IT 2593 - Income tax: company self-assessment: questions for Commissioner's attention: remission of interest on underpayment of income tax

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This ruling contains references to repealed provisions, some of which may have been rewritten. The ruling still has effect. Paragraph 32 in TR 2006/10 provides further guidance on the status and binding effect of public rulings where the law has been repealed or repealed and rewritten. The legislative references at the end of the ruling indicate the repealed provisions and, where applicable, the rewritten provisions.

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TAXATION RULING NO. IT 2593

INCOME TAX: COMPANY SELF-ASSESSMENT: QUESTIONS FOR COMMISSIONER'S ATTENTION: REMISSION OF INTEREST ON UNDERPAYMENT OF INCOME TAX

F.O.I. EMBARGO: May be released

REF N.O. REF: 90/3647-4 DATE OF EFFECT: Immediate

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F.O.I. INDEX DETAIL

REFERENCE NO:	SUBJECT REFS:	LEGISLAT. REFS:
I 1012008	COMPANY SELF-ASSESSMENT	160AIB(2)
	QUESTIONS FOR	160AQKB(2)
	COMMISSIONER'S	169A(2)
	ATTENTION	170AA

OTHER RULINGS ON TOPIC: IT 2444

PREAMBLE The Taxation Laws Amendment Act (No. 5) 1989 (Act No. 20 of 1990), which received Royal Assent on 17 January 1990, contained a number of measures to implement and facilitate the new tax collection system for companies and the trustees of approved deposit funds, superannuation funds and pooled superannuation trusts. In this Ruling, a reference to a company should be read as also referring to those trustees who are included in the definition of "relevant entity" in subsection 221AK(1) of the Income Tax Assessment Act 1936 (the Act).

2. Act No. 20 of 1990 inserted Division 1B of Part VI in the Act to implement the new collection system for tax on the income of companies for the 1989-90 and subsequent years of income. The key payment dates are the 28th day of the first month and the 15th day of the sixth and ninth months after the end of a company's year of income or substituted accounting period. The system requires a company to calculate its own tax payable and, subject to the transitional arrangements outlined in paragraph 3, operates as follows for a company which balances on 30 June:

- A company which has a notional tax liability (based on its taxable income of the year prior to the relevant year of income), or estimated total actual tax liability for the year of income, of $20,000 or more will make an initial payment of 85 per cent of its notional or estimated tax liability by the 28th day of the first month following the end of the year of income, i.e. by 28 July. It will pay the balance of its actual tax liability by the 15th day of the ninth month following the end of the year of income, i.e. by 15 March. The company will be required to lodge its return of income with its final payment, i.e., by 15 March.

- A company which has a notional or estimated tax liability for the year of income of $1,000 or more but less than $20,000 has an option of making the two payments as above, or of making a single payment of the whole of its actual tax liability by the 15th day of the sixth month following the end of the year of income, i.e., by 15 December. The company will be required to lodge its return of income by 15 December if it makes a single payment, or by 15 March if it pays by instalments.

- A company which does not fall within the above two categories (i.e., which has a notional or estimated tax liability for the year of income of less than $1,000, which was previously non-taxable or is a new company) will make a single payment of its actual tax liability by the 15th day of the ninth month following the end of the year of income, i.e. by 15 March. The company will be required to lodge its return of income by 15 March.

3. Transitional arrangements apply to a company with a notional or estimated tax liability for the 1989-90 year of income of $1,000 or more but less than $400,000. For that year, such a company has an option of paying 85 per cent of its notional or estimated tax liability by 28 July 1990 and the balance of its actual tax liability by 15 March 1991, or of making a single payment of its actual tax liability by 15 December 1990. It will be required to lodge its return of income by 15 December 1990 or 15 March 1991, as appropriate.

