PS LA 2007/3 - Remission of penalty for failure to comply with obligations in relation to tax invoices, adjustment notes or third party adjustment notes

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Practice Statement Law Administration

PS LA 2007/3

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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 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: **Remission of penalty for failure to comply with obligations in relation to tax invoices, adjustment notes or third party adjustment notes**

PURPOSE: **To set out guidelines for the remission of penalty imposed under section 288-45 or section 288-50 of Schedule 1 to the *Taxation Administration Act 1953* for:**

- **failure to issue a tax invoice, adjustment note or third party adjustment note as required by GST legislation, or**
- **both an entity and its agent issuing separate tax invoices or separate adjustment notes contrary to the requirements of GST legislation**

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STATEMENT

1. The administrative penalty regime in Part 4-25 of Schedule 1 to the *Taxation Administration Act 1953* (TAA) imposes uniform penalties for certain acts or omissions which relate to matters arising under taxation laws.

2. All legislative references in this practice statement are to Schedule 1 to the TAA unless otherwise stated.

3. The administrative penalty regime consists of three distinct components:

   - penalties relating to statements and schemes[1]
   - penalties for late lodgment of returns and other documents,[2] and
   - penalties for failing to meet other taxation obligations.[3]

4. Section 288-45 imposes a penalty of 20 penalty units if an entity fails to issue a tax invoice, adjustment note or third party adjustment note under sections 29-70, 29-75 or 134-20 of the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act) respectively. Section 288-50 imposes a penalty of 20 penalty units if both an entity and its agent issue separate tax invoices relating to the same taxable supply, contrary to subsection 153-15(2) of the GST Act, or separate adjustment notes or third party adjustment notes for the same decreasing adjustment, contrary to subsection 153-20(2) of the GST Act. These penalties may be remitted under subsection 298-20(1).

5. This practice statement:

   - explains that failure to issue a tax invoice, adjustment note or third party adjustment note as required under the GST Act will give rise to an administrative penalty
   - explains how and when administrative penalties will apply when an entity, being the principal, and its agent both issue separate documents in relation to the same taxable supply
   - provides guidance on how and when remission of the penalty is warranted, and
   - expands upon discussions of this matter in paragraph 25 of Law Administration Practice Statement PS LA 2000/9 and paragraphs 56 and 57 of Law Administration Practice Statement PS LA 2002/8.

[1] Division 284.
[2] Division 286.
[3] Division 288.

6. This practice statement does not deal with the administration of other types of penalties imposed under Division 288. Nor does it deal with the imposition or remission of the general interest charge (GIC), which is independent of the administrative penalty regime.

7. A decision to remit all or part of the penalty under subsection 298-20(1) should be made with regard to the following objectives of the penalty regime:

   - decisions should be made based on the individual circumstances of the case
   - decisions should be consistent with the principles of the taxpayers' charter and the compliance model
   - to promote consistent treatment in respect of the penalty imposed - penalties imposed should not be remitted without just cause, arbitrarily or as a matter of course. The Commissioner must ensure that the decision to remit in part or in full or not to remit at all is made in good faith and is reasonable. All relevant matters and no irrelevant matters must be taken into consideration in making the decision, and
   - the discretion to remit penalties should be administered in a fashion to affect improvements in future compliance by taxpayers and to provide certainty for those taxpayers. These objectives should be achieved without causing unintended or unjust results.

8. In all cases where an entity is liable to pay an administrative penalty, remission of the penalty should be considered.

9. Generally the entity should be provided with an opportunity to comply with tax invoice, adjustment note or third party adjustment note obligations prior to making a remission decision. In giving an entity the opportunity to comply a tax officer is to:

   - explain to the entity its obligations
   - provide information on how to comply with these obligations, and
   - allow a reasonable time to comply.

EXPLANATION

Tax invoice, adjustment note or third party adjustment note obligations

10. Subsection 29-70(2) of the GST Act requires the supplier of a taxable supply to give to the recipient of the supply a tax invoice within 28 days after the recipient requests it, unless it is a recipient created tax invoice.

