IT 2381 - INCOME TAX : INTEREST ON OVERPAYMENTS : ADDITIONAL TAX FOR LATE PAYMENT NOT "RELEVANT TAX" AS DEFINED.

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TAXATION RULING NO. IT 2381

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

F.O.I. EMBARGO: May be released

REF H.O. REF: 86/5410-7, F311
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DATE OF EFFECT: Immediate

B.O. REF:

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F.O.I. INDEX DETAIL

REFERENCE NO:	SUBJECT REFS:	LEGISLAT. REFS:
I 1210419	INTEREST ON OVERPAYMENTS OF TAX INTEREST ON OVERPAYMENTS OF LATE PAYMENT ADDITIONAL TAX	207 TAXATION (INTEREST ON OVERPAYMENTS) ACT 1983, 3(1), 9(1), 10

OTHER RULINGS ON TOPIC : IT 2069 IT 2295

PREAMBLE 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. A recent amendment of the Act extends payment of interest on "relevant tax" overpaid to assessments made on or after 1 July 1986 in respect of the year of income ended 30 June 1986 and subsequent years of income where the Commissioner, of his own volition, decides to amend such an assessment to reduce a taxpayer's liability (Taxation Laws Amendment Act 1986, Act No. 46 of 1986).

2. A question recently arose whether, in the same circumstances, the Act permits interest to be paid on refunds or credits of additional tax imposed by section 207 of the Income Tax Assessment Act. The answer turns on the definition of "relevant tax" in sub-section 3(1) of the Taxation (Interest on Overpayments) Act. Paragraph (a) of the definition of "relevant tax" covers "tax within the meaning of sub-section 207(1) of the Income Tax Assessment Act 1936". Sub-section 207(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.

3. The reference in paragraph (a) of the definition to "tax within the meaning of sub-section 207(1)" is a reference to income tax according to its basic meaning of income tax as assessed under the Income Tax Assessment Act and, in addition, includes amounts of additional tax imposed for late lodgments of returns, failures to lodge returns or the making of false or misleading statements and also includes provisional tax. This much is clear from sub-section 207(3) of the Income Tax Assessment Act, the Minister's Second Reading Speech and pages 2 and 6 of the Explanatory Memorandum which accompanied the Taxation (Interest on Overpayments) Bill 1983 on its introduction to Parliament. The definition of "relevant tax" does not extend, however, to additional tax imposed by sub-section 207(1) for late payment of tax.

RULING

4. 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, payment of interest does not extend to interest on any amount of section 207 additional tax paid in respect of the amount found to have been overpaid.

5. The Taxation (Interest on Overpayments) Act was introduced in June 1983 in association with legislation (Income Tax Assessment Amendment Act (No. 6) 1982) which increased, with effect from 14 February 1983, the rate of additional tax payable under section 207 of the Income Tax Assessment Act for late payment of income tax from 10 per cent per annum to 20 per cent per annum and which restricted the power of the Commissioner to remit that additional tax to cases involving specified or special circumstances. This legislation formed a package of measures to update penalty and dispute procedures in order to secure payment of overdue income tax and to ensure that, in future, there would be a disincentive to spurious use of the dispute procedures (refer Press Release No. 151 of the then Treasurer of 10 August 1982). It would be quite inconsistent with the overall aims of the package for interest to be paid under then Taxation (Interest on Overpayments) Act on section 207 additional tax found to have been overpaid. By comparison, unpaid section 207 additional tax is not subject to the imposition of additional tax under section 207. The overpaid additional tax itself will, of course, be refunded as appropriate.

COMMISSIONER OF TAXATION
22 JANUARY 1987