PS LA 2000/9 - Remission of penalties under the new tax system.

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Practice Statement Law Administration

PS LA 2000/9

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SUBJECT: **Remission of penalties under the new tax system**

PURPOSE: **This practice statement sets out guidelines for the remission of administrative penalties during the first year of the new tax system.**

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STATEMENT

1. A new regime of administrative penalties has been introduced to support compliance with the new tax system. Uniform penalties will now apply where a taxpayer:

   - fails to lodge an activity statement, tax return or other document on time;
   - understates tax or overclaims a credit; or

- fails to comply with other requirements in the law such as not withholding amounts from pay as you go (PAYG) withholding payments, not registering for GST,[1] not issuing a tax invoice[2] and not keeping proper records.

2. This new penalty regime applies to all taxes reported on activity statements from 1 July 2000. It will also apply to income tax matters for the 2000-2001 and later years and to fringe benefits tax matters for the year starting on 1 April 2001.

3. There is also a uniform general interest charge (GIC) that applies to amounts which remain unpaid after the time they become due and payable.

EXPLANATION

The imposition and remission of penalty

4. Where a person fails to satisfy a statutory requirement, the law makes the person liable for an administrative penalty at the maximum amount specified in the statutory provision. The penalty is not imposed by the Commissioner. It arises automatically as a consequence of the person's action or inaction. However, the law does allow the Commissioner to remit all or part of the administrative penalty.

5. The ATO's policies on the remission of the new administrative penalties are currently being prepared and will be released later this year. The remission guidelines will be based on the ATO Compliance Model and will be consistent with the principles of the Taxpayers' Charter. While these guidelines will explain our longer term expectations, it is necessary to articulate our response to taxpayer behaviour in the first year of the new tax system (the transitional period).

6. The ATO's response will take account of the fact that the community has to become aware of new obligations and procedures. Providing taxpayers with advice and assistance will help with the transition and also achieve improved compliance for the future. The ATO recognises that non-compliance with new obligations may be caused by a lack of knowledge rather than a non-compliant attitude. The policy on remission of penalties in the transitional period will reflect this reality. This is not a concessional approach but a fair and reasonable application of the remission discretion in accordance with the ATO Compliance Model.

7. In the transitional period, the ATO considers that it is important to encourage and assist taxpayers to adapt quickly to the new tax system. The remission policies will be designed to achieve this goal. They will distinguish between taxpayers who make a genuine attempt to comply with the requirements of the new tax system and those who do not attempt to understand and satisfy their obligations. The penalties will not be remitted where taxpayers are deliberately non-compliant. In cases of serious fraudulent activity the ATO will seek to prosecute the offence.

[1] From 1 July 2007, the GST registration threshold increased from $50,000 to $75,000 for entities other than non-profit bodies in accordance with regulation 23-15.01 of the *A New Tax System (Goods and Services Tax) Regulations 1999* (GST Regulations). For non-profit bodies, the GST registration threshold increased from $100,000 to $150,000 in accordance with regulation 23-15.02 of the GST Regulations.

[2] From 1 July 2007, the value of the supply where a tax invoice is not required to be issued increased from $50 to $75 in accordance with regulation 29-80.01 of the GST Regulations.

8. The remission policies outlined in the paragraphs below will apply to obligations in the transitional period that occur before 30 June 2001 relating to:

- goods and services tax;
- wine equalisation tax;
- luxury car tax;
- PAYG withholding;
- PAYG instalments;
- FBT instalments;
- deferred company and superannuation fund instalments; and
- sales tax credits.

This includes lodgment of activity statements due on 21 July 2001 and payments of liabilities covered by those statements.

Approach to applying this practice statement

9. An overriding principle in the application of this statement is to adopt a fair and reasonable approach, recognising the issues faced by business in implementing the new tax system. It is reasonable to expect that, notwithstanding people's best efforts, mistakes will be made during this transitional period.

10. Accordingly, the benefit of any doubt in applying the guidelines contained in this statement should be given to the taxpayer. Generally, evidence that a taxpayer has made a genuine attempt to meet his or her obligations should be accepted in the absence of clear evidence to the contrary.

11. The balance would shift where a taxpayer has an extended history of deliberate non-compliance with his or her taxation affairs. In these cases, clear evidence of the taxpayer having made a genuine attempt to meet his or her obligations would be required.

Remission of penalties on shortfall amounts

12. Following lodgment of the business activity statement (BAS) and Instalment Activity Statements, the ATO will commence activities to verify information provided by taxpayers. The ATO's emphasis continues to be very much on assisting business in implementing *The New Tax System* and completing their first BAS. Where information on a BAS suggests an irregularity it is important that we look to sort this out with the business person as soon as possible. To do otherwise could leave the business person in a position of compounding an error over time, with a potential significant cash flow consequence when the issue was ultimately addressed.

13. At the same time, we have made it clear that we will be alert from day one to possible risks associated with claims in respect of input tax credits or credits for Wholesale Sales Tax embedded in stock on hand on 1 July. The community would not accept us ignoring this or evidence of aggressive non-compliance.

14. The ATO may uncover understated tax or an overclaimed credit that was caused by the taxpayer being careless. If the taxpayer made a genuine attempt to try and provide correct information, the penalty will be remitted in full. Similarly, if the error arose because it was reasonable to conclude that the taxpayer was not in a position to be able to understand the law, then the penalty will also be remitted in full. Where it is clearly evident that the taxpayer intentionally understated tax or knowingly overclaimed a credit the penalty will not be remitted.

