PS LA 2002/8 (Withdrawn) - Administration of penalties under the new tax system

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This practice statement is withdrawn with effect from 19 November 2015. It provided guidance for the 2nd year of the new penalty system that commenced 1 July 2000 (that is, 2002). It is no longer of practical application to staff.

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Australian Government
Australian Taxation Office

Practice Statement Law Administration

PS LA 2002/8

This practice statement is withdrawn with effect from 19 November 2015. It provided guidance for the 2nd year of the new penalty system that commenced 1 July 2000 (that is, 2002). It is no longer of practical application to staff.

FOI status: may be released

This practice statement is issued under the authority of the Commissioner of Taxation and must be read in conjunction with Law Administration Practice Statement PS LA 1998/1. It must be followed by tax officers unless doing so creates unintended consequences or where it is considered incorrect. Where this occurs, tax officers must follow their business line's escalation process.

Taxpayers can rely on this practice statement to provide them with protection from interest and penalties in the way explained below. If a statement turns out to be incorrect and taxpayers underpay their tax as a result, they will not have to pay a penalty. Nor will they have to pay interest on the underpayment provided they reasonably relied on this practice statement in good faith. However, even if they don't have to pay a penalty or interest, taxpayers will have to pay the correct amount of tax provided the time limits under the law allow it.

SUBJECT:	**ADMINISTRATION OF PENALTIES UNDER THE NEW TAX SYSTEM**
PURPOSE:	**THIS LAW ADMINISTRATION PRACTICE STATEMENT SETS OUT GUIDELINES FOR THE REMISSION OF ADMINISTRATIVE PENALTIES AND THE GENERAL INTEREST CHARGE DURING THE SECOND YEAR OF THE NEW TAX SYSTEM**

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STATEMENT

1. The new tax system commenced on 1 July 2000 and brought about substantial change to the tax obligations of businesses, other enterprises and many individual taxpayers. In recognition of these changes, including the additional workloads faced by tax practitioners, the ATO adopted a penalty remission policy that acknowledged this environment and the efforts made by the community to become aware of the new requirements and procedures. The ATO's approach to the remission of administrative penalties for activity statement obligations in the first year of the new tax system is detailed in Law Administration Practice Statement PS LA2000/9.

2. The overriding principle to remission of penalties outlined in PS LA 2000/9 was that the ATO would adopt a fair and reasonable approach. It is recognised that non-compliance can result from a lack of knowledge and other difficulties faced by the community in implementing the new tax system rather than a non-compliant attitude. This is not a concessional approach but an application of the Commissioner's discretion to remit penalty in accordance with the Taxpayers' Charter and the ATO Compliance Model. Being fair and reasonable will continue to form the basis of the ATO's remission policies and practices.

3. The transitional period for implementing the new tax system is not yet over. Accordingly, the ATO will be extending the supportive approaches to penalties relating to obligations arising in accounting periods for the 2001-02 year as outlined in this Law Administration Practice Statement. It is not unreasonable to expect that there will continue to be misunderstandings and problems, despite the ATO's efforts to assist taxpayers in meeting their tax obligations. Mistakes will be made and there will be ongoing transitional issues as the new tax system (including the legislative changes made during the year) is bedded down.

4. Therefore, the approach adopted in PS LA 2000/9 is still applicable. Taxpayers who have made a genuine attempt to meet their obligations will have any penalties remitted in full unless there is clear evidence to the contrary. Taxpayers will be liable for the general interest charge (GIC) except where it is remitted in accordance with the policy of this Law Administration Practice Statement and the ATO Receivables Policy.

5. The ATO will take a firm approach with people who fail to make a genuine effort or set out to deliberately avoid their responsibilities. Penalties will not be remitted where it is evident that a taxpayer has:

   - intentionally disregarded the law;
   - recklessly approached their tax obligations;
   - carried over poor compliance behaviour from the past; or
   - repeatedly failed to comply in the face of a clear explanation of what is required.

6. This Law Administration Practice Statement provides direction and assistance to staff on the approach to be taken in administering penalty provisions, other than penalties applying to tax avoidance schemes which will be dealt with on a case by case basis. Where the remission policy outlined in this Law Administration Practice Statement relates to a particular type of tax and there is a consequential adjustment to another type of tax, the remission policy will be applied in the same way to the consequential adjustment (except Superannuation Contributions Surcharge).