11. Subsection 29-75(2) of the GST Act requires the supplier of a taxable supply to give to the recipient of the supply an adjustment note for an adjustment that arises from an adjustment event[4] relating to a taxable supply within:

    - 28 days after the recipient requests it,[5] or
    - if a tax invoice has been issued, or the recipient has requested a tax invoice, and the supplier becomes aware of the adjustment before an adjustment note is requested, within 28 days after becoming aware of that fact,

    unless any tax invoice for the supply would have been a recipient created tax invoice.[6]

[4] Refer to Division 19 of the GST Act and Goods and Services Tax Ruling GSTR 2000/19 for an explanation of adjustment events.
[5] Paragraph 29-75(2)(a) of the GST Act.
[6] Paragraph 29-75(2)(b) of the GST Act.

12. Subsection 134-20(2) of the GST Act requires the payer of a third party payment to give to the recipient (payee) of the payment a third party adjustment note for an adjustment[7] relating to a taxable supply within:

- 28 days after the recipient requests it,[8] or
- If the payer becomes aware of the adjustment before a third party adjustment note is requested, within 28 days after becoming aware of that fact,[9]

13. Subsections 29-75(3) and 134-20(4) of the GST Act authorise the Commissioner to make determinations varying the 28 day requirement.

14. If a principal makes a taxable supply through an agent:

- the principal's obligation to issue a tax invoice relating to the supply arises whether the recipient makes a request for a tax invoice to the principal or the agent, and
- that obligation is complied with if either the principal or the agent gives the recipient a tax invoice within 28 days after the request.[10]

15. Section 29-80 of the GST Act excludes the application of subsection 29-70(2) of the GST Act to a creditable acquisition that relates to a taxable supply the value[11] of which does not exceed $50, or such higher amount as the regulations specify. Regulation 29-80.01[12] of the A New Tax System (Goods and Services Tax) Regulations 1999 (GST Regulations) specifies a higher amount of $75. Furthermore it excludes the application of subsection 29-75(2) of the GST Act to a decreasing adjustment of an amount that does not exceed a GST adjusted value of $50, or such higher amounts as the regulations specify. Regulation 29-80.02 of the GST Regulations specifies a higher amount of $75, effective 1 July 2010[13].

16. Subsection 134-20(3) of the GST Act excludes the application of subsection 134-20(2) to a third party payment adjustment of an amount that does not exceed the amount provided for under subsection 29-80(2) of the GST Act.

17. If the GST on a taxable supply is payable by the recipient of the supply pursuant to Division 2[14] of *A New Tax System (Goods and Services Tax Transition) Act 1999*, the supplier is not required to issue:

- a tax invoice for the supply,[15] or
- an adjustment note for an adjustment that arises from an adjustment event relating to the taxable supply.[16]

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[7] Refer to Division 134 of the GST Act and Goods and Services Tax Ruling GSTR 2000/19 for an explanation of third party adjustments.
[8] Paragraph 134-20(2)(a) of the GST Act.
[9] Paragraph 134-20(2)(b) of the GST Act.
[10] Section 153-15 of the GST Act.
[11] The value of a taxable supply has the meaning given by sections 9-75, 9-80, 72-10, 72-70, 78-5, 78-60, 78-95, 79-40, 79-85, 87-10, 90-10, 96-10, and 108-5 of the GST Act.
[12] Amended by the A New Tax System (Goods and Services Tax) Amendment Regulations 2007 (No. 1).
[13] Amended by the A New Tax System (Goods and Services Tax) Amendment Regulations 2009 (No. 2).
[14] This Division provides for the payment of GST on taxable supplies made on or after 1 July 2005 that would have been GST-free under section 13 *A New Tax System (Goods and Services Tax Transition) Act 1999* if they had been made immediately before 1 July 2005.
[15] Paragraph 15H(1)(a) *A New Tax System (Goods and Services Tax Transition) Act 1999*.
[16] Paragraph 15H(1)(b) *A New Tax System (Goods and Services Tax Transition) Act 1999*.

