



COMMISSIONER'S PRACTICE TAA 1.1

REMISSION OF PENALTY TAX - LATE LODGEMENT OF STAMP DUTY INSTRUMENTS AND DUTIABLE STATEMENTS

Commissioner's Practice History

Commissioner's Practice	Issued	Dates of effect	
		From	To
TAA 1.0	1 July 2003	1 July 2003	30 June 2004
TAA 1.1	1 July 2004	1 July 2004	4 October 2004

This Commissioner's practice outlines how penalty tax payable as a result of the late lodgement or non-lodgement of instruments and dutiable statements will be remitted.

Background

Section 17B(1) of the *Stamp Act 1921* ("Stamp Act") requires an instrument, except a mortgage, to be lodged with the Commissioner within two months of the date of first execution. If the instrument is a dutiable statement, it must be lodged within two months after the occurrence of the transaction or event that triggered the requirement to lodge the dutiable statement.

Section 17B(1) of the Stamp Act does not apply to instruments if a provision of the Stamp Act requires the instrument to be lodged within an alternative time period.

Section 17B(1a) of the Stamp Act requires a mortgage to be lodged with the Commissioner each time a liability arises under section 87 of the Stamp Act. The mortgage must be lodged within 2 months after the respective liability date as defined in section 81 of the Stamp Act.

Section 17BA(1) of the Stamp Act specifies that if a general conditional contract, defined in section 8(1) of the Stamp Act, becomes unconditional within one month after the date of execution, the contract must be lodged with the Commissioner within two months of the date of execution.

Section 17BA(2) of the Stamp Act specifies that if subsection (1) does not apply to the general conditional contract, the contract is to be lodged with the Commissioner at the earliest of one month from the date of becoming an unconditional contract as defined in section 13 of the Stamp Act, or 12 months from the date of execution.

Section 17BA(3) of the Stamp Act requires a general conditional contract to be lodged with the Commissioner within two months of the date of execution (the required lodgement date) if the vendor and purchaser are related, as defined by section 7 of the Stamp Act.

Section 17BA(4) of the Stamp Act provides that there is no requirement to lodge a general conditional contract with the Commissioner if the contract is terminated on relevant grounds, as defined by section 14 of the Stamp Act, before it is required to be lodged under subsections (1), (2) or (3).

Section 17BA(5) of the Stamp Act requires that a contract of the following kind must be lodged with the Commissioner within 2 months after the day on which the contract was first executed:

- a) a farming land conditional contract;
- b) a mining tenement conditional contract;
- c) an off-the-plan conditional contract;
- d) a subdivision conditional contract.

Section 16(4) of the Stamp Act removes the liability to duty in circumstances where a general conditional contract has been terminated on relevant grounds and is not required to be lodged because of section 17BA(4) of the Stamp Act.

Section 26(1)(b) of the *Taxation Administration Act 2003* ("TAA") creates a liability to pay penalty tax where a taxpayer does not lodge an instrument as required by the Stamp Act.

Section 26(2) of the TAA authorises the Commissioner to assess an amount of penalty tax where reasonable grounds exist for suspecting that a taxpayer is liable to penalty tax. Section 26(3) of the TAA provides that the amount of penalty tax payable is equal to 100% of the primary tax liability.

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.

The Glossary of the TAA defines "instrument" to include a return, while the definition of "instrument" in section 4 of the Stamp Act specifies that an instrument does not include a return. This Commissioner's practice adopts the Stamp Act definition.

Commissioner's Practice

Circumstances where no remission is to occur

1. No remission of penalty tax will occur where:

- 1.1. a memorandum has been created under section 20 of the TAA because there are reasonable grounds for suspecting that the relevant instrument was not lodged for assessment in an endeavour to evade stamp duty or mislead the Commissioner; or
- 1.2. in any other case, there are reasonable grounds for suspecting that an instrument has not been lodged within the required time, in an endeavour to evade stamp duty or mislead the Commissioner.

