


ST 2130 - FALSE OR MISLEADING STATEMENT

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TAXATION RULING NO. ST 2130

FALSE OR MISLEADING STATEMENT

F.O.I. EMBARGO: May be released

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REFERENCE NO:	SUBJECT REFS:	LEGISLAT. REFS:
I 1187202	ADDITIONAL TAX OFFENCES	SALES TAX ASSESSMENT ACT (No.1) SECTION 45 TAXATION ADMINISTRATION ACT SECTIONS 8K, 8N, 8P

PREAMBLE Taxation Ruling No. IT 2141 provides guidelines for use in applying the false or misleading statement concept incorporated in the various taxation laws by amendments effected to those laws by the Taxation Laws Amendment Act 1984 - Act No. 123 of 1984. Those laws include :

- . Sales Tax Assessment Act (No. 1) 1930 - section 45;
- . Sales Tax Assessment Acts (Nos. 2 to 10) - section 12 of each Act (which applies section 45 of the Sales Tax Assessment Act (No.1) 1930);
- . Sales Tax (Exemptions and Classifications) Act 1935 and Sales Tax Procedure Act 1934 - section 45 of the Sales Tax Assessment Act (No.1) 1930; and
- . Taxation Administration Act 1953 - sections 8K, 8N and 8P.

2. As indicated in paragraph 5 of Taxation Ruling No. IT 2141, the principles embodied in that ruling are to be applied in determining whether or not a false or misleading statement, for the purposes of sub-section 45(2) and sections 8K, 8N and 8P, has been made.

3. Paragraph 4 of Taxation Ruling No. IT 2141 notes that new rulings providing guidelines for the remission of statutory penalties are in course of preparation. The new ruling in relation to the remission of additional sales tax imposed by section 45 of the Sales Tax Assessment Act (No. 1) will also contain further directions regarding the application of the section.

RULING 4. This ruling, which is to be read in conjunction with Taxation Ruling No. IT 2141, sets out some examples of false or misleading statements in typical sales tax situations - the examples are not intended to be exhaustive - and provides some additional guidelines on the application of the principles contained in Taxation Ruling No. IT 2141 in situations that have particular relevance to sales tax.

5. Subject to the application of the principles set out in Taxation Ruling No. IT. 2141 (see for example paragraphs 14 and 19 of that Ruling), it might be expected that a false or misleading statement to which sub-section 45(2) of the Sales Tax Assessment Act (No. 1) might apply has been made in the case of -

- (a) the omission of taxable sales from a return or the omission of the value of goods from an entry under section 7 of Sales Tax Assessment Act (No. 5), or the understatement of the sale value or value for duty of goods in a return or entry;
- (b) the inclusion of taxable sales in a return in the space provided for sales of goods in respect of which tax is not payable;
- (c) the overstatement, whether in a return or otherwise, of a claim for a refund, rebate or credit;
- (d) the inclusion in a return of a misdescription of taxable goods that indicates or suggests a classification at a rate lower than that which applies to the goods in question; and
- (e) false or misleading information supplied to a taxation officer in the course of an enquiry concerning the classification of goods (e.g. that the goods have certain attributes, characteristics or ingredients that they do not have) and which, if accepted, would result in a lower rate of tax or an exemption from tax in respect of the goods. (Similarly, the supply of false or misleading information concerning the sale value of goods that would, if accepted, lead to a lower than correct sale value.)

6. In a case where a taxpayer accurately and adequately describes particular goods in a return but states, as the rate of tax applicable to those goods, a rate lower than that which is statutorily applicable, it is to be accepted that no false or misleading statement has been made, provided that the rate of tax stated was in fact the rate of tax applied by the taxpayer on the sale of the goods and the description provided of the goods would enable a reasonably prudent and competent sales tax officer to determine, without the need to seek additional information, that the incorrect rate has been stated in the return. Of course, if the taxpayer has been advised of the correct rate, returns if lodged on the basis of the lower rate would, subject to paragraphs 7 and 8 below, render the taxpayer liable for additional tax for a false or misleading statement.

7. The situation could arise where the rate of tax applicable to particular goods, or the sale value of goods, is clearly arguable as a matter of law (and therefore would not normally give rise to a penalty - see paragraph 19 of Taxation Ruling No. IT 2141). In such a case the taxpayer would be expected to seek a ruling from the Taxation Office on the point at issue and, when lodging the first return asserting the lower rate or value, to disclose the legal arguments on which the

assertion is based. In subsequent returns it would not be necessary to disclose the full legal argumentation, but it would be sufficient if later returns contained a note referring to the material submitted with the first return. If the first return does not disclose the legal arguments on which the assertion is based or later returns are not referenced as described, the use of the lower rate or value should, subject to paragraph 6 above, be treated as a false or misleading statement. Once the taxpayer accepts the Commissioner's view of the law, or the question is finally determined against the taxpayer, future returns would be false or misleading if they continued to be lodged on the basis of the lower rate or value.

