# *PS LA 2004/5 (Withdrawn) - Administration of shortfall penalties under the new tax system*

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Law Administration Practice Statement PS LA 2004/5 was withdrawn on 6 March 2006 and has been replaced by PS LA 2006/2.

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# ATO Practice Statement Law Administration

**PS LA 2004/5**

Law Administration Practice Statement PS LA 2004/5 was withdrawn on 6 March 2006 and has been replaced by PS LA 2006/2.

**FOI status: may be released**

*This Practice Statement is issued under the authority of the Commissioner and must be read in conjunction with Law Administration Practice Statement PS LA 1998/1. It must be followed by ATO officers unless doing so creates unintended consequences. Where this occurs ATO officers must follow their Business Line's escalation process.*

**SUBJECT:** **Administration of shortfall penalties under the new tax system**

**PURPOSE:** **This Practice Statement outlines the Tax Office's position on remission of penalties now that the transition to the new tax system has passed. It deals in particular with penalties in circumstances where a shortfall amount results from a false or misleading statement.**

## STATEMENT

1. The new tax system which began on 1 July 2000 brought about substantial change to the tax obligations of many taxpayers. Under the new tax system, uniform penalties were introduced to support compliance, and these included a penalty for false or misleading statements that resulted in a shortfall amount. These uniform penalties are set out in Part 4-25 of Schedule 1 to the *Taxation Administration Act 1953* (the TAA 1953), and apply to:

   - income tax matters for the 2000-2001 and later income years;
   - fringe benefits tax matters for the year commencing 1 April 2001 and later years; and
   - other taxation matters (such as matters required to be reported on activity statements) for the year commencing 1 July 2000 and later years.

   The penalty provisions apply to taxpayers that fail to meet their taxation obligations.

2. The penalties in Part 4-25 of the TAA 1953 are imposed by the law as a consequence of a taxpayer's action or inaction. However, the Commissioner has a discretion to remit the penalty imposed either in full or in part (section 298-20 of Schedule 1 to the TAA 1953).

3. From the outset, the Tax Office recognised the difficulties that many taxpayers and their advisors would face in understanding and implementing the new tax system, and the impact it would have on other obligations under laws administered by the Commissioner. The Tax Office adopted an approach to the administration of penalties that acknowledged these difficulties. This approach was detailed in Law Administration Practice Statements PS LA 2000/9 and PS LA 2002/8.

4. Now that the new tax system is entering its fourth year of operation, the Tax Office is moving towards a 'business as usual' approach to the administration of penalties. The policy of generally remitting penalties to give taxpayers the opportunity to understand their obligations under the new tax system is no longer appropriate and will not apply to shortfalls in documents lodged on or after 1 April 2004.

5. This Law Administration Practice Statement sets out the application of this firmer approach in circumstances where a taxpayer has made a false or misleading statement that results in a shortfall amount, particularly where that shortfall amount results from the taxpayer failing to take reasonable care. It will apply to statements made on or after 1 April 2004. Law Administration Practice Statements PS LA 2000/9 and PS LA 2002/8 continue to apply to earlier statements, see paragraph 53.

6. Any decision concerning penalties for a false or misleading statement will have regard to the circumstances of the case and the effort made by the taxpayer to comply. Genuine attempts to comply will be treated differently to situations where a taxpayer does not make an effort to do this. This is the approach adopted in the legislation, and accords with the principles of the *ATO Compliance Model* and the *Taxpayers' Charter*.

7. In line with this approach, a penalty for a false or misleading statement will generally be remitted where a shortfall amount arises in circumstances where a taxpayer's overall level of compliance is sound, and in all the circumstances of the case it is clear that:

   - the shortfall amount is not a material amount: or
   - the taxpayer has made an honest mistake.

8. This Law Administration Practice Statement does not deal with the administration of penalties for failing to have a reasonably arguable position or not following a private ruling, or in situations where a person has participated in a scheme. Nor does it cover situations where the taxpayer fails to lodge a document on time (Division 286 of Schedule 1 to the TAA 1953), or fails to comply with other statutory requirements such as not registering for GST (section 288-40 of Schedule 1 to the TAA 1953) or not issuing tax invoices (section 288-45 of Schedule 1 to the TAA 1953). Other Tax Office publications will deal specifically with these. The Tax Office will also publish further guidelines on the remission of penalties where particular types of taxes are understated or credits overclaimed.

