



COMMISSIONER'S PRACTICE TAA 20.2

REMISSION OF PENALTY TAX – FOR LATE PAYMENT

Commissioner's Practice History

Commissioner's Practice	Issued	Dates of effect	
		From	To
TAA 20.0	1 July 2008	1 July 2008	28 February 2011
TAA 20.1	18 March 2011	1 March 2011	13 December 2012
TAA 20.2	14 December 2012	14 December 2012	31 December 2018

This Commissioner's practice outlines the circumstances in which penalty tax for late payment of duty or tax will be remitted.

Background

The *Taxation Administration Act 2003* ('TAA') provides the administrative framework for a number of taxation Acts administered by the Commissioner, including the *Stamp Act 1921* ('Stamp Act'), the *Pay-roll Tax Assessment Act 2002* ('PTA Act'), the *Land Tax Assessment Act 2002* ('LTA Act'), and the *Duties Act 2008* ('Duties Act'). Matters covered by the TAA include the issue of assessment notices and the imposition of penalty tax.

Liability to tax is set out in each of the relevant taxation Acts. In some instances tax liability is self-assessed, with the taxpayer remitting returns disclosing liability. In other instances the relevant taxation Act provides that the Commissioner is required to make an official assessment of liability.

Self-Assessed (Return Based) Tax

The taxation Acts provide that certain taxes (including pay-roll tax, insurance duty and tax under special tax return arrangements) are required to be lodged periodically by return. Section 14 of the TAA provides that a self-assessment is an assessment made by the taxpayer in a return under a taxation Act or an assessment made by a responsible party in a return or otherwise in accordance with a special tax return arrangement.

Official Assessment

Section 15 of the TAA provides that the Commissioner must make an official assessment of tax payable by a person where a person is not required to make a self-assessment or where a taxation Act specifically requires the Commissioner to do so. An official assessment may be made on either the Commissioner's initiative or at the taxpayer's request, irrespective of whether the taxpayer is required to make a self-assessment.

Reassessment

A reassessment represents an assessment made subsequent to an original assessment. A reassessment may be made on the Commissioner's initiative, on application by the taxpayer, or the Commissioner may be specifically required to undertake a reassessment under a taxation Act (e.g. section 16(1) of the PTA Act) or pursuant to directions given in review proceedings before the State Administrative Tribunal or Court of Appeal.

Matters relating to time periods for which assessments and reassessments of tax may be made are dealt with in Commissioner's Practice TAA 16.

Issue of Assessment Notice

Section 23 of the TAA generally requires that the Commissioner issue an assessment notice when he makes an assessment by way of official assessment or reassessment.

Payment Periods

Section 45 of the TAA provides that the due date for payment of tax is established in accordance with the relevant taxation Act. Where the taxation Act does not make provision for the date of payment, the tax is due for payment on the date specified in the assessment notice.

Tax is required to be paid on original (return based) self-assessments and original official assessments in accordance with the sections of the taxation Acts respectively set out in appendices 1 and 2.

The due date for payment of a reassessment is the later of:

- the date established in accordance with the relevant taxation Act; or
- 28 days after the date that the assessment notice was issued.

Imposition of Penalty Tax

Section 27 of the TAA provides that if the tax or duty assessed is not paid by the due date, the taxpayer is liable to pay penalty tax for late payment equal to 20 per cent of the amount outstanding on the due date.

Section 29 of the TAA provides the Commissioner with the power to remit penalty tax wholly or in part.

Section 30 of the TAA provides that the Commissioner is required to publish the policy that will be followed when deciding whether or not to remit penalty tax.

Commissioner's Practice

Remission of Penalty Tax – Return Based Taxes (Original and Reassessments)

1. Where a self-assessed (return based) tax is not paid by the due date:
 - 1.1 A penalty tax assessment notice will be issued if self-assessed (return based) tax is not paid within seven days after the due date. The seven days is allowed for the Office of State Revenue to process payments received by the due date.
 - 1.2 A single penalty is payable once in respect of each transgression under the TAA in respect of late lodgment of a return and late payment of tax. For example, where penalty tax has been raised as a result of late lodgment, penalty tax will not also be raised in respect of the same transgression as a result of late payment.
 - 1.3 Each 'occurrence' of a transgression is covered by this Commissioner's practice and Commissioner's Practice TAA 18. An occurrence will be determined by reviewing the previous 12-month period and ascertaining the number of transgressions that have occurred. The 12-month period is a 'rolling period' which extends back and is viewed from the most recent occurrence.
 - 1.4 The following penalty tax remission rates are to apply where payments are not received within seven days after the due date.

