IT 2141 - False or misleading statement

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TAXATION RULING NO. IT 2141

FALSE OR MISLEADING STATEMENT

F.O.I. EMBARGO: May be released

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I 1131930	ADDITIONAL TAX OFFENCES	223 TAXATION ADMINISTRATION ACT 8K, 8N, 8P

PREAMBLE This ruling provides guidelines for use in applying the "false or misleading statement" concept incorporated in the following taxation laws by amendments effected by the Taxation Laws Amendment Act 1984 - Act No. 123 of 1984:

- Australian Capital Territory Taxation (Administration) Act 1969 - section 70;
- Bank Account Debits Tax Administration Act 1982 - section 17;
- Estate Duty Assessment Act 1914 - section 46;
- Gift Duty Assessment Act 1941 - section 42;
- Income Tax Assessment Act 1936 - section 223;
- Pay-roll Tax (Territories) Assessment Act 1971 - section 42;
- Sales Tax Assessment Act (No. 1) 1930 - section 45;
- Sales Tax Assessment Acts (Nos. 2 to 9) 1930 - section 12 of each Act (which applies section 45 of the Sales Tax Assessment Act (No.1) 1930);
- Sales Tax (Exemptions and Classifications) Act 1935 and Sales Tax Procedure Act 1934 - section 45 of the Sales Tax Assessment Act (No.1) 1930;
- Taxation Administration Act 1953 - sections 8K, 8N & 8P;
- Tobacco Charges Assessment Act 1955 - section 29; and
- Wool Tax (Administration) Act 1964 - section 61.

2. Sections 8K, 8N and 8P of the Taxation Administration

Act 1953 specify the circumstances in which false or misleading statements are offences that may be the subject of prosecution action, while the other above-mentioned provisions of the taxation laws impose, by way of penalty, additional tax, duty or charge in the case of false or misleading statements. In this regard, attention is drawn to section 8ZE of the Taxation Administration Act 1953 (also inserted by the Taxation Laws Amendment Act 1984) which provides that statutory penalties are not payable by a person where prosecution action for a relevant offence has been instituted against that person and not withdrawn. In other words, where a false or misleading statement made by a taxpayer (or a failure to comply with a taxation requirement - see section 8C of the Taxation Administration Act) is an offence and that taxpayer is also liable to a statutory penalty in respect of the statement, the penalty is an alternative to prosecution.

3. As far as the provisions in question are concerned, the Taxation Laws Amendment Act 1984 came into operation on 14 December 1984. Consistent with the longstanding rule of legal construction that, unless there is a clear intention to the contrary, laws creating new offences apply only to acts, etc. occurring after the commencement of those laws, and with a similar rule in relation to laws increasing penalties that is contained in section 45A of the Acts Interpretation Act 1901, the new provisions apply in relation to acts, etc. occurring on or after 14 December 1984 - that is, in the case of false or misleading statements, the new provisions apply to such statements made on or after 14 December 1984, and for this purpose a statement should be taken to have been made when it is received - for example, a statement accompanying an income tax or sales tax return would be treated as having been made when the return was received in the Taxation Office. The former provisions will continue to apply to acts, etc. which occurred before that date - for example, former sub-section 25(2B) of the Sales Tax Assessment Act (No. 1) 1930 will continue to apply to impose additional tax in the case of relevant transactions that occurred before 14 December 1984.

4. The new statutory penalty provisions, as with the former provisions, automatically impose the additional tax, duty or charge once the relevant conditions are satisfied, with the Commissioner having the power to remit all or part of it. New rulings providing revised guidelines for the remission of statutory penalties are in course of preparation. Until they are issued, present guidelines should be applied, mutatis mutandis, where appropriate.

5. Although section 223 of the Income Tax Assessment Act contains some special provisions (for example, those relating to a false or misleading statement made by a partner in a partnership or by a trustee of a trust estate), the principal terms of all the new statutory penalty provisions relating to false or misleading statements are essentially the same. For ease of reference, the principles embodied in this ruling generally relate specifically to section 223, but are to be applied in determining whether or not a false or misleading

statement for the purposes of the relevant statutory penalty provisions of the other taxation laws has been made and in deciding whether or not an offence under section 8K, 8N or 8P of the Taxation Administration Act may have been committed and in respect of which prosecution proceedings ought to be instituted.