9. A general interest charge (GIC) is imposed on any tax or penalty that remains unpaid after the time it becomes due and payable. The GIC is separate from the penalty imposed. The Commissioner can remit all or part of the GIC in certain circumstances (section 8AAG of the TAA 1953). The Tax Office policy on remission of GIC is fully explained in the *ATO Receivables Policy* which can be found on the Tax Office web site www.ato.gov.au.

## Obligations under new taxation laws

10. Taxation laws will continue to be amended to reflect changes in the economic environment and the needs of business and Government. The policy of giving taxpayers the opportunity to become familiar with substantial new legal requirements will continue to be a feature of the Commissioner's approach to the administration of penalties. Any taxpayer who makes a genuine attempt to comply with new statutory requirements will generally have penalties on shortfall amounts remitted in the following circumstances:

    - in the first 12 months from the date of application of the new law; or
    - if there is a new law with an extended transitional period, during that transitional period, e.g. the consolidation regime.

    Remission will not apply where there is evidence of a clear attempt to avoid or disregard the requirements of the law. Whether a measure is substantial is to be determined having regard to what could reasonably be expected of a taxpayer of the class under examination, i.e., expectations would differ between a micro business and a large corporate.

## Obligations for amendments which have been introduced but not enacted

11. Situations can arise where a proposed law change has an application date prior to its Royal Assent, or where it is uncertain whether a proposed law will receive Royal Assent before its application date. Taxpayers potentially affected by the change may be uncertain about the most appropriate course of action to be followed in meeting their compliance obligations. Where this uncertainty causes the taxpayer to understate tax or over claim a credit the shortfall penalty will generally not apply.

## Obligations under old taxation laws

12. In general, the remission of penalties for failing to comply with an income tax or fringe benefits tax provision that existed prior to the introduction of the new tax system will continue to be considered in accordance with the principles set out in Taxation Rulings TR 94/4 and TR 95/4 unless the taxpayer can show that efforts made to comply with obligations under the new tax system affected the taxpayer's ability to comply with the existing income tax or fringe benefits tax requirements.

## New entrants to the tax system

13. A new entrant to the tax system will not generally be penalised under subsection 284 -75(1) of the TAA 1953 for shortfall amounts in its first year of operation, provided there has been a genuine attempt to comply with tax obligations. This concession will not apply to a business taxpayer whose principals have previously been involved in business operations, or if the taxpayer has used the services of a tax agent and:

    - the taxpayer has not followed the agent's advice; or
    - the agent has failed to exercise reasonable care.

# EXPLANATION

## Legislation

14. Subsection 284-75(1) of Schedule 1 to the TAA 1953 imposes an administrative penalty in circumstances where:

- a taxpayer or a taxpayer's agent makes a statement to the Commissioner about a taxation law;
- that statement is false or misleading, whether because of what is included or what is omitted; and
- a shortfall amount results.

15. If there is a shortfall amount because of a false or misleading statement, the behaviour of the taxpayer or the taxpayer's agent will determine the extent of the penalty imposed. The base penalty amount for the shortfall is worked out under section 284-90 of Schedule 1 to the TAA 1953 and is determined by the relevant behaviours that gave rise to the shortfall. The relevant behaviours and associated penalty amounts are:

    - failure to take reasonable care (25% of the shortfall amount)
    - recklessness (50% of the shortfall amount), and
    - intentional disregard of a taxation law (75% of the shortfall amount).

    The base penalty amount can be increased or decreased in the circumstances set out in sections 284-220 and 284-225 of Schedule 1 to the TAA 1953. The relevant behaviours are explained in detail in Taxation Ruling 94/4.

16. The Commissioner has the discretion to remit the penalty imposed either in full or in part (section 298-20). In keeping with the principles of the *Taxpayers' Charter* and the *ATO Compliance Model*, remission requests will be dealt with on a case by case basis having regard to the circumstances of the case and the effort made by the taxpayer to comply.