QUARTERLY / MONTHLY RETURNS	
Transgression	Penalty tax remitted to:
First occurrence in 12 months	2.5% of the outstanding amount
Second occurrence in 12 months	5% of the outstanding amount
Third or greater occurrence in 12 months	10% of the outstanding amount

ANNUAL RETURNS	
Each occurrence	5% of the outstanding amount

Remission of Penalty Tax – Non Return Based Taxes (Original and Reassessments)

2. Where duty payable in respect of a transaction record, instrument or dutiable statement under the Duties Act or the Stamp Act or tax payable under the LTA Act is not paid by the due date:
 - 2.1 A penalty tax assessment notice will be issued if the duty or tax assessed is not paid within seven days after the due date. The seven days is allowed for the Office of State Revenue to process payments received by the due date.

- 2.2 The penalty tax of 20 per cent of the outstanding amount imposed by section 27 of the TAA will be remitted to 5 per cent.

Further Remission of Penalty Tax

3. Further remission of the late payment penalty tax will only be considered in exceptional circumstances, which may include, but are not limited to where:
 - 3.1 payment of tax is received by the issue date of the penalty tax assessment notice, and a check of the taxpayer's history shows a good payment record;
 - 3.2 payment of tax is received within seven days after the due date of the penalty tax assessment notice with respect to land tax and return based taxes and a check of the taxpayer's history shows no prior instances of late payment;
 - 3.3 genuine financial difficulties caused payment to be delayed by up to seven days after the issue date specified in the penalty tax assessment notice and a check of the taxpayer's history shows a good payment record;
 - 3.4 payment is made within seven days after the issue date specified in the penalty tax assessment notice and payment was delayed due to unforeseen circumstances beyond the taxpayer's control (e.g. the taxpayer was hospitalised, a family emergency, etc.) and a check of the taxpayer's history shows a good payment record;
 - 3.5 late payment of tax was caused by postal system delays (e.g. Christmas/Easter), payment is made within seven days after the issue date specified in the penalty tax assessment notice and a check of the taxpayer's history shows a good payment record;
 - 3.6 the taxpayer is deceased and assets of the estate are frozen due to probate;
 - 3.7 payment was inadvertently directed to the wrong authority (e.g. Australian Taxation Office, Landgate or another State or Territory revenue office) and such payment was made within the required time; and/or
 - 3.8 the lodging party has misappropriated client funds held on trust for the payment of an assessment.
4. Where other circumstances that do not fall within paragraph 3 are given in support of a request for further remission of penalty tax, the request will be referred to the relevant Principal Revenue Officer or Assistant Director with a recommendation for determination. If it is determined that further remission is warranted, the penalty tax may be remitted in full, or to such other amount that is considered appropriate in the particular circumstances.

5. All determinations in respect of requests for further remission of late payment penalties should be supported by a file note giving the reasons for the allowance or refusal.
6. Any further remission of penalty tax arising in relation to the assessment of return based taxes may not negate the occurrence of the transgression for the purposes of determining whether a transgression has occurred in the previous 12-month period.
7. Notwithstanding that late payment penalty tax for land tax is remitted in accordance with paragraphs 3 or 4, the discounted payment provided under regulation 6 of the *Land Tax Assessment Regulations 2003* is no longer available, as regulation 6 only applies in the circumstances where the taxpayer makes full payment within 49 days after the date of the assessment notice. There is no discretion under the LTA Act to override this position.

Other Matters

8. Penalty tax is payable by the date specified in the assessment notice in accordance with section 45(2) of the TAA.
9. If full payment of the tax and penalty tax is not received, or an instalment arrangement or extension of time has not been granted under section 47 of the TAA within seven days after the date specified in the assessment notice, legal action to recover the outstanding amounts will be commenced.

