TR 93/D19 - Income tax: tax shortfall penalties: calculation of a tax shortfall and allocation of additional tax

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Draft Taxation Ruling

Income tax: tax shortfall penalties: calculation of a tax shortfall and allocation of additional tax

Draft Taxation Rulings (DTRs) represent the preliminary, though considered, views of the Australian Taxation Office.

DTRs may not be relied on by taxation officers, taxpayers and practitioners. It is only final Taxation Rulings which represent authoritative statements by the Australian Taxation Office of its stance on the particular matters covered in the Ruling.

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What this Ruling is about

1. This Ruling outlines the general basis on which additional tax should be calculated under sections 226G, 226H, 226J, 226K, 226L and 226M (the shortfall sections) of the *Income Tax Assessment Act 1936* (ITAA).

Ruling

2. Additional tax under the shortfall sections is calculated in respect of a tax shortfall or part of a tax shortfall. While a tax shortfall is broadly the gross difference between the tax properly payable by a taxpayer and the tax that would have been payable by the taxpayer if it were assessed on the basis of the taxpayer's return, a tax shortfall will frequently need to be split into its component parts to determine the correct application of the shortfall sections.

3. The examples below illustrate the calculations to be followed in applying shortfall sections. The examples recognise that in the course of an audit a tax officer may detect a number of items that require adjustment, some of which may warrant penalty, some of which may not. In addition, there may be adjustments made in a taxpayer's favour which may or may not relate to the debit adjustments made. Further, the adjustments may be to income, deductions, rebates, foreign tax credits or offsets of franking deficit tax.

4. The basic rule is that if there is not a tax shortfall for a year then additional tax cannot be imposed. For example, if a taxpayer has omitted an amount of income, but the tax related to that matter is more than offset by an adjustment in the taxpayer's favour (whether or not

related to the omitted income), no additional tax would be payable. Accordingly, the examples below only cover situations where, after the various adjustments to the taxpayer's assessment, there is a tax shortfall. Although all of the examples assume that the taxpayer was taxable to start with, the same principles for calculating penalty would apply where a taxpayer had originally returned a loss, provided there was in fact a tax shortfall after all adjustments had been made.

5. The examples below are assumed to be in respect of assessments for the 1992-93 year of income for a resident individual taxpayer. The principles illustrated apply equally to the calculation of penalty under the shortfall sections for other kinds of taxpayers.

Date of effect

6. This Ruling (that is, the final Taxation Ruling based on this Draft Taxation Ruling) sets out the current practice of the Australian Taxation Office and is not concerned with a change in interpretation. Consequently, it applies from the date on which the shortfall sections commenced to operate.

Examples

7. The examples below are based around combinations of the following income/rebate/credit adjustments:

TAXABLE INCOME AS RETURNED / ASSESSED	(TIAR/A)	35,000
INCOME MISSTATEMENT NO. 1 (caused by recklessness - penalty 50%)	(IM NO.1)	1,000
INCOME MISSTATEMENT NO. 2 (caused by lack of reasonable care - penalty 25%)	(IM NO.2)	2,000
INCOME MISSTATEMENT NO. 3 (not culpable - no penalty)	(IM NO.3)	500
INCOME MISSTATEMENT NO. 4 (OVERSTATEMENT OF INCOME UNRELATED TO OTHER MISSTATEMENTS)	(UIM)	(300)
REBATE/CREDIT MISSTATEMENT NO. 1 (caused by recklessness - penalty 50%)	(R/C NO.1)	500
REBATE/CREDIT MISSTATEMENT NO. 2 (caused by lack of reasonable care - penalty 25%)	(R/C NO.2)	1,000
REBATE/CREDIT MISSTATEMENT NO. 3	(UR/C)	(400)

(UNDERSTATED REBATE/CREDIT UNRELATED
TO OTHER REBATE/CREDIT MISSTATEMENTS)

NOTES:

- "income misstatements" may be either understated income amounts or overstated deductions, or a combination of both;
- "credits" for penalty purposes are foreign tax credits under Divisions 18, 18A and 18B of Part III of the ITAA, and offsets of franking deficit tax;
- for the purpose of calculating tax shortfalls in the following examples, 1992-93 resident individual rates of tax have been used;
- for the purpose of calculating interest in the following examples, the tax is assumed to have been avoided for a period of one year, and the rate of interest for the purpose of section 170AA of the ITAA is assumed to be 9.6% for that whole year.