Late Lodgement of Instruments for Assessment

2. If an instrument is lodged voluntarily, penalty tax will be remitted to the following:
 - 2.1. within 7 days of the required lodgement date - no penalty tax;
 - 2.2. after 7 days of the required lodgement date but within 1 calendar month - 2.5% of the amount of duty;
 - 2.3. after 1 calendar month of the required lodgement date but within 4 calendar months - 5% of the amount of duty;
 - 2.4. after 4 calendar months of the required lodgement date but within 7 calendar months - 10% of the amount of duty;
 - 2.5. after 7 calendar months of the required lodgement date but within 10 calendar months - 15% of the amount of duty;
 - 2.6. after 10 calendar months of the required lodgement date - 20% of the amount of duty.
3. Where it is apparent that a taxpayer has lodged an instrument because an investigation was imminent, the penalty tax rates detailed in paragraph 4 are to apply.

Impounded Instruments

4. If an instrument is impounded by an investigator or other officer, penalty tax will be remitted to the following:
 - 4.1. after 7 days of the required lodgement date but within 1 calendar month - 5% of the amount of duty;
 - 4.2. after 1 calendar month of the required lodgement date but within 4 calendar months - 10% of the amount of duty;
 - 4.3. after 4 calendar months of the required lodgement date but within 7 calendar months - 20% of the amount of duty;
 - 4.4. after 7 calendar months of the required lodgement date but within 10 calendar months - 30% of the amount of duty;
 - 4.5. after 10 calendar months of the required lodgement date - 40% of the amount of duty.

5. Where an investigator or other officer who has impounded an instrument has evidence, or has reason to believe, that the failure to lodge the instrument for assessment was a deliberate attempt to evade stamp duty or mislead the Commissioner, or where false or misleading information has been provided, he or she shall report the circumstances and make a recommendation for determination to the Assistant Commissioner (Compliance). If the Assistant Commissioner (Compliance) is satisfied that such action has been attempted, no remission of penalty tax will occur in accordance with paragraph 1.

Undated instruments

6. Unless satisfactory evidence is provided to the Commissioner which clearly indicates the date of first execution of an undated instrument, an undated instrument that is lodged on or after 1 July 2003 will be assumed to have been first executed on 1 July 2003.
7. Any remission of penalty tax applicable as a result is to be in accordance with this Commissioner's practice.

Further remission of penalty tax

8. As a general rule, the remission of penalty tax will not be allowed on the basis of a liable party's claim to have been ignorant of a liability to taxation, as this factor is already taken into account in the remission under paragraphs 2 and 4.
9. Where an instrument was inadvertently lodged with another authority (eg. Australian Taxation Office, Department of Land Information or another State or Territory revenue office), the penalty tax (if any) will be further remitted to the amount which would have applied had it been received at the Office of State Revenue on the date on which it was received by the other authority.
10. The further remission of penalty tax below the amounts specified in paragraphs 2 and 4 will be considered only in exceptional circumstances which may include, but are not limited to:
 - 10.1. the late lodgement of the instrument or dutiable statement occurred as a result of advice issued by the Office of State Revenue;
 - 10.2. the default was associated with an illegal activity of the lodging party or any other person acting on behalf of the liable party where the liable party was not involved in the activity;
 - 10.3. the delay in lodging the instrument or dutiable statement was occasioned by the death or serious illness of the liable party or lodging party;
 - 10.4. an investigator or other officer reports that there are other exceptional reasons which may warrant a further remission of the penalty tax and recommends to the Manager Assessments that the penalty tax be remitted in part or in full;
 - 10.5. a taxpayer, solicitor, settlement agent etc has made written representations detailing exceptional circumstances.

11. In the case of paragraphs 10.4 and 10.5, the Manager Assessments may remit the penalty tax in part to an amount equal to interest at 20% per annum or, if the circumstances are such that a full remission is warranted, remit the penalty tax in full.
12. Unless otherwise specified, the remission of penalty tax in circumstances outlined in paragraph 10 is generally to be remitted in full, unless reasons for a partial remission are submitted to the Manager Assessments, who agrees that penalty tax will only be partially remitted.
13. All determinations of requests for further remission of penalty tax should be supported by a file note giving reasons for the allowance or refusal.

Other matters

14. Penalty tax will not be reduced below \$10 for an *ad valorem* assessment or \$2 for a fixed rate assessment, except where the penalty tax is fully remitted.

Date of Effect

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

Bill Sullivan
COMMISSIONER OF STATE REVENUE

1 July 2004