15. If the shortfall amount was caused by a weakness in the taxpayer's record-keeping or bookkeeping procedures, but a genuine attempt has been made to establish adequate procedures, then the penalty will be remitted in full.

16. Where an input tax credit is claimed for goods or services that are partly used for private or input-taxed purposes and there is no apportionment, penalty on the overclaimed credit will be remitted where it would be reasonable to assume that the taxpayer was not in a position to know about the apportionment.

17. Taxpayers will still be liable for the shortfall amount and the GIC payable on that amount from the date when the correct amount should have been paid.

Remission of penalty for failure to lodge on time

18. The Commissioner has deferred the date for lodgment of quarterly activity statements.[3] He has also deferred the date for lodgment of monthly activity statements by taxpayers who have elected to report the GST on a monthly basis.[4] All activity statements must be lodged by the statutory due date or the deferred due date.[5] Where a due date falls on a weekend or public holiday, taxpayers must ensure that the activity statement is lodged on or before that date. If it is lodged on the first working day after the due date, it will be late and the law will impose a penalty for failing to lodge on time.

19. Where the taxpayer has a history of lodging returns, statements and other documents on time and there is only a minor delay in lodgment the penalty may be remitted in full. Where the taxpayer has a history of poor lodgment behaviour, the penalty will not be remitted unless there are genuine reasons beyond the taxpayer's control that caused the delay in lodgment. A taxpayer or agent who is having difficulty preparing a BAS on time should advise the ATO if there will be a delay in lodgment. Where contact is made and there are genuine reasons for the delay, the late lodgment penalty will usually be remitted in full.

Remission of the GIC

20. In line with the deferral of lodgment, the Commissioner has also deferred the due date for payment of tax in respect of activity statements. Payments must be made on or before the statutory due date, or where applicable, the deferred due date for payment. Where the due date falls on a weekend or public holiday, taxpayers must ensure that the payment is received by that date. There is no deferral of the payment date to the next working day. The GIC is automatically imposed on amounts remaining unpaid after the due date.

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[3] *Businesses to get their business activity statement instructions*, ATO Media Release 2000/55, Canberra, 6 June 2000.
[4] *Extension for monthly BAS lodgment as businesses receive first monthly Business Activity Statement,* ATO Media Release 2000/87, Canberra, 26 July 2000.
[5] Letters to tax practitioners on 18 and 27 October 2000.

21. However, the GIC may be remitted where a taxpayer can demonstrate that reasonable steps were taken to mitigate the reasons for the delay in payment or there are special circumstances because of which it would be fair and reasonable to remit the GIC.

22. In cases where there are no other unpaid debts on the taxpayer's account and the amount of GIC is small, the Commissioner may remit the GIC.

Remission of GIC for underestimating a variation to a PAYG instalment

23. Taxpayers can reduce a PAYG instalment liability by varying the instalment rate or the benchmark tax. Where the variation results in an underestimation by more than 15% the taxpayer is liable to pay GIC on the underestimated instalment. This penalty will be remitted in full where the taxpayer can demonstrate that a genuine attempt was made to determine the correct instalment based on all relevant known matters at the time the varied rate or the benchmark tax was determined.

Remission of penalty for failing to register for GST

24. Where an enterprise is found to have an annual turnover[6] of $50,000 or more[7] and the taxpayer undertaking that enterprise is not registered for GST, the law imposes a penalty of 20 penalty units (currently $2,200). If it is reasonable to conclude that the taxpayer considered it did not have to register because it thought its turnover would be below the threshold the penalty will be remitted in full. However, if the failure was the result of the taxpayer deliberately trying to avoid being part of the GST system the penalty will not be remitted.

Remission of penalty for failing to issue a tax invoice

25. The law also imposes a penalty of $2,200 where a taxpayer fails to issue a tax invoice.[8] If a taxpayer has made a genuine attempt to issue a tax invoice but has not fully satisfied all the invoice requirements, the penalty will be remitted in full. If the failure to issue an invoice is caused by the taxpayer's general inaction, the penalty may be remitted in part. However, if the failure to issue a tax invoice is a result of an intentional act to avoid this obligation, the penalty will not be remitted.

[6] From 1 July 2007, the term 'annual turnover' was changed to 'GST turnover'. 'Annual turnover' before 1 July 2007 has the same meaning as 'GST turnover' from 1 July 2007 as per the *Tax Laws Amendment (Small Business) Act 2007*.

[7] From 1 July 2007, the GST registration threshold increased from $50,000 to $75,000 for entities other than non-profit bodies in accordance with regulation 23-15.01 of the GST Regulations. For non-profit bodies, the GST registration threshold increased from $100,000 to $150,000 in accordance with regulation 23-15.02 of the GST Regulations.

[8] From 1 July 2007, the value of the supply where a tax invoice is not required to be issued increased from $50 to $75 in accordance with regulation 29-80.01 of the GST Regulations.

Amendment history

Date of amendment	Part	Comment
16 April 2014	Contact details	Updated.
16 October 2007	Footnotes 1 and 7	Included to reflect increases in GST registration thresholds
	Footnotes 2 and 8	Included updated to reflect increases in the value of the supply where a tax invoice is not required to be issued

Subject references	administrative penalties GIC new tax system PAYG instalments registration for GST remission of penalties tax invoice
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Other references	ATO Compliance Model Taxpayers' Charter *Businesses to get their business activity statement instructions*, ATO Media Release 2000/55, Canberra, 6 June 2000 *Extension for monthly BAS lodgment as businesses receive first monthly Business Activity Statement*, ATO Media Release 2000/87, Canberra, 26 July 2000
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