

## Part F Penalties and Interest Relating to Receivables Activities

### 99 ELECTRONIC NOTIFICATION AND PAYMENT PENALTY

*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)

*(This chapter should be read in conjunction with the chapter 'Introduction to Part F – Penalties relating to Receivables Activities')*

#### 99.1 PURPOSE

99.1.1 This chapter deals with:

- (i) the requirements to electronically notify Business Activity Statement (BAS) amounts,
- (ii) the requirements to electronically pay tax debts, and
- (iii) the imposition and remission of penalties for non-electronic notification or payment.

#### 99.2 LEGISLATION

99.2.1 The circumstances in which an entity will electronically lodge its Goods and Services Tax (GST) return are described in section 31-25 of the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act).

99.2.2 In relation to electronic lodgment, the law specifically provides that:

- (i) an entity whose annual turnover meets the electronic lodgment turnover threshold listed under subsection 31-25(4) of the GST Act, (currently \$20 million) *must* lodge its GST return electronically - unless the Commissioner 'otherwise approves' (subsection 31-25(2) of the GST Act),
- (ii) an entity whose turnover does not exceed the electronic lodgment threshold may *choose* to lodge their GST return electronically,
- (iii) where an entity is an 'approved entity' for the purposes of deferring GST payable on taxable importations (paragraph 33-15(1)(b) of the GST Act), the entity must lodge its GST returns electronically (regulation 33-15.06(b) of the GST Act), and/or
- (iv) any entity that chooses or is required to lodge its GST return electronically, must also electronically notify the Commissioner of all other BAS amounts whose notification is required on the same day as the GST return – section 388-80 of Schedule 1 to the Taxation Administration Act 1953 (TAA).

99.2.3 The circumstances in which an entity will electronically pay its net amount for a tax period, are described in section 33-10 of the GST Act.

- 99.2.4 In relation to electronic payment, the law specifically provides:
- (i) Where an entity is required to lodge electronically (because it meets the electronic lodgment turnover threshold) it must also pay its net GST amount electronically (subsection 33-10(2) of the GST Act). In addition, it must also electronically pay the Commissioner all of its other tax debts that are due to be paid during that period -section 8AAZMA of the TAA);
  - (ii) Under section 8AAZMA of the TAA a 'large' withholder must electronically pay to the Commissioner any amounts withheld under subsection 16-85(1) Schedule 1 to the TAA; as well as any other tax debts that are due to be paid that month;
  - (iii) where an entity is required to lodge electronically under regulation 33-15.06(b) of the GST Act (because it is an 'approved entity' for the purposes of the 'Deferred GST Scheme'), regulation 33-15.06(c) of the GST Act requires that entity also pay its liabilities electronically.
- 99.2.5 An entity that exceeds the threshold and commences as a large withholder in the months July or August 2000 must pay amounts withheld to the Commissioner by the end of the 21<sup>st</sup> day after the end of that month, by electronic payment or any other means approved in writing by the Commissioner – section 16-130 of Schedule 1 to the TAA.
- 99.2.6 GST branches and PAYG withholding branches are classified according to the parent entity's classification.
- 99.2.7 In respect of **GST branches and PAYG withholding branches**:
- (i) the legal obligation to pay GST and PAYG withholding amounts,
  - (ii) the legal right to receive GST refunds, and
  - (iii) the legal obligation for notification of liabilities
- remains with the (parent) entity and is not transferred to the branch – section 16-143 of Schedule 1 to the TAA, and section 54-60 of GST Act.
- 99.2.8 An entity must lodge a GST return for each branch (section 54-55 of the GST Act). PAYG withholding branches and GST branches *may* prepare their own GST returns, but the legal obligation to lodge and pay still rests with the parent entity.
- 99.2.9 Under section 48-60 of the GST Act, members of **GST groups** are not required to lodge a GST return unless they are also the 'representative member' of the GST group. The representative member is required to pay any GST liability for the GST group and is entitled to receive any refund payable to the GST group.
- 99.2.10 Under section 51-50 of the GST Act, members of **GST joint ventures** are not required to lodge a GST return unless they are also the 'joint venture operator'. Under sections 51-55 and 51-60 of the GST Act the joint venture operator is responsible for paying the GST liability of the joint venture, and is entitled to any GST refund payable by the Commissioner to the joint venture.
- 99.2.11 Payment of GST on any taxable importations is collected by Customs (section 33-15 of the GST Act) but this has no effect on an entities other electronic lodgment and payment obligations.

