


IT 2099 - Remission of additional tax under sub-section 221YDB(4) of the Income Tax Assessment Act.

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TAXATION RULING NO. IT 2099

REMISSION OF ADDITIONAL TAX UNDER SUB-SECTION 221YDB(4)
OF THE INCOME TAX ASSESSMENT ACT.

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

REF

*** NOTE - THIS RULING HAS BEEN SUPERSEDED BY IT 2212

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I 1096852	IMPOSITION OF	221YDA
	ADDITIONAL (PENALTY)	221YDB(4)
	TAX	

REMISSION OF ADDITIONAL
(PENALTY) TAX

PREAMBLE

Sub-section 221YB(1) of Division 3 of Part VI of the Income Tax Assessment Act provides that a person, other than a company, and a company in the capacity of a trustee, who derives assessable income other than salary and wages, shall be liable to pay provisional tax. The purpose of this section is to put taxpayers not on salary and wages in a comparable position to salary or wage earners by providing for the collection of income tax payable by these taxpayers during the financial year in which income is derived.

2. Under the pay-as-you-earn system, taxpayers receiving salary or wages have tax deducted during the year of income to pay the tax which is ultimately assessed on that income. Taxpayers who receive income other than salary or wages are also required to make a payment during the year of income in anticipation of the assessment of tax after the close of the year. This payment, called provisional tax, is applied in payment of the tax assessed when the taxable income of the year has been finally ascertained. The provisional tax charged in advance of the next assessment is calculated by reference to the income determined for the assessment currently being made.

3. Since sub-section 221YA(3) specifically provides that the ascertainment of provisional tax does not form part of an assessment, there is no right of objection under section 185 against the amount of provisional tax levied in respect of any year of income.

4. However, where it is known that income will be lower or higher than the previous year's income, an application under section 221YDA for a variation of the provisional tax may be

lodged by the taxpayer. The application must show the taxpayer's estimate of the income expected to be derived during the year.

5. Section 221YDB provides for the imposition of penalty by way of additional tax where the estimated taxable income shown in a variation application is less than 90% of the assessed taxable income for the year in question. For calculation purposes any amount representing salary and wages is excluded from both the estimated and assessed taxable incomes.

6. The amount of penalty is 10% of the reduction in provisional tax payable under self-assessment, as compared with provisional tax originally notified, or of the amount by which the reduced provisional tax falls short of tax ultimately payable, whichever is the lesser.

RULING

7. This ruling consists of guidelines which generally should be applied in considering requests for remission of additional tax under sub-section 221YDB(4).

8. In considering requests for remission of additional tax raised under sub-section 221YDB(1) of the Income Tax Assessment Act, the Commissioner is statutorily limited to having regard only to those circumstances that the taxpayer was not aware of when the variation of provisional tax was furnished. The Commissioner is also mindful that generally a minimum of six months of the financial year will have passed by the time the taxpayer receives an assessment notice containing the ascertained provisional tax.

9. Having regard to these factors, the circumstances where such a remission may be granted will be limited to those instances where a taxpayer can demonstrate that his error was due to the receipt of unexpected income or to other causes of which he could not be expected to have knowledge of at the time the variation was furnished.

10. There is also an expectation that the taxpayer, at the very least, must make a reasonable and rational calculation based on the information in his possession.

11. In broad terms there are three kinds of situations in which remission may be warranted -

. The taxpayer in arriving at the estimated taxable income makes a genuine and excusable mistake in interpreting the law applicable to the assessability of an amount of income or deductibility of an amount of expenditure.

. The receipt of windfall gains which are related to factors external to the taxpayer's control and which arise as a consequence of unforeseeable climatic, marketing or trade conditions.

. The Commissioner is satisfied there are other special circumstances by reason of which it would be fair and

reasonable to remit the additional tax.

These three situations are discussed hereunder.

Situation (1) Cases

12. There will be occasions where, in the course of a taxpayer's assessment, an adjustment is made which has the effect of increasing the taxable income. If, as a result of such an adjustment, the taxpayer incurs a liability for additional tax under section 221YDB (i.e., the estimated taxable income shown in the variation application proves, by reason of the adjustment, to be less than 90% of the actual taxable income as notified in the notice of assessment) remission of the additional tax will be warranted where the adjustment is open to genuine dispute.

13. However, if the adjustment relates to a claim which is considered to be completely without merit, or is in respect of an artificial arrangement designed to avoid liability to tax, the additional tax should not be remitted.

14. Occasions may also arise where a taxpayer, at the time of lodgment of a variation, has good reason to believe that an item of expenditure will be deductible. Where, in the light of a subsequent court ruling or change in office administrative policy, the taxpayer later finds that the item is no longer deductible and as a consequence incurs a liability for additional tax under section 221YDB, valid grounds for remission may exist.

Situation (2) Cases

15. Windfall gains, which are related to factors external to the taxpayer's control, will be accepted as sufficient grounds for remission where the taxpayer can clearly demonstrate to the Commissioner that the difference in the varied provisional tax and the taxable income is directly related to this windfall gain. One example would be where an individual holds shares in a company which becomes the target of a takeover bid by another company which is not related to the individual and the bid forced the value of the shares up and the individual decided to sell. A further example of such windfall gains would be an unexpected decision by the Government after the variation is lodged to remove a tariff or to provide some incentive to purchase items which directly affects the income of the individual.

16. In such a case the taxpayer would be required to show clearly that the cause of the difference between his estimated taxable income and the taxable income finally determined was attributable to the tariff removal or other action concerned.

17. As a general rule, in considering requests for remission in this category, general assertions to the effect that the underestimation was due to an upturn in the economy or unexpected increase in confidence by consumers should not be

accepted as reasons justifying remission of the additional tax.

Situation (3) Cases

18. Remission of additional tax under this criterion is limited to the following cases -

- (a) where the amount of the additional tax is too trifling or too costly to pursue
; or
- (b) where the additional tax has been imposed incorrectly due to an office error.

COMMISSIONER OF TAXATION
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NOTE THIS RULING HAS BEEN SUPERSEDED BY IT 2212