18. For the information that must be contained in a tax invoice see subsection 29-70(1) of the GST Act. The corresponding requirements for adjustment notes and third party adjustment notes are set out in a Legislative Determination made by the Commissioner as follows:

- under paragraph 29-75(1)(c) of the GST Act, the A New Tax System (Goods and Services Tax) Adjustment Note Information Requirements Determination (No. 1) 2000
- under paragraph 134-20(1)(d) of the GST Act, the A New Tax System (Goods and Services Tax) Third Party Adjustment Note Information Requirements Determination (No. 1) 2010 (TPANI 2010/1)

Australian Taxation Office (ATO) approach to tax invoice, adjustment note or third party adjustment note obligations

19. Tax invoices, adjustment notes and third party adjustment notes are key integrity measures under the GST system. They form an essential part of the audit trail and provide evidence that taxable supplies, adjustment events and third party payment adjustments have occurred.

20. A recipient of a taxable supply will rely on the tax invoice or adjustment note in order to fulfil its own tax obligations, for example, to determine whether the acquisition was a creditable acquisition, the amount of input tax credit that may be claimed and the correct tax period to which the claim can be attributed.

21. The payer of a third party payment will rely on a third party adjustment note in order to fulfil its own tax obligations, for example, to determine whether the correct amount of the decreasing adjustment has been claimed relating to the third party payment and the correct tax period to which the decreasing adjustment should be attributed.

Commissioner's discretion for particular documents

22. The Commissioner has discretion to treat a document as a tax invoice that does not meet the requirements of a valid tax invoice.[17] A similar discretion exists in relation to adjustment notes and third party adjustment notes.[18] Guidelines on exercising these discretions are set out in Law Administration Practice Statement PS LA 2004/11. The exercising of this discretion does not relieve the supplier from their obligation to issue tax invoices.

23. Where, at the request of the recipient of a supply, the Commissioner exercises his discretion to treat a document as a tax invoice or an adjustment note, the supplier will still be liable to a penalty pursuant to section 288-45 as the supplier will have failed to issue a tax invoice or adjustment note. Any remission decision relating to this penalty should be made in accordance with the guidelines set out in this practice statement.

24. Where, at the request of the payer of a third party payment, the Commissioner exercises his discretion to treat a document as a third party adjustment note, the payer will still be liable to a penalty pursuant to section 288-45 as the payer will have failed to issue a third party adjustment note. Any remission decision relating to this penalty should be made in accordance with the guidelines set out in this practice statement.

[17] Subsection 29-70(1B) of the GST Act.
[18] Subsections 29-75(1) and 134-20(1) of the GST Act.

Example 1

25. *Tom and Jeff operate a GST registered partnership*[19] *that manufactures toys. The partnership has been issuing tax invoices*[20] *since the start of GST to recipients who are generally wholesalers registered for GST. Jeff discovered there is a transposition error in the partnership ABN on the system which produces the tax invoices and the partnership ABN can not be clearly ascertained.*

26. *The partnership has requested the Commissioner treat the invoices issued as valid tax invoices. The guidelines contained in Law Administration Practice Statement PS LA 2004/11 are satisfied and having given consideration to the administration costs related to correcting these documents, and as these supplies were correctly treated by the supplier, the Commissioner exercises the discretion to treat the invoices as valid tax invoices.*

27. *In this situation section 444-30 applies*[21] *making each partner jointly and severally liable for a penalty for failing to issue tax invoices as required since the tax invoices issued do not provide sufficient information to clearly ascertain the correct ABN of the supplier. Given the Commissioner has exercised the discretion to treat these documents as valid tax invoices the penalty should be remitted in full.*

Establishing liability to a penalty

28. An entity, as the principal supplier, is liable for an administrative penalty of 20 penalty units under section 288-45 if it fails to issue a tax invoice or adjustment note as required by sections 29-70 or 29-75 of the GST Act. A payer of a third party payment is liable for an administrative penalty of 20 penalty units under 288-45 if it fails to issue a third party adjustment note as required by section 134-20 of the GST Act. Penalty units are quantified in section 4AA of the *Crimes Act 1914*. On the date of issue of this practice statement the value of a penalty unit is $110.

29. The decision that a supplier is liable to the penalty for failure to issue a tax invoice requires sufficient evidence to show that:

    - the supplier made a taxable supply which has a GST exclusive value of more than $75
    - a request for a tax invoice has been made but no tax invoice was issued within 28 days of that request, and
    - there are no facts or circumstances under genuine dispute.