- 99.2.12 Penalties for not notifying or not paying electronically when required are provided for in Division 288 of Part 4-25 in Schedule 1 to the TAA.
- 99.2.13 The machinery provisions for notifying and remitting those (and other) penalties and the application of the General Interest Charge (GIC) to those penalties is provided for in Division 298 of Part 4-25 in Schedule 1 to the TAA.
- 99.2.14 Specifically the law provides for:
- (i) The imposition of a penalty of 5 penalty units for non-electronic notification where an entity has not, as was required, made a notification electronically, but has made the notification in another way – section 288 -10 of Schedule 1 to the TAA,
  - (ii) The imposition of a penalty of 5 penalty units for non-electronic payment where an entity has not, as was required, made a payment electronically, but has made the payment in another way – section 288-20 of Schedule 1 TAA,
  - (iii) The written notification of those penalties, this notification may be included in any other notice the Commissioner gives the entity – section 298-10 of Schedule 1 to the TAA,
  - (iv) The partial or complete remission of those penalties – section 298-20 of Schedule 1 to the TAA, and
  - (v) The imposition of GIC to any unpaid part of the penalty – section 298-25 of Schedule 1 to the TAA.

### **99.3 INTRODUCTION**

- 99.3.1 The provisions of the GST Act and the TAA combine to enable electronic notification and payment of all BAS amounts and specifically require:
- (i) any entity with turnover of \$20 million or more to electronically lodge and pay its GST return,
  - (ii) any 'entity classed as a 'large' withholder under the PAYG withholding system to pay all its tax debts electronically,
  - (iii) any entity that is participating in the 'Deferred GST Scheme' to lodge and pay its GST return electronically, and
  - (iv) any entity that chooses or is required to lodge its GST return electronically to also notify electronically all other BAS amounts due on the same day and to pay all its tax debts electronically.
- 99.3.2 Penalties apply where an entity fails to comply with its electronic lodgment obligations. If an entity is required to deal electronically with the Commissioner but instead chooses to lodge or pay by another means (for example paper lodgment), the entity will be liable for a penalty. The Commissioner must notify the entity of its liability to pay the penalty, which may be remitted in full or part at the Commissioner's discretion. General Interest Charges apply to the balance of any unpaid penalty from the due date for payment of that penalty.

### **99.4 POLICY**

- 99.4.1 The reporting and payment obligations imposed under the various taxation acts have not changed considerably in relation to the withholding obligations of 'large' entities. Tax reforms such as GST have imposed a

range of additional lodgment and payment obligations on reporting entities and have made many other entities 'reporting entities' for the first time.

- 99.4.2 Choices made by entities in regards to branching and grouping also require consideration, although it is assumed that a decision to branch or group was made in the knowledge of the obligations imposed for electronic notification and payment.
- 99.4.3 In general, it would be considered that an entity that is required to lodge and/or notify electronically by virtue of the level of turnover or amount withheld would normally have sufficiently sophisticated communications, banking and accounting systems to enable it to comply with the law. It is recognised that there may be exceptions.
- 99.4.4 Further it is considered that an entity that chooses to lodge its GST return electronically would have made an informed decision and accepted that it is bound to notify electronically all other BAS liabilities that are due on the same day.
- 99.4.5 Subsection 31-25(2) of the GST Act provides that an entity with turnover exceeding \$20 million may not be required to lodge electronically if the Commissioner 'otherwise approves'.
- 99.4.6 It will be considered that the non-electronic lodgment of a GST return (and consequently the non-electronic notification of other BAS amounts due on the same day) would be approved in the following circumstances:
- (i) The relevant infrastructure has not been installed by the independent suppliers of telecommunications networks, that is the entity or branches accounting work for these liabilities is conducted in a location where communication systems, for example telephone lines, satellite transmission or other third party medium, are not readily accessible by the entity or branch for installation, or
  - (ii) The relevant infrastructure is not accessible without prohibitive expense to the entity or all branches of the entity.
- 99.4.7 It is not envisaged that an entity whose activities and accounting work are conducted in a city, town or other area with telecommunications infrastructure installed would meet these criteria.
- 99.4.8 Entities that have access to the appropriate public infrastructure, but choose not to pay installation and/or software costs to enable electronic lodgment and/or payment, or decide to use available funds to acquire other assets or to pay other creditors, are assumed to have made such decisions knowing the ramifications of the decision.
- 99.4.9 Steps an entity has, or could have, taken to seek finance or to direct funds from income or cash flow to enable electronic lodgment and/or payment are all relevant considerations in deciding whether an entity is eligible for remission of penalty for non-electronic lodgment and/or payment.

#### **Remission of penalties**

- 99.4.10 Where an entity seeks a remission of the penalty for non-electronic lodgment and/or payment, the entity's request should be considered having regard to:
- (i) the facts of each individual case,