7. The Law Administration Practice Statement consolidates guidelines contained in a number of ATO publications dealing with the administration of penalties. It supplements any public rulings about penalties but does not contain interpretive advice. Details about the ATO's administration of debt and lodgment matters is covered by the ATO Receivables Policy. The Receivables Policy can be found on the ATO web site (www.ato.gov.au) in the legal database. Administrative practices concerning GST and PAYG instalment mistakes can be found in Fact Sheets.

8. The policies set out in this Law Administration Practice Statement will be reviewed later this year. A Law Administration Practice Statement revising these guidelines will be released before 30 September 2002.

EXPLANATION

9. The new administrative penalties in Part 4-25 of Schedule 1 to the *Taxation Administration Act 1953* (TAA 1953) apply to matters required to be reported on activity statements from 1 July 2000, to income tax matters for the 2000-01 and later years and to fringe benefits tax returns for the year commencing 1 April 2001. The uniform penalties were introduced to support compliance with the new tax system and apply where a taxpayer:

- understates an amount of tax or overclaims a credit – subsection 284-75(1);
- fails to lodge an activity statement, tax return or other document on time – Division 286; or
- fails to comply with other statutory requirements, for example:
  - not keeping proper records – section 288-25;
  - not retaining and producing declarations – section 288-30;
  - preventing access to premises and documents – section 288-35;
  - not registering for GST[1] – section 288-40; and
  - not issuing tax invoices[2] – section 288-45.

[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 ANTS (GST) Regulations 1999 regulation 23-15.01. For non-profit bodies, the GST registration threshold increased from $100,000 to $150,000 in accordance with ANTS (GST) Regulations 1999 regulation 23-15.02.

[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 ANTS (GST) Regulations 1999 regulation 29-80.01.

10. A penalty for non-compliance with a statutory requirement is imposed by the law at the maximum amount specified. Section 298-20 of Schedule 1 to the TAA 1953 gives the Commissioner a discretion to remit the penalty imposed either in full or in part. This Law Administration Practice Statement deals with the remission of penalties listed above. In exercising this discretion, the policy reflects the principles of the Taxpayers' Charter and has regard to the ATO Compliance Model.

11. A person who uses an agent to provide taxation services will be vicariously liable for any penalties arising from mistakes, or non-compliance with obligations, made by their agent.

Penalty for shortfall in tax or overclaimed credits

12. Under subsection 284-75(1) a penalty is imposed where the following conditions are satisfied:

    - a person or the person's agent makes a statement to the Commissioner or to an entity that is exercising powers or performing functions under a taxation law;
    - the statement is false or misleading; and
    - there is a shortfall amount.

    A person will have a shortfall amount where:

    - a tax liability is less than it would have been if the statement were not false or misleading; or
    - the amount the Commissioner must pay or credit a person is more than it would be if the statement were not false or misleading.

13. The amount of penalty payable is a percentage of the shortfall amount based on the behaviour that gave rise to the shortfall. Where a taxpayer, or the taxpayer's agent, fails to take reasonable care the penalty is 25% of the shortfall amount. The penalty increases to 50% in cases of recklessness and 75% where there is an intentional disregard of the law. Where there are aggravating circumstances the penalty amount is increased by a further 20%.

14. Where a taxpayer makes a voluntary disclosure before being told that a tax audit is to be conducted the penalty is reduced by 80%, or to nil if the shortfall amount is less than $1,000. If the voluntary disclosure is made after the commencement of the audit the penalty is reduced by 20%. These reductions are not remissions but are the penalty amounts specified in Subdivision 284-D. There is no penalty where the shortfall amount is caused by a taxpayer following advice from the ATO, general administrative practice under a taxation law or an ATO publication.

15. An audit is taken to have commenced when the taxpayer or their representative is first advised that a tax audit, review, check or other compliance action initiated by the ATO is to be carried out. The advice may be in writing or by phone. This would include notification of a potential adjustment as a result of ATO information matching activities. However, it would not include a compliance risk review of a large business or enterprise unless the taxpayer is advised that an audit will be undertaken. The Commissioner does have the discretion under subsection 284-225(5) of Schedule 1 to the TAA 1953 to treat a voluntary disclosure as having been made before the audit is taken to have commenced. The disclosure of a shortfall following a matter becoming public knowledge may not be considered to be a voluntary disclosure, for example disclosure by a taxpayer after being named in a Royal Commission.