8. The non-imposition of additional tax in cases to which paragraph 7 applies is to be subject to further conditions. First, the assertion must, as indicated above, be clearly arguable as a matter of law and not be frivolous in nature. Mere disagreement with the official view of the law does not, of course, render an assertion by a taxpayer frivolous, but a proposition already covered by legal precedent or one that is obviously unsupportable at law could, if relied upon in asserting a lower rate or value, give rise to a false or misleading statement. Secondly, subject to the qualification to be mentioned, it would be expected that a taxpayer asserting a lower rate or value should have invoiced sales tax on the goods in question on the basis of that lower rate or value. A qualification to this general rule is that, where a taxpayer has charged sales tax to a customer on the basis of the higher rate or value under an agreement with the customer that a refund would be made if the taxpayer's view of the law is upheld, the amount of tax in dispute is to be paid to the Taxation Office to hold on trust until the dispute is resolved.

9. Even though sub-section 45(2) of the Sales Tax Assessment Act (No. 1) may not apply in the cases mentioned in paragraphs 6 to 8, the taxpayer would of course be liable for the tax correctly payable on the proper sale value of the goods, as well as (where appropriate) late payment penalty at the rate of 20% per annum.

10. Sub-section 45(2) only applies where it is a taxpayer that makes a false or misleading statement affecting the taxpayer's tax liability. It would not apply where, for example, a person who is not a taxpayer quotes a non-existent sales tax certificate number in order to acquire goods free of tax; nor would sub-section 45(2) apply where a registered person quotes a sales tax certificate number in the required manner but in circumstances not prescribed. The offence provisions of the law including amendments effected by the Sales Tax Laws Amendment Act 1985 are directed at those situations.

11. It should be noted that section 45 applies, inter alia, to the Sales Tax Procedure Act 1934 (see the definition of "relevant sales tax law" in sub-section 45(6)) in its operation in relation to each Sales Tax Assessment Act. Where, therefore, a false or misleading statement is made in a return furnished under the Sales Tax Procedure Act, the statement should be treated as one made under that Act. In this situation it is not considered necessary to identify, for additional tax assessment purposes, the particular Assessment Act under which tax on the goods is payable.

12. In cases where section 45 applies to impose additional tax, the question of whether prosecution action should be instituted as an alternative to the imposition of the additional tax (see paragraph 2 of Taxation Ruling No. IT 2141) is a matter that would need to be resolved in light of the circumstances (particularly the gravity) of the particular case.

13. Where sub-section 45(2) does not apply to impose additional tax, the institution of prosecution action may be appropriate in the light of the circumstances of the case. Examples of false or misleading statements not subject to additional tax under sub-section 45(2), but which may give rise to an offence under section 8K, 8N or 8P of the Taxation Administration Act are -

- (a) the tendering by a member of the public of a false or misleading certificate concerning a claim for conditional exemption or classification of goods;
- (b) a false or misleading statement made in an application for, or in response to an enquiry concerning, registration for sales tax purposes; and
- (c) a false or misleading statement made to a sales tax investigation officer in the course of an investigation of a taxpayer's affairs by a person other than the taxpayer (N.B. where such a statement is made by the taxpayer see paragraph 12).

14. The question has also been raised whether additional tax under former sub-section 25(2B) is imposed in circumstances where an assessment is made after 13 December 1984 under sub-section 25(2A) in relation to a sales tax liability on transactions that occurred prior to 14 December 1984. As indicated in paragraph 3 of Taxation Ruling No. IT 2141, the view is taken that the liability for sales tax and additional tax under sub-section 25(2B) does not arise on the making of the assessment under sub-section 25(2A), but arises at the time the transactions to which the assessment relates were entered into. That liability is merely quantified by the assessment process. Accordingly, the liability for additional tax by virtue of former sub-section 25(2B) that arose at that time is preserved by paragraph 8(c) of the Acts Interpretation Act 1901. This view is supported by sub-section 233(2) of the Taxation Laws Amendment Act 1984 which continues in force the power of remission in relation to a liability for additional tax under former sub-section 25(2B) that accrued before 14 December 1984 and by the consideration that the Parliament would not have intended that there be a lacuna in the imposition of additional tax in cases to which sub-section 25(2A) applies. Assessments made under sub-section 25(2A) in relation to a sales tax liability on transactions occurring before 14 December 1984 should therefore, where appropriate, incorporate additional tax under former sub-section 25(2B).