6. Section 223 imposes additional tax by way of penalty where a taxpayer -

(a) makes a statement to a taxation officer, or to another person for a purpose connected with the operation of the Act or regulations, that is false in a material particular, or is misleading in a material particular; or

(b) omits something from such a statement that renders it misleading in a material particular, and

the tax properly payable by the taxpayer exceeds the tax that would have been payable if the statement had not been false or misleading. The additional tax so imposed is equal to double that excess. The section applies where the false or misleading statement made by a taxpayer would have the effect of reducing his or her assessed income tax liability. It may therefore apply where false or misleading statements are made in or in connection with return forms, objections, requests for amendment and post-assessment audits and investigations. The section may also apply where false or misleading statements are made in obtaining advance opinions from the Taxation Office that are provided as support for claims found not to be sustainable on assessment. While section 223 does not apply where false or misleading statements do not affect the taxpayer's assessed liability - for example, in the PAYE, prescribed payments or provisional tax context - section 8K, 8N or 8P of the Taxation Administration Act may apply (see paragraph 17).

7. The term "statement" is defined in very general terms in sub-sections 223(8) and 223(9) and includes claims for deductions made in returns, as well as supporting documents enclosed with a return or subsequently provided. The term also includes statements made orally. While an oral response that is clearly false or misleading would be penalisable, it would not normally be the case that an oral response to a routine enquiry relating to a particular fact (such as might be made by an assessor over the telephone) would be in that category.

8. Paragraphs (a) to (d) of sub-section 223(8) dealing with statements made to a "taxation officer" (as defined in sub-section 223(10)) refer specifically to statements made, etc. under or pursuant to the Act or regulations, whereas paragraphs (a) to (c) of sub-section 223(9) dealing with statements made to a person other than a taxation officer do not refer specifically to statements made under or pursuant to the Act or regulations. It should, however, be noted in relation to that latter point that, in terms of sub-sections 223(1), 223(2) and 223(4), a statement made to a person other than a taxation officer must be made for a purpose in connection with the

operation of the Act or regulations. In other words, where a statement is made by a taxpayer to a person other than a taxation officer and it is made for some other purpose, section 223 does not apply in relation to that statement.

RULING 9. This ruling consists of -

(a) an outline of the general principles to be applied in relation to the new statutory additional tax provisions and in particular to section 223 of the Income Tax Assessment Act;

(b) guidelines as to the approach which ought generally to be adopted in deciding whether or not -

(i) a statement is false or misleading in a material particular; or

(ii) an omission from a statement renders the statement misleading in a material particular; and

(c) further comments regarding false or misleading statements in particular situations.

General

10. As a basic principle, the provisions of new Part VII of the Assessment Act, and in particular of section 223, are to be administered in a commonsense manner bearing in mind that a proper balance needs to be struck between the supply by taxpayers of sufficient information to enable a correct assessment to be made and the supply of excessive detail which may, in the longer term, result in inefficiencies developing in the administration of the taxation laws. Efficiency is most likely to be maintained if taxpayers can be confident that full open and accurate disclosure in a succinct manner of relevant details would not expose them to a penalty. On the other hand, taxpayers who give minimum disclosure with vague descriptions run the risk of having a penalty imposed. In determining whether sufficient information has been provided in a particular situation, it would be a relevant consideration if the information called for in the various returns and associated explanatory guides had not been supplied.

11. The purpose of section 223 is to ensure the accuracy and completeness of returns on which the income tax system is based. The section is expressed in such a way that there can be no doubt that it applies in situations where a claim for a deduction, whether or not directly for expenditure incurred, is misdescribed in such a way as to be false or misleading - for example, where second-hand plant is described as "new" for investment allowance purposes. In addition, statutory additional tax is imposed in situations where it has been argued that former sub-section 226(2) did not apply - for example, where false or misleading claims are made for items such as bad

debts, depreciation, the excess of the value of trading stock on hand at the beginning of the income year over that of trading stock on hand at the end of the income year, loss on sale of depreciable assets and carry-forward losses.