## Law Administration Practice Statement PS LA 2000/9

17. In the first year of the new tax system, the Tax Office recognised the difficulties faced by taxpayers in implementing the changes brought by the new system. It was clear that, notwithstanding a taxpayer's best efforts, genuine mistakes and misunderstandings would occur.

18. The Tax Office adopted a supportive approach in response to these difficulties. This was reflected in its approach to the administration of penalties: for example, penalties on shortfall amounts were remitted in full unless it was clear the taxpayer had not made a genuine attempt to meet the relevant obligations by intentionally understating a tax-related liability or knowingly overclaiming a credit. This approach was detailed in PS LA 2000/9. Although PS LA 2000/9 only referred to shortfall amounts in activity statements, the Tax Office applied a concessional policy to shortfalls of other taxes where it was evident that coming to terms with the complexity and volume of new obligations in the tax system caused unintentional mistakes. Penalties continued to apply to income tax shortfall cases where taxpayers did not make a genuine effort to comply.

## Law Administration Practice Statement PS LA 2002/8

19. The supportive approach in the transition to the new tax system continued with the remission policy in PS LA 2002/8. However, given that by then taxpayers had become more familiar with their obligations, the circumstances in which penalties on shortfall amounts would not be subject to a general remission were broadened.

From the commencement of the second year, penalties were not remitted if it was clear that the taxpayer:

- intentionally disregarded the law;
- recklessly approached their tax obligations;
- carried over poor compliance behaviour from the past; or
- demonstrated a repeated failure to comply in spite of a clear explanation of what was required.

20. However, penalties for shortfall amounts continued to be remitted in full if taxpayers made a genuine attempt to meet their obligations and to provide information that was correct and complete. Again, where it is evident that making a genuine attempt to comply with the new tax system had caused unintentional mistakes to be made with other tax obligations the lack of reasonable care penalty will be remitted. However, this concession is less likely to apply as the new tax system is bedded down, particularly in relation to other tax obligations which are not new to the taxpayer or their agent.

## Law Administration Practice Statement PS LA 2004/5

21. As the new tax system is into its fourth year of operation, the Tax Office considers that taxpayers have had sufficient opportunity to understand and implement the changes introduced. As a result, the Tax Office is taking a firmer approach to the administration of penalties. The general remission concessions based solely on the introduction of the new tax system are no longer appropriate.

22. In keeping with this firmer approach, there will be no general remission of administrative penalties for shortfall amounts in income tax returns, fringe benefits tax returns, activity statements and other documents lodged on or after 1 April 2004.

23. This means that in addition to the circumstances outlined in PS LA 2002/8, a penalty for a false or misleading statement will now be payable where the shortfall amount results from the taxpayer failing to take reasonable care. Individual remission requests will be dealt with on a case by case basis in accordance with the principles set out in the *Taxpayers' Charter* and the *ATO Compliance Model*, but given that the structure of the penalty provisions already takes into account a taxpayer's behaviour in determining the penalty amount, remission would only be appropriate in limited circumstances. The onus will be on the taxpayer to demonstrate that reasonable care has been exercised.

## Reasonable care

24. For the purpose of determining whether a penalty is imposed under subsection 284-75(1) of the TAA 1953 for making a false or misleading statement, a shortfall amount is taken not to exist where a taxpayer has taken reasonable care. This exception is contained in subsection 284-215(2) of Schedule 1 to the TAA 1953. If the taxpayer has used the services of an agent, both the taxpayer and the agent must have taken reasonable care to qualify for this exemption. This exception is limited to a penalty imposed under subsection 284-75(1). Even though a taxpayer may have exercised reasonable care, there is the additional requirement with income tax matters for a taxpayer to have a reasonably arguable position where the

shortfall is above the thresholds in section 284-90. This requirement is explained in Taxation Ruling TR 94/5, which is currently being updated.

