


***ST 2384 - SALES TAX : INTEREST ON
OVERPAYMENTS : ADDITIONAL TAX FOR LATE
PAYMENT NOT "RELEVANT TAX" AS DEFINED.***

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TAXATION RULING NO. ST 2384

SALES TAX : INTEREST ON OVERPAYMENTS : ADDITIONAL TAX
FOR LATE PAYMENT NOT "RELEVANT TAX" AS DEFINED.

F.O.I. EMBARGO: May be released

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INTEREST ON
OVERPAYMENTS OF TAX
INTEREST ON
OVERPAYMENTS OF LATE
PAYMENT ADDITIONAL
TAX

SALES TAX ASSESSMENT
ACT (No.1) 29(1) and
that sub-section as
applied by any other
Act providing for
the assessment of
sales tax

TAXATION (INTEREST ON
OVERPAYMENTS) ACT
1983, 3(1), 9(1), 10

PREAMBLE This ruling is a counterpart in the sales tax field to Taxation Ruling No. IT 2381 in the income tax field.

2. Sub-section 9(1) of the Taxation (Interest on Overpayments) Act 1983 operates, subject to sections 11, 11A and 12 (which are not relevant for present purposes), where a person has paid to the Commissioner an amount of "relevant tax" and the amount paid is, after resolution of an objection or appeal concerning the person's liability to pay that amount, found to be in excess of the amount that is correctly payable. By that sub-section and section 10, the person is entitled to interest in respect of the overpaid amount of "relevant tax" that, by reason of the adjustment necessary to give effect to the decision on the objection or appeal, is either refunded to the person or applied against another taxation liability of the person.

3. The question has arisen whether, in the same circumstances, the Act permits interest to be paid on refunds or credits of additional tax imposed by section 29 of Sales Tax Assessment Act (No.1) or by that sub-section as applied by any other Act providing for the assessment of sales tax. The answer turns on the definition of "relevant tax" in sub-section 3(1) of the Taxation (Interest on Overpayments) Act. Paragraph (m) of the definition of "relevant tax" covers "tax within the meaning of sub-section 29(1) of the Sales Tax Assessment Act (No.1) 1930 (including that sub-section as applied by any other Act providing for the assessment of sales tax)". Sub-section 29(1) provides that if any tax remains unpaid after the time when it became due and payable (or after such extended time for payment as the Commissioner has allowed), additional tax is due and payable by way of penalty at the rate of 20% per annum on the

unpaid amount.

4. The reference in paragraph (m) of the definition to "tax within the meaning of sub-section 29(1) and that sub-section as applied by any other Act providing for the assessment of sales tax" is a reference to sales tax according to its basic meaning of sales tax payable under any of the Sales Tax Assessment Acts and, in addition, includes further tax in terms of section 25, amounts of additional tax imposed for late lodgments of returns, failures to lodge returns or information relating to goods or the making of false or misleading statements. This much is clear from sub-section 29(4) of Sales Tax Assessment Act (No.1), the Minister's Second Reading Speech and pages 135 and 136 of the Explanatory Memorandum which accompanied the Taxation Laws Amendment Bill 1984 on its introduction to Parliament. The definition of "relevant tax" does not extend, however, to additional tax imposed by sub-section 29(1) for late payment of tax.

RULING

5. When, as a result of a decision to which the Taxation (Interest on Overpayments) Act applies, a person is entitled to interest on an amount of relevant tax overpaid, entitlement does not extend to interest on any amount of sub-section 29(1) additional tax paid in respect of the amount found to have been overpaid.

6. Provision for the payment of interest on relevant overpayments of sales tax was included in the Taxation Laws Amendment Act which was introduced into the Parliament on 13 September 1984. That provision became effective on and from 14 December 1984. Among other things, that enactment amended the penal provisions of the sales tax law in line with corresponding provisions of the income tax law, increased the rate of additional tax for late payment of sales tax from 10% per annum to 20% per annum and restricted the circumstances in which the Commissioner is empowered to remit the additional tax incurred. This legislation implemented measures, foreshadowed in the Treasurer's 1984 Budget Speech, to strengthen existing mechanisms for the collection of tax, to increase the levels of penalty for breaches of taxation laws and to modernise provisions for the prosecution of such breaches. Among its aims was the discouragement of resort to delaying tactics to postpone tax collection. It would be quite inconsistent with the overall aims of the legislation for interest to be paid under the Taxation (Interest on Overpayments) Act on section 29 additional tax found to have been overpaid. By comparison, unpaid section 29 additional tax itself is not subject to the imposition of additional tax under section 29. The overpaid additional tax itself will, of course, be refunded as appropriate.

COMMISSIONER OF TAXATION
21 January 1988