12. It is equally clear that the section, as with the former sub-section 226(2), may apply not only in cases of fraud or other deliberate evasion but also in situations arising from carelessness or ignorance. Further, a statement that is honestly made can be false or misleading. Although intent, knowledge, honesty, etc. may be taken into account in considering any remission of penalties, they are not factors relevant to their statutory imposition. In this regard, attention is drawn to the fact that, in a prosecution for an offence against sub-section 8K(1) of the Taxation Administration Act, it is a defence if the person proves that he or she did not know and could not reasonably be expected to have known that the statement to which the prosecution relates was false or misleading (sub-section 8K(2)). In a prosecution for an alleged offence under section 8N or 8P, the plaintiff/ informant would of course need to prove each element of the offence. Not only would this require proof that the relevant statement was false or misleading, but that it was made "recklessly" or "knowingly". It would, therefore, be relevant to determine whether the statement was made through carelessness or ignorance or with an honest belief that it was not false or misleading. Further directions as to the circumstances in which prosecution action should be taken will be issued as soon as possible.

13. Information provided in relation to a deduction claimed in a return that is, without further information or enquiry, adequate to lead a reasonably prudent and competent taxation assessor or auditor to disallow the whole or part of the claim is not to be taken as misleading. Such a statement would not lead such an officer into allowing the claim. An example would be where, without further enquiry, an assessor reduces, to a limit determined in relation to the taxpayer's particular industry, an unvouched claim made by a taxpayer in respect of incidental expenditure incurred in the course of his or her employment. On the other hand, a statement that alerts an assessor or auditor to instigate an enquiry the result of which leads to disallowance of the claim may, in the light of the additional information obtained, be shown to have been misleading. For example, the amount shown as the cost of plant in respect of which investment allowance is being claimed may alert an assessor with specialised personal knowledge of the industry in which the taxpayer operates to seek further information which reveals that the plant was in fact second-hand. The omission of material particulars from the original statement in the return form would render that statement misleading, notwithstanding that it did not in fact mislead the particular assessor. The test is whether the statement could have led into error the typical assessor. (In each of the above examples, it has been assumed that no false statement has been made - in that the relevant expenditures were incurred and, in the case of the second example, that the plant was not described as "new" in making the investment allowance

claim. If a statement is false, there is no need to consider whether it is also misleading.)

14. A statement as to a particular view of the proper operation of the law is not false or misleading even though it may be inaccurate. In context, and as a matter of the proper interpretation of the expression "false or misleading statement", it is clear that the legislature is directing its attention to statements of fact that are false or misleading and not to statements as to the application or interpretation of the law. A taxpayer who claims a deduction under a particular description, and who does so in a way that is not, having regard to the disclosure made, false or misleading in relation to the facts, will not incur a penalty even though the amount may not be deductible as a matter of law. While there will be some situations where the distinction is not entirely clear, it is unlikely to be difficult to make in the vast majority of practical situations. Where there is some doubt, fine distinctions are not to be made and the statement should be treated as one of law and not penalisable.

15. In the case of a partnership, sub-section 223(2) imposes the penalty for a false or misleading statement on the partner who makes the statement. That partner may also be liable under sub-section 223(1) for a penalty in respect of a statement made on the same matter in relation to his or her own affairs. In such a case, sub-section 223(3) provides that the partner is liable to pay only one of those penalties, being whichever the Commissioner determines. As a general rule, the appropriate penalty would be that imposed by sub-section 223(2).

16. Also as a general rule it should be accepted that a partner - other than a partner who makes a false or misleading statement in relation to the partnership return itself - has not, merely by including in his or her individual return a share of the partnership income or loss as reflected in the partnership return that was the subject of the statement, thereby also made a false or misleading statement. An exception might be where it is established that the non-defaulting partner, although he or she did not actually make the false or misleading statement in relation to the partnership return, had full knowledge that such a statement had been made - for example, all partners may have participated in the preparation of an incorrect partnership return but only one partner may have actually signed and submitted that return. In this regard, attention is drawn to income tax regulation 13 (as recently amended by Statutory Rules 1984 No. 416) which provides that partnership returns are to be made and furnished by the resident partners, by the principal resident partner or, in the case of partners with equal interests, by any one of them.

