter the policy intent of that ruling. Similar to TAA.005, this ruling is issued to reflect various legislative changes in the Acts administered by the State Revenue Office (SRO) since 1 July 2001. It explains how the SRO will apply the interest and penalty provisions of the *Taxation Administration Act 1997* (the TAA).

The TAA was introduced on 1 July 1997 to provide consistent administrative provisions for those Acts defined as "taxation laws" by the TAA. Taxation laws include the *Pay-roll Tax Act 1971*, *Financial Institutions Duty Act 1982* and *Debts Tax Act 1990*. From 1 July 2001, the *Duties Act 2000* became a taxation law whilst *Financial Institutions Duty Act 1982* ceased as a taxation law.

Interest and penalty provisions play an integral role in tax administration as they serve the following purposes:

- To deter non compliance by making it unprofitable to taxpayers
- To promote equity among taxpayers by ensuring that those who meet their obligations are not disadvantaged in comparison with those who do not
- To compensate the government for being denied the use of funds to which it is entitled.

The policy intent of the interest and penalty provisions is that the level of penalty should match the degree of culpability and that taxpayers should be encouraged to voluntarily declare any tax liabilities as soon as they are known. This is important given that Victorian taxation legislation frequently adopts the principle of self-assessment that places the onus on taxpayers to exercise reasonable care in the calculation and timely payment of their tax

liabilities. In accordance with the Taxpayers' Charter, the SRO will start from the presumption that taxpayers have dealt with their tax affairs openly and honestly and that consequently any error is due to ignorance or mistake rather than deliberate intent.

The Commissioner of State Revenue (the Commissioner) must exercise the discretionary powers contained in the interest and penalty provisions to meet contemporary standards of ethical, fair and sensible tax administration. Delegated SRO staff will assess or remit interest and penalties in accordance with this ruling. However, they will be responsible for identifying situations where strict application of the ruling would produce outcomes which are unreasonable and inconsistent with the stated policy objectives. In such cases it may be necessary to vary the practices stated in this ruling.

Ruling

1. This ruling provides for the application of interest and penalty tax on a tax default and commences on 1 September 2002.

Tax default

2. A tax default occurs when there has been a failure by a taxpayer to pay tax in accordance with the requirements of a taxation law. For example, a tax default occurs when there has been a late payment of tax by a taxpayer or a representative of a taxpayer, or where there is a tax shortfall by a taxpayer.

Interest – s.24 of TAA

3. Where a tax default occurs, interest is calculated on the amount of tax unpaid on a daily basis from the end of the last day for payment until (and inclusive of) the day upon which the tax unpaid is paid.

4. Interest is payable on tax unpaid and unpaid penalty tax but is not payable on any unpaid interest. Interest is also payable where judgment has been given by or entered in a Court for a debt that is for or includes an amount of tax unpaid.

Interest rate – s.25 of TAA

5. The applicable interest rate consists of the following components:
 - (a) **a market rate** component to reimburse the Government for the financing cost incurred through the late payment of tax. This rate is adjusted annually and from 1 July 2001 is based on the daily average of the 90 day Bank Accepted Bill rate for the preceding May of each financial year; and
 - (b) **a premium rate** component to deter late payment of revenue and to compensate the SRO for the costs of administering approved arrangements for payment of tax by a taxpayer. This rate is a fixed rate of 8 per cent per annum.

Minimum amount of interest – s.26 of TAA

6. Where the interest amount calculated on tax unpaid is less than \$20, no interest will be imposed.

Remission of interest – s.28 of TAA

7. The Commissioner may remit all or some of the market rate and/or premium rate components of interest rate.

Market rate

8. In considering the remission of the market rate component of interest, the Commissioner will consider the opportunity costs of revenue forgone as a result of a tax default and the exposure to the risks and uncertainty of revenue loss. Thus the market rate component of interest will only be remitted in exceptional circumstances.
9. The market rate component can be fully remitted where the taxpayer can demonstrate that tax has been paid in

error to another jurisdiction or the Australian Taxation Office (ATO) and full payment of tax was received by that jurisdiction or the ATO on or before the due date of the tax liability. Where the actual tax liability payable in Victoria is greater than the amount paid and received by that jurisdiction or the ATO, remission is possible if the taxpayer pays the differential tax amount in Victoria by a date specified by the Commissioner.