30. The decision that a supplier is liable to the penalty for failure to issue an adjustment note within 28 days of a request made by a recipient as specified in paragraph 29-75(2)(a) of the GST Act requires sufficient evidence to show that:

    - an adjustment event for a taxable supply has occurred
    - a request for an adjustment note has been made but no adjustment note has been issued, and
    - there are no facts or circumstances under genuine dispute.

[19] Paragraphs 21 to 26 of Goods and Services Tax Ruling GSTR 2003/13 Goods and services tax: general law partnerships.
[20] Paragraph 117 of GSTR 2003/13.
[21] Paragraph 87 of Law Administration Practice Statement PS LA 2006/2.

31. When determining whether the supplier is liable to the penalty for failure to issue an adjustment note as required by paragraph 29-75(2)(b) of the GST Act, there must be sufficient evidence to show that:

- the supplier has issued, or the recipient has requested, a tax invoice for the supply
- an adjustment event has occurred
- the adjustment event had a GST adjustment value of more than $75, effective 1 July 2010
- the supplier became aware of the adjustment event
- the supplier did not issue an adjustment note within 28 days of becoming aware of the adjustment event, and
- there are no facts or circumstances under genuine dispute.

32. The decision that a payer is liable to the penalty for failure to issue a third party adjustment note requires sufficient evidence to show that:

- an adjustment relating to a third party payment has occurred
- as specified in subsection 134-20(2) of the GST Act, a request for a third party adjustment note has been made to the payer but no third party adjustment note was issued within 28 days of that request or the payer did not issue a third party adjustment note within 28 days of becoming aware of the adjustment, and
- the third party payment adjustment had a GST adjustment value of more than $75.

Multiple failures to issue required documents

33. A supplier may fail to comply with its tax invoice or adjustment note obligations in relation to several taxable supplies or adjustment events or a payer may fail to comply with its third party adjustment note obligations in relation to several adjustments. The TAA imposes a liability to penalty on each occasion that an entity fails to fulfil its obligations in relation to tax invoices, adjustment notes or third party adjustment notes.

34. In most circumstances, multiple failures to fulfil the tax invoice, adjustment note or third party adjustment note obligations may be caused by a singular offence, resulting in a liability to this penalty being established only once as the result of a single compliance activity. The Commissioner may in these circumstances consider the first offence to be the cause of subsequent offences. However, in circumstances where the entity has a history of disregarding their tax invoice, adjustment note or third party adjustment note obligations it may be appropriate to penalise the entity for each occurrence in which the entity failed to comply.

Uncertainty of requirement to issue certain documents

35. In some cases the supplier may not have issued a tax invoice, an adjustment note or a third party adjustment note based on a genuine belief the supply was not a taxable supply.

36. In these cases if the Commissioner determines that the supply was a taxable supply, the supplier should be given a reasonable opportunity to issue a tax invoice, an adjustment note or a third party adjustment note. A period of 28 days from the date that the decision is communicated to the supplier would be considered a reasonable period for the entity to comply with its obligation to issue a tax invoice, an adjustment note or a third party adjustment note. In determining what would constitute a reasonable opportunity, regard will be given to the circumstances of each case. In the case of a genuine dispute or uncertainty there may be grounds to extend the period to allow the issue to be resolved. If a tax invoice, an adjustment note or third party adjustment note has not been issued following the resolution of the dispute or the uncertainty the supplier should be contacted to determine why the tax invoice, an adjustment note or third party adjustment note has not been issued. Non remission of the penalty may be appropriate in these circumstances.

Obligations of an entity or its agent issuing certain documents in relation to the same taxable supply, adjustment event or adjustment

37. Section 153-15 of the GST Act sets out the requirements for issuing tax invoices if supplies are made through an agent. Subsection 153-15(2) of the GST Act states that an entity, being a principal and its agent must not both issue separate tax invoices relating to the supply.

38. Section 153-20 of the GST Act sets out the requirements for issuing adjustment notes or third party adjustment notes if supplies are made through an agent. Subsection 153-20(2) of the GST Act states that an entity, being the principal, and its agent must not both issue separate adjustment notes or third party adjustment notes for the adjustment.

