


IT 2213 - Income Tax: remission under sub-section 221AG(7C) of additional tax imposed by sub-sections 221AG(6), 221AG(7), 221AG(7A) and 221AG(7B) of the Income Tax Assessment Act.

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TAXATION RULING NO. IT 2213

INCOME TAX: REMISSION UNDER SUB-SECTION 221AG(7C) OF
ADDITIONAL TAX IMPOSED BY SUB-SECTIONS 221AG(6),
221AG(7), 221AG(7A) AND 221AG(7B) OF THE INCOME TAX
ASSESSMENT ACT.

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

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F.O.I. INDEX DETAIL

REFERENCE NO:	SUBJECT REFS:	LEGISLAT. REFS:
I 1124171	VARIATION OF COMPANY	221AG (6)
	INSTALMENT	221AG (7)
	ADDITIONAL TAX FOR	221AG (7A)
	UNDERESTIMATION	221AG (7B)
	OF NOTIONAL TAX	221AG (7C)

PREAMBLE

This ruling provides guidelines which generally should be applied in considering, pursuant to sub-section 221AG(7C), requests for remission of additional tax levied in accordance with sub-sections 221AG(6), 221AG(7), 221AG(7A) and 221AG(7B) of the Income Tax Assessment Act. These guidelines replace those included in Taxation Ruling No IT2090 dated 4 July 1984. To the extent that the earlier ruling is intended to be retained, it has been incorporated in this ruling.

2. Income tax in respect of companies is generally collected by quarterly instalments which are paid during the financial year following the year in which the income was derived. Each instalment represents one-quarter of the "notional tax" - i.e. the tax calculated at the rate of tax applicable to the year of income and based on the taxable income of the previous income year. Amounts paid by instalments are credited against the total tax payable and any balance remaining is payable when the company's normal assessment issues.

3. A company may pay the amount of the instalment as notified by the Commissioner or, at its option, one-quarter of the tax that it estimates to be payable for the income year to which the instalment relates. It will normally exercise this option only for the purposes of obtaining a reduction in the instalment.

4. A company may vary the amount of an instalment of tax on the basis of its estimate of the income tax (if any) payable. Its estimate must be set out in a written statement sent to the Commissioner and must provide details of the estimated amount and the basis on which the estimate was made.

5. A liability for additional tax may be incurred by a company if it obtains a reduction in its instalment on the basis of an estimate which proves to be less than the income tax ultimately found to be payable.

6. Additional tax, by way of penalty, will accrue on the difference between the reduced instalment and the lesser of the original instalment and that which would have been payable on the basis of the tax actually payable by the company for the year of income. The rate at which the additional tax accrues is 20% per annum and is calculated for the period from the due date for payment of the instalment to the due date for payment of the balance payable on assessment.

7. Sub-section 221AG(6) imposes additional tax in relation to the instalment upon which the variation was lodged. Sub-section 221AG(7) imposes a further amount of additional tax on each instalment notice issued by the Commissioner subsequent to, and based on, the varied instalment. Similarly, where subsequent notices have not been issued by virtue of sub-sections 221AE(1A) and 221AE(1B), sub-section 221AG(7A) will impose additional tax on each subsequent instalment as if it had been notified to the company. The additional tax is based on the amount by which each instalment of tax, had it been notified, would be short-paid by virtue of the underestimate. Further, where multiple instalments are issued pursuant to sub-section 221AG(5A) and additional tax is imposed in accordance with sub-section 221AG(6) in relation to the instalment upon which the variation was lodged, sub-section 221AG(7B) will impose a like amount of additional tax in respect of each other instalment.

8. The Commissioner may, however, pursuant to sub-section 221AG(7C), remit the additional tax imposed by sub-sections 221AG(6), 221AG(7), 221AG(7A) or 221AG(7B), in whole or in part, where he is satisfied that there are special circumstances by reason of which it would be fair and reasonable to do so.

9. The parameters within which requests for remission of the additional tax should be considered are provided in the ruling below.

RULING

10. At the outset it is emphasised that, having regard to the underlying purpose of the company instalment system, remission of additional tax will be justified in only limited and exceptional circumstances. The legislative provisions by which company income tax instalments are spread over the financial year have a two fold purpose, firstly to expedite collection of tax and secondly to avoid the seasonal run-down in liquidity occasioned in the past where most company taxes fell due for payment in the last quarter of the financial year.

11. To ensure achievement of the above objectives it is essential that strict attention be given by approving officers to the guidelines set out in this ruling.

12. Unless a company can clearly demonstrate that there are

extenuating circumstances which justify remission, the full amount of the additional tax imposed should stand. Thus, factors such as carelessness in arriving at the estimate of income tax payable, ignorance of the liability for additional tax or fault of an agent, will not be considered as circumstances warranting remission.

13. In broad terms there are three kinds of situation in which remission may be warranted:

- (1) A company, in arriving at its estimate of the income tax payable, 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.
- (2) A company which operates on a substituted accounting period ending some time after the issue of the instalment notice to which the variation applies, is able to show to the satisfaction of the Commissioner that its estimate was, at the time it was made, the best estimate that could be made in the circumstances.
- (3) The Commissioner is satisfied that there are 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

14. There will be occasions where, in the course of assessment of a company's liability, an adjustment is made which has the effect of increasing the amount of tax payable by the company. If, as a result of such an adjustment, a company incurs a liability for additional tax under sub-sections 221AG(6), (7), (7A) and (7B) (i.e., its estimate proves, by reason of the adjustment, to be less than the tax payable as notified in the notice of assessment) remission of the additional tax will be warranted where the adjustment is open to genuine dispute.

15. 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.

16. Occasions may also arise where a company, at the time of exercising its option to obtain a reduction in its instalment, 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 company later finds that the item is no longer deductible and as a consequence incurs a liability for additional tax under sub-sections 221AG(6), (7), (7A) and (7B), valid grounds for remission may exist.

Situation (2) Cases

17. Where a company seeks remission in these circumstances, the onus is on the company to clearly demonstrate that the difference between the estimate and the tax ultimately payable was directly attributable to factors both external to the company's control and unknown to the company at the time the variation of the instalment was sought. An example of this would be where a company's income is boosted as a result of increased consumer demand for its product following an unexpected decision by the Government, after the variation was requested, to remove an import tariff.

18. in such a case the company would be required to show clearly that the cause of the difference between its estimate and the tax ultimately payable was attributable to the tariff removal.

19. 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

20. 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; or
- (c) where an instalment variation has been accepted and in respect of which, at the time it was lodged, it was clearly evident that the company's estimate was based on grounds which the Commissioner would unquestionably dismiss on assessment. (Conceptually, a variation falling within this category should never have been accepted).

COMMISSIONER OF TAXATION
12 September 1985

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