IT 2444 - Income tax : self-assessment of income tax returns: amendment of assessments : remission of interest on underpayments of income tax

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TAXATION RULING NO. IT 2444

INCOME TAX : SELF-ASSESSMENT OF INCOME TAX RETURNS: AMENDMENT OF ASSESSMENTS : REMISSION OF INTEREST ON UNDERPAYMENTS OF INCOME TAX

F.O.I. EMBARGO: May be released

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I 1211127	AMENDMENT OF ASSESSMENTS REMISSION OF INTEREST	170 170AA

PREAMBLE The Taxation Laws Amendment Act 1986 (Act No.46 of 1986), which received the Royal Assent on 24 June 1986, effected a number of measures to facilitate self-assessment of income tax returns. It amended section 170 of the Income Tax Assessment Act 1936 (the Act) to enable the Commissioner to amend an assessment within the existing specified time limits to either increase or decrease the liability of a taxpayer so as to enable a correct assessment to be made. The effect of the amendment is that assessments issued on or after 1 July 1986 in respect of the 1985-86 and subsequent years of income may be amended to correct errors of law as well as errors in calculation or mistakes of fact.

2. Act No. 46 of 1986 also inserted section 170AA in the Act to provide for the payment of interest by a taxpayer where an assessment is amended to correct an error which resulted in underpayment of tax. The section does not operate where the underpayment of tax is subject to additional tax under section 223 (false or misleading statements), 224 (certain tax avoidance schemes), 225 (Division 13 cases) or 226 (Part IVA cases). This is so even where the additional tax is not actually payable because of the exercise of the Commissioner's discretion to remit the whole of the additional tax or because prosecution action is taken in respect of the act or omission giving rise to the underpayment of tax.

3. Interest payable in accordance with section 170AA applies to an amendment of an assessment for the 1985-86 year of income or a subsequent year where the assessment was made on or after 1 July 1986. For the purposes of section 170AA, a notice advising that no tax was payable or that there was no taxable income is deemed to have been a notice of assessment and a subsequent assessment is deemed to have been an amendment of that assessment.

4. The amount of interest payable on underpaid tax is calculated at the rate applicable from time to time under the

Taxation (Interest on Overpayments) Act 1983. Interest commences to run from the date on which tax first became due and payable by the taxpayer under an assessment (or 30 days after the date of service of a deemed assessment) and ends on the date on which the amended assessment (or deemed amended assessment) is made. Subsection 170AA(11) allows the Commissioner of Taxation to remit the whole or a part of the interest.

5. A detailed explanation of the self-assessment provisions is contained in the explanatory memorandum which accompanied the Taxation Laws Amendment Bill 1986. This Ruling does not deal with issues already covered in that memorandum. Its purpose is to provide guidelines concerning -

- the amendment of an assessment where there is a change in interpretation of the income tax law; and

- the exercise of the subsection 170AA(11) discretion to wholly or partly remit interest payable under section 170AA.

RULING Amendment of assessments

6. The amendments of section 170 of the Act by the Taxation Laws Amendment Act 1986 reflect the recognition that, under the self-assessment system, income tax returns will not, before an assessment is made, be subject to the same degree of technical scrutiny as has occurred in the past. While the more obvious errors could be expected to be detected prior to assessment, errors of law may not be detected until the post assessment audit or examination stage. Accordingly, section 170 as amended permits the amendment of assessments to correct errors of law, subject to the same time limits as apply to amendments to correct mistakes of fact or errors in calculation.

7. Where, for example, an assessment is made on the basis of processing of a return in which a claim was incorrectly made for non-deductible expenditure, the assessment may be amended within the specified time limits to disallow the claim. Similarly, where a taxpayer has incorrectly returned as assessable income an amount that is not subject to tax, an assessment made on the basis of the taxpayer's return may be amended to exclude that amount.

8. The question has been raised whether the extended powers to amend assessments will be exercised in a wider range of cases than those instanced above. While an answer covering in advance all the circumstances in which the question might arise is not practicable, it is appropriate to state a policy for the situations most commonly posed - those where the Commissioner decides to change a previous formally adopted and publicly known interpretation of the law (typically, as expressed in a Taxation Ruling) or where a court or tribunal overturns a previously adopted official interpretation. In these situations, the normal policy will be that the altered interpretation is applied only on a suitably prospective basis, the precise terms of which would be set out in a Taxation Ruling that spells out that interpretation. This policy will not protect a taxpayer who has

not made a full and true disclosure of all material facts in a return and there is an avoidance of tax. Indeed, the penalty tax provisions of Part VII of the Act or the prosecution provisions of Part III of the Taxation Administration Act 1953 may apply in such circumstances (see Taxation Ruling No. IT 2141).

9. The requirement for a full and true disclosure will be satisfied where sufficient information is provided in the return to ensure that an assessment could have been made in accordance with the Commissioner's interpretation of the law had the return been examined before issue of the assessment. In other words the concept of a full and true disclosure is unchanged by self-assessment. In particular, there will be no need to provide more extensive documentation or information than has been acceptable in the past for purposes of making a full and true disclosure under self-assessment. The comments made at paragraph 10 of Ruling No. IT 2141 and paragraph 11 of Ruling No. IT 2206 continue to be relevant in this regard.