ATO approach to an entity or its agent issuing certain documents in relation to the same taxable supply, adjustment event or adjustment

39. The recipient of a taxable supply relies on a tax invoice or adjustment note or the payee in relation to a third party payment relies on a third party adjustment note in determining its own taxation obligations. If both the principal supplier or payer and its agent issue a tax invoice, adjustment note or third party adjustment note in relation to the same taxable supply or third party payment this may cause the recipient of the supply or payee of a third party payment to inadvertently report an incorrect amount.

40. An entity is liable to an administrative penalty under section 288-50 if the entity, being the principal, and its agent issue separate tax invoices relating to the same taxable supply or separate adjustment notes or third party adjustment notes relating to the same decreasing adjustment.

41. A determination that the entity is liable to the penalty under section 288-50 requires sufficient evidence to show that the entity and its agent issued separate tax invoices relating to the same taxable supply or separate adjustment notes or third party adjustment notes relating to the same decreasing adjustment. Whenever possible, the tax officer should obtain a copy of the relevant documents issued by the entity and its agent.

Administration of penalties

42. An important principle contained in the taxpayers' charter and the compliance model is that the Commissioner will adopt a fair and reasonable approach in the administration of the tax system, and in doing so will take into consideration the issues faced by entities in meeting their obligations. This principle is applied by the Commissioner when making decisions on administering penalties.

43. Generally an entity may be assisted to voluntarily comply with its obligations through education and assistance. However, in circumstances when it can clearly be established that an entity is aware of its obligations and is deliberately ignoring or avoiding its obligations, or seeking to gain an advantage, education and assistance are unlikely to achieve the desired results. Generally remission of the penalty will not be appropriate where an entity makes no attempt to comply or deliberately fails to comply with these obligations.

44. The following principles from the taxpayers' charter and the compliance model should be considered when making remission decisions:

- most entities want to comply with tax laws if they are helped to understand them and they are treated fairly
- an entity should be treated as honest unless there is reason to conclude otherwise
- the more evidence of reluctance by an entity to comply with their obligations under the law, the higher the likelihood of compliance activity, and the less likely penalty remissions will be appropriate, and
- the more evidence of improvement in an entity's willingness to comply with their obligations under the law, the higher the likelihood of penalty remission.

45. Where an entity has a history of non-compliance clear evidence that the imposition of a penalty would be unfair and unjust will be necessary before any remission is considered.

46. Tax officers must ensure their remission decisions are consistent with the good decision-making model. That is, the decision must be legal, ethical, equitable, overt, sensible, timely and in accordance with the principles of natural justice. Although the law provides for penalties to be imposed at a certain level, the facts and circumstances of a case may be such that maintaining the penalty at that level might produce an unfair or unreasonable outcome.

47. The particular facts of each case will determine whether or not the Commissioner should exercise the discretion to remit.

48. Section 298-10 requires the Commissioner to give written notice to the entity of the entity's liability to pay the penalty and of the reasons why the entity is liable to pay the penalty.

49. For the purposes of encouraging future compliance the entity should be provided with a written explanation of:

- the opportunity provided for them to comply
- why they are liable to the penalty
- the amount of the penalty imposed by law
- the Commissioner's discretion to remit the penalty
- the factors considered in the remission decision

- the evidence (or other material) relied on in making the remission decision
- reasons for decision
- the remission decision
- the amount of remission, if any, and
- the amount of penalty payable, if any, after remission.

50. The amount of penalty notified should be the amount remaining after any remission of part of the penalty. This advice may be included in any other notice.[22] The due date must be specified being at least 14 days after the notice is given to the entity.[23]

51. When the penalty is remitted in full, a formal notice of the reasons for the decision is not required under the legislation. However for the purposes of encouraging future compliance and in accordance with the taxpayers' charter, the entity should still be advised of the decision in writing and that advice should include the information specified in paragraph 44 of this practice statement. This advice may be included in any other written communication such as a case finalisation letter.

52. If an entity fails to comply with its obligations in relation to tax invoices, adjustment notes, third party adjustment notes, or when both the entity and its agent issue certain documents, and is liable to a penalty, the entity may object against the Commissioner's decision not to remit the penalty in whole or part.[24] However, an entity may only object against the remission decision under section 298-20 if the penalty payable after remission is more than 2 penalty units.[25]

Remission framework

53. Penalty applies in all cases where there has been a failure to comply with tax invoice, adjustment note or third party adjustment note obligations as provided by the law, therefore remission of the penalty should be considered in all cases. Subsection 298-20(1) provides the Commissioner with a discretion to remit the penalty in whole or in part. If the Commissioner decides not to remit the penalty in full, subsection 298-20(2) requires that written notice of the decision must be given to the entity. This must include an explanation of the evidence (or other material) on which the decision to impose the penalty and the extent of any remission is based (refer to paragraph 44 of this practice statement).