25. Reasonable care is not a new concept. It is explained in Taxation Ruling TR 94/4. The test continues to be whether, in making (or not making) a statement, or in acting or omitting to act, the taxpayer has exercised the level of care that a reasonable person in the taxpayer's circumstances would have taken to fulfil the taxpayer's tax obligations. It is not a 'one size fits all' test. The effort required of a taxpayer depends on their circumstances, having regard to their background, knowledge, education, experience and skill.

26. For example, a taxpayer who lodges their own return would generally pass the test if a genuine attempt is made to follow TaxPack instructions. If a taxpayer uses TaxPack properly and makes an honest mistake, the penalty will not be payable. If something in TaxPack is misleading and a taxpayer makes a mistake there will be no penalty because of the exception contained in subsection 284-215(1) of Schedule 1 to the TAA 1953.

27. A taxpayer who uses the services of an agent to prepare a return, activity statement or other document will generally be taken to have exercised reasonable care if the taxpayer has:

- provided the agent with honest, accurate and complete information that is necessary for the preparation of the document, including information that the taxpayer could reasonably be expected to have known was relevant to the document; and
- adopted the agent's advice where it is given to the taxpayer.

However, even if a taxpayer has taken reasonable care but there is a shortfall amount that results from the agent failing to take reasonable care, the taxpayer will be liable to a penalty at the appropriate rate.

## Reasonable care – agents

28. The standard of care expected of an agent is higher than the standard expected of a taxpayer who self prepares and lodges. An agent would be expected to:

- have the skills, knowledge and competence to prepare correct returns, activity statements and other tax documentation
- be reasonably confident about a position taken on the application of a taxation law, and
- have procedures in place to ensure the returns, activity statements and other documents are correctly prepared.

29. In making a penalty decision in cases involving a tax agent, tax officers will take into account the agent's work environment and the effort the agent is making to help the client comply with their tax obligations. Where work pressure causes an agent to make unintentional mistakes, the penalties on shortfall amounts will be remitted if, on the whole, it is evident the agent is making a genuine effort to prepare correct returns, activity statements and other documentation. The onus will be on the tax agent to demonstrate these circumstances apply.

30. If a shortfall amount results from a client not providing the agent with all the information necessary for the preparation of a correct return, activity statement or other documentation, the penalty will not be remitted. The amount of penalty will be determined by the client's circumstances and the reasons for withholding the information. The client could be liable for a penalty up to 75% of the shortfall amount if the information has been withheld for the purpose of intentionally disregarding obligations under the law.

31. If a shortfall amount is caused by an agent not requesting information from the client that the agent should have known was necessary for the correct completion of the return, activity statement or other documentation, the penalty will not be remitted.

### Failure to take reasonable care

32. The following are examples of circumstances that would tend to indicate the taxpayer has failed to take reasonable care (subject to an assessment of the taxpayer's circumstances).

- A taxpayer makes a claim for a deduction without being able to substantiate the deduction in accordance with the substantiation provisions, and relief from the substantiation requirement is inappropriate. This is because TaxPack and other Tax Office publications clearly explain that a taxpayer must be able to substantiate their claims for relevant work related expenses.

- A taxpayer simply forgets to include an amount of assessable income in a tax return.

- A taxpayer is uncertain about the correct treatment of a tax-related matter and does not make reasonable enquiry to resolve the issue. (Reasonable enquiry would include the taxpayer looking at reference materials such as Tax Office publications in an attempt to understand the proper tax treatment of the matter).

- A taxpayer makes a wrong interpretation of a statutory provision that is clear to a reasonable person.

- A business taxpayer does not have in place an appropriate record-keeping system and other procedures to ensure that the income and expenses of the business are properly recorded and classified for tax purposes. What is appropriate depends on factors such as the nature and size of the business, and could include consideration of whether there are additional internal controls such as internal audits, whether staff dealing with accounts are adequately trained, whether there is ongoing support for accounting staff.

- Arithmetic errors can indicate a failure to take reasonable care but are not conclusive. Business taxpayers could reasonably be expected to have systems and procedures in place to prevent careless errors occurring. In other cases it would depend on factors such as the size, the nature and frequency of the error, and the circumstances of the person making the error.

