


IT 2570 - Remissions under sub-section 207(1A) of additional tax payable under sub-section 207(1) of the Income Tax Assessment Act 1936

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TAXATION RULING NO. IT 2570

REMISSIONS UNDER SUB-SECTION 207(1A) OF ADDITIONAL TAX
PAYABLE UNDER SUB-SECTION 207(1) OF THE INCOME TAX
ASSESSMENT ACT 1936

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

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REFERENCE NO:	SUBJECT REFS:	LEGISLAT.REFS:
I 1011725	ADDITIONAL TAX FOR LATE PAYMENT IMPOSITION REMISSION	207 207(1A)

PREAMBLE This Ruling replaces Taxation Ruling No. IT 2091 and provides guidelines for the exercise of the Commissioner's discretion under subsection 207(1A) to remit additional tax for late payment of unpaid tax, imposed by subsection 207(1). A separate Taxation Ruling No IT 2569 (replacing Ruling IT 2156 and Ruling IT 2091 insofar as it relates to the Commissioner's discretion to grant extensions of time) provides guidelines for the exercise of the Commissioner's discretion pursuant to section 206 of the Income Tax Assessment Act 1936 ("the Act").

2. The guidelines contained in this Ruling 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. Additional tax for late payment of 20% per annum arises automatically upon late payment of tax and is designed to focus taxpayers' attention on their obligations to pay on time and to arrange their affairs to enable them to do so.

4. It is a basic responsibility of the Commissioner to ensure as far as practicable that income tax will be collected expeditiously. While the use of legal action or the issue of a notice under section 218 of the Act are effective methods of collection which may be used in appropriate circumstances, emphasis must also be placed on the imposition of additional tax for late payment to encourage payment of the tax by the due date. The Commissioner's guidelines on remission of penalties are intended to reinforce this position.

RULING 5. The guidelines to be followed in considering requests for remission of additional tax for late payment are set out below.

6. 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 remit

additional tax. It is essential that Deputy Commissioners and authorised officers retain the flexibility necessary to deal with each particular case on its merits.

7. Sub-section 207(1A) of the Income Tax Assessment Act permits the Commissioner to remit additional tax for late payment (in part or in full) in situations which fall within one of the three categories set out below:

Factors Beyond the Control of the Taxpayer

8. Paragraph (a) of subsection 207(1A) permits remission of additional tax for late payment where 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.

9. 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 payment were beyond his or her control and clearly could not be predicted. Such circumstances may include (but should not be limited to) sudden ill-health of key personnel in sole trader or small business situations, strikes, and the unforeseen collapse of a major debtor. Delays caused by serious financial difficulties as a result of drought, flood or bushfire should receive sympathetic consideration for the remission of additional tax where the extended due date for payment (refer paragraphs 10 and 20 IT Ruling No. IT 2569) has passed or has not been granted.

10. Generalisations such as "adverse business conditions affecting the industry", "general economic downturn" or "fluctuations of currency exchange rates" do not meet the requirements of this category unless the taxpayer can show a more specific event or effect on the taxpayer's cash flow.

11. A taxpayer must also demonstrate that he or she has taken reasonable steps to mitigate, or to mitigate the effects of, the circumstances that contributed to the late payment. Mitigating steps may include a budget reorganisation to counteract the reduction in cash flow; payment of a portion of the tax outstanding; attempts to raise additional funds from financial institutions; application for government assistance for disaster relief, if available; and action by the taxpayer to protect his or her position where money is owed to the taxpayer.

Factors Subject to the Control of the Taxpayer

12. Paragraph (b) of subsection 207(1A) permits remission where the circumstances leading to the delay were caused by the taxpayer but the taxpayer has taken reasonable steps to mitigate, or mitigate the effect of, those circumstances and it is fair and reasonable to remit additional tax (in part or in full) in view of the nature of those circumstances.

13. To qualify for remission under this category, a taxpayer

must demonstrate that some specific event or decision affected his or her current ability to pay. Factors caused by the taxpayer may include a bad business decision (although reasonable at the time it was taken) which resulted in a direct financial loss or adverse and unforeseen consequence for the taxpayer.

14. Where mitigating factors can be shown, remission may then be granted only where it is fair and reasonable to do so having regard to the nature of the specific event or decision. This will need to be determined on the facts of the individual case while also having regard to Parliament's intention that taxpayers should pay their taxes at the time at which they fall due.

15. It is not likely to be considered fair and reasonable to remit additional tax for late payment where late payment is due to a taxpayer's need to extend credit in order to maintain sales or the payment of other debts in preference to outstanding taxes in order to sustain operations.

