IT 2569 - Extensions of time to pay under section 206

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TAXATION RULING NO. IT 2569

EXTENSIONS OF TIME TO PAY UNDER SECTION 206.

F.O.I. EMBARGO : Edited for F.O.I. purposes

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I 1011704	EXTENSIONS OF TIME FOR PAYMENT OF TAX AND PAYMENT OF TAX BY INSTALMENTS IMPOSITION OF ADDITIONAL (PENALTY) TAX	206 207 (1)

PREAMBLE This Ruling replaces Taxation Rulings Nos IT 2091, and IT 2156 insofar as it relates to the Commissioner's discretion under section 206 to grant extensions of time for payment of tax or permit payment of tax to be made by such instalments and within such time as he considers the circumstances warrant (The part of Taxation Ruling No. IT 2091 which provided guidelines for the remission of additional tax for late payment under section 207(1) is now contained in Taxation Ruling No. IT 2570).

2. The guidelines have been designed to give effect to the intention of the legislature when enacting the provisions relating to the payment, collection and recovery of income tax and also to complement the overall collection and recovery policy of the Taxation Office.

3. The Income Tax Assessment Act 1936 provides that tax assessed to a taxpayer is due for payment on the date specified in the assessment notice, not being less than 30 days after the service of the notice, or, if no date is specified, on the thirtieth day after service of the notice on the taxpayer (section 204). The fact that the liability is disputed by review or appeal is expressly declared by the Act not to affect the Commissioner's ability to recover the disputed tax (section 201).

4. The purpose of granting an extension of time in the majority of cases will be to give a taxpayer a further period within which to pay where that taxpayer is unable to pay by the due date but has demonstrated the ability or potential to pay at some time in the future. The extension of time to pay then provides the Commissioner with an alternative to legal action to recover overdue debts from taxpayers in this situation.

5. Consequently, where an extension of time for payment is granted, recovery action will normally be held in abeyance but should recommence if the taxpayer defaults on the terms of the extension. Taxpayers should be advised of this whenever an

extension is granted.

RULING 6. The guidelines to be followed in considering requests for extensions of time for the payment of tax are set out below.

7. In providing these guidelines there is no intention of laying down any conditions which may restrict a Deputy Commissioner in the exercise of the discretion to grant an extension of time for payment. It is essential that Deputy Commissioners and authorised officers retain the flexibility necessary to deal with each particular case on its merits.

8. Section 206 of the Income Tax Assessment Act provides that the Commissioner may in any case grant such extension of time for payment of tax, or permit payment of tax to be made by such instalments and within such time as he considers the circumstances warrant.

9. Section 207(1) provides that where, under section 206, the Commissioner has granted an extension of time for payment of the tax or has permitted payment of the tax to be made by instalments, additional tax for late payment is to be calculated from such date as the Commissioner determines, not being a date prior to the date on which the tax was originally due and payable.

10. In the majority of cases where an extension of time is granted it would normally be on the basis that additional tax would accrue from the original date for payment. Types of situations where it would be appropriate for additional tax to accrue only from the extended due date are discussed later in this Ruling at paragraphs 19, 21, 23, and 25.

11. With the exception of disputed assessment cases and some Quarterly Provisional Tax cases as outlined in paragraphs 38 to 41, it is a pre-requisite in considering any extension application that the taxpayer establish to the satisfaction of the approving officer that insufficient funds are available to fully discharge the debt or that payment would cause financial hardship and that all avenues for obtaining the necessary funds have been exhausted.

12. In practice, however, the bulk of requests seeking short-term extensions need to be dealt with quickly, often with little or no information to enable a proper assessment of the bona fides of the application. Bearing this in mind, applications to pay assessments beyond the due date may be approved, subject to the accrual of additional tax for late payment, where reasonable grounds are furnished in support of the request but the extension should not exceed six months.

13. Applications for longer term payment arrangements should be examined more closely and normally a full assessment of the taxpayer's financial position would be undertaken. Inability on the part of the taxpayer to pay the tax by the due date could be demonstrated by, for instance, a total lack of cash reserves, claims to cash, recourse to borrowings, ownership or effective control of realizable assets, etc at that time.

