

Part F Penalties and Interest Relating to Receivables Activities**91 INTRODUCTION TO PART F – PENALTIES AND INTEREST RELATING TO RECEIVABLES ACTIVITIES**

The policy in this chapter is to be followed by Tax Office staff. We have made every effort to ensure it is technically accurate, but in the interests of clarity it has been written in 'plain English' and should not be read or interpreted like legislation. If you feel that something in the chapter is wrong or misleading, please advise the Tax Office.

Date of effect: 4 July 2006 (*This replaces the 2003 version*)

91.1 PURPOSE

91.1.1 This chapter is an introduction to Part F of the *ATO Receivables Policy* which deals with penalties and interest that may apply to an entity as a result of:

- failure to pay by the due date (including a failure to pay electronically if required);
- failure to notify or lodge by the due date (including a failure to notify or lodge electronically if required);
- failure to register for PAYG Withholding as required;
- overclaiming credits or underestimating liabilities.

91.1.2 These chapters include the Tax Office's policy in relation to penalties and interest (of the types outlined above) that were introduced as part of *A New Tax System (Tax Administration) Act (No. 2) 2000*.

91.2 THE PENALTIES REGIME**Background to the legislation**

91.2.1 The implementation of the new tax system from 1 July 2000 introduced a number of new tax obligations. A common penalty applies to understatements of these different taxes and to overclaiming credits, and a common penalty applies for failing to notify the Commissioner of these obligations by lodging an Activity Statement. These obligations are self-reporting and, for some taxpayers, required to be executed electronically. The former penalties framework was not designed to operate in this environment.

91.2.2 The current administrative penalty regime is designed to overcome the problems within the former penalties framework and the application of penalties to the new tax system by:

- grouping together existing penalty provisions which have a substantially similar operative effect;
- imposing the same administrative penalty for breaches of similar tax obligations; and

- applying the new administrative penalty regime uniformly to all taxation laws, including those introduced as part of the New Tax System.

The current regime

91.2.3 *A New Tax System (Tax Administration) Act (No. 2) 2000* introduced a uniform administrative penalty regime into Schedule 1 of the *Taxation Administration Act 1953* (TAA). This regime consists of 3 distinct components:

- penalties relating to statements and schemes;
- penalties for failure to lodge returns and other documents on time; and
- penalties for failing to meet other taxation obligations.

91.2.4 This administrative penalty regime applies to all taxation laws of which the Commissioner has administration.

Context of Reform

91.2.5 The purpose of the amendments was to streamline the existing penalties framework and to support compliance by imposing uniform administrative penalties on taxpayers for failing to satisfy obligations under the taxation laws.

91.2.6 The administrative penalty regime is designed to be easily understood by taxpayers and easily administered by the Commissioner. It is equitable in that a common penalty applies where a taxpayer fails to satisfy the same type of obligation under different tax laws. The regime is consistent with the ATO Compliance Model and the Taxpayers' Charter.

91.2.7 These measures were the second phase of the uniform penalties regime. The general interest charge (GIC) which is not, in law, a penalty but an interest charge, was introduced in 1999 in *Taxation Laws Amendment Act (No. 3) 1999* to apply a uniform interest rate to all late payments of tax.

91.2.8 As a result of the recommendations following the Review of Aspects of Income Tax Self Assessment, on 16 December 2004, the Government announced the introduction of the shortfall interest charge (SIC) to improve the interest regime that applies to income tax shortfalls. This lower interest charge applies to shortfalls arising from amended income tax assessments for the 2004-05 and later income years, for the period from the due date of the original assessment, to the day before the assessment is amended.

Date of effect

91.2.9 The amendments contained in *A New Tax System (Tax Administration) Act (No. 2) 2000* generally applied from 1 July 2000. However, where the amendments relate to income tax return matters they applied to the 2000-2001 and later income years. Amendments relating to FBT return matters applied to the year of tax starting 1 April 2001 and later years.