Premium rate

10. Remission of all or some of the premium rate component may occur in the following circumstances:
 - (a) where the market rate component of interest is partially or fully remitted;
 - (b) that a taxpayer or person acting on behalf of the taxpayer took reasonable care to comply with the taxation law;
 - (c) the tax default is due to unforeseen circumstances beyond the control of the taxpayer or the person acting on behalf of the taxpayer and the taxpayer took all reasonable steps to avoid or mitigate the tax default;
 - (d) a voluntary disclosure by the taxpayer or the representative of the taxpayer;
 - (e) the SRO contributed substantially to the taxpayer's error.

Penalty tax – s.29 of TAA

11. Penalty tax is imposed in addition to interest on a tax default resulting from a failure to declare or disclose a tax liability, that is, a tax shortfall. The following, whilst not exhaustive, are examples of a tax shortfall:
 - (a) non-payment of tax;
 - (b) failure to stamp an instrument and pay stamp duty within 3 months after the liability to pay duty arises;
 - (c) failure to lodge returns and pay tax on time.

12. The Commissioner has discretion not to impose penalty tax only in the following circumstances where the Commissioner is satisfied:
- that a taxpayer or person acting on behalf of the taxpayer took reasonable care to comply with the taxation law; or
 - the tax default occurred solely because of circumstances beyond the control of the taxpayer or the person acting on behalf of the taxpayer and the taxpayer took all reasonable steps to avoid or mitigate the tax default.
13. There is no penalty tax imposed on any unpaid penalty tax or unpaid interest (s.29(3) of TAA).

Penalty Tax Rates – s.30 of TAA

14. The two standard rates of penalty tax to be applied to tax unpaid are:
- 25%; or
 - 75% if the taxpayer has shown intentional disregard of a taxation law.
15. The two standard penalty tax rates will vary in the following circumstances:
- rates are reduced by 80% if a voluntary disclosure is made before an investigation;
 - rates are reduced by 20% if a voluntary disclosure is made during an investigation;
 - rates are increased by 20% if the taxpayer hinders or conceals information in an investigation.

16. The indicative rates of penalty tax can be tabled as follow

Penalty Category	Prime Rate %	Voluntary Disclosure Before Investigation %	Voluntary Disclosure During Investigation %	Concealment or Hindrance %
Reasonable care or circumstances beyond the control of the taxpayer or taxpayer's agent and taxpayer has taken reasonable steps to mitigate the tax default	0	0	0	0
Standard penalty	25	5	20	30
Intentional disregard of a taxation law	75	15	60	90

Minimum amount of penalty tax – s.33 of TAA

17. Penalty tax is not to be imposed if it is less than \$20.

Remission of penalty tax – s.35 of TAA

18. The Commissioner has the discretion to remit part or the entire amount of the penalty tax. The following are circumstances where the Commissioner may fully remit penalty tax:
- where tax has been paid in error to another jurisdiction or ATO and full payment of tax was received by that jurisdiction or ATO on or before the

due date of the tax liability. Where the actual tax liability payable in Victoria is greater than the amount paid and received by that jurisdiction or ATO, remission may be granted if the taxpayer pays the differential tax amount in Victoria by a date specified by the Commissioner; or

- the SRO has substantially contributed to an error by providing incorrect or misleading advice to a taxpayer who has relied on that advice to determine a tax liability. The SRO would recognise such a

situation only where the particular advice given was premised on the information provided by the taxpayer and there is no reason in the mind of a reasonable prudent person to doubt the accuracy of the advice. The SRO will only be bound where the facts disclosed by the taxpayer and upon which the advice was provided were accurate and comprehensive.

19. The following provides clarification of various terms stated in the ruling.

Tax

20. Tax, for the purpose of this ruling, has the same meaning as defined in section 3 of the *Taxation Administration Act 1997*.

Taxpayer

21. A taxpayer includes an individual taxpayer or a member of a group of taxpayers.

Tax unpaid

22. Tax unpaid refers to a tax liability under a taxation law which has not been discharged. Where, at the time the tax default occurred, there is an overpayment of tax by the taxpayer, such overpayment can be offset against the unpaid tax within the same tax line so that interest or penalty tax is payable on the net amount of unpaid tax. The offsetting of an overpayment and an underpayment of tax must not extend beyond the three-year limit under the relevant refund provisions of a taxation law and the retrospective assessing policy (refer to GEN.010).