14. In many cases extensions of time to pay are sought where business operations are involved. Where it is established that the difficulties which caused the inability to pay the debt are not permanent and that the business has good prospects of successfully trading out of its difficulties an extension of time may be granted subject to the conditions set out in the preceding paragraphs. (Refer para. 11-13)

15. In these cases the ability or potential to pay may be indicated by reference to the actions of the taxpayer's other genuine arms length creditors. Where the taxpayer's creditors have decided to stay recovery proceedings or extend further credit, and there is no suggestion that the creditors are acting at anything other than at arms length or are receiving security for amounts owed to them, it may be appropriate for the Taxation Office to adopt a similar position, subject to the accrual of additional tax for late payment, even though the debt may not be fully discharged for some time in the future. This course would only be appropriate where the taxpayer's tax liability (including amounts owing in respect of sales tax, tax instalment deductions or deductions from prescribed payments) will not increase over the period of the extension, with the exception of the accrual of additional tax for late payment.

16. Care should also be taken in considering applications from taxpayers whose record indicates an unsatisfactory level of compliance in relation to the lodgment of returns and/or payment of tax.

17. It is not possible to lay down firm rules regarding the length of time for which an extension of time can be granted. Each case must be considered on its own merits. However, as a general principle, payment arrangements for arrears of tax should only be granted beyond the expected due date of the taxpayer's next liability where the taxpayer can show that provision has been made for payment of that liability. Furthermore, an extension should usually be on the basis of a progressive reduction of the debt by payment of instalments of tax during the currency of the extension.

18. Where additional tax is to accrue only from the extended due date it is particularly important that taxpayers be advised that unless the terms of the extension are strictly adhered to the extension will be withdrawn and penalty will accrue from the original due date.

GUIDELINES TO BE APPLIED IN SOME PARTICULAR CIRCUMSTANCES

(i) Taxpayers suffering serious financial hardship as a result of natural disasters.

19. Extensions of time to pay should be granted to persons who suffer financial hardship as a consequence of natural disasters such as drought, flood, bushfire, hail damage, earthquake, etc. In these cases additional tax should accrue only from the extended due date. Although each case must be considered on its

merits, sympathetic consideration should be given to requests for extension past the end of the current financial year if circumstances warrant.

20. It should be noted, however, that blanket extensions of time to taxpayers in a particular industry or region are not to be granted.

(ii) Taxpayers whose major source of income is received by way of pension or unemployment benefits.

21. Taxpayers whose major source of income is derived by way of pension or unemployment benefit or whose financial situation has been adversely affected by prolonged periods of unemployment, and who seek additional time to pay should receive sympathetic consideration. In cases where payment by the due date would cause serious financial hardship, taxpayers may be given until as late as the close of the financial year with penalty accruing only from the extended due date. Tax should be allowed to remain unpaid after this date only in exceptional circumstances.

22. Wherever possible, taxpayers with additional income other than pensions, unemployment benefits or salary and wages should be encouraged to have sufficient tax deducted to cover their full annual liability. Every assistance should be offered to taxpayers in arranging the deduction of tax instalments.

(iii) Deceased Estates

23. Where requests are received from trustees advising that probate is not complete, an extension of time until one month after the issue of probate may be granted with additional tax accruing only from the extended due date. Similarly, where the trustee has advised that assets must be sold in order to pay the outstanding liability and the trustee has taken appropriate steps or has agreed to take all reasonable steps to sell the assets, an extension of time to pay, with additional tax accruing only from the extended due date may be granted for a reasonable period to allow for the sale of these assets.

24. Extensions for further significant periods of time in either of the cases outlined in the previous paragraph should only be granted in exceptional circumstances and after a full examination of the facts.

(iv) Taxpayers whose taxation liability is met substantially through source deduction (i.e., PAYE) or PPS).

25. Requests for extensions of time received from taxpayers whose taxation liability is met substantially through source deductions and who, because of either an event unique to that taxpayer (e.g. the receipt of interest income derived from the investment of the proceeds of sale of the marital home, prior to the purchase of another home) or because of the receipt of small amounts of other income receive a small debit assessment should be given favourable consideration where:

- the officer considering the request is satisfied that immediate payment of the full amount would be likely to cause financial hardship; and

- the taxpayer's compliance record has been good; and

- the taxpayer has agreed to take all appropriate steps to ensure that subsequent liabilities will be covered by deductions at source.

26. In cases displaying all of these features extensions of time may be granted, if necessary, up until the end of the current financial year with penalty accruing only from the extended due date. Extensions of time past the end of the current financial year would normally only be granted in exceptional circumstances and after a full examination of the taxpayer's financial affairs.

(v) Disputed Assessment Cases

PRIOR TO OBJECTION BEING DETERMINED

27. Where a taxpayer lodges an objection against an assessment and there is no perceived risk to the revenue, an extension of time for payment of the amount in dispute may be granted pending determination of the objection. Where there is a perceived risk that funds may be dissipated prior to the objection being determined legal action may proceed without reference to National Office.

