

ATO RECEIVABLES POLICY

PART G Penalties and Interest Relating to Receivables Activity

Chapter 91

INTRODUCTION TO PART G – 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: 24 July 2008 (This version replaces the 2006 version.)

Key legislation: *A New Tax System (Tax Administration) Act (No. 2) 2000; Tax Administration Act 1953*

PURPOSE

1. This chapter is an introduction to Part G and deals with penalties and interest that were introduced as part of *A New Tax System (Tax Administration) Act (No. 2) 2000*. These 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 pay as you go (PAYG) withholding as required
 - overclaiming credits or underestimating liabilities.

INTRODUCTION

2. *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.
3. The penalty regime:
 - groups together existing penalty provisions which have a substantially similar operative effect
 - imposes the same administrative penalty for breaches of similar tax obligations, and

- applies the new administrative penalty regime uniformly to all taxation laws, including those introduced as part of the New Tax System.
4. This administrative penalty regime applies to all taxation laws of which the Commissioner has administration.
 5. The penalty regime was designed to overcome the problems within the former penalties framework, to be easily understood by taxpayers and easily administered by the Tax Office. It is equitable and supports compliance 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 compliance model and the taxpayers' charter.
 6. 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.
 7. 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

8. 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 2000–01 and later income years. Amendments relating to fringe benefit tax return matters applied to the year of tax starting 1 April 2001 and later years.

POLICY

Penalties and the compliance model

9. The ATO Receivables Policy (the 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 compliance model. (Refer to Chapter 3 'Risk management'.)
10. The principle of the 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.
11. The determination of the level of penalties (that is, 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 and 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.

12. 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, while taxpayers with poor compliance history may be prosecuted rather than have administrative penalties imposed.
13. 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.

The Imposition and remission of penalties

14. In the transitional period of the new tax system, the Tax Office tempered its approach to the imposition of penalties to ensure compliant taxpayers were not unfairly penalised as a result of their lack of understanding of the new regime.
15. The guidelines for the remission of administrative penalties and general interest charge during the first and second years of the new tax system are covered in the Law Administration Practice Statements PS LA 2000/9 and PS LA 2002/8.
16. The Tax Office has now moved to a “business as usual approach”. Voluntary compliance is encouraged through a fair and equitable enforcement of the penalty regime. The Tax Office will continue to exercise discretion to remit all or part of a penalty where it is considered appropriate.
17. The Commissioner’s approach to remission from 1 April 2004 is outlined in PS LA 2006/2.

Chapter 91 - Archived version

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