TR 93/D36 (Withdrawn) - Income tax: remission of additional amounts imposed for late payment of income tax

This cover sheet is provided for information only. It does not form part of *TR 93/D36 (Withdrawn) - Income tax: remission of additional amounts imposed for late payment of income tax*

This document has been Withdrawn.

Draft Taxation Ruling
Income tax: remission of additional amounts imposed for late payment of income tax

Draft Taxation Rulings (DTRs) represent the preliminary, though considered, views of the Australian Taxation Office.

DTRs may not be relied on by taxation officers, taxpayers and practitioners. It is only final Taxation Rulings which represent authoritative statements by the Australian Taxation Office of its stance on the particular matters covered in the Ruling.

contents para

What this Ruling is about 1
Legislative scheme 4
Remission of additional tax 8
Remission of interest 9
Ruling 10
Remission of additional tax 11
Circumstances not due to act or omission of the taxpayer 11
Circumstances due to act or omission of the taxpayer 14
Special circumstances 17
Remission of interest 18
Liability to tax reduced by credit amendment 20
Company and provisional tax instalments 22
Date of effect 23

What this Ruling is about

1. This Ruling provides guidelines on the remission of additional amounts for late payment of income tax imposed under sections 207 and 207A of the *Income Tax Assessment Act 1936* (the Act).

2. It is one of the basic responsibilities of the Commissioner of Taxation to ensure that, as far as is practicable, income tax will be collected within the financial year in which the liability falls due for payment. The Act plainly contemplates and intends that taxpayers comprehend the financial implications of late payment and arrange their affairs so that they will be able to pay their tax when it falls due.

3. This intention was reinforced by Parliament with the passage of the *Taxation Laws Amendment (Self Assessment) Act 1992,* which made provision for the separate imposition of additional tax penalty and interest when income tax is paid late.

Legislative scheme

4. If any tax remains unpaid after the time it becomes due and payable, a taxpayer will be required to pay both -

- additional tax as a penalty for not paying the amount of tax by the prescribed or notified due date for payment (section 207); and
- interest at the statutory rate (section 207A of the Act).

5. The additional tax for late payment of income tax is set at the rate of 8% per annum under subsection 207(1) while the interest penalty is equal to the Treasury Note yield as defined by section 214A (9.0% for the six month period from July 1993 to December 1993).

6. Both additional tax and interest are calculated from the time the tax become due and payable and are due on a daily basis while any amount of tax due for payment remains unpaid.

7. The new arrangements apply to the late payment of tax in respect of the 1992-93 year of income and all subsequent years or of a franking year commencing on or after 1 July 1992, and to the late payment of provisional tax in respect of the 1993-94 year of income and all subsequent years. This replaces the 16% (previously 20%) per annum additional tax for late payment previously payable under section 207 of the Act.

Remission of the additional tax

8. The Commissioner may remit the additional tax or part of the additional tax where he is satisfied that -

(a) the circumstances that led to the delay in payment were not caused by an act or omission of the taxpayer *and* the taxpayer has taken reasonable action to mitigate, or mitigate the effect of, the circumstances that led to the delay (paragraph 207(1A)(a)),

(b) the circumstances that led to the delay in payment were due to or caused by an act or omission of the taxpayer *and* the taxpayer has taken reasonable action to mitigate, or mitigate the effect of, the circumstances that led to the delay and having regard to those circumstances it would be fair and reasonable to remit the additional tax (paragraph 207(1A)(b)), or

(c) there are special circumstances where it would be fair and reasonable to remit the additional tax or part thereof (paragraph 207(1A)(c)).

Remission of the interest

9. Subsection 207A(4) states that the Commissioner may, in his or her discretion, remit the whole or any part of the interest payable by a taxpayer under section 207A.

Ruling

10. In providing these guidelines, there is no intention of laying down any conditions to restrict officers in the exercise of any discretion. Each case must be decided on its merits.

Remission of additional tax

Circumstances not due to act or omission of taxpayer

11. In this instance a taxpayer must clearly demonstrate that factors causing a redirection or reduction in the level of his or her cash flow and a subsequent delay in payments were beyond his or her control and clearly could not be predicted. Such circumstances include sudden ill-health of key personnel in sole trader or small business situations, strikes and unforseen collapse of a major debtor. Delays caused by serious financial difficulties as the result of drought, flood or bushfire will be considered where the extended due date for payment has passed or has not been granted (refer paragraphs 10 and 20 of Taxation Ruling IT 2569).

12. With all of the above situations, the event must in fact cause the closure of the business or cessation of cash flow and/or the physical inability to make the payment on time. A major debtor is defined as one whose debts represent more than 50% of the taxpayer's receivables.

13. A taxpayer must also demonstrate that he or she has taken reasonable steps to mitigate, or mitigate the effects of, the circumstances that contributed to the late payment. A budget reorganisation made in an attempt to counteract the reduction in cash flow, attempts to raise additional funds from financial institutions, application for government assistance for disaster relief and action by the taxpayer to protect his or her position where money is owed to the taxpayer are all considered to be reasonable actions. In addition, the payment of a portion of the tax outstanding by the due date is also considered to be an attempt to mitigate an effect of a particular circumstance ie. the inability to pay in full by the due date.

Circumstances due to act or omission of taxpayer

14. The Commissioner is of the view that where late payment is caused by a factor within the control of the taxpayer, the taxpayer retains culpability for his or her actions and is therefore not eligible for remission of the penalty component.

15. As stated earlier, the Act intends that taxpayers comprehend the financial implications of late payment and arrange their affairs so that they will be able to pay their tax when it falls due. Where a taxpayer has control over factors which might lead to the inability to pay tax, the decision by the taxpayer to continue on that path points to the taxpayer remaining culpable for late payment.

