



## Remission of Penalty Tax – for Late Payment

This Commissioner's practice outlines when penalty tax for late payment of tax will be remitted.

### Background

The *Taxation Administration Act 2003* (TAA) provides the administrative framework for taxation Acts administered by the Commissioner, including the *Betting Tax Assessment Act 2018*, the *Duties Act 2008*, the *Land Tax Assessment Act 2002*, and the *Pay-roll Tax Assessment Act 2002*.

While the TAA covers issuing assessment notices and imposing penalty tax, liability to tax is set out in each relevant taxation Act. Liabilities are either self-assessed, with the taxpayer remitting returns disclosing liability, or assessed by the Commissioner.

### Self-assessment

Section 14 of the TAA provides that a self-assessment is an assessment made by the taxpayer or responsible party in a return under a taxation Act or 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 if a person is not required to make a self-assessment or if 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, regardless of whether the taxpayer is required to make a self-assessment.

### Reassessment

A reassessment is an assessment made subsequent to an original assessment.<sup>1</sup>

A reassessment may be made:

- on the Commissioner's initiative or
- on application by the taxpayer or
- when required by a taxation Act<sup>2</sup> or
- in accordance with directions given in review proceedings before the State Administrative Tribunal or Court of Appeal.

### Issue of assessment notice

Section 23 of the TAA generally requires the Commissioner to issue an assessment notice when an official assessment or reassessment is made.

<sup>1</sup> Matters relating to time periods for which assessments and reassessments of tax may be made are dealt with in [Commissioner's Practice TAA 16 'Certain Assessment and Reassessment Time Limits'](#).

<sup>2</sup> For example, section 16(1) of the PTA Act.

## Payment periods

Under section 45 of the TAA, payment of tax is due on a date fixed or worked out by the relevant Act. If the Act does not provide for a payment date, tax is due for payment on the date specified in the assessment notice.

Tax is required to be paid on self-assessments and official assessments in accordance with the sections set out in Appendices 1 and 2.

Tax is required to be paid on a reassessment by the later of:

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

## Penalty tax

In accordance with section 27 of the TAA, if tax is not paid by the due date, the taxpayer is liable to pay penalty tax 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.

## Commissioner's practice

1. This practice applies to original assessments and reassessments.

### Self-assessments not paid by the due date

2. A penalty tax assessment notice will be issued if the tax is not paid within seven days after the due date.
3. A single penalty applies to each transgression of late lodgment of a return and late payment of tax. For example, if penalty tax has been raised as a result of late lodgment, penalty tax will not also be raised for late payment of the same transgression.
4. An 'occurrence' of a transgression<sup>3</sup> will be determined by reviewing the previous 12-month period, taken from the most recent occurrence.
5. Penalty tax will be remitted in accordance with the following scale:

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

<sup>3</sup> Transgression occurrences are covered by this Commissioner's practice and [Commissioner's Practice TAA 18 'Remission of Penalty Tax – Late or Non-lodgment'](#).

### ***Official assessments not paid by the due date***

6. A penalty tax assessment notice will be issued if the tax assessed is not paid within seven days after the due date.
7. Penalty tax will be remitted to 5 per cent of the outstanding amount.

### ***Corporate taxpayers under voluntary administration or liquidation***

8. When a taxpayer with a liability is in administration or liquidation, the Commissioner will submit a proof of debt claim to the insolvency administrator. A proof of debt claim includes primary tax and penalty tax that applied at the administrator or liquidator's appointment date.<sup>4</sup>

### ***Duties***

9. Penalty tax for late payment will be remitted in full if an administrator or liquidator is appointed before the due date on the assessment notice.
10. Penalty tax for late payment will generally not be remitted if an administrator or liquidator is appointed after the due date on the assessment notice.

### ***Self-assessments***

11. Late payment penalty tax arises on the day after the last day for lodging the return.
12. Penalty tax will not be remitted if the obligation to pay the tax by the due date, or the liability for late payment penalty tax, arose before an administrator or liquidator's appointment.
13. The administrator or liquidator is the liable party for a debt if a liability for a self-assessed tax or associated late payment penalty tax arises for the period that is after their appointment.