10. An assessment may be amended where a return is lodged (and assessed) on a basis that is contrary to the interpretation of the law by the Commissioner, although in accordance with a decision of an independent tribunal or court that is not final (in the sense that the interpretation of the law established by the decision is or may be the subject of an appeal). Paragraphs 19 to 21 discuss the remission of section 170AA interest in these circumstances.

11. In the self-assessment context, the fact that an item in a taxpayer's return has been accepted, or has not been questioned, does not mean that the Commissioner is in agreement as to the application of the law in relation to the item. Similarly, the issue of a notice of assessment is not conclusive evidence that a question raised in a return by the taxpayer has been considered and the taxpayer's interpretation of the law accepted as correct. In that regard, not all questions raised in returns may be able to be considered prior to the issue of a notice of assessment. Where a question raised in a return is considered prior to the assessment issuing, the taxpayer is to be given a positive indication to that effect - for example, by way of adjustment sheet or a separate letter of explanation. For these purposes, a question is one placed prominently in a return and clearly identified as a request for the Commissioner's interpretation of the law in relation to a particular item in the return.

Remission of interest

12. In providing these guidelines, there is no intention to restrict Deputy Commissioners and authorising officers in the exercise of the discretion to remit the interest charge - it is essential that they retain the flexibility necessary to deal with each case on its merits. The following paragraphs do no more than set out a guide as to the manner in which the discretion might generally be exercised.

13. In considering whether, or to what extent, interest should be remitted, it is necessary to bear in mind the purpose for which the interest charge was introduced. Broadly, the interest charge on underpayments of tax is designed to compensate the revenue for the full amount of tax not having been paid by the due date. Interest is calculated from the date on which tax first became due and payable by the taxpayer under an assessment (or 30 days after the date of service of a deemed assessment) to the date on which the amended assessment (or deemed amended assessment) is made.

14. Having regard to the compensatory nature of the interest charge, it is clear that the legislature did not intend the remission power to be exercised in the general run of cases. This is specifically noted at page 70 of the explanatory memorandum which accompanied the Taxation Laws Amendment Bill 1986. Against this background, factors such as ignorance or misinterpretation of the law and tax agent error will not normally be considered as circumstances warranting remission.

15. In broad terms, there are three kinds of situations in which remission in whole or in part may be warranted -

- where a taxpayer voluntarily advises of an underpayment;
- where an understatement of taxable income resulted from an interpretation of the law adopted by a taxpayer for which there was judicial or quasi-judicial authority at the time of lodgment of the taxpayer's return; and
- where, by reason of the particular circumstances, it is considered fair and reasonable to remit the interest.

These three situations are discussed below.

Voluntary advice of underpayment

16. Where a taxpayer voluntarily provides advice to the effect that an underpayment of tax has resulted from a mistake of law in a return that contained a full and true disclosure of all the material facts, interest payable under section 170AA on the underpayment may be remitted to an amount equal to the lesser of interest calculated at the rate of 10% per annum or 75% of interest otherwise payable.

17. The remission of interest payable in accordance with section 170AA to the rate of 10% per annum is consistent with the policy that applies to the remission of -

- the statutory penalty imposed by section 223 where a taxpayer makes a voluntary disclosure (paragraph 16 of Taxation Ruling No.IT 2206 refers); and
- the statutory penalty imposed by section 222 in cases of voluntary disclosure of non-lodgment of returns (paragraph 7 of Taxation Ruling No. IT 2214 refers).

18. In determining whether advice of underpayment was voluntarily given, the principles relating to voluntary disclosure of false or misleading statements should be applied - see paragraphs 9 to 12 of Taxation Ruling No. IT 2012.

Where judicial or quasi-judicial support for understatement

19. This category covers a situation where a taxpayer prepares a return in a particular way having regard to a decision of an independent tribunal or a court and, subsequent to lodgment of the return, a court of higher authority overturns that decision, thereby resulting in an unintended understatement of taxable income by the taxpayer.

20. Interest may be remitted in full in this situation, provided that the judicial or quasi-judicial decision relied upon in the preparation of the return clearly applied to the taxpayer's circumstances and, prior to the time of lodgment of the return or within the period allowed to appeal against the decision, the Commissioner had neither lodged an appeal nor indicated publicly that an appeal would be lodged against the decision.

21. Where, either prior to the time of lodgment of the return or within the period allowed to appeal against the decision, the Commissioner had lodged an appeal or had indicated publicly that an appeal would be lodged against the decision, interest may still be remitted in full if in a document accompanying the return the taxpayer discloses that the return was prepared on the basis of the particular decision but the decision is or may be contrary to the position adopted by the Commissioner. In the absence of such disclosure, interest should generally be remitted only in respect of the period that the decision directly applicable to and in favour of the taxpayer exists - that is, up to the time the decision is overturned. However, interest may be remitted in full if, within 60 days immediately following the latter decision, the taxpayer voluntarily discloses the resultant understatement.

Where particular circumstances warrant remission

22. The following are two examples of circumstances which may warrant full or partial remission under this criterion (they do not cover all situations that might arise)-

- where the underpayment of tax giving rise to the interest charge resulted from an office error - e.g., an incorrect credit adjustment by a return examiner or a claim in respect of which a question (see paragraph 11) was raised in a return but was overlooked and not considered; and

- where the underpayment of tax is offset by an increase in credits (e.g., tax instalment deductions) which are not otherwise taken into account in calculating the increase in tax payable for purposes of section 170AA.

COMMISSIONER OF TAXATION
27 August 1987