



COMMISSIONER'S PRACTICE TAA 2.1

REMISSION OF PENALTY TAX WHERE LIABILITY NOT DECLARED - SELF-ASSESSMENTS

Commissioner's Practice History

Commissioner's Practice	Issued	Dates of effect	
		From	To
TAA 2.0	1 July 2003	1 July 2003	22 December 2003
TAA 2.1	23 December 2003	23 December 2003	30 June 2008

This Commissioner's practice outlines how penalty tax payable under section 26 will be remitted in circumstances where pay-roll tax, debits tax, rental business duty and special tax return liabilities have not been declared by a taxpayer.

Background

Section 15(3) of the *Taxation Administration Act 2003* ("TAA") provides that the Commissioner may make an official assessment on his or her own initiative of tax payable by a taxpayer under a particular taxation Act. This section also clarifies the Commissioner's power to make an assessment regardless of whether the taxpayer has made, or is required to make, a self-assessment.

Section 16 of the TAA provides the power for the Commissioner to make a reassessment of a tax liability.

Section 16(2) of the TAA provides for the Commissioner to make a reassessment on his or her own initiative if it appears that a previous assessment may not be correct.

Section 16(4) of the TAA allows for a reassessment to consolidate two or more separate assessments into a single assessment. This section is relevant to the reassessment of return based taxes, which often involve the reassessment of tax over more than one return period, particularly where the reassessment is the result of an audit.

Section 17(2)(b) of the TAA allows a reassessment to be made at any time where there are reasonable grounds for suspecting that there has been an evasion of tax, or that a previous assessment was made on the basis of false or misleading information.

Section 26(1) of the TAA makes a taxpayer liable to pay penalty tax in the following circumstances:

- a. where the taxpayer does not lodge an instrument (as defined in the TAA Glossary) in accordance with a taxation Act;
- b. where a contravention of a taxation Act occurs and, as a result, the taxpayer:
 - (i) avoids or delays the payment of tax; or
 - (ii) avoids or delays the submission of information required for the assessment of tax;
- c. where there is a material misstatement or omission in an instrument submitted to the Commissioner by or for the taxpayer under a taxation Act;
- d. where the taxpayer fails to provide information as required under a taxation Act or intentionally or unintentionally provides information that is incorrect, incomplete or misleading;
- e. where the taxpayer makes an underestimation to avoid, delay or reduce the payment of tax;
- f. where the taxpayer fails to pay (or underpays) tax for which the taxpayer is liable.

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.

“Instrument” is defined in the TAA Glossary to include a return. This Commissioner’s practice adopts the TAA definition.

For the purposes of this Commissioner's practice, "Current Year" is determined as the financial year during which information is disclosed, that is, the date when:

- information (including voluntary disclosure) is received by the Commissioner;
- the Commissioner commences an audit/enquiry (commencement of an audit/enquiry is deemed to be the date an officer first contacts the taxpayer or their representative).

For example, an audit commenced in February 2003 for which an assessment is subsequently issued in August 2003 will have a current year of 2002/03 for the purpose of this Commissioner's practice.

Commissioner's Practice

Remission of penalty tax

1. Penalty tax will be remitted on the basis of a separate rate for each financial year for which tax was not declared, with the penalty tax percentage increasing in severity according to the degree of lateness.
2. Where registration is effected due to voluntary disclosure by the taxpayer, or a registered taxpayer has inadvertently failed to declare correct amounts by return and has voluntarily disclosed the position in writing to the Office of State Revenue, penalty tax will be remitted in accordance with the "voluntary" category specified in paragraph 5.
3. Where registration is effected as a result of an investigation by the Commissioner, or an audit identifies that a taxpayer has inadvertently failed to declare correct amounts, penalty tax will be remitted in accordance with the "involuntary" category specified in paragraph 5.
4. Where:
 - 4.1 registration is effected as a result of an investigation and the Commissioner is of the opinion that the taxpayer deliberately failed to register;
 - 4.2 the Commissioner is of the opinion that a taxpayer has deliberately failed to declare correct amounts,no penalty tax will be remitted in accordance with the "evasion" category specified in paragraph 5.

5. Where penalty tax is to be remitted, the amount of penalty tax payable will be calculated as a percentage of the primary tax payable, in accordance with the relevant year of assessment:

FINANCIAL YEAR OF ASSESSMENT	VOLUNTARY %	INVOLUNTARY %	EVASION %
Current Year	Nil	5	100
Preceding Year 1	5	10	100
Preceding Year 2	10	20	100
Preceding Year 3	15	30	100
Preceding Year 4	20	40	100
Preceding Year 5	25	50	100
Preceding Year 6	*	*	100
Preceding Year 7	*	*	100
Preceding Year 8	*	*	100
Preceding Year 9	*	*	100

* Matters relating to voluntary and involuntary categories are assessed only for a period covering the current financial year and the five previous financial years, in accordance with section 17 of the TAA.

6. Where a taxpayer volunteers his or her failure to declare a liability for taxation, but the Commissioner is of the opinion that the taxpayer has previously deliberately concealed that liability, the amount of penalty tax will be calculated under the "evasion" category.
7. Where the Commissioner is of the opinion that a taxpayer has declared a liability because it was apparent that an investigation was imminent, the amount of penalty tax will be remitted under the "involuntary" category specified in paragraph 5, unless paragraph 6 applies, in which case the "evasion" category applies.
8. Except where the Commissioner is of the opinion that an employer deliberately failed to register for pay-roll tax, penalty tax will be remitted under the "voluntary" category specified in paragraph 5 where an individual employer's wages are below the relevant threshold and the employer is required to register for grouping reasons only.

Further remission of penalty tax

9. 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 paragraph 5.

10. Further remission of penalty tax may be allowed in exceptional circumstances which may include, but are not limited to:
 - 10.1 where an investigator reports that a further remission of penalty tax is warranted and the Assistant Commissioner (Compliance), in consultation with the Assistant Commissioner (Revenue Services), approves remission of the penalty tax in part or in full;
 - 10.2 where a taxpayer has made written representations outlining exceptional circumstances and the Assistant Commissioner (Revenue Services), in consultation with the Assistant Commissioner (Compliance), approves remission of the penalty tax in part or in full.

Full remission of penalty tax

11. Penalty tax will be remitted in full in the following circumstances:
 - 11.1 where the Commissioner is of the opinion that an employer has correctly declared wages for a financial year prior to 1 July 2003, and that employer has been given an increased assessment in respect of that period due to an under-declaration of wages made by another group member, for a period during which the employer was a member of that group;
 - 11.2 where an employer/employee determination has been made that tax is payable under section 3 or 11E of the *Pay-roll Tax Assessment Act 1971* as a result of an investigation commenced prior to 1 July 2003, but not assessed until after 1 July 2003;
 - 11.3 where an employer/employee determination has been made that tax is payable under section 3 or 11E of the *Pay-roll Tax Assessment Act 1971* which arose from a questionnaire or declaration made under the terms of the Commissioner's Pay-roll Tax Amnesty, which ceased on 30 June 2003, but the amount payable has not been assessed until after 1 July 2003;
 - 11.4 where the Commissioner determines that a tax liability exists in Western Australia and the Commissioner is satisfied that the tax has been fully paid in another jurisdiction in error.
12. All determinations of requests for further remission of penalty tax should be supported by a file note giving reasons for the allowance or refusal.

Date of Effect

This Commissioner's practice takes effect from 23 December 2003.

Bill Sullivan
COMMISSIONER OF STATE REVENUE

23 December 2003