54. Tax officers making remission decisions should record the following information on the appropriate case management system:

- facts relating to the failure to comply with the obligations in relation to tax invoices, adjustment notes or third party adjustment notes, and any evidence (or other material) relating to that failure
- facts relating to the entity's effort to comply and any evidence (or other material) relating to their efforts
- whether the entity was aware of its obligations, and details of any opportunity provided to the entity to comply with their obligations in relation to tax invoices, adjustment notes or third party adjustment notes
- the remission decision

[22] Section 298-10.
[23] Section 298-15.
[24] Section 298-20.
[25] Subsection 298-20(3).

- the reasons for the remission decision (that is, the tax officer's consideration of the circumstances relevant to the remission decision), and
- any other relevant information.

55. Decisions in relation to the remission of administrative penalties will be directly linked to the entity's compliance attitude. In cases which exhibit indicators of fraud or evasion or deliberate avoidance remission of the penalty will not be appropriate.

56. In determining the appropriate level of remission, tax officers must distinguish between those entities that are making a genuine effort to comply, and those entities that make little or no effort to comply.

57. In determining the appropriate level of remission the tax officer should consider what steps the entity has taken to satisfy its obligations. The amount of remission should reflect the efforts made by the entity to comply with its obligations.

- Full remission may be appropriate for entities that have a good overall compliance attitude and make a genuine attempt to comply with their tax invoice, adjustment note or third party adjustment note obligations.
- In cases where an entity has made some attempt to understand its tax invoice, adjustment note or third party adjustment note obligations, the entity's compliance history has been good, however the efforts made by the entity are considered insufficient for the penalty to be remitted in full, a 50% remission may be appropriate.
- Where an entity makes no effort to comply, no remission would be appropriate.

58. If an entity has previously been penalised for failing to meet its tax invoice, adjustment note or third party adjustment note obligations and it continues to deliberately avoid or ignore its obligations, no remission of the penalty will be warranted.

Example 2

59. *Angela is registered for GST. She makes supplies in the course of her enterprise both directly and through an agent. It was established during an audit that Angela and her agent had both issued tax invoices in relation to the same supplies. Angela and her agent were subsequently provided with education and assistance. The penalty which was imposed was remitted in full for this occurrence due to her good compliance history and because Angela was new to the GST system. Angela is advised of the decision to remit the penalty in full, the evidence relied on, and the reasons to support this decision.*

60. *Angela and her agent discussed methods of avoiding the issuance of separate tax invoices for the same supply. Angela and her agent established procedures where Angela would issue tax invoices for the supplies she made directly to recipients, and no tax invoices would be issued by Angela for supplies made through her agent. While this procedure was implemented, systems were not updated sufficiently to ensure this occurred in relation to 100% of supplies made through her agent.*

61. *Another occurrence of Angela and the agent issuing tax invoices in relation to the same supply is discovered. Angela is liable to a penalty. The penalty is remitted to 50% as:*

- *Angela has made some effort to comply but in the circumstances she has not made a sufficient effort to be compliant. She put in place a process but did not ensure the system supported the process, nor did she take steps to test if it worked.*
- *While one occurrence of non-compliance does not in itself establish a 'past history', it would in this case support the finding of insufficient effort given the educative support provided.*

62. *The decision, the evidence relied on, and the reasons for partial remission would be provided to Angela in a written notice.*

Example 3

63. *Elisa is registered for GST. During an audit it was brought to Elisa's attention that the tax invoices she was issuing in relation to her supplies did not satisfy the requirements for a valid tax invoice. While Elisa had upgraded her systems at the introduction of GST, there were deficiencies including the lack of the recipient's ABN or identity, a description of the supplies, and the quantity of goods supplied. As the correct amount of GST had been reported on each supply, and because of Elisa's good compliance history, the penalty was remitted in full. Elisa was subsequently provided with education and assistance. Elisa was advised of the decision to remit the penalty which arose including the reasons for this decision.*