4. The above rules also apply for a company with a substituted accounting period, with the relative dates calculated from the end of the accounting period, subject to the following modifications:

- for a company which balances earlier than 31 December in lieu of the following 30 June the relative dates are calculated from that 31 December, with the initial payment due not later than 28 January [paragraph 221AN(3)(a)]; and

- a late balancing company with an accounting period ending after 30 June in lieu of that date is to make its final (or single) payment no later than 15 June following the end of the accounting period [paragraph 221AN(3)(c)].

5. In conjunction with the new company tax collection system, the Taxation Laws Amendment Act (No. 5) 1989 also contained provisions to give effect to full self-assessment of companies. As noted above, a company will calculate its own tax liability and pay that amount, either as a single payment or after taking into account the initial payment, on the date indicated. It will still be required to lodge a return of income with its final (or single) payment of tax. However, it is intended that under full self-assessment, the return will contain only minimal

details, e.g., the taxable income of the company and the tax payable thereon, plus a limited amount of information from the accounts of the company. By section 166A, the Commissioner will be deemed to have made an assessment of the amounts specified in the return and to have served it on the company:

- if the company lodges its return on or before the day by which it is required to make the final (or single) payment of tax, on that day; or

- if the company lodges its return after that day, on the day its return is lodged.

6. These arrangements differ from the self-assessment system which has applied for all taxpayers in respect of the 1985-86 and subsequent years of income. That system retained the basic feature of the income tax law of requiring the Commissioner, from returns lodged and other information, to make an assessment of the amount of the taxable income of a taxpayer, and of the tax payable thereon, and to serve notice of the assessment upon the taxpayer. Returns were not generally subject to technical scrutiny before an assessment was made, but rather at any post-assessment audit or examination stage. Section 170 of the Act facilitates the self-assessment system by allowing the Commissioner to amend an assessment, within specified time limits, to correct an error of law.

7. Subsection 169A(2), which was also part of the 1986 self-assessment legislative package, requires the Commissioner to give attention to a question raised by a taxpayer (in a document furnished with the return of income) that is relevant to the taxpayer's liability to tax. Act No. 20 of 1990 inserted similar provisions requiring the Commissioner to give attention to a question relevant to a claim for a credit under Division 18, 18A or 18B of Part III of the Act or under the Income Tax (International Agreements) Act 1953-1960 [subsection 160AIB(2)] or to a claim for franking deficit tax offsets [subsection 160AQKB(2)].

8. Because the self-assessment rules for companies (see paragraph 5) deem an assessment to be made on the day on which the company's return of income is lodged, there is no practical way for a question raised under subsection 169A(2), 160AIB(2) or 160AQKB(2) to be resolved prior to the deemed assessment being made. That means that, where a question is resolved subsequently in a way that causes the Commissioner to amend the assessment increasing the company's liability to tax, the company is prima facie liable under section 170AA to pay interest on the underpayment of tax.

9. Given that the Commissioner is unable to consider a company's subsection 169A(2), 160AIB(2) or 160AQKB(2) question prior to the time the assessment is deemed to be made, the company would be required to pay the amount of tax it calculates as being payable without knowing the Commissioner's response to the question raised. In these circumstances, arrangements are being implemented to enable a company to raise a question

relevant to its liability to tax prior to the lodgment of its return.

10. Where a question submitted prior to the return has been answered before the day the company is required to lodge its return, the question of interest on underpayment would not generally arise. The Commissioner will adopt the same administrative practices to these questions as apply to subsection 169A(2) requests. Broadly, these are:

- The Commissioner will respond in writing to each question; and

- The Commissioner will normally consider himself bound by any concluded view expressed to a particular taxpayer in response to the question. Provided sufficient details have been given by the taxpayer, that view will only be departed from in circumstances similar to those set down in IT 2500 for Advance Opinions.