91.3 PENALTIES AND THE COMPLIANCE MODEL

- 91.3.1 The *ATO Receivables Policy* is an integral part of the Tax Office's strategy to improve taxpayer compliance. While the policy is primarily concerned with taxpayers meeting their payment and lodgment obligations, its contribution to taxpayer compliance overall can be demonstrated by reference to the ATO Compliance Model. (See chapter entitled 'Risk management' for further details).
- 91.3.2 The principle of the ATO Compliance Model applies to every facet of tax administration and is utilised widely at both strategic and operational levels. It illustrates that the individual circumstances of a taxpayer contribute to his or her underlying attitudes to compliance and to the subsequent behaviour. Accordingly, the Tax Office's strategies, including its approach to the imposition of penalties, are designed to improve that behaviour and in the long term, the underlying attitude to compliance.
- 91.3.3 The determination of the level of penalties (ie the level to which the penalty imposed by law would be remitted) is predicated upon an evaluation of the overall compliance risk posed by the taxpayer, and this is based on their individual circumstances. In other words, the Tax Office needs to differentiate its treatment of taxpayers according to their approach to meeting their tax responsibilities and the circumstances they face in doing it. This is consistent with the intent of the Taxpayers' Charter. The Compliance Model clearly links the degree of compliant attitude (and consequent behaviour) to the severity of the strategies adopted. In applying this model the Tax Office will consider all available behavioural information (not just lodgment history, or payment and debt performance), together with an understanding of why there was any previous non-compliance.
- 91.3.4 Accordingly, the remission of penalties will be cognisant of the taxpayer's compliance history and a consequential evaluation of compliance risk, as well as being focused on the longer-term goal of ensuring both current and future compliance. Some penalties or interest charges, particularly the GIC, are designed to include compensation to the Government for the delay in paying a correct liability. In circumstances where a taxpayer has an impeccable compliance history, an error may not attract any penalty other than the GIC, (or SIC for amended income tax assessments for the 2004-05 and later income years), while taxpayers with poor compliance history may be prosecuted rather than have administrative penalties imposed.
- 91.3.5 The imposition of penalties is not an end in itself. It is a means of encouraging or securing compliance, not only for a specific taxpayer but also for the wider taxpayer community generally.

91.4 THE IMPOSITION AND REMISSION OF PENALTIES UNDER THE NEW TAX SYSTEM

- 91.4.1 In the transitional period of the new tax system, the Tax Office's response was cognisant of the compliance model and administrative effectiveness as well as considerations of the implementation workload on taxpayers, agents and professional advisors. The underlying philosophy in determining transitional arrangements was to strike an appropriate balance between the advice and assistance

that the Tax Office was obliged to provide during this time and the longer term aim of continued compliance improvement. The Tax Office recognised the educational requirements of taxpayers who often have limited understanding of taxation matters. This required us to temper our approaches to the imposition of penalties so as to ensure that compliant taxpayers were not unfairly penalised as a result of their lack of understanding of the new regime.

- 91.4.2 Since the establishment of the new tax system and allowance of ample opportunities for taxpayers and their professional advisors to familiarise themselves with the relevant provisions, the Tax office has returned to its traditional focus of encouraging voluntary compliance through a fair and equitable enforcement of its penalty regime.
- 91.4.3 As would be expected, the Commissioner will continue to exercise his discretion to remit all or part of a penalty where he considers it appropriate to do so.
- 91.4.4 Practice Statement PS LA 2000/9 sets out guidelines for the remission of administrative penalties and general interest charge during the first year of the new tax system.
- 91.4.5 Practice Statement PS LA 2002/8 sets out guidelines for remission of administrative penalties and general interest charge during the second year of the new tax system.
- 91.4.6 The overriding principle to remission of penalties outlined in those Practice Statements is to adopt a fair and reasonable approach, recognising that non-compliance could result from a lack of knowledge and other difficulties faced by the community in implementing the new tax system, rather than a non-compliant attitude. Where a shortfall amount results from an honest mistake, a misunderstanding of new requirements or an inadvertent error, and it is evident that the taxpayer is making a genuine attempt to comply with the obligations, penalties are usually remitted.
- 91.4.7 However, a distinction is drawn between taxpayers who make a genuine attempt to comply with the requirements of the new tax system and those who do not attempt to understand and satisfy their obligations, or cases where taxpayers are deliberately non-compliant or fraudulent.
- 91.4.8 Under both Practice Statements, taxpayers are still generally liable for general interest charge from the date when the correct amount should have been paid.
- 91.4.9 Practice Statement PS LA 2006/2 outlines the Commissioner's approach to remission from 1 April 2004. The Tax Office has moved to a 'business as usual' approach to the administration of penalties. The policy of generally remitting penalties to give taxpayers the opportunity to understand their obligations under the new tax system is no longer appropriate and does not apply to shortfalls in documents lodged on or after 1 April 2004.