PS LA 2007/11 - Administrative treatment of taxpayers affected by announced but unenacted legislative measures which will apply retrospectively when enacted

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Australian Government
Australian Taxation Office

PS LA 2007/11
Administrative treatment of taxpayers affected by announced but unenacted legislative measures which will apply retrospectively when enacted

This Practice Statement outlines what action should be taken when announced legislative measures will apply retrospectively and our policy on penalties and interest in these circumstances.

This Practice Statement is an internal ATO document and an instruction to ATO staff.

If taxpayers rely on this Practice Statement, they will be protected from interest and penalties in the following way. 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 do not 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.

1. When does this Practice Statement apply?

Usually, changes to the laws we administer take effect and create rights and obligations after they have been enacted by the Australian Parliament. However, sometimes the changes are applied retrospectively and affect earlier rights and obligations. Reasons for this include where an unintended consequence is being corrected, the change is favourable to taxpayers, or there is a delay in passing the bill.

In these instances, we need to consider our approach and our guidance to taxpayers on the implications should they comply with the law as it is or if they anticipate the proposed changes.

2. Who decides on the approach we will take and puts it in place?

Project managers are accountable for the end-to-end implementation of announced tax and superannuation measures, including making recommendations about the approach to be taken in these circumstances.

Once endorsed by the Project Sponsor, these recommendations are presented for consideration to the Policy Implementation Committee (PIC), which makes the decision about the administrative approach.

The Project Manager is responsible for ensuring that the decisions endorsed by the PIC are implemented.

3. What do you need to consider in making recommendations?

The Project Manager should take into account the advice for taxpayers outlined in Administrative treatment of retrospective legislation when preparing recommendations, to ensure consistency of advice.

The recommendations to the PIC should include:

- what advice will need to be provided or amended (for example, draft Law Companion Rulings) to taxpayers to allow them to manage their affairs appropriately (for example, where record keeping or business systems need to change)
- what other communication is required
- reference to timing issues, including due dates that may be relevant for tax returns, activity statements or other documents.

4. When do recommendations need to be made?

Recommendations should be made to the PIC at the earliest practicable time after the announcement of the proposed retrospective change.

If the passage of a bill is significantly delayed or if a measure is unlikely to proceed, the recommendations will need to be reconsidered by the PIC.

5. What is our policy on penalties and interest in these circumstances?

When a change to the law that has a retrospective effect is enacted, some taxpayers may have either underpaid or overpaid the amount of tax now properly payable for an earlier period.

Generally, for taxpayers who exercise reasonable care and follow the existing law, there will be no tax shortfall penalties and nil general interest charge (GIC) or shortfall interest charge (SIC) up to the date of enactment of the legislative change. In addition, taxpayers will be given a 'reasonable time' to get their affairs in order, post-enactment of the measure, without incurring any GIC or SIC. The reasonable time will need to be determined having regard to the measure and a taxpayer's circumstances.

Where a taxpayer 'anticipates' the proposed law change, they may be liable to GIC or SIC at the base interest rate if the proposed measure is not enacted or

if the change is enacted and the taxpayer has understated their liability. However, if the law is enacted and the taxpayer overstates their liability, they would generally be entitled to a credit amendment and interest on the overpayment once the amending legislation is enacted.

If the amendments or revisions will reduce a taxpayer's liability, appropriate interest on any overpayments will be paid.

6. More information

For more information, see Administrative treatment of retrospective legislation.

SCENARIOS

Scenario 1 – taxpayers who lodge on time in accordance with the existing law

If:

- *a taxpayer lodges a return or activity statement in accordance with existing law, and*
- *later debit amendments or activity statement revisions are needed because of the effect of retrospective legislative changes,*

then:

- *no tax shortfall penalties will apply, and*
- *any interest attributable to the shortfall will be remitted to nil up to the date of enactment of the new legislative measure.*

In addition, any interest that may have accrued post the enactment of the new legislative measure will be remitted for taxpayers who actively seek to appropriately amend their returns or revise their activity statements within a reasonable time after the enactment of the new law.