11. The purpose of this Ruling is to provide guidelines concerning the exercise of the discretion contained in subsection 170AA(11) to remit in whole or in part interest payable in the circumstances outlined in paragraph 8 that is, where for the 1989-90 and subsequent years of income interest is payable because a question raised with a return of income or submitted prior to lodgment of the return was not resolved prior to the making of the deemed assessment. As a result of the new procedures outlined above relating to companies, the reference in paragraph 22 of IT 2444 to questions raised in a return being overlooked and not considered prior to the issue of an assessment does not apply to companies. Otherwise, nothing in this Ruling alters the guidelines contained in IT 2444.

12. Nothing in this Ruling affects the scope and operation of section 223, which imposes additional tax for false or misleading statements or omissions which make a statement false or misleading, nor the guidelines for remission of additional tax imposed by subsection 223(1) contained in Taxation Ruling No IT 2517. Where a taxpayer is liable to pay additional tax under section 223, interest on underpayments is not payable - subsection 170AA(2). Statements or omissions in documents retained by a company which contain particulars of the basis of the calculation of its taxable income and tax payable were included within the scope of section 223 by Act No. 20 of 1990.

13. The guidelines contained in this Ruling have been formulated having regard to the administrative practices that have developed in responding to requests for advice pursuant to subsection 169A(2), the circumstances under which interest on underpayments of tax and penalty tax are imposed by law, the legislative framework as described above for company self-assessment, and the capacity of the Australian Taxation Office to respond to additional community demands for taxation advice. Extension of, and improvement to, the self-assessment system are presently under examination. These guidelines may

therefore need revision in future to take account of any legislative or procedural changes arising from that review.

RULING

14. In providing these guidelines, there is no intention of laying down any conditions to restrict Deputy Commissioners and authorised officers in the exercise of the discretion to remit interest payable under section 170AA. It is essential that they retain the flexibility necessary to deal with each case on its merits. The following paragraphs do no more than set out a guide as to the manner in which the discretion might generally be exercised.

15. As paragraphs 13 and 14 of IT 2444 point out, interest payable under section 170AA is designed to compensate the revenue for the full amount of tax not having been paid by the due date, and accordingly the remission power is not intended to be exercised in the general run of cases. However, in the context of full self-assessment, a company should, when it lodges its return and makes its final (or single) payment of tax - that is, when an assessment is deemed to be made - or within a reasonable time thereafter, be as certain as possible that it has not misunderstood or misapplied the law.

16. In these circumstances, there are generally three broad factors that should be taken into account in exercising the discretion contained in subsection 170AA(11):

(i) the degree of certainty of the relevant law;

(ii) whether the Commissioner has responded to the question within a reasonable time after the date of the deemed assessment; and

(iii) the individual circumstances of the particular taxpayer.

These factors are discussed below.

(i) Certainty of the law

17. In view of the matters mentioned in paragraph 15, remission of interest in the circumstances considered in this Ruling may generally be warranted only where there is genuine uncertainty about the application of the law. The facility to raise questions ought not be capable of being misused to delay the payment of tax beyond the due date.

18. In relation to the general run of income and expenditure items (e.g., the regular fees of a consultancy business, wages paid to employees, repairs to rental property, etc.), there will be no uncertainty as to the principles of assessability or deductibility. (In some cases, though, the application of those principles to the facts of a particular case may not be clear.) Nor will a matter be regarded as uncertain where the Commissioner's position on the application of the relevant law is settled and has been publicly communicated, e.g. by issuing a Taxation Ruling or Media Release. In addition, the Commissioner

may make his position known to a particular taxpayer:

- by an Advance Opinion in accordance with Taxation Ruling No IT 2500 in respect of a transaction prior to its implementation by the taxpayer, as long as there is no relevant change to the transaction or the method of its implementation;

- by response in an earlier year to a question lodged in respect of a completed transaction, where the relevant law and facts have remained unaltered; or

- by official advice of the Commissioner's concluded view of a particular issue during the course of an audit of the company's affairs.