### ***Further remission***

14. The Commissioner will consider remitting penalty tax further in exceptional circumstances. Examples of exceptional circumstances include:
  - 14.1 payment of tax is received by the date the penalty tax assessment notice is issued, and the taxpayer's history shows a good payment record
  - 14.2 payment of tax is received within seven days after the penalty tax assessment notice due date (land tax and return-based taxes), and the taxpayer's history shows no prior instances of late payment
  - 14.3 genuine financial difficulties caused payment to be delayed by up to seven days after the penalty tax assessment notice is issued, and the taxpayer's history shows a good payment record
  - 14.4 payment is made within seven days after the penalty tax assessment notice is issued, payment was delayed due to unforeseen circumstances beyond the taxpayer's control (e.g. the taxpayer was hospitalised, a family emergency, etc.), and the taxpayer's history shows a good payment record
  - 14.5 late payment was caused by postal system delays (e.g. Christmas/Easter), payment is made within seven days after the penalty tax assessment notice is issued, and the taxpayer's history shows a good payment record
  - 14.6 the taxpayer is deceased and estate assets are frozen due to probate

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<sup>4</sup> Section 553 of the *Corporations Act 2001* provides that claims or debts can be claimed against a company if the circumstances giving rise to the claim occurred before the relevant date.

- 14.7 payment was inadvertently made to the wrong authority (e.g. Australian Taxation Office, Landgate or another State or Territory revenue office) but the payment was made within the required time or
- 14.8 the lodging party has misappropriated client funds held on trust for paying an assessment.

The Commissioner will consider other exceptional circumstances claims on a case-by-case basis.

15. Further remitting penalty tax in relation to the assessment of return-based taxes does not mean the transgression did not occur when determining whether a transgression has occurred in the previous 12-month period.

### **Other matters**

16. Penalty tax is payable by the date specified in the assessment notice.<sup>5</sup>
17. If full payment of the tax and penalty tax is not received, or an instalment arrangement or extension of time has not been granted,<sup>6</sup> within seven days after the date specified in the assessment notice, we may commence legal action to recover the outstanding amounts.

### **Date of effect**

This Commissioner's practice takes effect from 4 April 2023.

Chris McMahon  
COMMISSIONER OF STATE REVENUE

4 April 2023

### **Document 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
TAA 20.3	1 January 2019	1 January 2019	3 April 2023
TAA 20.4	4 April 2023	4 April 2023	Current

<sup>5</sup> in accordance with section 45(2) of the TAA.

<sup>6</sup> under section 47 of the TAA.

## Appendix 1

### Original return-based assessments (self-assessments) – Payment requirements

Taxation Act	Return	Payment requirement	Payment time period
Pay-roll Tax Assessment Act 2002	Payroll tax – monthly return	Section 6	Seven days after the end of the month
	Payroll tax – quarterly return		Seven days after the end of the quarter
	Payroll tax – annual return		21 days after the end of the assessment year
Betting Tax Assessment Act 2018	Betting tax – monthly return	Section 17	28 days after end of the month
	Betting tax – quarterly return		28 days after end of the quarter
	Betting tax – annual return		28 days after end of the year
Duties Act 2008	Insurance duty – monthly return	Section 221	21 days after the end of the month
Taxation Administration Act 2003	Special tax return arrangement	Section 50(1)(a) and 52(4)	15 days after the end of the return period

## 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"> <li>General conditional agreement</li> <li>Farming land conditional agreement</li> <li>Mining tenement conditional agreement</li> <li>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"> <li>Landgate (under the <i>Transfer of Land Act 1893</i> or the <i>Registration of Deeds Act 1856</i>) or</li> <li>the Department of Mines and Petroleum (under the <i>Mining Act 1978</i>).</li> </ul> </li> </ul>	Section 25(2)	12 months after the day on which liability for duty arose
	<ul style="list-style-type: none"> <li>Issue of title conditional agreement</li> <li>Subdivision conditional agreement</li> </ul>	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"> <li>Farming land conditional agreement</li> <li>Mining tenement conditional agreement</li> <li>Farming land where completion is subject to a primary production activity</li> </ul>	Section 25(1)(a)	12 months after the day on which liability for duty arose
	<ul style="list-style-type: none"> <li>Off-the plan conditional agreement</li> <li>Subdivision conditional agreement</li> </ul>	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)