Remission policy in cases of voluntary disclosure

16. Where there is a voluntary disclosure that is not prompted by a request from the ATO, it will be regarded 'prima facie' as the notification of an honest mistake. Voluntary disclosures include lodgment of revised activity statements or requests for amendments of income tax assessments or FBT assessments. In these cases, there will be no shortfall penalty. For example, a taxpayer who revises a PAYG withholding liability in a BAS to correct an arithmetic error will be regarded as disclosing an honest mistake and there will be no shortfall penalty payable. The GIC will be payable from the day that the amount was originally due.

17. A revision of a liability or a request for an amendment will not be regarded as an honest mistake where there is information to indicate otherwise. In these cases the 80% voluntary disclosure reduction would apply, as explained in paragraph 14. A pattern of voluntary disclosures may indicate that a taxpayer has not made a genuine attempt to lodge a correct return, BAS or other document.

18. This policy acknowledges that any taxpayer making a genuine effort to achieve the correct tax position by advising the ATO of an honest mistake should not be penalised. Under the ATO Compliance Model, it is inappropriate for a taxpayer with compliant behaviour to be penalised while a taxpayer who displays resistant or disengaging behaviour will only be penalised if detected through compliance activity. It also reflects the Taxpayers' Charter which states that the ATO will treat a taxpayer as being honest unless the taxpayer acts otherwise.

Shortfall amounts detected by ATO or Customs officers

19. A shortfall amount may be detected through tax compliance activity undertaken by an ATO officer. It may also be detected by a Customs officer in carrying out the administration of GST in relation to importations and tourist refund schemes. In these circumstances a penalty is imposed where a person, or their agent, fails to take reasonable care. Reasonable care requires a taxpayer to make a genuine attempt to comply with the law. The effort required is commensurate with all the person's circumstances, including the person's knowledge, education, experience and skill.

20. Where a shortfall amount results from an honest mistake, a misunderstanding of new requirements or an inadvertent error, and it is evident that the taxpayer is making a genuine attempt to comply with the obligations required, there is no penalty. GIC will be payable.

21. Where it is evident that a person has made an attempt at compliance, any penalty that might otherwise be imposed on the shortfall amount for a lack of reasonable care will be remitted in full. An attempt requires a person to show an open commitment to participating in the tax system. It is about the person trying to do the right thing. It recognises that a person who willingly attempts to advise the ATO of the correct tax liability, credit or refund entitlement should not be penalised. An attempt also requires a person to arrive at a reasonable conclusion about the application of the law according to their particular circumstances, skills and capabilities.

22. A person must be able to show that an effort has been made to comply and that needs to be evident in a tangible way. Whether or not a person is making a genuine attempt to correctly determine a liability or entitlement will be evident from steps taken by the person to prepare business records, follow guides from the ATO and advice from tax practitioners. If there are adequate procedures and controls in place that would ordinarily assist in the provision of correct information to the ATO or Customs then a person will be considered to have made a genuine attempt. Determining whether a person has made a genuine effort is a matter of judgment. If there is any doubt the benefit will be given to the person.

23. Any shortfall amount arising from minor oversights, inadvertent errors and unintentional mistakes will have the penalty remitted. However, where it is evident to a taxation or customs officer that there has been more than a minor divergence from those procedures, a person will not be considered to have made a genuine attempt to comply. If there is any doubt about the significance of that divergence, the benefit will be given to the person.

24. Any person who ignores or resists their tax obligations or is not making a genuine attempt to comply will not have penalties remitted.

25. Where the Commissioner remits shortfall penalty, the person is still liable to pay the shortfall amount and GIC from the day that the amount was originally due, subject to the GIC remission policy in paragraph 49.

Correcting PAYG Instalment mistakes

26. Under the PAYG Instalment system, taxpayers who use the instalment rate times instalment income method to determine their instalment liability are required to notify the instalment income in an activity statement. Where a person understates the instalment liability because an amount has been omitted from instalment income there will be a shortfall amount.

27. A taxpayer who makes a voluntary disclosure of the understated PAYG instalment amount prior to lodgment of the income tax return for that year will have the shortfall penalty remitted in full (see paragraphs 16-17).

