



# Employee benefit arrangements

Guidelines for consideration of applications by individual participants for remission of interest and/or further remission of penalty.

This fact sheet provides information for those people who wish to make an application for remission of interest and/or further remission of penalty.

If you are a participant in an employee benefit arrangement you can apply for remission of interest and/or further remission of the penalty relating to your employee benefit arrangement debt.

Your application will be considered having regard to your individual circumstances. Remission would only be expected if there are special circumstances such as those outlined below.

If the claimed contribution was not actually made or the tax avoided was the result of fraud it would generally not be appropriate to consider remission other than in the context of an application for relief or waiver on grounds of hardship.

## REMISSION OF INTEREST

The following factors may help you structure an application for remission of interest. These factors should not be seen as limiting the issues you may wish to address. Consideration of these matters is not intended to restrict authorised officers in exercising the discretion to remit interest.

Factors relevant to a further remission of interest include the following.

- 1 If you have a good history of payment and lodgment, and have not previously been involved in a mass marketed investment or other tax avoidance scheme, and one or both of the following apply it would be reasonable to remit interest to 4.72% for the period prior to the issue of the relevant amended assessment if:
  - a you were subject to the type of aggressive and sophisticated marketing techniques commonly employed in mass marketed investment schemes, and/or
  - b you entered into an arrangement relying on advice from the Tax Office held by your adviser in relation to that particular type of arrangement.

- 2 There was an unreasonable delay by the Tax Office in issuing amended assessments after you provided all necessary information. In this case, full remission for the period of delay would be appropriate.

- 3 If you can demonstrate one or more of the following it would be appropriate that any remission apply for both the pre and post amended assessment period. Where there is sufficient weight of circumstances warranting a remission, it would generally be reasonable to remit interest to 4.72% if:
  - a you have suffered financial difficulties because of the existence of both income tax and fringe benefits tax assessments. This could include, for example, evidence of an inability to secure borrowings that, except for the multiple liabilities, could reasonably be expected to have been available, and/or
  - b your financial circumstances are such that you could not reasonably meet repayment of the liability with the full interest component.

In this context it is not the Tax Office's desire to cause you to dispose of or liquidate a viable business to meet your liability. Provided you are prepared to enter into a repayment program, remission would be appropriate where necessary to achieve a realistic program of repayment, and/or

- c you relied on advice given by the Tax Office to you or your agent or advisor about the particular arrangement.

## FURTHER REMISSION OR REDUCTION OF PENALTIES

Taxation Ruling TR94/7 sets out the framework for further remission of penalties. It indicates that this would occur only in those exceptional cases where, having regard to all of the circumstances, the rate of penalty prescribed under the law would lead to an unreasonable result.

The following factors may help you structure an application for further remission or reduction of penalties. You should ensure that you cover comprehensively the reasons the tax shortfall occurred and what action you personally took before claiming the deduction. The Tax Office will consider any information that may not have been evident at the time the penalty was originally imposed.

These factors below should not be seen as limiting the issues you may wish to address. Consideration of these matters is not intended to restrict authorised officers in exercising the discretion to remit penalties.

Factors include if:

- you voluntarily told the Tax Office, in writing, about the matter to which the penalties relate prior to the notification of audit and you have not already received a reduction in penalties for doing this, or
- you relied upon advice you received from the Tax Office about your particular arrangement, or a Tax Office publication misled you.

Applications for further remission of penalties and interest may be sent to:

EBA Interest and Penalty Remission  
Australian Taxation Office  
PO Box 3543  
ALBURY NSW 2640

## INTERNAL REVIEW OF DECISION

If you are dissatisfied with our decision in respect of your application for remission, you can request a review of that decision.

## SERIOUS HARDSHIP

Making a request for further remission of penalties or interest does not prevent you from applying for release from all or part of your tax debt, if payment of the debt will cause you serious financial hardship.

Indications of serious financial hardship that would justify release from your tax debt include the inability to pay for the basic necessities of life such as food, clothing, medical supplies, accommodation or education for children and other basic requirements.

## EMPLOYEE BENEFIT ARRANGEMENTS

Employee benefit arrangements include those set up as:

- employee benefit trusts
- employee share plans
- controlling interest superannuation schemes
- offshore superannuation schemes, and
- employee share trusts.

### MORE INFORMATION

If you have any queries about applying for further remission of interest or penalties you can phone us on **1800 001 111**.

For further information about release from tax debts, you can phone us on **1300 130 912**.

If you do not speak English well and want to talk to a tax officer, phone the Translating and Interpreting Service on **13 14 50** for help with your call.

If you have a hearing or speech impairment and have access to appropriate TTY or modem equipment, phone **13 36 77**. If you do not have access to TTY or modem equipment, phone the Speech to Speech Relay Service on **1300 555 727**.

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