MT 2008/2A1 - Addendum - Shortfall penalties: administrative penalty for taking a position that is not reasonably arguable

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Addendum

Miscellaneous Taxation Ruling

Shortfall penalties: administrative penalty for taking a position that is not reasonably arguable

This Addendum amends Miscellaneous Taxation Ruling MT 2008/2 to reflect the amendments made to section 284-75 of Schedule 1 to the *Taxation Administration Act 1953* under the *Tax Laws Amendment (2010 Measures No. 1) Act 2010*. These amendments, among other things, extend the existing administrative penalty regime to cover false or misleading statements that do not produce a shortfall amount and false or misleading statements made to entities other than the Commissioner or an entity that is exercising powers or performing functions under a taxation law and the statement is one required or permitted by taxation law.

Miscellaneous Taxation Ruling MT 2008/2 is amended as follows:

1. Paragraph 17

Omit the first dot point; substitute:

- makes a statement that is false or misleading in a material particular to:
  - the Commissioner or to an entity that is exercising powers or performing functions under a taxation law – subsection 284-75(1); or
  - to an entity other than the Commissioner and an entity that is exercising powers or performing functions under a taxation law and the statement is one required or permitted to be made by a taxation law – subsection 284-75(4).

2. Paragraph 19

Omit the paragraph; substitute:

19. Subsection 284-75(2) and subsection 284-90(1) impose a penalty where:

- a statement is made by an entity or its agent, which treats an income tax law as applying to a matter in a particular way that is not reasonably arguable; and

- a shortfall amount resulting from the statement exceeds the relevant threshold set out in item 4, 5 or 6 of the table in subsection 284-90(1).

3. Paragraph 22

Omit the paragraph; substitute:

> 22. Due to the operation of Items 4, 5 and 6 of subsection 284-90(1), a base penalty amount can only apply if the statement results in a shortfall amount. Exceptions under section 284-224 may also apply to reduce the amount of the penalty.[3] A statement can be made by way of omission, for example, where an entity fails to include information in a document or approved form when there is a requirement to do so. An example of this could be where an entity completes an income tax return but omits to return relevant amounts of income.

4. Paragraph 23

Omit the dot points; substitute:

- calculate the base penalty amount under subsection 284-90(1);
- increase (section 284-220) or decrease (section 284-225) the base penalty amount if certain conditions are satisfied; and
- consider remission.

5. Paragraph 32

Omit 'and the resulting shortfall amount exceeds'; substitute 'and there is a shortfall amount that exceeds'.

[3] Section 284-224 sets out a number of situations which affect whether a base penalty amount is reduced. For guidance on the periods before 4 June 2010, see Miscellaneous Tax Ruling MT 2008/1 issued 12 November 2008.

6. Paragraphs 64, 65 and 66

Omit the paragraphs; substitute:

> 64. Subsection 284-224(1) sets out a number situations which reduce an entity's base penalty amount under section 284-90.[18A] The base penalty amount is reduced to the extent that it was caused by the entity or its agent treating a taxation law as applying in a way that is consistent with any of the following:
>
> - advice given to the entity or its agent by or on behalf of the Commissioner (paragraph 284-224(1)(a);[19]
> - general administrative practice under that law (paragraph 284-224(1)(b);[20] or
> - a statement in a publication approved in writing by the Commissioner paragraph 284-224(1)(c), for example, a statement made in *TaxPack*.
>
> 65. [Omitted].
>
> 66. Under subsection 284-75(5) an entity is not liable to an administrative penalty as a result of a false or misleading statement if the entity or its agent took reasonable care in making the statement. In these circumstances, an administrative penalty will not arise under subsection 284-75(1) or (4).[21]

7. Legislative references

Insert:

- TAA 1953 Sch 1 284-75(1A)
- TAA 1953 Sch 1 284-75(4)
- TAA 1953 Sch 1 284-75(5)
- TAA 1953 Sch 1 284-224
- TAA 1953 Sch 1 286-75(1A)

This Addendum applies from 4 June 2010.

[18A] For guidance on the periods before 4 June 2010, see Miscellaneous Tax Ruling MT 2008/1 issued 12 November 2008.

[19] Generally, 'advice' would include correspondence from the Tax Office on a matter relating to a taxation law, a private ruling, a binding oral ruling and statements made in public rulings.

[20] A general administrative practice under a taxation law is a practice adopted by the Commissioner which applies to all entities, to a class of entities or to a specified group within a class.

[21] For guidance on the periods before 4 June 2010, see Miscellaneous Tax Ruling MT 2008/1 issued 12 November 2008.

Commissioner of Taxation
1 June 2011

ATO references

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