28. With preparation of income tax returns for the 2000-01 year, many taxpayers and their tax agents have had the first chance to reconcile their end of year accounts with the details reported on quarterly activity statements. The Commissioner has announced that taxpayers will be able to use this opportunity to correct certain understatements of PAYG instalments. This concession is explained in Fact Sheet *'Correcting PAYG instalment income mistakes 2000-01'* (NAT 5035). It sets out the method of correcting PAYG instalment mistakes, which is either through a revision of the instalment liability in the fourth quarter activity statement or having the shortfall reflected in the income tax return. The concession is not available where there is evidence that the understatement was caused by recklessness or an intentional act by the taxpayer.

29. If a taxpayer is permitted to correct the mistake by revising the instalment liability in the fourth quarter activity statement, the penalty on the PAYG instalment shortfall will be remitted in full. Under the special rules in the Fact Sheet, the GIC on that amount will also be remitted from the day that the shortfall was originally due up to the due date for payment of the fourth instalment.

30. For the 2000-01 year, a taxpayer is permitted to include omitted instalment income in their income tax return if:

- the net amount of tax payable in 2000-01, following allocation of assessment credits, is $5,000 or less;
- the instalment income notified in activity statements is at least 85% of the actual instalment income; or
- the shortfall in instalment payments is $5,000 or less.

31. In these cases the liability will be reflected through the assessment rather than as a PAYG instalment shortfall amount. This is achieved by a taxpayer being entitled to a credit for instalments payable upon assessment of tax payable for the year. The PAYG instalment shortfall amount will be reflected in the net amount owing following assessment. The penalty on the PAYG instalment shortfall and GIC will be remitted in full where the 2000-01 return is lodged by the due date and payment of the net amount was made by 21 November 2001. Where the return is lodged through a registered tax agent the payment must be made by 21 March 2002.

32. If a mistake in the calculation of instalment income is detected in the preparation of the 2000-01 income tax return and the underlying reason for that mistake has continued in the calculation of 2001-02 instalments, then that mistake must be corrected immediately. The shortfall penalty and GIC will be remitted if the mistake is genuine and it is corrected in the first quarterly activity statement after the mistake is found.

Correcting GST mistakes

33. Under the GST law a taxpayer is required to lodge a BAS stating the net amount payable or refundable for the tax period. Where a taxpayer makes a mistake by understating GST payable or overclaiming input tax credits there will be a shortfall amount upon which a penalty is imposed. Section 17-20 of the *A New Tax System (Goods and Services Tax) Act 1999* (GSTA 1999) provides that the Commissioner can make a determination that allows a net amount for a tax period to include the correction of an error for the immediately preceding tax period.

34. The ATO has released a determination in Fact Sheet *'Correcting GST Mistakes'* (NAT 4700). It allows a taxpayer to correct a shortfall amount if the total of the GST errors for the tax period is within the correction limits outlined in the following table. (Mistakes that increase input tax credit entitlements are not subject to these limits.) It also allows a correction to be made to decrease the net amount payable for the tax period, for example, to correct a mistake in classifying a GST-free supply as taxable, but only if the taxpayer has reimbursed the GST to the recipient and cancelled the tax invoice issued in relation to that supply.

Annual turnover[3]	**Correction limits**
Less than $20m	Less than $5,000
$20m to less than $100m	Less than $10,000
$100m to less than $500m	Less than $25,000
$500m to less than $1b	Less than $50,000
$1b and over	Less than $300,000

35. As a means of reducing costs incurred in complying with the new tax system the Commissioner will allow taxpayers to correct mistakes that either increase GST payable or decrease input tax credit entitlements on the first BAS after the mistake was discovered. This will be allowed where the corrections are below the correction limits in the above table and made within the time limits in the following table. Mistakes that either decrease GST payable or increase input tax credit entitlements are not subject to the time limits on corrections.

Annual turnover	**Time limits to correct errors**
Less than $20m	Up to 18 months (18 monthly BASs, 6 quarterly BASs or 1 annual GST return)
$20m to less than $100m	Up to 3 months (3 monthly BASs)
$100m to less than $500m	Up to 3 months (3 monthly BASs)
$500m to less than $1b	Up to 3 months (3 monthly BASs)
$1b and over	Up to 3 months (3 monthly BASs)

36. Any mistake in a tax period that exceeds the correction or the time limit must be adjusted by revising the amount for that tax period. This will be treated as a voluntary disclosure and the remission policy outlined in paragraphs 16-17 will apply.