28. Where there is an obvious error made by the Taxation Office, (e.g. a situation where an amended assessment did not include a credit for a spouse rebate, correctly allowed in the original assessment, and an objection has been lodged against the assessment) the taxpayer, on request, should be granted an extension of time for the amount of the dispute relating to the error, pending the determination of that component of the objection.

29. Where an objection is disallowed in full or in part and an amount is ultimately payable additional tax for late payment will be calculated on this amount from the original due date.

SUBSEQUENT TO THE OBJECTION BEING DETERMINED

30. The provisions of the Income Tax Assessment Act which relate to the collection of outstanding taxes give clear priority to the recovery of revenue over the determination of the taxpayer's appeal (section 201). Accordingly, extensions of time after the objection has been determined should only be granted in very limited circumstances.

31. Regard must be given to the power of the courts to grant a stay of proceedings in disputed cases. Such power has been considered in many cases and was highlighted by French J. in SNOW v DFCT (1987) 87 ATC 4078 who indicated, among other things, that -

- the power to grant a stay is exercised sparingly, and the onus is on the taxpayer to justify it;

- the merits of the taxpayer's appeal constitute a factor to be taken into account in the exercise of the discretion;

- irrespective of the legal merits of the appeal, a stay will not usually be granted where the taxpayer is party to a contrivance to avoid the liability to payment of tax;

- a stay may be granted in a case of abuse of office by the Commissioner or extreme personal hardship to the taxpayer called on to pay;

- the mere imposition of the obligation to pay does not constitute hardship;

- the existence of a request for reference of an objection for review is a factor relevant to the exercise of the discretion.

32. Extensions of time for payment in disputed assessment cases should therefore only be granted where:

- the taxpayer can demonstrate that payment of the full amount would cause financial hardship; or

- the Commissioner accepts that there is a genuine dispute and/or the objection raises arguable questions of fact and/or law.

33. Where either of the above criteria are met an extension of time to the date 14 days after the date of the decision on the appeal may be granted subject to the following conditions:

- payment of 50% of the amount in dispute together with the full amount not in dispute. Where financial hardship has been demonstrated an extension of time for payment of this amount may be granted in accordance with the guidelines for dealing with hardship cases as previously outlined in this Ruling;

- the taxpayer agreeing to take all reasonable steps to prosecute their appeal.

34. Remissions of additional tax for late payment in these cases is dealt with in IT 2570.

35. Where there is a request for reference of an objection and the case does not fall within those outlined in paragraph 32 or where it does, it has not met the conditions outlined in paragraph 33, an extension of time to pay should not be granted and legal action for recovery may proceed.

36. However, it is expected that winding-up applications and bankruptcy petitions would issue in genuine dispute cases only

where there is a real risk that delay may result in the dissipation of assets.

37. In general, no extensions of time unless justified for reasons other than the fact that the liability is disputed should be granted in cases involving artificial arrangements to avoid liability, particularly where a determination in accordance with section 177F has been made, although each case must be considered on its merits.

(vi) Taxpayers who are subject to the Quarterly Provisional Tax system and find that greater instalments are payable than would be the case following the issue of the next assessment.

38. Taxpayers who are subject to the Quarterly Provisional tax system sometimes find that their next assessment will give rise to an Actual Provisional Tax figure that is lower than the Notional Provisional Tax figure upon which the Quarterly Provisional Tax instalments have been calculated. This results in greater instalments being payable than would be the case following the issue of the next assessment.

39. In these circumstances taxpayers may request that the taxation office accept a lesser amount than the instalments notified, based upon their estimate of the Actual Provisional Tax figure and that the balance be allowed to remain outstanding.

40. Where the taxpayer contacts the taxation office and requests an extension of time to pay this balance, the taxpayer should initially be requested to lodge a variation of the Quarterly Provisional Tax instalment, as provided in section 221YDA. If, however, the taxpayer is not in a position to lodge such a variation, an extension of time to pay, subject to the accrual of additional tax for late payment, may be granted where :

.The taxpayer has lodged the relevant tax return which will establish the Actual Provisional Tax; and

.The taxpayer pays the amount that he/she estimates should be payable for any instalment issued, by the due date of that instalment, or, if the instalment is overdue, the payment accompanies the request for the extension of time to pay.

41. Remission of additional tax for late payment in these circumstances is dealt with in IT 2570.

COMMISSIONER OF TAXATION
7 December 1989