Reasonable care

23. Penalty tax will not be imposed where taxpayers can show that they have taken reasonable care in the conduct of their tax affairs. The reasonable care standard requires taxpayers to keep complete and accurate records, make diligent efforts to

understand and comply with the law, seek expert advice on uncertain or complex matters and be honest in their dealings with the SRO. In determining whether or not a taxpayer has taken reasonable care, the SRO will consider a range of factors including the taxpayers' knowledge of tax legislation, commercial experience, access to expert advice and familiarity with the English language.

24. The following situations, whilst not exhaustive, may indicate that a taxpayer or a representative of a taxpayer has taken reasonable care.
- (a) the taxpayer has maintained appropriate and proper recording systems;
 - (b) the taxpayer has taken reasonable steps to be aware of his taxation obligations and has familiarised himself with the relevant legislation so as not to overlook the legislative requirements;
 - (c) the taxpayer has applied any relevant public rulings in good faith;
 - (d) the taxpayer has sought professional advice or private rulings for uncertain or complex matters where no public ruling applied or his circumstances differed from those described in a public ruling;
 - (e) the taxpayer has acted in good faith in applying any independent tax advice received;
 - (f) the taxpayer has observed any private ruling received and has notified the SRO if there have been any changes in the information on which the ruling was formed;
 - (g) the taxpayer has acted promptly to seek advice or provide information once made aware, from any source, that he might have a tax liability;
 - (h) the taxpayer has sought a formal decision from the SRO before relying on any legislative exemption or concession which requires the Commissioner to exercise his discretion or grant approval.

Circumstances beyond a taxpayer's control

25. Circumstances beyond the control of the taxpayer or the person acting on behalf of the taxpayer, who has made every reasonable effort to mitigate the effect of these circumstances include the following:

- (a) postal or delivery delays but not where the taxpayer could arrange for an alternative means of delivery because the taxpayer is aware of the likelihood of a delay;
- (b) fires, flood or other natural disasters;
- (c) key personnel not available due to sudden resignation, illness or death;
- (d) computer breakdowns including third party systems such as Electronic Funds Transfer systems.

Intentional disregard of a taxation law

26. Intentional disregard of a taxation law means circumstances where the tax default is caused by a deliberate act or omission by the taxpayer or the person acting on behalf of the taxpayer. This is determined on the basis of direct evidence of a taxpayer's intention (eg admission by taxpayer) or can be inferred from the surrounding circumstances and conduct of the taxpayer.

27. Examples of conduct, which may demonstrate intentional disregard of a taxation law, include:

- (a) use of contrived or artificial avoidance schemes which prove to be legally flawed;
- (b) tax evasion or fraud;
- (c) knowingly making false or misleading records or statements;
- (d) knowingly concealing relevant facts on a tax liability;
- (e) ignoring a private or public ruling of which the taxpayer is aware, particularly on a matter where the law is clearly established;
- (f) failing to assess in accordance with well established principles of tax law;

- (g) failing to meet a tax liability after being advised of its existence by the SRO or another person.
- (h) repeating a tax default on a same matter or a closely related matter.

Concealment or hindrance of an investigation

28. Concealment or hindrance of an investigation means circumstances where a taxpayer, having been informed by the Commissioner that an investigation is to be carried out and before the investigation is completed, took steps to prevent or hinder the Commissioner from becoming aware of the tax default.

Voluntary disclosures

29. A voluntary disclosure must be in writing and provide sufficient information to determine the nature and extent of the tax default. A voluntary disclosure must state the identity of the taxpayer or a group of taxpayers, the nature, period and amount of the tax default and provide an explanation of how the tax default occurred. The SRO would not accept a voluntary disclosure from a member of a pay-roll tax group if another member of that group has been advised of an investigation.

30. The unsolicited payment of a liability to duty or the unsolicited lodgement of documents liable for duty after the expiration of the statutory three-month time for payment will generally be considered to be a voluntary disclosure. However, if the circumstances leading to payment of duty produce inequitable outcomes with other taxpayers, the penalty tax rate for voluntary disclosures will not be applied.

Commencement and completion of an investigation

31. An investigation begins either when the SRO informs a taxpayer in writing that an investigation relating to the taxpayer is to be conducted or on the first use of coercive powers available under the TAA or other relevant legislation in respect of the taxpayer. A member of a taxpayer group will be deemed to have been informed of an investigation if any member of that group has been duly

informed. An investigation is completed when the SRO has provided a taxpayer with formal acknowledgement that the SRO has completed the investigation.

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.01.

Commissioner of State Revenue
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