- (ii) the principles of natural justice and those outlined in the Taxpayers' Charter, and
  - (iii) the policy guidelines contained in this chapter.
- 99.4.11 An entity has a right to request a remission of the penalty for non-electronic lodgment and/or payment. Where the Commissioner is satisfied that a remission of the penalty for non-electronic lodgment and/or payment is warranted, it will be remitted, either in full or in part. The onus is on the entity to demonstrate that remission is warranted.
- 99.4.12 In deciding whether to remit the penalty, the Commissioner may have regard to any information provided by the entity as part of the request for remission, or any other information, such as information regarding the entity's compliance with other taxation obligations. The Commissioner will not remit any penalty for non-electronic lodgment and/or payment if there is insufficient relevant information to make a decision.
- 99.4.13 It is considered that there are three sets of circumstances when the Commissioner may exercise a discretion to remit the penalty for non-electronic lodgment and/or payment. He may remit if he is satisfied that:
- (i) the circumstances that contributed to non-electronic lodgment and/or payment were not due to, or caused directly or indirectly by, an act or omission of the entity; and the entity has taken reasonable action to relieve, or relieve the effects of, those circumstances,
  - (ii) the circumstances that contributed to non-electronic lodgment and/or payment were due to, or caused directly or indirectly by, an act or omission of the entity; and the entity has taken reasonable action to relieve, or relieve the effects of, those circumstances; and having regard to the nature of those circumstances, it would be fair and reasonable to remit the penalty for non-electronic lodgment and/or payment or part of the penalty, or
  - (iii) there are special circumstances by reason of which it would be fair and reasonable to remit the penalty for non-electronic lodgment and/or payment or part of the penalty.
- 99.4.14 It is not possible to identify every circumstance likely to prevent electronic lodgment and payment that is beyond the control of an entity. However, it can generally be expected that partial or full remission will be granted where the entity can show the inability to electronically lodge and/or pay can be directly attributed to:
- (i) the relevant infrastructure not being installed by the independent suppliers of telecommunications networks, ie the entity or branches accounting work for these liabilities is conducted in a location where communication systems, eg telephone lines, satellite transmission or other third party medium, are not readily accessible by the entity or branch for installation,
  - (ii) the relevant infrastructure not being accessible without prohibitive expense by the entity or all branches of the entity,
  - (iii) natural disasters (flood, fire, drought, earthquake and the like),
  - (iv) other disasters that may have, or have had, a significant impact on an entity or region where the entity or its branches operate, or

- (v) the serious illness of those responsible for electronically notifying or paying for the entity, where there is no other person that can, or could have notified or paid.

99.4.15 If the Commissioner sends:

- (i) a paper activity statement to an entity that has an obligation to lodge electronically, and this results in a delay in the electronic lodgment of the activity statement, consideration will be given to the remission of any penalty imposed for late lodgment; and
- (ii) an electronic BAS to an entity that has no obligation to lodge electronically, non-electronic lodgment penalty is not applicable.

99.4.16 It would be inappropriate to exercise the discretion to remit the penalty for non-electronic lodgment and/or payment for the following reasons:

- (i) as an inducement to encourage compliance with other taxation laws; or
- (ii) as an inducement to finalise a dispute, eg a disputed assessment.

## 99.5 TERMS USED

99.5.1 'Activity Statement (AS)'. See Business activity statement and Instalment Activity Statement for further details.

99.5.2 'Business activity statement' (BAS) – an 'approved form' lodged by those taxpayers who have an ABN and are registered or required to register for GST. Obligations shown on the BAS may include WET, LCT, PAYG instalments and PAYG withholding. FBTI and DCIN amounts may be pre-printed by the Tax Office.

99.5.3 'Electronic lodgment' means that the GST return is transmitted to the Commissioner in an electronic format approved by the Commissioner.

99.5.4 'Electronic payment' means that a payment is transmitted to the Commissioner in an electronic format approved by the Commissioner.

99.5.5 'Electronic lodgment turnover threshold' means an annual turnover of above \$20 million, or such higher amounts as the regulations specify.

99.5.6 'Entity' means any of the following:

- (i) a company;
- (ii) a partnership;
- (iii) a person in a particular capacity of trustee;
- (iv) a body politic;
- (v) a corporation sole;
- (vi) any other person.

99.5.7 'GST branch' means a branch registered under Division 54 of the GST Act.

99.5.8 'GST Group' means a Group registered under Division 48 of the GST Act.

99.5.9 'GST return' refers to the BAS when referring to the entity's monthly or quarterly GST obligation.

99.5.10 'Instalment activity statement' (IAS) – an 'approved form' lodged by taxpayers who are either not registered or required to be registered for

GST, or are not required to report GST in the particular reporting period, but may have PAYG Instalment, PAYG Withholding obligations, FBTI and/or DCIN obligations.

99.5.11 'Large withholder' for a particular month in the financial year starting on or after 1 July 2001 means an entity:

- (i) that withheld amounts during the financial year ending at least 2 months before the current month that exceeded \$1 million; or
- (ii) that was included in a 'company group' and the total withheld amounts for all companies in that group during the threshold year exceeded \$1 million; or
- (iii) where the Commissioner makes a determination under section 16-115 of Schedule 1 to the TAA that the entity is a large withholder for that month.

Different rules apply for working out who is a large withholder for a month in 2000-01. These are set out in section 16-125 of Schedule 1 to the TAA.

99.5.12 'PAYG withholding branch' means a branch registered under section 16-142 of Schedule 1 to the TAA.

99.5.13 'Representative member' is that member of a group that is registered under paragraph 48-5(1)(c) of the GST Act and is required to undertake various obligations, for example lodgment of GST returns, for the Group.