Date of Effect

This Commissioner's practice takes effect from 14 December 2012.

Bill Sullivan
COMMISSIONER OF STATE REVENUE

14 December 2012

Appendix 1

ORIGINAL RETURN BASED ASSESSMENTS – PAYMENT REQUIREMENTS

TAXATION ACT	RETURN	PAYMENT REQUIREMENT	PAYMENT TIME PERIOD	
<i>Pay-roll Tax Assessment Act 2002</i>	Pay-roll tax – monthly return	Section 6	Seven days after the end of the month	
	Pay-roll tax – quarterly return		Seven days after the end of the quarter	
	Pay-roll tax – annual return		21 days after the end of the assessment year	
<i>Stamp Act 1921</i>	Insurance duty – monthly return	Section 94(1) and (3)	21 days after the end of the month	
<i>Duties Act 2008</i>	Insurance duty – monthly return	Section 221	21 days after the end of the month	
<i>Taxation Administration Act 2003</i>	Special tax return arrangement	Section 50(1)(a) and 52(4)	15 days after the end of the return period	

SUPERSEDED

Appendix 2

ORIGINAL OFFICIAL ASSESSMENTS – PAYMENT REQUIREMENTS

TAXATION ACT	DUTIABLE TRANSACTION	PAYMENT REQUIREMENT	PAYMENT TIME PERIOD	
<i>Land Tax Assessment Act 2002</i>	Assessment	Section 6	49 days after date of the assessment notice	
<i>Duties Act 2008</i> (for transactions occurring on or after 1 March 2011)	Generally (unless alternative payment provisions are provided for)	Section 25(1)	One month after the date of the assessment notice	
	<ul style="list-style-type: none"> • General conditional agreement • Farming land conditional agreement • Mining tenement conditional agreement • Transfer of dutiable property; agreement for the transfer of dutiable property; declaration of trust over dutiable property; or vesting of dutiable property by statute law or court order, where a transfer form relating to the transaction must be lodged with – <ul style="list-style-type: none"> ○ Landgate (under the <i>Transfer of Land Act 1893</i> or the <i>Registration of Deeds Act 1856</i>); or ○ the Department of Mines and Petroleum (under the <i>Mining Act 1978</i>). 	Section 25(2)	12 months after the day on which liability for duty arose	
	<ul style="list-style-type: none"> • Issue of title conditional agreement • Subdivision conditional agreement 	Section 25(3)	Three years after the day on which liability for duty arose	

Appendix 2

ORIGINAL OFFICIAL ASSESSMENTS – PAYMENT REQUIREMENTS

TAXATION ACT	DUTIABLE TRANSACTION	PAYMENT REQUIREMENT	PAYMENT TIME PERIOD	
<i>Duties Act 2008</i> (for transactions occurring on or before 28 February 2011)	Generally (unless alternative payment provisions are provided for)	Section 25(1)	One month after the date of the assessment notice	
	<ul style="list-style-type: none"> • Farming land conditional agreement • Mining tenement conditional agreement • Farming land where completion is subject to a primary production activity 	Section 25(1)(a)	12 months after the day on which liability for duty arose	
	<ul style="list-style-type: none"> • Off-the plan conditional agreement • Subdivision conditional agreement 	Section 25(1)(b)	Two years after the day on which liability for duty arose (providing the property is not on sold prior to the transaction record being endorsed for duty)	
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<i>Stamp Act 1921</i>	Generally (unless alternative payment provisions are provided for)	Section 17A(2)	One month after the date of the assessment notice	
	<ul style="list-style-type: none"> • Farming land conditional contract • Mining tenement conditional contract 	Section 17AA(1)	The later of: <ul style="list-style-type: none"> • 12 months after the date on which the contract was first executed; or • One month after the date of the assessment notice 	
	<ul style="list-style-type: none"> • Off-the plan conditional contract • Subdivision conditional contract 	Section 17AA(2)	The later of: <ul style="list-style-type: none"> • Two years after the date on which the contract was first executed; or • One month after the date of the assessment notice 	