64. *Elisa revised the system that generates tax invoices in relation to her supplies. This new system was fully compliant in all but one aspect in that the description of the goods supplied was ambiguous. As such, there was not sufficient information to clearly ascertain what is supplied. This was written into the template by Elisa in the genuine belief that the description given to the supply was correct.*

65. *Elisa issued several invoices that used the insufficient description. A review of one of Elisa's customers brought this to the attention of the ATO. Elisa explained the full extent of the actions she had undertaken to revise the tax invoices.*

66. *Elisa is liable to a penalty for failure to issue a tax invoice as required. However, Elisa has made a genuine attempt to comply and the penalty is remitted in full. Elisa is advised of this decision, the evidence relied on, and the reasons for the decision. In this case the reasons for the decision to remit the penalty would have included the efforts made by Elisa following the earlier audit. Elisa made a reasonable effort to improve her systems within a short timeframe once becoming aware of the problem.*

Prosecution

67. As an alternative to an administrative penalty, the Commissioner may seek to have an offence prosecuted by referring the matter to the Director of Public Prosecutions (DPP). The Commissioner will consider referring a case to the DPP only where the case exhibits indicators of serious non-compliance such as falsifying records and or fraud, or where the imposition of penalties has failed to improve the entity's behaviour. This is in keeping with the principles of the compliance model where the most severe compliance responses by the ATO are restricted to those entities that are the least compliant.

68. The ATO policy on prosecution is fully explained in the *ATO Prosecution Policy*. If prosecution action is instituted, section 8ZE of the TAA removes the entity's liability to pay an administrative penalty for the same act or omission.

Record keeping penalty

69. In the event that a supplier fails to retain records of supplies or adjustments or a payer of third party payments fails to retain records of adjustments, it may be liable to a penalty for failing to keep records. The Commissioner's policy in relation to record keeping penalty is detailed in Law Administration Practice Statement PS LA 2005/2 Penalty for failure to keep or retain records.

70. In the event that the ATO detects record keeping deficiencies, its general approach will be to inform taxpayers of their record keeping obligations as a first step. If the ATO later finds that the entity has not taken steps to improve its compliance with those obligations, a record keeping penalty will be imposed and a decision as to the remission or otherwise of the penalty may need to be made.[26]

[26] Section 288-25 – Penalty for failure to keep or retain records.

Amendment history

Date of amendment	Part	Comment
21 November 2011	Contact details	Updated.
29 October 2010	Contact details	Updated.
17 September 2010	Subject and Purpose headings	Insert reference to 'third party adjustment notes'
	Table of contents	Updated
	Paragraphs 4-5, 9, 18, 19, 22, 33-36, 38-41, 52-54 and 57-58	Insert reference to 'third party adjustment notes'
	Paragraph 12	Insert reference to subsection 134-20(2) of GST Act
	Paragraph 13	Insert reference to 134-20(4) of GST Act
	Paragraph 16	Insert reference to subsection 134-20(3) of GST Act
	Paragraph 18	Insert reference to TPANI 2010/1
	Paragraph 19	Insert reference to third party adjustment note tax obligations
	Paragraph 24	Insert reference to Commissioner's discretion for third party adjustment notes
	Paragraph 28	Insert reference to 134-20 of the GST Act
	Paragraph 32	Insert reference to penalty liability for failure to issue a third party adjustment note
	Paragraph 69	Insert reference to third party payments
	Subject references	Insert term 'GST third party adjustment notes'
	Legislative references	Insert reference to ANTS(GST)A 1999 Div 134 and ANTS(GST) Third Party Adjustment Note Information Requirements Determination TPANI 2010/1
	Contact details	Updated
15 April 2010	Paragraphs 14 and 23	Updates from 7 April 2010 removed.
7 April 2010	Paragraphs 14	Update value of adjustment event to exceed $75 (increased from $50), effective 1 July 2010
	Paragraph 23	Insert reference to value of adjustment event.
	Related public rulings	Insert reference to GSTR 2000/1
	Legislative references	Insert reference to 29-80.02 of GST Regulations
	Contact details	Updated
22 October 2009	Related public rulings	Reference to MT 2008/D1 replaced with MT 2008/1
2 September 2008	Related public rulings	Reference to TR 94/4 replaced with MT 2008/D1
5 March 2008	Contact details	Updated
16 October 2007	Paragraphs 14 and 21	Increase value of taxable supply to $75
	Paragraph 16	Update reference to GST Regulations