[3] 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*.

37. The administrative concessions in Fact Sheet (NAT 4700) will not apply where it is evident that a taxpayer has deliberately manipulated the system to take an unwarranted advantage of the concessions. Where the ATO considers that deliberate manipulation has occurred it will revise each BAS to record the correct net amount for each tax period. The shortfall penalty that applies to a voluntary disclosure will be imposed, as explained in paragraph 14. The penalty will generally be based on the taxpayer's behaviour of intentionally disregarding the law. Reporting an amount in a tax period outside the correction limits will also be regarded as a voluntary disclosure. The BAS will be revised by the ATO and a penalty will be imposed. Where a BAS is revised, GIC on any underpayments of net amounts will accrue from the date the net amounts were originally payable until the date the underpaid amounts (including unpaid GIC) are paid.

38. The Fact Sheet does not apply where a taxpayer has been contacted by the ATO advising of the intention to conduct a verification check. This may be in writing or by phone. The law recognises that a taxpayer may make a voluntary disclosure at any time, including before the compliance action is completed. Disclosures made after notification of the ATO's intention to conduct a verification check should be made to the taxation officer reviewing the taxation records. Penalty on the shortfall amount may be imposed on a voluntary disclosure made after the commencement of the verification check. However, there will be no penalty if it is evident that a genuine attempt has been made to comply with the GST obligations.

39. Where an error is detected during a verification check and it is evident that the taxpayer has made a genuine attempt to comply there will be no penalty on the shortfall amounts. If the error is within the correction and time limits of the Fact Sheet, the taxation officer may allow the taxpayer to utilise the Fact Sheet arrangements and include the amount in the subsequent BAS. If the error is outside the correction or time limits of the Fact Sheet the taxation officer will revise the net amount for the relevant tax period and the taxpayer will be issued with a notice of assessment. GIC will be payable on a revision to earlier tax periods.

40. Where a taxpayer has not made an effort to comply with the law, and this results in a shortfall amount, the taxation officer will revise the net amount for the relevant tax period and the taxpayer will be issued with a notice of assessment. Penalty will be imposed on the shortfall amount as explained in paragraphs 12-25. GIC will be payable.

41. The concessions in the Fact Sheet are broader than the determination covered by section 17-20 and are allowed by the Commissioner exercising the discretion to remit any penalty on shortfall amounts. Penalties will not apply to mistakes that are genuine and reasonable. The policy on correcting GST mistakes will be reviewed before 31 December 2002.

Penalty for failure to lodge on time

42. Division 286 of Schedule 1 to the TAA 1953 imposes an administrative penalty for failing to lodge on time (FTL penalty) at the rate of one penalty unit for each period of 28 days or part thereof that the document is overdue, up to a maximum of 5 penalty units. For contraventions occurring prior to 28 December 2012, the value of a penalty unit is currently $110. For contraventions on or after this date, the value of a penalty unit is $170. The penalty imposed on medium withholders and taxpayers with assessable income or GST turnover of more than $1 million but less than $20 million is increased by a factor of 2. Large withholders and taxpayers with assessable income or GST turnover of more than $20 million have the penalty increased by a factor of 5.

43. During the continuing implementation stages of the new tax system, the ATO will not be automatically applying the FTL penalty to taxpayers who do not lodge on time. The FTL penalty will generally be remitted except in the following circumstances:

- the taxpayer has a poor compliance history in relation to lodgment and other compliance obligations;
- the outstanding lodgment is likely to cause escalating compliance problems;
- the taxpayer has not responded to a written or verbal request to lodge the document; or
- the taxpayer is a large entity or part of a group.

44. This remission policy applies to the lodgment of all documents including activity statements and tax returns. It is important to ensure that taxpayers not complying with their lodgment obligations do not gain undue advantage over those who do. The ATO will be continuing its enforcement program of following up outstanding documents. Prior to 30 June 2002, the ATO will endeavour to contact taxpayers by letter and/or phone, and give them the opportunity to comply with the obligation before a penalty notice is issued.