17. It should be noted that sub-section 223(1) applies only where a false or misleading statement made by a taxpayer would have the effect of reducing his or her assessed income tax liability - including, in the case of a taxpayer in the capacity of a trustee, his or her liability in that capacity. Similarly, sub-section 223(2) applies only where a false or misleading

statement made by a partner in a partnership would have the effect of reducing either or both of that partner's or any other partner's assessed liability, and sub-section 223(4) applies only where a false or misleading statement made by a trustee would have the effect of reducing a beneficiary's liability. Section 8K, 8N or 8P of the Taxation Administration Act may, however, apply where a taxpayer makes a false or misleading statement otherwise than in a return/assessment context - for example, a taxpayer may make a false or misleading statement of assets and liabilities with a view to securing an extension of time for payment, or may lodge a false income tax instalment declaration. Section 8K, 8N or 8P may also apply where a false or misleading statement is made by a person other than the taxpayer whose income tax liability would be affected - for example, by an associate of the taxpayer, by his or her agent or employer, or by a professional adviser in providing a certificate or statement in support of the taxpayer's claim for a deduction or an exemption. However, an indication that the other person did not know and could not reasonably be expected to have known that a statement was false or misleading would be an important consideration in deciding whether or not to institute prosecution action (see paragraph 12), as would evidence that the other person made a reasonable attempt to determine the validity of facts relevant to the statement.

False or misleading statement

18. In the majority of cases, no real difficulty should be encountered in determining, once all the relevant facts are known, whether or not a statement is false in a material particular. Putting it quite simply, a "false" statement is one that is contrary to fact, untrue, erroneous or incorrect (see Given v C.V. Holland (Holdings) Pty Ltd (1977) 29 FLR 212 at p217 and FCT v Turner 84 ATC 4161 at p4163, 15 ATR 379). A statement to the effect that a motor vehicle is used exclusively for business purposes when it is used partly or wholly for private purposes (including travel to and from work) would plainly be a statement that is false in a material particular; so too would the understatement of a spouse's separate net income in a claim for a dependent spouse rebate.

19. In the case of a statement the substance of which is clearly arguable as a matter of law, no penalty would, as a general rule, be imposed, even though the statement may be found, again as a matter of law, to have been inaccurate. For example, a statement by a taxpayer to the effect that he or she is engaged in a business of primary production may be found to have been incorrect, on the basis that the relevant activities were not sufficiently extensive to constitute the carrying on of a business. In those circumstances, the statement would not be penalisable, provided that no material facts were omitted. The application of this general rule is not, of course, confined to points that are arguable as a matter of taxation law. For example, the question might be whether, as a matter of contract law, an enforceable contract has been entered into or whether, as a matter of trust law, a trust estate has been created.

20. Also as a general rule, a statement relating to a claim the allowability of which is subject to the exercise of a statutory discretion would not be penalisable. For example, a statement supporting a deduction claimed for salary or wages paid to an associate which is reduced upon the exercise of the discretion provided in sub-section 65(1) of the Assessment Act would not, prima facie, be penalisable. That would not, however, be the case if it were established that, in fact, no amount had been paid or no liability had been incurred, or if the claim itself was not, as required by the return form, identified as being in respect of payments made to an associate.

21. Where it is established that a taxpayer has made a statement based on information provided by another person who could reasonably be expected to have been in a position to provide accurate information, the statement should, subject to the qualification that follows, be treated as a statement to the effect that the information was provided by the other person. Treated in this way, such a statement would not itself be false or misleading, although the information on which it is based may prove to be inaccurate. The qualification is that a statement should not be treated as above where it is shown that there were reasonable grounds for the taxpayer to have doubted the accuracy of the information provided but the statement did not indicate that doubt. For example, a taxpayer may claim a deduction in respect of contributions to the cost of producing an Australian film stating, on the basis of advice provided by the production manager, that a provisional certificate in respect of the film is in force. The fact that such a certificate was not in force would not mean that the taxpayer claiming the deduction had made a false or misleading statement, unless it were shown that the taxpayer had reasonable grounds to doubt the validity of the advice he or she was given but nevertheless made the statement without qualification.

22. Sub-section 223(7) specifies that the omission of assessable income from a return is to be taken as a statement to the effect that the income was not derived. Accordingly, the omission of assessable income derived is treated as a false statement in terms of section 223. On the basis that a taxpayer is required to disclose in his or her return total income derived from all sources, the view should not be accepted that an omission of income because it is considered to be of a non-assessable nature is not penalisable. The various return forms call for the provision of details of all income and, where property is disposed of or there are overseas interests, specific questions are required to be answered. The return forms make it clear that, if the taxpayer is in doubt about any aspect of his or her return, all the facts should be provided. In addition, the associated explanatory guides provide advice in relation to what constitutes assessable income and specify the type of information that should be provided in particular situations (for example, property sales).