Special Circumstances

16. Paragraph 207(1A)(c) provides that where the Commissioner is satisfied that there are special circumstances by reason of which it would be fair and reasonable to remit the additional tax or part thereof he may do so. Full or partial remission under the "special circumstances" criterion must be considered against the Parliament's desire to tighten the rules for remission of additional tax and thereby ensure that the financial penalties are not reduced in effect. Accordingly, remissions under the "special circumstances" criterion may be considered in, but should not be limited to, the following circumstances:

- (a) where imposition of additional tax is considered not worthwhile i.e. less than \$125;
- (b) to reduce additional tax where a provisional tax variation credit is processed;
- (c) cases of serious financial difficulties. This category may include:
 - (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 either in full or by way of instalments.
 - (ii) taxpayers who make an offer to pay and that offer approximates the limit of the financial capacity which the taxpayer controls or has access to so that any further litigation would only deplete the available fund and reduce the prospect of collection. It can be said that in such a case, the point of extreme financial difficulty has

obviously been reached.

- (d) where the prospects of collection are affected by factors other than the ability to pay from all sources and after a full examination of all possible alternatives the Commissioner believes that it would better facilitate his general administration of the Act to accept an amount of additional tax less than that which is owing.
- (e) 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 finalisation of the dispute, and all 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 i.e., payment of 50% of the amount in dispute and 100% of the amount not in dispute (unless difficulties can be shown).

In this situation additional tax on the unpaid 50% of the amount in dispute should be remitted in part to equal the interest rate payable under section 170AA of the Income Tax Assessment Act (currently 14.026%). Provided the conditions in paragraph (e) (i) above continue to be met, the additional tax should 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 should continue to be remitted in accordance with this guideline, up to the date 14 days after the date of the decision on the appeal or payment in full, whichever is the earlier.

It should be noted that extensions of time in these situations will normally be granted only in those cases where the dispute involves substantial questions of law and/or fact and the Commissioner is of the view that there are genuine prospects of the appeal succeeding. In all other cases where an objection against an assessment has been disallowed and no further extension of time has been granted, requests for remission of penalty should not normally be granted unless justified for other reasons.

- (f) where provisional tax should have been reduced as a result of a credit amendment, but was not reduced because of the prior issue of an assessment for the subsequent year, additional tax which has accrued on the provisional tax that would otherwise not have been

outstanding (i.e. had the credit amendment issued prior to the subsequent year's assessment) should be remitted in full from the due date to the issue date of the subsequent assessment.

- (g) Where partial relief is granted by a Deputy Commissioner or a Board constituted under section 265 of the Income Tax Assessment Act 1936 and payment of the balance outstanding less the additional tax for late payment, is made within a reasonable period of a decision on the application or in accordance with some agreed arrangement, consideration should be given to remitting the additional tax for late payment either in full or in part after a full examination of the taxpayers circumstances.

Where relief is denied, additional tax for late payment which has accrued should not be remitted unless justified for other reasons.

- (h) Where an extension of time to pay has been granted in accordance with paragraph 40 of IT 2569 and the payments made by the taxpayer in accordance with their estimate of their Actual Provisional Tax is found to be substantially correct (i.e.,. the estimate is 90% or more of the Actual Provisional Tax figure as disclosed by the issue of the assessment), remission of the additional tax for late payment which has accrued on the unpaid instalments or part thereof which were the subject of the extension of time to pay may be granted. If the taxpayer's estimate of their Actual Provisional Tax is less than 90% of the Actual Provisional Tax as disclosed by the issue of the assessment, remission of the accrued additional tax for late payment should not be granted unless justified by other reasons.

Amnesty Cases

17. Where the liability for income tax has arisen as a result of the lodgment of income tax returns under the terms of the amnesty, and additional tax for late payment has accrued, any request for remission of that additional tax should be considered in accordance with the provisions outlined in this ruling.

Liability to Tax Reduced by Credit Amendment

18. 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 for late payment accrued thereon, is taken never to have been payable (refer subsections 172 (1) and (2)). In these circumstances remission of the additional tax does not need to be considered within the terms of subsection 207 1A. The account should merely be adjusted to reflect this reduction.

Additional Tax Imposed on Company Instalments and Provisional Tax

19. Where additional tax has accrued on company instalments or

provisional tax (including quarterly provisional tax not subject to an extension of time to pay as per paragraph 40 of IT 2569) and taxpayers have chosen not to lodge a variation and the subsequent assessment is either nil or for an amount of tax substantially less than the amount of the provisional tax or company instalment, remission of the additional tax will not normally be granted unless it can be justified for other reasons.

COMMISSIONER OF TAXATION

7 December 1989