EXAMPLE A:

I**NCOME INCREASE**

TAXABLE INCOME AS RETURNED / ASSESSED	(TIAR/A)	35,000
INCOME MISSTATEMENT NO. 1 (penalty 50%)	(IM NO.1)	1,000
INCOME MISSTATEMENT NO. 2 (penalty 25%)	(IM NO.2)	2,000
INCOME MISSTATEMENT NO. 3 (no penalty 0%)	(IM NO.3)	500
INCOME MISSTATEMENT NO. 4 (UNRELATED OVERSTATEMENTS)	(UIM)	(300)

TIAR/A			35,000	
Less UIM			300	
			34,700	
Plus	IM NO.1	1,000		
	IM NO.2	2,000		
	IM NO.3	500		
Net Debit Adjustment			3,500	
Amended Taxable Income (ATI)			38,200	

Tax Shortfall

Tax on ATI	38,200	9,886	
Less			
Tax on TIAR/A	35,000	8,494	
Plus			
Adjusted Medicare Levy		40	
Tax Shortfall		1,432	

Allocation of Tax Shortfall to Income Misstatements

IM NO.1	IM NO.2	IM NO.3
1,000 x 1,432	2,000 x 1,432	500 x 1,432
3,500	3,500	3,500
= 409.14	= 818.28	=204.57

Penalties

IM NO.1	IM NO.2	IM NO.3
50% flat	25%flat	no penalty
409.14 x 50%	818.28 x 25%	
= 204.57	= 204.57	

Total Penalties = 204.57 + 204.57 = $409.14

Interest

1432 x 9.6% = $137.47 (deductible)

EXAMPLE B:

REBATE/CREDIT REDUCTION

TAXABLE INCOME AS RETURNED / ASSESSED	(TIAR/A)	35,000
REBATE/CREDIT MISSTATEMENT NO. 1 (penalty 50%)	(R/C NO.1)	500
REBATE/CREDIT MISSTATEMENT MO. 2 (penalty 25%)	(R/C NO.2)	1,000
REBATE/CREDIT MISSTATEMENT NO. 3 (UNRELATED UNDERSTATED REBATE)	(UR/C)	(400)

TIAR/A	35,000
Amended Taxable Income (ATI)	35,000

Tax Shortfall

Tax on ATI	35,000	8,494		
Less				
Tax on TIAR/A	35,000	8,494		
				0
Plus R/C No.1		500		
R/C No.2		1,000		
			1,500	
Less UR/C			400	
				1,100
Tax Shortfall				1,100

Allocation of Tax Shortfall to Rebate/Credit Misstatements

R/C NO.1	R/C NO.2
500 x 1,100	1,000 x 1,100
1,500	1,500
= 366.66	= 733.33

Penalties

R/C NO.1	R/C NO.2
50% flat	25%flat
366.66 x 50%	733.33 x 25%
= 183.33	= 183.33

Total Penalties = 183.33 + 183.33 = $366.66

Interest

1,100 x 9.6% = $105.60 (deductible)

EXAMPLE C

INCOME INCREASE, REBATE/CREDIT INCREASE

TAXABLE INCOME AS RETURNED / ASSESSED	(TIAR/A)	35,000
INCOME MISSTATEMENT NO. 1 (penalty 50%)	(IM NO.1)	1,000
INCOME MISSTATEMENT NO. 2 (penalty 25%)	(IM NO.2)	2,000
INCOME MISSTATEMENT NO. 3 (no penalty)	(IM NO.3)	500
INCOME MISSTATEMENT NO. 4 (UNRELATED OVERSTATEMENT)	(UIM)	(300)
REBATE/CREDIT MISSTATEMENT NO. 3 (UNRELATED UNDERSTATED REBATE)	(UR/C)	(400)

TIAR/A			35,000
Less UIM			300
			34,700
Plus	IM NO.1	1,000	
	IM NO.2	2,000	
	IM NO.3	500	
Net debit adjustment			3,500
Amended Taxable Income (ATI)			38,200

Tax Shortfall

Tax on ATI	38,200	9,886	
Less			
Tax on TIAR/A	35,000	8,494	
			1,392
Plus			
Adjusted Medicare Levy			40
Less			
Unrelated Rebate (UR/C)			(400)
Tax Shortfall			1,032

Allocation of Tax Shortfall to Income Misstatements

IM NO.1	IM NO.2	IM NO.3
1,000 x 1,032	2,000 x 1,032	500 x 1,032
3,500	3,500	3,500
= 294.85	= 589.71	= 147.42