23. It is, however, accepted that, where sub-section 223(2) applies to impose on the "defaulting" partner in a partnership a penalty calculated by reference to the tax payable by that

partner and by non-defaulting partners, sub-section 223(7) does not have the result that additional tax is also imposed on the non-defaulting partners simply because they included in their individual returns their shares of the partnership net income as reflected in the partnership return, which shares proved to be less than they should have been due to the false or misleading statement made by the defaulting partner (see also paragraphs 15 and 16). In the similar situation where sub-section 223(4) applies to impose a penalty on a trustee of a trust estate, sub-section 223(7) does not have the result that additional tax is also imposed on a beneficiary in relation to his or her returned share of the net income of the trust estate.

24. Although in a different statutory context, i.e., in considering whether a prospectus was "false in a material particular" within the meaning of section 84 of the Larceny Act 1861, it has been held (in R v Kylsant (1931) All E.R. Rep. 179) that a statement may be false if it conveys a false impression even where the statement itself is not untrue. In that case, the Court had this to say -

> "... in the opinion of this court there was ample evidence upon which the jury could come to the conclusion that this document, the prospectus, was false in a material particular, in that it conveyed a false impression, the falsity in this case consisting in putting before intending investors as material upon which they could exercise a judgment as to the existing position of the company, figures which apparently disclose the existing position but in fact conceal it. In other words, the document implied that the company was in a sound financial position, and that a prudent investor could safely invest in its debentures. This implication arises particularly from the statement that the dividends have been regularly paid over a term of years, although times have been bad, a statement which is entirely misleading when the fact that they were paid not out of current earnings but out of earnings in the abnormal war period is omitted."

In the context of section 223, which draws the distinction between statements that are false and statements that are misleading either by commission or omission, a statement giving rise to implications of the kind referred to above may more accurately be described as misleading by omission, but however described such a statement would, if relevant to a question of liability to tax, clearly be penalisable.

25. The question whether a statement is misleading in a material particular is one that needs to be decided after careful consideration of the relevant facts and circumstances, including the particular level of knowledge generally expected of persons in the class of persons to whom it is directed. Each case is likely to be different according to the consequences of the statement, the detail it contains, the circumstances in which it is made and the person or persons to whom it is addressed.

26. A statement may be misleading if it is uninformative, unclear or deceptive, notwithstanding that it may be in a sense literally true. The crucial question to be decided is whether or not the statement could reasonably mislead a typical person in the class of persons to whom it is directed. In the great majority of cases, that class of persons will comprise taxation assessors or auditors, who are expected to have substantial knowledge of and experience in the application of the taxation law, in which cases only a statement that is capable of leading a reasonably prudent and competent officer into error will be a misleading statement. If an officer is misled, the statement itself must be the cause, and not a deficiency in that officer's knowledge or ability.

27. There may, however, be some instances where a misleading statement affecting a taxpayer's income tax liability is, for a purpose connected with the operation of the Assessment Act or regulations, made to a person other than a taxation officer - that is, to a person other than one exercising powers, or performing functions, under the Act or regulations. An example would be where a misleading statement is made by a taxpayer to a third person, on the basis of which that person provides information that has been requested by an assessor for the purpose of determining the taxpayer's eligibility for an income tax deduction. Whether or not a particular statement by a taxpayer could reasonably be said to have been capable of misleading the third person to whom it was directed is something that would need to be decided in the light of the relevant facts and circumstances, bearing in mind that persons other than taxation officers may not always have a good knowledge of the taxation law and thus may be more easily led into error.

28. A series of statements may be misleading even if each statement comprising the series, if taken in isolation, cannot be shown to be false or misleading. Authority for this can be found in Aaron's Reefs v Tiviso (1896) AC 273 where Lord Halsbury LC said at p281 "If by a number of statements you intentionally give a false impression and induce a person to act upon it, it is not the less false although if one takes each statement by itself there may be difficulty in showing that specific statement is untrue." As a further point the language of a statement should be read in the sense in which the author must have known it would be understood (cf. Peek v Gurney (1873) All E.R. Rep 116 at p124).

29. A statement that is misleading is penalisable notwithstanding that it was made voluntarily, or otherwise than in response to a specific question or request for information.

Omission from a statement

30. It would seem that the most likely manner in which a statement that is not false could mislead would be by the omission of one or more relevant facts. In other words, a statement may be true as far as it goes, but what is not disclosed may be sufficient to make what has been disclosed

misleading. This does not mean, of course, that every true statement pertaining to taxation matters that omits some facts will be misleading. As noted earlier, to be misleading a statement must be capable of leading people into error.