### Remission for inadvertent mistake

33. A taxpayer who makes an inadvertent mistake will not be penalised. An inadvertent mistake will be taken to have occurred where, on the evidence available,

- the taxpayer has made a genuine attempt to meet the relevant tax obligations but has made an unintentional error, and
- the taxpayer's overall level of compliance is sound.

34. The following are examples that would tend to indicate a taxpayer has made an inadvertent mistake:

    - a taxpayer who keeps good taxation records and has a good compliance history makes an isolated mistake by recording a transaction incorrectly, or
    - a business taxpayer has in place appropriate record keeping and other procedures to ensure income and expenses are properly recorded and classified, but an employee makes an unintentional error that is not detected when accounts are reviewed.

35. This approach reflects a principle in the *ATO Compliance Model* that it is appropriate to remit penalties for an inadvertent mistake where a taxpayer is fully engaged in the tax system and genuinely attempts to reach a correct tax position. Although it may be argued that the mistake was caused by a lack of reasonable care, the discretion to remit the penalty can be exercised in recognition of the overall compliance behaviour of the taxpayer.

## Voluntary Disclosure

36. The legislation provides that where a taxpayer makes a voluntary disclosure before being told that a tax audit is to be conducted, the penalty that would otherwise be imposed for a shortfall amount is:

    - reduced to nil if the shortfall amount is less than $1,000;
    - reduced by 80% if the shortfall amount is $1,000 or more.

    If the voluntary disclosure is made after this time, the penalty is reduced by 20%. These reductions are not remissions but are the penalty amounts specified in Subdivision 284-D of Schedule 1 to the TAA 1953.

37. The Commissioner has the discretion under subsection 284-225(5) of Schedule 1 to the TAA 1953 to treat a disclosure made after an audit commences as having been made before being told of the commencement of the audit. The effect of this discretion is to reduce the penalty by 80%. This discretion will be exercised where a taxpayer, after being advised of a compliance activity, makes a voluntary disclosure before the formal date of commencement of the audit. The Tax Office will generally notify a taxpayer about a compliance activity and give a date for the commencement of the audit. Notification will normally be in writing or may be made orally.

38. As a matter of policy, *any* voluntary disclosure that is made *before* a taxpayer is told that a tax audit is to be conducted will generally be penalty free. A taxpayer who would otherwise be liable to a penalty reduced by 80% (ie because the shortfall amount is $1,000 or more) will generally be taken to have made an honest mistake and as a result the penalty that would otherwise apply will be remitted in full. However, the penalty will not be remitted if there is information to indicate the taxpayer did not make an honest mistake.

39. This approach acknowledges that a taxpayer making a genuine effort to achieve the correct tax position by advising the Tax Office of an honest mistake should not

be penalised. Under the *ATO Compliance Model*, it is not appropriate 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 Tax Office will treat a taxpayer as being honest unless the taxpayer acts otherwise.

40. However, repeated voluntary disclosures by a taxpayer may indicate the taxpayer has not made an honest mistake. Similarly, a pattern of voluntary disclosures by a registered tax agent may indicate carelessness or, at the extreme, an abuse of this voluntary disclosure concession. Where a tax officer finds this is the case the remission will not apply.

41. A tax audit is defined as an examination by the Commissioner of an entity's financial affairs for the purposes of a taxation law (section 995-1, *Income Tax Assessment Act 1997*). Taxation Ruling TR 94/6, which is being updated, will explain the compliance activities that would be considered to be a tax audit.

42. Voluntary disclosures are required to be made in the approved form. In accordance with the requirements in section 388-50 of Schedule 1 to the TAA 1953 for approved forms, a voluntary disclosure must be made in paper form, be signed with the appropriate taxpayer or agent declaration and posted to the Tax Office or given to the tax officer who is responsible for conducting the audit.

## Shortfall amounts that are not material amounts

43. If, during an audit activity, a tax officer finds a shortfall amount that results from a lack of reasonable care but in the circumstances of the case the amount is not material, the penalty will be remitted where it is evident that the taxpayer and the agent (if any) have, on the whole, made a genuine attempt to comply with the taxpayer's obligations, and the taxpayer's overall level of compliance is satisfactory. For example, an agent preparing an income tax return may have difficulty reconciling the net amounts of GST and/or PAYG instalments in activity statements prepared and lodged by a client during the year, and an immaterial shortfall amount may result. If the agent can show that a genuine attempt was made to reconcile figures, but without success, the penalty will be remitted.

