IT 2559 - Income tax : dividend imputation system: guidelines for remission of additional tax imposed for late lodgment of franking account return

TAXATION RULING NO. IT 2559

INCOME TAX : DIVIDEND IMPUTATION SYSTEM: GUIDELINES FOR REMISSION OF ADDITIONAL TAX IMPOSED FOR LATE LODGMENT OF FRANKING ACCOUNT RETURN.

F.O.I. EMBARGO: May be released

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REFERENCE NO:	SUBJECT REFS:	LEGISLAT. REFS:
I 1011562		
	FRANKING ACCOUNT RETURN	160ARE
	FRANKING ADDITIONAL TAX	160ARZ
	PENALTY FOR LATE LODGMENT	160ASB
	AUTHORITY TO REMIT	

PREAMBLE

Section 160ARE of the Income Tax Assessment Act 1936 authorises the Commissioner to publish a notice in the Gazette requiring returns to be lodged in respect of a franking year. Companies required to lodge franking account returns are those in respect of which a franking debit or credit arose or which paid a frankable dividend (as defined in section 160APA) during the relevant franking year. The Commissioner may also issue a notice on a company requiring it to furnish a return at any time under section 160ARF.

2. Corporate unit trusts and public trading trusts, defined in section 160APA as current corporate trusts, are affected by the imputation system in the same way as companies. Therefore, in this ruling the term "company" includes a current corporate trust.

3. Where a company has a liability for franking deficit tax at the end of a franking year, a franking account return is required to be furnished by the last day of the month following the end of that franking year. Extensions of time for lodgment may be granted. Assessment of the franking account balance and any franking deficit tax is deemed to be made when the first franking return for the franking year is lodged (section 160ARH). Any franking deficit tax is due and payable on the last day of the month following the end of the franking year (section 160ARV). If there is no franking deficit tax liability, a franking account return is usually required to be lodged with a company's income tax return.

4. If a company does not furnish a return for a franking year, the Commissioner can, under section 160ARK, make an assessment of the franking account balance and any franking deficit tax payable for that franking year. The due date for payment of the franking deficit tax would remain the last day of the month following the end of the franking year.

5. Section 160ARZ imposes additional tax equal to double the amount of the franking deficit tax payable by a company for the franking year where a franking account return is not furnished when and as required. However, section 160ASB allows the Commissioner to remit the whole or any part of the additional tax imposed under section 160ARZ for late lodgment of a franking account return.

6. This ruling provides guidelines for the exercise of the Commissioner's discretion under section 160ASB to remit the statutory penalty imposed under section 160ARZ. In providing these guidelines, it is not intended to lay down any conditions which may restrict a Deputy Commissioner or other authorised officer in exercising his or her discretion. It is essential that Deputy Commissioners and other authorised officers retain the flexibility necessary to consider each particular case on its merits as required by the legislation.

RULING

7. As a general rule, the full statutory additional tax imposed by section 160ARZ will not normally be levied. In all but exceptional circumstances Deputy Commissioners would exercise the discretion provided by section 160ASB to remit a substantial part of any franking additional tax liability of a company for late lodgment of a franking account return. The power of remission may be exercised either before or after the assessment of additional tax is made.

8. There will be many cases in which a franking account return lodged after the due date will be accompanied by payment of the relevant franking deficit tax. By virtue of section 160ARW late payment of franking deficit tax is subject to the same penalties as late payment of other income taxes. Therefore, section 207 will apply to impose a penalty of 20% per annum for the period the franking deficit tax was due for payment until the date payment is made. The guidelines for the remission of this penalty will be contained in a new ruling that will issue shortly to replace the current ruling No. IT 2091, on the subject.

9. The discretion to remit the statutory penalty imposed by section 160ARZ will be exercised to impose a basic penalty equal to five percent of the franking deficit tax payable for the year. This basic penalty is considered to be appropriate having regard to the fact that defaulting companies incur at the same time, a late payment penalty on the franking deficit tax at the rate of 20% per annum.

10. Companies required to maintain franking accounts should have maintained those accounts throughout the year and be aware of any impending franking deficit well in advance of the date a franking account return is due for lodgment. For this reason, a request for a further remission of franking additional tax for late lodgment will only be granted where the circumstances which led to the delay in lodgment were exceptional or unpredictable. Circumstances such as the destruction or loss of the whole of a company's records due to flood or fire would be considered to be exceptional or unpredictable circumstances, as would the sudden

death of a number of directors of the company. On the other hand, franking additional tax would not generally be remitted where the delay in lodgment occurs through the neglect, inadvertence or omission of the company or the tax agent.

11. In any case, when it becomes apparent that lodgment of a franking account return will be delayed, the company should seek an extension of time for lodgment. Whether or not an extension is approved will depend on the particular circumstances of each individual case. The fact that the company has notified the Taxation Office of the reasons for the delay would be taken into account in considering the extent of any further remission. Other factors which may be taken into account include:

(a) action taken by the taxpayer to mitigate the effects of the delay by payment of the estimated amount of franking deficit tax; and

(b) the lodgment history of the taxpayer.

12. The action taken by the taxpayer to reduce the extent of delay resulting from unforeseen circumstances is an important factor in determining the amount of further remission. Where extenuating circumstances have been proved and the taxpayer can demonstrate that every possible step has been taken to ensure prompt lodgment, consideration would be given to a full remission of the penalty.

13. A company must lodge a franking account return by the end of the month following the end of the franking year if at the end of the franking year the franking account is in deficit. Accordingly, delays in receiving assessments or determinations are not considered to be unforeseen circumstances warranting further remission of additional tax imposed for late lodgment of a franking account return.

14. This ruling does not apply where a company has not lodged a franking account return and the Commissioner makes an assessment of franking deficit tax under section 160ARK. The extent to which penalty will be remitted in such cases will be at the discretion of the relevant Deputy Commissioner having regard to all the circumstances of the case leading to the need to make an assessment under that section. However, where the penalty imposed is greater than 5% of the franking deficit tax, companies should not expect a further remission of penalty to 5% when the return is eventually lodged.

COMMISSIONER OF TAXATION
21 September 1989