31. It is expected, however, that statements such as those made in tax returns and objections that omit material particulars would generally be misleading because of the context in which they are made. A claim for a deduction, for example, is to be taken as a statement that the taxpayer considers that all of the conditions for deduction have been met. If, in fact, all those conditions have not been met and the deduction is not allowable, and the statement omits information that would have indicated this, it should be treated as a misleading statement. Similarly, a statement about income derived that implies that it is exempt or non-taxable but which omits information which would point to a contrary conclusion should be treated as a misleading statement.

32. Similar principles should be applied in determining whether or not an omission from a statement made to a person other than a taxation officer for a purpose connected with the operation of the Assessment Act or regulations renders the statement misleading, bearing in mind that such a person may not necessarily have a good knowledge of the taxation law and may therefore be more easily led into error by a statement that omits any material particular.

Material particular

33. A commonsense approach is also called for in relation to the phrase "in a material particular". As mentioned previously, to be liable for additional tax under section 223, a taxpayer must make a statement that is false or misleading in a material particular or omit from a statement any matter or thing without which the statement is misleading in a material particular.

34. In a recently decided case concerning a contract for property insurance (Khoury (M.&S.) and Anor. v Government Insurance Office of N.S.W. (1984) 54 ALR 639), the High Court held that a person seeking insurance cover from an insurer had a duty at common law to disclose to the insurer facts material to the risk. The pertinent facts of the case were that the insured persons had a reasonably held belief that one or more of their children were taking money from their business, which was the subject of the insurance proposal, but did not disclose that belief to the insurer at the time of the proposal. In their joint judgment Mason, Brennan, Deane and Dawson JJ. said at p646 "Indeed, common sense would seem to indicate that, at least in the circumstances of the present case, a father's belief that one of his sons living in the family home was or had been systematically stealing money, for gambling purposes, from the father's business would be regarded by any reasonably prudent insurer as something that was relevant to the risk covered by a policy insuring the father and his wife against sustained loss by reason of theft of valuables from the home" (underlining

added).

35. That kind of approach should be adopted in deciding whether or not something constitutes a material particular for the purposes of section 223. For example, if something is left out of a statement in a return which, if known, would cause a taxation assessor to determine a claim in another way, it will be a material particular. In short, if it is important enough to affect a decision relevant to determining a taxpayer's income tax liability, it is to be regarded as material.

Examples

36. Set out below are some additional examples of the types of situations where false or misleading statements might be made. These examples by no means cover all situations that might arise and are intended to do no more than further illustrate some of the principles set out in this ruling.

(a) A deduction claimed by a taxpayer for a gift in return for which a material advantage accrued to the taxpayer.

Section 223 would apply to impose additional tax where the taxpayer claimed in his or her return a deduction for expenditure incurred by way of a "gift" and did not disclose that the transaction was part of an arrangement under which the taxpayer received an advantage of a material character (see Leary v FCT 80 ATC 4438, 10 ATR 521). Failure to disclose the existence of those arrangements would constitute the omission of material particulars and, in the context in which it was made, the claim would constitute a misleading statement.

(b) A claim for a share of a partnership loss.

It has been held that former sub-section 226(2) did not apply where a taxpayer claimed as a deduction his or her share of the net loss of a partnership, even where it was determined that the partnership had not incurred a loss or had incurred a lesser loss than that returned, because the claim could not be classified as expenditure incurred.

In such circumstances, provided a false or misleading statement was made in relation to the returned partnership loss (for example, a false claim for a deduction was made in the partnership return), section 223 would apply to impose additional tax on the partner(s) who made the statement (in the example quoted, the partner(s) who made and furnished the partnership return). Whether or not section 223 would apply to also impose additional tax on any other partner in

relation to the deduction claimed in his or her individual return for a share of the returned partnership loss would depend on the particular circumstances (see paragraph 16).

(c) A statement made by a taxpayer in relation to his or her contention that an amount of income derived is exempt from tax.

Such a statement would be misleading if the taxpayer revealed only those facts that would support the contention, and omitted material particulars that would lead to a different conclusion. An example might be where a taxpayer, in support of a claim that an amount of foreign source income is exempt from Australian tax, refers specifically to paragraph 23(q) of the Assessment Act and states that the income was subject to tax in the country of source, but does not reveal that the income consisted of dividends.

COMMISSIONER OF TAXATION
11 March 1985