44. Depending on the circumstances, factors that could be examined in determining if a shortfall amount is material include the size of the shortfall amount in relation to the taxpayer's turnover, and the effect of the shortfall on the taxpayer's overall liability (including claims for credits). An amount will not be material for shortfall penalty purposes if it has a minor or relatively insignificant effect on the taxpayer's liability overall. Material amount will not be quantified in this Practice Statement as it will differ in each case. Tax officers need to take a common sense approach when applying this standard. Case managers will need to sign off remission decisions involving issues of materiality. Taxpayers will still be required to pay the shortfall amount.

## Correcting GST mistakes

45. The Tax Office has published a revised Fact Sheet outlining the Commissioner's position on correcting GST mistakes on a Business Activity Statement – *Correcting GST Mistakes – Revised Fact Sheet* (03/2002)(Nat 4700). This states that a taxpayer who makes a mistake on an activity statement may in certain circumstances correct that mistake on a subsequent activity statement without penalty.

46. In addition to that concession, where a registered tax agent prepares an income tax return and has difficulties in reconciling the GST details in BASs prepared by the client or their bookkeeper, the GST may be corrected by including the adjustment in the next BAS to be lodged following the preparation of the income tax return. This concession to registered tax agents will only apply to client entities which have a turnover that is less than $20 million. There will be no threshold on the value of the reconciliation adjustment. The registered tax agent will be expected to advise the client or bookkeeper of the mistake and discuss possible causes of the error in the BAS to prevent it from happening in the future.

### Timing adjustments

47. In some cases, taxpayers may include an income amount or a supply in a period later than the period in which the amount should have been included, or claim a deduction or credit in a period earlier than the period in which the claim should have been made. The penalty on the resulting shortfall amount will generally be remitted unless it is clear that the taxpayer was aware of the proper tax treatment of the particular item but sought to gain an advantage by disclosing or claiming in the incorrect period.

### Amounts incorrectly included in another taxpayer's return

48. If income, a deduction, a credit or a supply of one taxpayer is incorrectly included in the return of another taxpayer but in overall terms no tax has been avoided, the penalty on the shortfall amount which results will generally be remitted in full. If, however, some tax has been avoided, the penalty will be payable but should be based on the net tax avoided in overall terms.

### Taxpayers should be given the opportunity to explain

49. Once it has been established that a taxpayer has made a false or misleading statement that results in a shortfall amount, the behaviour of the taxpayer that resulted in the shortfall must be examined to determine the amount of the penalty. Other than in cases in an automated case actioning environment, or in cases where the facts clearly show fraud or evasion or that a taxpayer is deliberately disengaging from the tax system, the taxpayer should be contacted and given the opportunity to explain their actions before a decision on the penalty is made. The penalty decision will not be based on assumptions about what may have motivated a taxpayer's behaviour.

50. The basis of the decision must be clearly communicated to the taxpayer either before or at the time the penalty is determined. Given that penalties are designed to both sanction and influence behaviour, the ATO will not be able to positively influence a taxpayer's behaviour if the basis of a penalty decision is not explained.

51. In an automated case actioning environment it is not always possible to establish all the material facts before a penalty is imposed. In these situations, penalty remission requests will be considered on a case by case basis in accordance with the policy outlined in this Practice Statement.

### Which Practice Statement applies?

52. The administrative penalties in Part 4-25 of the TAA 1953 apply to income tax matters for the 2000-2001 and later income years, to fringe benefits tax matters for the year commencing 1 April 2001 and later years, and to other taxation matters

(such as matters required to be reported on activity statements) for the year commencing 1 July 2000 and later years.