Penalties

IM NO.1	IM NO.2	IM NO.3
50% flat	25%flat	no penalty
294.85 x 50%	589.71 x 25%	
= 147.42	= 147.42	

Total Penalties = 147.42 + 147.42 = $294.84

Interest

1,032 x 9.6% = $99.07 (deductible)

EXAMPLE D

INCOME INCREASE, REBATE/CREDIT REDUCTION

TAXABLE INCOME AS RETURNED / ASSESSED	(TIAR/A)	35,000
INCOME MISSTATEMENT NO. 1 (penalty 50%)	(IM NO.1)	1,000
INCOME MISSTATEMENT NO. 2 (penalty 25%)	(IM NO.2)	2,000
INCOME MISSTATEMENT NO. 3 (no penalty)	(IM NO.3)	500
INCOME MISSTATEMENT NO. 4 (UNRELATED OVERSTATEMENT)	(UIM)	(300)
REBATE/CREDIT MISSTATEMENT NO. 1 (penalty 50%)	(R/C NO.1)	500
REBATE/CREDIT MISSTATEMENT MO. 2 (penalty 25%)	(R/C NO.2)	1,000
REBATE/CREDIT MISSTATEMENT NO. 3 (UNRELATED UNDERSTATED REBATE)	(UR/C)	(400)

TIAR/A				35,000
Less UIM				300
				34,700
Plus	IM NO.1	1,000		
	IM NO.2	2,000		
	IM NO.3	500		
Net debit adjustment				3,500
Amended Taxable Income (ATI)				38,200

Tax Shortfall

Tax on ATI	38,200	9,886		
Less				
Tax on TIAR/A	35,000	8,494		
			1392	
Plus				
Adjusted Medicare Levy			40	
				1,432
Plus				
R/C NO.1		500		
R/C NO. 2		1000		
UR/C		(400)		
				1,100
Tax Shortfall				2,532

Allocation of Tax Shortfall to Income and Rebate/Credit Misstatements

IM NO.1
1,000 x 1,432
3,500
= 409.14

IM NO.2
2,000 x 1,432
3,500
= 818.28

IM NO.3
500 x 1,432
3,500
= 204.57

R/C NO.1
500 x 1,100
1,500
= 366.66

R/C NO.2
1,000 x 1,100
1,500
= 733.33

Penalties

IM NO.1
50% flat
409.14 x 50%
= 204.57

IM NO.2
25%flat
818.28 x 25%
= 204.57

IM NO.3
no penalty

R/C NO.1
50% flat
366.66 x 50%
= 183.33

R/C NO.2
25%flat
733.33 x 25%
= 183.33

Total Penalties = 204.57 + 204.57 + 183.33 + 183.33 = $775.80

Interest

2532 x 9.6% = $243.07 (deductible)

EXAMPLE E

INCOME REDUCTION, REBATE/CREDIT REDUCTION

TAXABLE INCOME AS RETURNED / ASSESSED	(TIAR/A)	35,000
INCOME MISSTATEMENT NO. 4 (OVERSTATEMENT)	(UIM)	(300)
REBATE/CREDIT MISSTATEMENT NO. 1 (penalty 50%)	(R/C NO.1)	500
REBATE/CREDIT MISSTATEMENT MO. 2 (penalty 25%)	(R/C NO.2)	1,000
REBATE/CREDIT MISSTATEMENT NO. 3 (UNRELATED UNDERSTATED REBATE)	(UR/C)	(400)

TIAR/A	35,000
Less UIM	300
Amended Taxable Income (ATI)	34,700

Tax Shortfall

Tax on ATI	34,700	8,380		
Less				
Tax on TIAR/A	35,000	8,494		
				(114)
Less Medicare Levy				(3.75)
Plus R/C No.1		500		
R/C No.2		1,000	1,500	
Less UR/C			400	
				1,100
Tax Shortfall				982.25

Allocation of Tax Shortfall to Rebate/Credit Misstatements

R/C NO.1	R/C NO.2
500 x 982.25	1,000 x 982.25
1,500	1,500
= 327.41	= 654.83

Penalties

R/C NO.1	R/C NO.2
50% flat	25%flat
327.41 x 50%	654.83 x 25%
= 163.70	= 163.70

Total Penalties = 163.70 + 163.70 = $327.40

Interest

982.25 x 9.6% = $94.29 (deductible)

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