19. A matter will be treated as uncertain, for example, where a company seeks to rely on a decision of an independent tribunal or court which either remains open to appeal at the time the company raises a question relevant to its liability to tax or, at that time, has been overturned by a decision of a court of higher authority which in turn remains open to appeal. Other examples of uncertainty would be where there have been no relevant judicial decisions in relation to the particular issue, or where conflicting decisions have been given by courts of comparable authority.

20. Where a question involves a matter where there is no genuine uncertainty as to the application of the law, remission of interest will generally not be warranted.

(ii) Reasonable time for the Commissioner to respond to the question

21. Where the question involves genuine uncertainty as to the application of the law, it needs to be recognised that the Commissioner requires a reasonable time to respond to a question. In the context of full self-assessment for companies, in particular the matters mentioned in paragraphs 8, 9, 13 and 15 above, interest should accrue for the reasonable time after the date of the deemed assessment that the Commissioner requires to respond to the question. That is, where the question has not been resolved within that reasonable time and it is determined in a way that causes the company's taxable income to be increased, partial remission of interest payable under section 170AA will usually be justified so that interest accrues only for that period of time.

22. In broad terms, factors to be taken into account in determining whether a question has been resolved within a reasonable time include:

(a) the amount of information provided with the question, and

(b) the complexity of the factual situation and legal issues raised.

These two factors are discussed below.

(a) The amount of information provided with the question

23. For the Commissioner to give proper consideration to a question, it is necessary that all relevant information be provided with the question. The amount of information required will generally depend on the type of question raised. As questions will be considered prior to any audit or other examination by the Taxation Office, it is incumbent on the company to provide all the information necessary to enable the Commissioner to respond to the question.

24. In determining whether the Commissioner has considered a question within a reasonable time, consideration would need to be given to the question whether all necessary information is provided by the company. If there is insufficient information to form a concluded view, this should be sought as soon as possible, by telephone if appropriate, but otherwise in writing.

25. It will sometimes happen that a company has genuinely sought to provide information that it considers is sufficient to enable a question to be answered, but on consideration of the issues by the Taxation Office further information is sought. Where that information is of such importance to the question that it ought reasonably to have been supplied with the question, the company should not be treated as having supplied all relevant information when submitting the question. If, however, the additional information is more in the nature of supplementary material which tends to confirm conclusions suggested by the original information, the approach should be to treat the question as having been submitted with all the relevant information.

26. It is a matter of judgment in each case as to how much information is to be provided. In all cases, though, it will be necessary for the company to indicate the amount of income, deductions or rebates etc. affected by the question, and whether that amount has been taken into account in calculating the amount of tax payable by the company.

27. Most questions will be concerned with either the application of well-established principles of law to a particular factual situation, or with uncertainty as to the correct legal principles to be applied. All questions need to be accompanied by a full description of the relevant facts and copies of any relevant documents, together with an explanation of the company's view as to the correct application of the law to the circumstances described. The Commissioner's response will be based on that description and the documentation supplied. Where a question relates to novel or complex transactions or financing arrangements, the following information usually will need to accompany the question to enable it to be given proper consideration:

(i) the relevant parties to the transaction are to be

identified by name and address, together with details of any relationships between the parties;

(ii) all material facts relating to the transaction are to be made known. This would include details of any financing arrangements, the purpose of the transaction and the reasons why the particular method of implementation was adopted;

(iii) the particular legislative provisions on which the question is based are to be specified, and reasons and authorities both in support of and against the company's contentions are to be addressed; and

(iv) all relevant documents are to be provided for examination with the question.

The provision of any legal opinions received will assist the Taxation Office to deal with the question.

28. Generally, where a transaction has been the subject of a request for an Advance Opinion in accordance with Taxation Ruling No IT 2500, there will be no need for a company to raise it again as a question for the Commissioner's attention - paragraph 14 of IT 2500 makes it clear that an Advance Opinion will be departed from only in limited circumstances. Where a question involves a transaction which was implemented in a different manner from a proposal about which an Advance Opinion has been given, the following additional information is to be supplied with the question:

(i) details of the relevant differences between the proposed transaction and the transaction actually implemented;

(ii) the advice received in response to the request for Advance Opinion;

(iii) the reasons for altering the transaction or the method of its implementation; and

(iv) copies of any new or altered agreements.