53. As a general principle, the Law Administration Practice Statement that applies to a particular false or misleading statement depends on when the statement was made. The application of the various Law Administration Practice Statements can be summarised as follows:

- The approach outlined in PS LA 2000/9 applies to statements made on or before 31 July 2001 in relation to activity statement obligations.
- PS LA 2002/8 applies to statements made:
  - between 1 August 2001 and 1 April 2004 in relation to activity statement obligations.
  - between 1 July 2001 and 1 April 2004 in relation to other tax obligations.
- PS LA 2004/5 applies to statements made on or after 1 April 2004 in relation to activity statement, income tax and other tax obligations irrespective of the tax period or year of income to which the document relates.

54. This means that if a taxpayer lodges forms for multiple tax periods or years at one time, the Law Administration Practice Statement relevant to the period in which the lodgment occurs will generally apply. The Tax Office's response to taxpayer behaviour in the transition years of the new tax system was based on an awareness of the difficulties faced by taxpayers in understanding and implementing it. The extra time gained by those who lodge late gives those taxpayers the opportunity to better understand their obligations.

55. The remission of penalties for failure to comply with an income tax or fringe benefits tax provision that existed prior to the introduction of the new tax system will continue to be considered in accordance with the principles set out in Taxation Rulings TR 94/4 and TR95/4. However, a penalty that would not be remitted under those Rulings may be remitted under these guidelines or the guidelines in PS LA 2000/9 and PS LA 2002/8 if the taxpayer can demonstrate that efforts made to comply with obligations under the new tax system affected the taxpayer's ability to comply with the existing income tax or fringe benefits tax requirements.

## Review rights

56. Taxpayers have the right to object against an assessment of a Division 284 penalty (section 298-30 of Schedule 1 to the TAA 1953) and can also object against the Commissioner's decision on a remission request if the amount of penalty that remains payable as a result of that decision is more than 2 penalty units (section 298-20). The Tax Office will publish guidelines on procedures for objecting against an assessment of penalty or a remission decision.

## Prosecution

57. It is an offence to make a false or misleading statement to a tax officer. As an alternative to an administrative penalty, the Tax Office can seek to have an offence prosecuted by referring the matter to the Director of Public Prosecutions. The Tax Office will not generally seek to prosecute unless the case involves serious non-compliance. This is in keeping with the Compliance Model concept that the most severe compliance strategies are to be restricted to those who are most non-compliant. The Tax Office's policy on prosecution is fully explained in the *ATO Prosecution Policy*.

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| *subject references* | administrative penalties<br>shortfall amount<br>false or misleading statement |
| *legislative references* | *Income Tax Assessment Act 1997* section 995-1<br>*Taxation Administration Act 1953* section 8AAG<br>*Taxation Administration Act 1953* Schedule 1, Part 4-25, Division 284<br>*Taxation Administration Act 1953* Schedule 1, subsection 284-75(1)<br>*Taxation Administration Act 1953* Schedule 1, section 284-80,<br>*Taxation Administration Act 1953* Schedule 1, section 284-90<br>*Taxation Administration Act 1953* Schedule 1, subsection 284-215(1)<br>*Taxation Administration Act 1953* Schedule 1, subsection 284-215(2)<br>*Taxation Administration Act 1953* Schedule 1, section 284-220<br>*Taxation Administration Act 1953* Schedule 1, section 284-225<br>*Taxation Administration Act 1953* Schedule 1, subsection 284-225(5)<br>*Taxation Administration Act 1953* Schedule 1, Division 286<br>*Taxation Administration Act 1953* Schedule 1, section 288-40<br>*Taxation Administration Act 1953* Schedule 1, section 288-45<br>*Taxation Administration Act 1953* Schedule 1, section 298-20<br>*Taxation Administration Act 1953 S*chedule 1, section 298-30<br>*Taxation Administration Act 1953 S*chedule 1, section 388-50 |
| *related public rulings* | Taxation Ruling TR 94/4<br>Taxation Ruling TR 94/5<br>Taxation Ruling TR 94/6<br>Taxation Ruling TR 95/4 |
| *related practice statements* | Law Administration Practice Statement PS LA 2000/9<br>Law Administration Practice Statement PS LA 2002/8 |
| *case references* | |
| *file references* | |

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