

TR 93/D18 - Income tax: remission of additional tax imposed by subsection 223(1): transitional arrangement for 1992-93 substituted accounting periods

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This document has been finalised by TR 94/2.

Draft Taxation Ruling

Income tax: remission of additional tax imposed by subsection 223(1): transitional arrangement for 1992-93 substituted accounting periods

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| contents | para |
|---------------------------|------|
| What this Ruling is about | 1 |
| Ruling | 2 |
| Date of effect | 4 |
| Explanations | 5 |
| Example | 9 |

What this Ruling is about

1. This Ruling provides further guidelines for the remission of additional tax imposed under subsection 223(1) of the *Income Tax Assessment Act 1936* (ITAA) in respect of taxpayers who have adopted an accounting period in lieu of the 1992-93 year of income that commences before 1 July 1992.

Ruling

2. Where subsection 223(1) operates to impose additional tax in respect of a taxpayer who has adopted an accounting period in lieu of the 1992-93 year of income that commences before 1 July 1992, the additional tax will be remitted to the extent that only a culpability penalty will be assessed. Interest will apply in accordance with section 170AA. However, this Ruling does not fetter authorised officers when exercising the discretion to remit subsection 223(1) additional tax. Each case should be considered on the basis of its own facts and circumstances.

3. Taxation Ruling TR92/10 is varied by this Ruling to the extent that the two are inconsistent.

TR 93/D18

Date of effect

4. This Ruling (that is, the final Taxation Ruling based on this Draft Taxation Ruling) applies where the Commissioner's discretion to remit subsection 223(1) additional tax is exercised after the date on which this Ruling is issued.

Explanations

5. Section 170AA of the ITAA was amended by the *Taxation Laws Amendments (Self Assessment) Act 1992* (SAA) so that a taxpayer may be liable to pay interest under that section, in relation to an amended assessment, notwithstanding that the taxpayer may also be liable to pay additional tax under Part VII of the ITAA in relation to the same matter which led to the assessment being amended. This changed operation of section 170AA applies to assessments for the 1992-93 year of income and all subsequent years of income.

6. The change to section 170AA was designed to complement the tax shortfall penalties also introduced by the SAA. However, while the changes to section 170AA apply in respect of *all* 1992-93 year and subsequent assessments (including assessments for accounting periods adopted in lieu of the 1992-93 year), the tax shortfall penalties apply to the 1992-93 and subsequent years but *not* to accounting periods adopted in lieu of the 1992-93 year of income and commencing before 1 July 1992. Section 223 continues to be the operative provision for the imposition of penalties for taxpayers with accounting periods commencing before 1 July 1992 that are in lieu of the 1992-93 year of income.

7. The effect is that taxpayers who have adopted accounting periods in lieu of the succeeding 30 June will, in respect of amended assessments for the 1992-93 year of income that increase their liability to pay tax, face the prospect of a per annum amount being imposed under both section 170AA and subsection 223(1) in accordance with Taxation Ruling TR 92/10.

8. To prevent these taxpayers facing this problem, the Commissioner will remit any additional tax attracted under subsection 223(1) on a basis which does not include any per annum component. This will leave the per annum component to be calculated via the operation of section 170AA. Taxation Ruling TR 92/10 is varied by this Ruling to the extent that the two are inconsistent.

Example

9. The following example illustrates the operation of this Ruling:

- Company A balances on 31 December in lieu of the succeeding 30 June;
- for the year ended 31 December 1992 (in lieu of the standard 1992-93 year of income) the taxpayer returns a liability of \$1m on 15 September 1993;
- following an audit of the company's affairs, an amended assessment issues to the company on 15 September 1995 for a further \$1m of tax;
- in issuing the amended assessment the Commissioner determines that the taxpayer is liable to pay additional tax under subsection 223(1);
- additional tax and interest would be calculated as follows:
 - additional tax (s.223(1)): (say) 25% of \$1m
(i.e., 200% penalty remitted to a culpability penalty only of 25%) = \$250,000
 - interest (170AA): (say) 9.6% of \$1m for 2 years.
(N.B. rate of interest for illustrative purposes only)
= \$192,000
- note that the interest under s.170AA is deductible to the company under subsection 51(5).

Commissioner of Taxation

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legislative references

- ITAA 170AA; ITAA 223(1);
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