(b) The complexity of the factual situation and legal issues

29. The other factor relevant to determining whether the Commissioner has considered a question within a reasonable time is the complexity of the matter having regard to the factual situation and legal issues raised. In this connection, the degree of difficulty of each case will depend upon its own particular facts and the various provisions of the law that need to be considered.

A general rule for the application of subsection 170AA(11)

30. In determining what is a reasonable time, some allowance has to be made for reasonable delays before consideration of a

question might begin. In the ordinary run of cases, it is expected that an answer to a question on the application of the taxation law to a particular company's circumstances could be decided within three months of all relevant information being provided. The general rule, therefore, would be that, where a question is resolved after the date of the deemed assessment, interest would be remitted so that it would be payable for the period commencing on the date of the deemed assessment and ending on the later of:

- three months after the date of the deemed assessment; or

- three months after the date when all necessary information (see paragraphs 24 and 25) is supplied.

This general rule also applies where a question is submitted prior to lodgment of the company's return of income. The earlier a question is submitted, of course, the more likely it is that it will be resolved prior to the date of the deemed assessment. The issue of interest on underpayments should not arise if the question is resolved prior to that date.

31. The following examples illustrate the general rule. (The examples are based on a company which is due to lodge its return and make its final payment of tax on 15 March):

(i) A company lodges a question with its return on 15 March. An amended assessment to give effect to the Commissioner's resolution of the question issues on 15 April. Interest would generally be payable for the period of one month from 15 March to 15 April.

(ii) A company lodges a question with its return on 15 March. An amended assessment issues on 15 July. The discretion would generally be exercised to partially remit interest so that it is payable for the period of three months from 15 March to 15 June.

(iii) A company lodges a question with its return on 15 March. Sufficient information is not provided with the question. The necessary information is provided by the company on 30 April. An amended assessment issues on 15 July. Interest would generally be payable for a period of four months from 15 March to 15 July.

(iv) A company lodges a question with its return on 15 April. An amended assessment issues on 31 July. Interest would generally be payable for the period of three months from 15 April to 15 July. The company would also be liable to pay additional tax for late lodgment under section 222 for the period 15 March to 15 April.

(v) A company submits a question on 15 November. The Commissioner advises the company in writing of his opinion in relation to the question on 1 March. The company lodges its return on 15 March. The question of

interest on underpayments does not arise. The company may be liable to additional tax under section 223 if taxable income disclosed when it lodges its return does not reflect the advice given by the Commissioner.

(vi) A company submits a question on 1 December. The company lodges its return on 15 March. The Commissioner resolves the question and issues an amended assessment on 1 April. Interest would generally be payable for the period 15 March to 1 April.

(iii) Individual circumstances of a company

32. The particular circumstances in which a company finds itself from time to time may, notwithstanding the matters mentioned above, be sufficient reason to justify exercise of the discretion under subsection 170AA(11). It is difficult to think of circumstances in which interest would be remitted if there is no uncertainty about the application of the relevant law. However, special circumstances could possibly exist that might warrant the discretion being exercised to remit interest in part or in full. Such circumstances might include:

. the effects of a natural disaster on the company;

. the death of key personnel;

. where a question submitted prior to the due date for lodgment of the return is resolved before that date, but advice of the decision is not received by the company in time for it to alter its return prior to lodgment;

. undue delay by the Taxation Office in issuing an amended assessment following the resolution of a question; or

. other matters cited by the company.

The extent to which interest may, if warranted, be remitted in these circumstances needs to be considered in the light of each particular case. For example, where there is undue delay by the Taxation Office in issuing an amended assessment, the discretion could be exercised to remit interest to the amount (if any) that would have been payable had the delay not occurred.

COMMISSIONER OF TAXATION
14 June 1990