

## ATO RECEIVABLES POLICY

### PART G Penalties and Interest Relating to Receivables Activity

## Chapter 99 NON-ELECTRONIC NOTIFICATION AND PAYMENT PENALTIES

*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 (Goods and Services Tax) Act 1999; Taxation Administration Act 1953*

### PURPOSE

1. This chapter deals with:

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

### INTRODUCTION

2. The provisions of the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act) and the *Taxation Administration Act 1953* (TAA) combine to enable electronic notification and payment of all BAS amounts and specifically require:
- any entity with turnover of \$20 million or more to electronically lodge and pay its GST return
  - any 'entity classed as a 'large' withholder under the PAYG withholding system to pay all its tax debts electronically
  - any entity that is participating in the 'Deferred GST Scheme' to lodge and pay its GST return electronically, and
  - 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.

### Branches

3. GST branches and PAYG withholding branches are classified according to the parent entity's classification.

4. In respect of **GST branches and PAYG withholding branches**:

- the legal obligation to pay GST and PAYG withholding amounts
- the legal right to receive GST refunds, and
- the legal obligation for notification of liabilities

remains with the (parent) entity and is not transferred to the branch.

5. An entity must lodge a GST return for each branch. 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.
6. 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.
7. Members of **GST joint ventures** are not required to lodge a GST return unless they are also the 'joint venture operator'. 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.
8. Payment of GST on any taxable importations is collected by Customs but this has no effect on an entity's other electronic lodgment and payment obligations.

## Penalties

9. 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. The general interest charge (GIC) applies to the balance of any unpaid penalty from the due date for payment of that penalty.
10. Specifically, the law provides for:
  - 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
  - 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
  - the written notification of those penalties - this notification may be included in any other notice the Commissioner gives the entity
  - the partial or complete remission of those penalties, and
  - the imposition of GIC to any unpaid part of the penalty.

## POLICY

11. 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.

12. 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 with the knowledge that electronic notification and payment may be required.
13. 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.
14. 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.

### **Exemption from electronic lodgment**

15. 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'.
16. 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.
17. 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.
18. 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.
19. 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 notification and/or payment.

### **Remission of penalties**

20. The Commissioner has discretion to remit penalty for non-electronic notification and/or payment under section 298-20 of Schedule 1 to the TAA.
21. A decision on a request for remission of the penalty for non-electronic notification and/or payment, will be made having regard to:
  - (i) the facts of each individual case including,
    - a information provided by the taxpayer or their tax agent, and
    - b any other information, such as information regarding the entity's compliance with other taxation obligations
  - (ii) the principles of natural justice and those outlined in the taxpayers' charter,

- (iii) Chapter 1 'Principles underlying the ATO Receivables Policy', and
  - (iv) the policy guidelines contained in this chapter.
22. Where the Commissioner is satisfied that a remission of penalty is warranted, either in full or in part, it will be remitted.
- Requests for remission**
23. An entity has a right to request a remission of the penalty for non-electronic notification and/or payment. The onus is on the entity to demonstrate that remission is warranted.
24. It is considered that there are three sets of circumstances when the Commissioner may exercise a discretion to remit the penalty for non-electronic notification and/or payment. He may remit if he is satisfied that:
- the circumstances that contributed to non-electronic notification 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
  - the circumstances that contributed to non-electronic notification 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 notification and/or payment or part of the penalty, or
  - there are special circumstances by reason of which it would be fair and reasonable to remit the penalty for non-electronic notification and/or payment or part of the penalty.
25. 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:
- the relevant infrastructure not being installed by the independent suppliers of telecommunications networks, that is the entity or branch 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
  - the relevant infrastructure not being accessible without prohibitive expense by the entity or all branches of the entity
  - natural disasters (flood, fire, drought, earthquake and the like)
  - other disasters that may have, or have had, a significant impact on an entity or region where the entity or its branches operate, or
  - 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.
26. If the Commissioner sends:
- 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

- an electronic BAS to an entity that has no obligation to lodge electronically, non-electronic notification penalty is not applicable.
27. It would be inappropriate to exercise the discretion to remit the penalty for non-electronic notification and/or payment for the following reasons:
- as an inducement to encourage compliance with other taxation laws; or
  - as an inducement to finalise a dispute, for example a disputed assessment.
28. The Commissioner will not remit any penalty for non-electronic notification and/or payment if there is insufficient relevant information to make a decision.

### **Objection provisions**

29. Where the Commissioner decides not to remit an amount of non-electronic notification and/or non-electronic payment penalty, either in part or in full, the taxpayer must be advised in writing of the decision, the reasons for the decision, and their objection rights.
30. An objection may be made if the Commissioner has refused, to any extent, to remit a penalty amount and the penalty amount that remains payable after the refusal is more than 2 penalty units.
31. If the taxpayer is dissatisfied with an objection decision, they may:
- (i) apply to the Administrative Appeals Tribunal (AAT) for review of the objection decision - an application to the AAT is required to be lodged within 60 days of service of the notice of the objection decision on the taxpayer (an application fee is payable). The taxpayer may apply for an extension of time if it is required, or
  - (ii) appeal to the Federal Court against the objection decision - an appeal to the Federal Court is required to be lodged within 60 days of service of the notice of the objection decision on the taxpayer. Generally, a filing fee, a setting down fee and a daily hearing fee are payable. There is no provision for an extension of time when lodging an appeal with the Federal Court.
32. Where a decision not to remit penalty cannot be reviewed by objection (that is, the amount of penalty that remains payable after the refusal to remit is 2 penalty units or less) the taxpayer may seek a review of the decision under the *Administrative Decisions (Judicial Review) Act 1977*.

### **TERMS USED**

Activity Statement (AS) – a form that allows the taxpayer or representative to report obligations for goods and services tax (GST), luxury car tax (LCT), wine equalisation tax (WET), pay as you go (PAYG) withholding and instalments, fringe benefits tax (FBT) instalments and fuel tax credits (FTC)

Business activity statement (BAS) – a personalised form lodged by those taxpayers who have an obligation to lodge an activity statement and have a GST role as well as other obligations such as Wine equalisation tax (WET), Luxury car tax (LCT), PAYG instalments, PAYG withholding, FBT instalments (FBTI) and Fuel Tax Credits (FTC). A BAS must be lodged with the Tax Office for each tax period..

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

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

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

**Entity** – includes 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.

**Instalment activity statement (IAS)** – a personalised form issued by the Tax Office for reporting tax obligations to be lodged by taxpayers who are either not registered or required to be registered for GST, or who are not required to report GST in a particular period, but may have other reporting obligations.

**Large withholder** – takes the meaning set out in sections 16-95 and 16-125 of Schedule 1 to the TAA and is generally an entity where amounts withheld (or who is part of a wholly owned group of companies and the amount withheld by those companies) exceed \$1 million annually being required to report and pay within 6-9 days of withholding.

**Chapter 99 - Archived version**

Version 4 – July 2006 (will link to chapter 99 pdf)