If the taxpayer does not lodge an amendment request or revise their activity statement within a reasonable time, full interest will apply from the date of enactment.

Scenario 2 – taxpayers who anticipate an announced change to the law

If:

- *a taxpayer lodges a return or activity statement on the basis of anticipated changes to the law, and*
- *later amendments or revisions which result in a reduction to an entitlement or an increase in liability are needed because of the effect of retrospective legislative changes,*

then:

- *no tax shortfall penalties will apply on the basis that it is reasonable that the taxpayer has followed an announced government policy and that the existence of such an announcement represents special circumstances for remission, and*
- *any interest accrued in respect of the amendment will be remitted to the base interest rate up to the date of enactment of the new legislative measure. In addition, any interest, in excess of the base rate, that accrues post the enactment of the new legislative measure, will be remitted for taxpayers who actively seek to appropriately amend their returns or revise their activity statements within a reasonable time after the enactment of the new law.*

If the taxpayer does not lodge an amendment request or revise their activity statement within a reasonable time, interest will revert to the full rate from the date of enactment.

This approach will be conditional on the taxpayer having acted reasonably when lodging the original return or activity statement.

Where there is an overpayment by the taxpayer, a 'time value of money' concept is appropriate in providing symmetry in circumstances where interest on overpayments would be payable.

If anticipation of the announcement has the effect of resulting in a refund to a taxpayer, the ATO will either hold the processing of the assessment or activity statement or adjust the return or activity statement in accordance with existing law. Where it is unclear whether the taxpayer has anticipated a change to the law, a decision about further investigation and possible mediation will need to be made. Such a decision should be based on the principles of proper use of ATO resources and appropriate risk analysis.

Scenario 3 – announcements not enacted

In some cases, a taxpayer may have anticipated a proposed change that intends to remove a liability, which is ultimately not enacted. This may require an amendment which increases their tax liability. Alternatively, they may have lodged in accordance with the existing law and then delayed payment in anticipation of the proposed measure passing.

In these cases, the ATO will publicly advise taxpayers that the law has not passed, explaining the circumstances and requiring that the relevant amendment requests and activity statement revisions be lodged or relevant payments made. The advice could be provided through publication on our website, media release, agent flyer, letters to relevant professional associations, letters to individual

taxpayers, and so on, depending on the nature of the measure and the taxpayer base affected.

The principles set out in Scenario 2 of this Practice Statement will apply, as the taxpayer has anticipated the proposed change. Taxpayers will have reasonable time to lodge amendments, make revisions and make payment, after which time the interest applied to the taxpayer's case would revert to the full statutory rate. Regard will be paid to such factors as agent workloads and other appropriate circumstances to determine the reasonable time in this situation.

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Amendment history

24 January 2024

Part	Comment
All	Changes made to apply latest formatting and style, and clarify content
Contact details	Updated

2 April 2020

Part	Comment
All	Updated to ensure currency, and to latest format

17 October 2012

Part	Comment
Generally	Updated to current publication style

7 October 2011

Part	Comment
Paragraph 28	Updated legislative reference
References	Updated legislative reference Inserted PS LA references Removed reference to the ATO Receivables Policy
Attachment C	Updated legislative reference Removed reference to the ATO Receivables Policy and replaced with PS LA 2011/12

1 July 2010

Part	Comment
Paragraph 28	Updated legislative references (Part VI of the ITAA 1936 rewrite)

22 February 2010

Part	Comment
Paragraphs 37, 38 and 42.	Removal of the word 'tax' from 'tax agent' to reflect that agents may also be BAS (business activity statement) agents

17 December 2009

Part	Comment
Paragraphs 1, 2, 9, 13, 15, 16, 17, 18, 23 and 28	Text deleted from and inserted into this version to update and clarify the Practice Statement
Paragraph 5	Has been moved up into paragraph 4
Paragraph 24	Deleted
Paragraphs 31, 32, 33 and 34	Re-written

15 September 2009

Part	Comment
Contact details	Updated

ATO references

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