16. Nevertheless, whilst it is difficult to envisage circumstances where that culpability is removed, the legislation does make provision for remission thereby acknowledging that such circumstances may exist. In the event that such circumstances do arise, consideration will be given to particular cases individually.

Special circumstances

17. The special circumstances for which remission of additional tax will be considered are as follows:

(a) Cases of serious financial difficulty -

(i) taxpayers whose major source of income is received by way of pension (age, invalid, etc.) or unemployment benefit or where unemployment has played a critical part in reaching a point of extreme financial difficulty, and who have demonstrated that they do not have the means to pay the additional tax in full or by way of instalments;

(ii) a taxpayer who makes an offer to pay the outstanding tax and that offer approximates the limit of the financial capacity that the taxpayer controls or has access to so that further litigation would only deplete the available fund and reduce the prospect of collection. The point of extreme financial difficulty must be considered to have been reached.

(b) Where a taxpayer whose objection against an assessment has been disallowed has requested that the matter be referred to the Administrative Appeals Tribunal or the Federal Court for review, an extension of time has been granted pending the finalisation of the dispute, and both of the following conditions apply:

(i) the taxpayer has taken all reasonable steps to diligently prosecute the appeal; and

(ii) the taxpayer has complied with all conditions attached to the extension of time to pay, that is, payment of 50% of the amount in dispute and 100% of the amount not in dispute (unless difficulties can be shown).

Provided the conditions in paragraph (b)(i) continue to be met, the additional tax will be remitted from the due date or the date of payment in full of 50% of the amount in dispute and 100% of the amount not in dispute, whichever is the later. Where the appeal is determined in the Commissioner's favour, the additional tax will continue to be remitted in accordance with this guideline up to 14 days after the date of the decision on the appeal or payment in full, whichever is the earlier.

Extensions of time are only granted in certain circumstances as provided in Taxation Ruling IT 2569. In all other cases where an objection against an assessment has been disallowed, requests for remission will not be granted unless justified for other reasons provided in this guideline.

(c) Applicants for relief -

(i) where partial relief is granted by a Deputy Commissioner or a Board constituted under section 265 of the Act because the taxpayer is found to be in serious financial difficulty, consideration will be given to remitting the additional tax imposed on the remaining tax due per paragraph (a)(i) or (a)(ii) above;

(ii) where a Deputy Commissioner or the Board has found that the payment of outstanding tax would cause serious financial difficulty, but have for some other reason decided not to grant relief, consideration will be given to remitting the additional tax in accordance with paragraph (a)(i) or (a)(ii) above;

(iii) where relief has been denied as serious financial hardship was not found, additional tax is not to be remitted unless justified under another ground contained in this ruling.

(d) Where an extension of time to pay has been granted under paragraph 40 of IT 2569 and the payments made under this arrangement are substantially correct (ie. the payments made are 90% or more of the Actual Provisional Tax figure as disclosed by the issue of assessment); the additional tax may be remitted on the unpaid instalments, or part thereof, which were the subject of an extension of time to pay.

Remission of interest

18. The Explanatory Memorandum accompanying the introduction of the Taxation Laws Amendment (Self Assessment) Act states that, as distinct from remission of the additional tax penalty for late payment, interest is only to be remitted in very exceptional cases, given that it represents compensation for the time value of money for

the period that the Revenue has been denied use of the funds. Thus in contrast to the remission provision for the additional tax penalty, which has regard to special circumstances that contributed to the delay in payment of tax, the remission provision for interest will be more limited.

19. As such, interest is only to be remitted the following exceptional circumstances -

- natural disasters such as fire flood and drought which directly cause serious financial difficulty, and
- serious financial difficulty suffered by persons in receipt of pensions or unemployment benefits.

Liability to tax reduced by credit amendment

20. Where a person's liability to tax is reduced by reason of a credit amendment, the amount of the reduced tax and the additional tax and interest is taken never to have been payable (subsections 172(1) and (2)). Remission does not need to be considered as the account should merely be adjusted to reflect this reduction.

21. The above reasoning also applies where a provisional tax variation is processed or where provisional tax should have been reduced as a result of a credit amendment, but was not because of the prior issue of an assessment for the subsequent year.

Company and Provisional Tax Instalments

22. Additional tax and interest will not be remitted on company instalments or provisional tax where a taxpayer has chosen not to lodge a variation and the taxpayer subsequently receives an assessment with an amount of tax owing which is substantially less than either the amount of the provisional tax or the company instalment, unless the remission can be justified for other reasons provided in this guideline.

Date of effect

23. To the extent that this Ruling (that is, the final Taxation Ruling based on this Exposure Draft Taxation Ruling) relates to remission of interest penalty, it applies in relation to the late payment of tax for the 1992-93 year of income and subsequent years or for a franking year commencing on or after 1 July 1992, and to the late payment of provisional tax for the 1993-94 year of income and subsequent years.

24. The remainder of this Ruling (being the final Taxation Ruling) supersedes Taxation Ruling IT 2570 and applies from the date of release of the final Taxation Ruling.

Commissioner of Taxation

12 August 1993

ISSN 1039 - 0731

ATO references
NO 92/8573-3
BO

Not previously released to the public in draft form

Price $0.70

FOI index detail
reference number

subject references
- Additional tax
- Interest penalty
- Late payment of tax
- Remission

legislative references
- ITAA 172
- ITAA 207
- ITAA 207(A)
- ITAA 214A
- ITAA 265
- Taxation Laws Amendment (Self Assessment) Act 1992

case references