45. From 1 July 2002, the ATO is moving to a new bedding-in phase which is designed to ensure the integrity promised with the new tax system is delivered for the community. As part of this, documents due for the new financial year but not lodged on time may have a penalty notice automatically issued. Remission of the FTL penalty from this time will be based on the Compliance Model and be consistent with the principles of the Taxpayers' Charter. Penalty will not be applied for isolated instances of late lodgment, and will generally be remitted where the taxpayer has a good compliance record. Remission guidelines are contained in the ATO Receivables Policy.

46. The FTL penalty applies separately to each lodgment or notification of a tax related liability. Where separate obligations are required to be reported on the one form, for example in the activity statement, only one FTL penalty will be applied to the document. The lodgment of that document will discharge all separate lodgment and notification obligations even if a taxpayer does not advise the Commissioner of a particular tax related liability. Where a liability is not disclosed in the document, the taxpayer will have made a false or misleading statement by omission and may be liable for a penalty on the shortfall amount.

47. A taxpayer or agent who anticipates difficulty in fulfilling their lodgment obligations should contact the ATO at an early time to discuss possible alternative arrangements.

The general interest charge

48. The taxation law also imposes a general interest charge (GIC) on tax debts that remain unpaid after the time they become due and payable. Its purpose is to ensure the payment of taxes when they are due. GIC is worked out daily on a compounding basis. The nominal annual interest rate from which the daily effective rate is calculated is set at the monthly average yield of 90-day Bank Accepted Bills, as published by the Reserve Bank of Australia, plus an uplift margin of 7 percentage points. The daily rate is adjusted each quarter to reflect changes in the 90-day Bank Accepted Bills rate. The GIC is tax deductible when it is incurred.

49. The GIC is automatically imposed on any amount remaining unpaid after the due date. It is a charge that is separate from any penalty imposed on shortfall amounts. The Commissioner can remit GIC under section 8AAG of the TAA 1953. The policy on remission of GIC is fully explained in the ATO Receivables Policy. GIC may be remitted, in whole or in part, where:

- the payment of the full amount of GIC would result in serious financial hardship for the taxpayer; or
- the taxpayer has been granted partial relief from payment of a tax debt; or
- the taxpayer can demonstrate that reasonable steps were taken to mitigate the reasons for the delay in payment; or
- it is the result of an undue delay or an error caused by the ATO; or
- there are special circumstances that make remission of the GIC fair and reasonable.

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

Penalty for underestimating a variation to a PAYG or GST instalment

51. Taxpayers can reduce a PAYG or GST instalment liability by varying the instalment rate or amount. Where a variation of the PAYG instalment rate results in an amount less than 85% of the assessed income tax payable for the year, the taxpayer is liable to pay a penalty. Similarly, a penalty is also payable where a variation of a GST instalment results in an underestimation of GST instalments by less than 85% of the annual GST liability. The penalty imposed is calculated by applying the GIC rate to the underestimated instalment amount.

52. The penalty for underestimation of a PAYG or GST instalment liability will generally be remitted in full where the taxpayer can demonstrate that a genuine attempt was made to determine the correct instalment. This will require a taxpayer to show that the estimate was based on all relevant matters that were known to the taxpayer at the time the variation was made. For example, an unexpected upturn in sales in the fourth quarter may cause an underestimation of GST instalments. If the varied instalments were based on a fair and reasonable projection of the estimated annual GST amount at the time the variation was made the penalty will be remitted in full. A similar approach will be taken to underestimation of FBT. The concession is not available where there is evidence that the underestimation was caused by the taxpayer not making a genuine effort.

Administration of other penalties

53. Division 288 of Schedule 1 to the TAA 1953 imposes penalties where there is a failure to comply with other statutory requirements. These obligations were listed in paragraph 9 and are dealt with below.

Record keeping requirements and access to premises and documents

54. The requirements to make and keep appropriate records and to provide access to premises and documents are long-standing obligations of the taxation system. These obligations apply regardless of the taxes to which the records apply or access is being sought. As such, the concessional approach to remission of penalties in this transitional period will not apply where a taxpayer fails to make and keep appropriate records to support any claims made in a document lodged with the Commissioner or fails to give access to premises and documents.