Subject references	goods and services tax GST adjustment notes GST invoices GST supplies by agents GST tax invoices GST third party adjustment notes remission of penalty
Legislative references	TAA 1953 8ZE TAA 1953 Sch 1 Pt 4-25 TAA 1953 Sch 1 Div 284 TAA 1953 Sch 1 Div 286 TAA 1953 Sch 1 Div 288 TAA 1953 Sch 1 288-25 TAA 1953 Sch 1 288-45 TAA 1953 Sch 1 288-50 TAA 1953 Sch 1 298-10 TAA 1953 Sch 1 298-15 TAA 1953 Sch 1 298-20 TAA 1953 Sch 1 298-20(1) TAA 1953 Sch 1 298-20(2) TAA 1953 Sch 1 298-20(3) TAA 1953 Sch 1 444-30 ANTS(GST)A 1999 9-75 ANTS(GST)A 1999 9-80 ANTS(GST)A 1999 Div 19 ANTS(GST)A 1999 29-70 ANTS(GST)A 1999 29-70(1) ANTS(GST)A 1999 29-70(1B) ANTS(GST)A 1999 29-70(2) ANTS(GST)A 1999 29-75 ANTS(GST)A 1999 29-75(1) ANTS(GST)A 1999 29-75(1)(c) ANTS(GST)A 1999 29-75(2) ANTS(GST)A 1999 29-75(2)(a) ANTS(GST)A 1999 29-75(2)(b) ANTS(GST)A 1999 29-75(3) ANTS(GST)A 1999 29-80(2) ANTS(GST)A 1999 72-10 ANTS(GST)A 1999 72-70 ANTS(GST)A 1999 78-5 ANTS(GST)A 1999 78-60 ANTS(GST)A 1999 78-95 ANTS(GST)A 1999 79-40 ANTS(GST)A 1999 79-85 ANTS(GST)A 1999 87-10 ANTS(GST)A 1999 90-10 ANTS(GST)A 1999 96-10 ANTS(GST)A 1999 108-5 ANTS(GST)A 1999 Div 134 ANTS(GST)A 1999 134-20 ANTS(GST)A 1999 134-20(1) ANTS(GST)A 1999 134-20(1)(d) ANTS(GST)A 1999 134-20(2) ANTS(GST)A 1999 134-20(2)(a) ANTS(GST)A 1999 134-20(2)(b) ANTS(GST)A 1999 134-20(3) ANTS(GST)A 1999 134-20(4) ANTS(GST)A 1999 153-15 ANTS(GST)A 1999 153-15(2) ANTS(GST)A 1999 153-20

	ANTS(GST)A 1999 153-20(2) ANTS(GST)R 1999 29-80.01 ANTS(GST)R 1999 29-80.02 A New Tax System (Goods and Services Tax Transition) Act 1999 13 A New Tax System (Goods and Services Tax Transition) Act 1999 Div 2 A New Tax System (Goods and Services Tax Transition) Act 1999 15H(1)(a) A New Tax System (Goods and Services Tax Transition) Act 1999 15H(1)(b) A New Tax System (Goods and Services Tax) Amendment Regulations 2007 (No. 1) ANTS(GST) Adjustment Note Information Requirements Determination (No. 1) 2000 ANTS(GST) Third Party Adjustment Note Information Requirements Determination (No. 1) 2010 Crimes Act 1914 4AA
Related public rulings	GSTR 2000/1 GSTR 2000/19 GSTR 2003/13 MT 2008/1
Related practice statements	PS LA 1998/1 PS LA 2000/9 PS LA 2002/8 PS LA 2004/11 PS LA 2005/2 PS LA 2006/2
Other references	ATO Prosecution Policy
File reference	2005/4224 1-2AOXOT0
Date issued	16 February 2007
Date of effect	16 February 2007
Other Business Lines consulted	Superannuation, Operations, OCTC, LB&I, ATP, SNC