

MT 2012/3A3 - Addendum - Administrative penalties: voluntary disclosures

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Addendum

Miscellaneous Taxation Ruling

Administrative penalties: voluntary disclosures

This Addendum is a public ruling for the purposes of the *Taxation Administration Act 1953* (TAA). It amends Miscellaneous Taxation Ruling MT 2012/3 to provide further clarification and guidance, including:

- (a) whether Annual Compliance Arrangements and Advance Pricing Arrangements are ‘examinations of an entity’s affairs’
- (b) whether an entity will be taken to have been told that an audit is to be conducted where there is a delay between a risk review being finalised and notification of an audit, and
- (c) to provide another example of when the Commissioner will generally exercise the discretion in subsection 284-225(5) of Schedule 1 to the TAA.

MT 2012/3 is amended as follows:

1. Contents list

After ‘Flowchart’; insert ‘Appendix 3:’.

2. Paragraph 11

Omit ‘When the final Ruling is issued, it is will apply’; substitute ‘This Ruling applies’.

3. Paragraph 51

After the paragraph; insert:

51A. Annual Compliance Arrangements (ACAs) are administrative arrangements which set out a framework for managing the compliance relationship between the ATO and a taxpayer. A statement made by a taxpayer may be subject to examination in accordance with the arrangements that are agreed in an ACA. Advance Pricing Arrangements (APAs) are arrangements that determine, in advance of controlled transactions, an appropriate set of criteria for the determination of the transfer pricing of those transactions over a fixed period of time. Neither arrangement is of itself an examination of an entity's affairs. If a risk review, audit or other examination occurs while an ACA or APA exists, the entity will be explicitly told. In some cases, a clause in the ACA itself will tell the entity that its statements will be subject to examination (for example, the ACA might provide that the ATO will examine statements made by the entity in its income tax returns when they are lodged).

4. Paragraph 57

Add to the end of the last sentence; insert '(however generally the Commissioner will commence an audit immediately on closure of a risk review and advise the taxpayer this is occurring)'.

5. Paragraph 58

Omit the heading; substitute '*Example 4 – disclosure made after completion of a risk review but before notification of a resulting audit*'.

6. Paragraph 59

Omit the last sentence; substitute '*As the disclosure was made after the end of the risk review examination, and before being notified of a resulting audit or any other examination, the disclosure is regarded as having been made before the notification of a relevant examination and will therefore be considered under subsection 284-225(2).*'.

7. Paragraph 71

After the paragraph; insert:

Example 6A – no notification of an audit

71A. Assume the same facts as Example 4. Although Calum is told when the risk review is completed that he will be advised in due course if he has been selected for an audit, this creates no more than a suspicion that an audit may be conducted and is insufficient for him to be taken to have been told that an audit is to be conducted for the purposes of section 284-225.

8. Paragraph 104

After the paragraph; insert:

104A. An entity must have made a false and misleading statement and/or have a shortfall in order to make a voluntary disclosure about it under section 284-225. Accordingly, a voluntary disclosure cannot be made before the relevant statement^{16A} is made or before the relevant scheme^{16B} is entered into or carried out.

9. Paragraph 133

- (a) Omit ‘or’ from subparagraph 133(iv).
- (b) Omit ‘.’ from subparagraph 133(v); substitute ‘; or’.
- (c) After subparagraph 133(v); insert:
 - (vi) where the Commissioner has notified the entity that he is or will be examining statements for a period that is subject to an ACA, except where the disclosure relates to a significant issue which the Commissioner was not adequately advised of in pre-lodgment communications.

10. Detailed contents list

Omit:

<i>Example 4 –disclosure made after completion of the examination</i>	58
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^{16A} The false and misleading statement referred to in section 284-75.

^{16B} The scheme referred to in section 284-145.

Insert:

<i>Example 4 – disclosure made after completion of a risk review but before notification of a resulting audit</i>	58
<i>Example 6A – no notification of an audit</i>	71A
Appendix 3 - Detailed contents list	159

This Addendum applies on and from 14 October 2015.

Commissioner of Taxation

14 October 2015

ATO references

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