Retaining and producing declarations

55. Where an approved form is lodged by an agent on behalf of a person, the person is required to make a declaration under section 388-65 of Schedule 1 to the TAA 1953. This states that the agent is authorised to give the document to the Commissioner and that the information given to the agent for the preparation of the document is true and correct. The declaration is required every time an approved form is to be given to the Commissioner. The penalty under section 288-30 for failing to retain or produce a declaration will generally be remitted in this transitional period. It will not be remitted where the person or their agent is attempting to frustrate the detection of false or misleading statements.

GST Obligations

56. The GSTA 1999 imposes a number of obligations specific to that tax regime including the requirement to register for GST[4] and the requirement to issue tax invoices[5]. If a taxpayer fails to meet one of those obligations, they are liable for a penalty. The administration of that penalty will be based upon the behaviour which resulted in the taxpayer not meeting the relevant obligations. Given the encompassing nature of GST on business and consumers, it is unlikely that a person would not be aware of the compulsion to register and issue tax invoices.

57. Failure to comply with the obligation to register would generally arise from a person either:

- consciously avoiding their obligations; or
- making an error in determining whether they have exceeded the turnover threshold.

Similarly, in relation to tax invoices, failure to comply would generally arise from a person either:

- consciously avoiding their obligations; or
- misunderstanding the obligations imposed on them by the GST law.

Therefore, penalties would not be remitted unless a person's circumstances indicated that it was reasonable for them to be genuinely uncertain about their obligations.

PAYG Withholding penalties

58. Under the PAYG withholding regime of the new tax system there is an expanded list of payments from which a person is required to withhold amounts. Section 16-30 and section 16-40 of Schedule 1 to the TAA 1953 impose a penalty where a person fails to withhold the required amount. The penalty is equal to the amount the person failed to withhold. Section 16-45 allows the Commissioner to remit the penalty.

59. Where the ATO discovers that a person is not withholding the correct amount and it is evident that failure to comply with the withholding requirements is due to an honest mistake, a misunderstanding of the new system or an inadvertent error, the penalty will generally be remitted. However, the extent of remission will be dependent on the person putting procedures in place to ensure that the correct amounts will be withheld in the future.

60. Where a person is not withholding amounts and the person's skills and experience indicate that it is reasonable to conclude that such a person should have been aware of their withholding obligation, the penalty will not be remitted.

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[4] 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 ANTS (GST) Regulations 1999 regulation 23-15.01. For non-profit bodies, the GST registration threshold increased from $100,000 to $150,000 in accordance with ANTS (GST) Regulations 1999 regulation 23-15.02.

[5] 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 ANTS (GST) Regulations 1999 regulation 29-80.01.

61. People who have a withholding responsibility are required to register under section 16-140. A penalty is imposed under this provision for failing to register. This penalty will not be payable unless a person is consciously avoiding their registration obligations.

Amendment history

Date of amendment	Part	Comment
22 January 2013	Paragraph 42	Revised to reflect change in penalty unit value from 28 December 2012.
16 October 2007	Footnotes	1 & 4 - included to reflect increases in GST registration thresholds 2 & 5 - included to reflect increases in the in the value of the supply where a tax invoice is not required to be issued 3 - included to reflect a change in term used

Subject references	administrative penalties; general interest charge; shortfall amount; remission of penalties
Legislative references	TAA 1953 8AAG TAA 1953 16-30 Sch 1 TAA 1953 16-40 Sch 1 TAA 1953 16-45 Sch 1 TAA 1953 16-140 Sch 1 TAA 1953 Part 4-25 Sch 1 TAA 1953 Div 284 Sch 1 TAA 1953 284-75(1) Sch 1 TAA 1953 284-225(5) Sch 1 TAA 1953 Div 286 Sch 1 TAA 1953 Div 288 Sch 1 TAA 1953 288-25 Sch 1 TAA 1953 288-30 Sch 1 TAA 1953 288-35 Sch 1 TAA 1953 288-40 Sch 1 TAA 1953 288-45 Sch 1 TAA 1953 298-20 Sch 1 TAA 1953 388-65 Sch 1 GSTA 1999 17-20
Related public rulings	
Related practice statements	PS LA 2000/9
Case references	
Other references	Fact Sheets NAT 4700 and NAT 5035; ATO Receivables Policy Chapters 7B, 9, 10, 28, 93 & 98; Tax Agent broadcast letter of 13 July 2001
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Other Business Lines consulted	
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