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

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This Practice Statement contains references to provisions of the *A New Tax System (Goods and Services Tax) Regulations 1999*, which have been replaced by the *A New Tax System (Goods and Services Tax) Regulations 2019*. This LAPS continues to apply in relation to the remade Regulations.

A comparison table which provides the replacement provisions in the *A New Tax System (Goods and Services Tax) Regulations 2019* for regulations which are referenced in this LAPS is available.

This document has changed over time. This version was published on *17 October 2024*

This Practice Statement was originally published on 16 February 2007. Versions published from 2 September 2008 are available electronically - refer to the online version of the practice statement. Versions published prior to this date are not available electronically. If needed, these can be requested from Law Practice Management in Law and Practice by emailing TCNLawPublishingandPolicy@ato.gov.au

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Australian Government
Australian Taxation Office

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

This Practice Statement sets out guidelines for the remission of penalty.

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

Taxpayers can rely on this Practice Statement to provide them with protection 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. What this Practice Statement is about

Schedule 1 of the *Taxation Administration Act 1953* (TAA) imposes administrative penalties if:

- an entity fails to issue a tax invoice, adjustment note or third party adjustment note as required under the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act)[1]
- both an entity and its agent issue separate tax invoices relating to the same taxable supply, or separate adjustment notes or third party adjustment notes for the same decreasing adjustment.[2]

This Practice Statement provides guidance on how and when remission of the penalties is warranted. All legislative references in this Practice Statement are to the GST Act, unless otherwise indicated.

2. About the requirements

The obligations in relation to tax invoices, adjustment notes and third party adjustment notes are as set out in this Practice Statement. Note that we are able to make a determination varying the 28-day limits mentioned for adjustment notes and third party adjustment notes.[3]

Tax invoices

The supplier of a taxable supply with a value of $75 or greater must give the recipient of the supply a tax invoice within 28 days of the recipient requesting it (unless it is a recipient-created tax invoice).[4] If the supply is made through an agent, the tax invoice can be supplied by either the principal or the agent, but not both.[5]

Adjustment notes

The supplier of a taxable supply must give the recipient of the supply an adjustment note for a decreasing adjustment[6] of $75 or more that arises from an adjustment event[7] which relates to a taxable supply within:

- 28 days of the recipient requesting it, 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 the tax invoice for the supply would have been a recipient-created tax invoice).[8]

Third party adjustment notes

The payer of a third-party payment must give to the recipient (payee) of the payment a third party adjustment note for a decreasing adjustment[9] of $75 or more relating to a taxable supply within:

- 28 days after the recipient requests it, 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.[10]

[1] Section 288-45 of Schedule 1 to the TAA.
[2] Section 288-50 of Schedule 1 to the TAA.
[3] Subsections 29-75(3), 134-25(4) and 134-25(6).
[4] Subsections 29-70(2) and 29-80(1), as well as section 29-80.01 of the *A New Tax System (Goods and Services Tax) Regulations 2019* (GST Regulations).
[5] Section 153-15.
[6] See subsection 29-80(2) of the Act and section 29-80.02 of the GST Regulations.
[7] Refer to Division 19 and Goods and Services Tax Ruling GSTR 2000/19 *Goods and services tax: making adjustments under Division 19 for adjustment events* for an explanation of adjustment events.
[8] Subsection 29-75(2).
[9] Refer to Division 134 and GSTR 2000/19 for an explanation of third-party adjustments.
[10] Subsections 134-20(2) and (3).

3. Liability to a penalty

Liability to a penalty will arise if there is evidence that the above requirements are not met and there are no facts or circumstances under genuine dispute.

In circumstances where there are multiple failures to issue the required documents, a penalty will arise in relation to each document.

4. Before making the remission decision

You need to make a decision on remission in all instances where the entity is liable to pay an administrative penalty as outlined in sections 1 and 3 of this Practice Statement.

Before you make your decision, you should provide the entity with an opportunity to comply with the obligations.

You should:

- explain the obligations to the entity
- provide them information on how to comply with their obligations
- allow them a reasonable time to comply.

You should also note that where there are indicators of serious non-compliance (such as falsifying records) or where previous penalties have failed to improve the entity's behaviour, you can consider referring the case for prosecution as an alternative to the penalty.

5. General principles in relation to the remission decision

The following are the general principles you need to bear in mind when making the remission decision:

- your decision should be made based on the individual circumstances of the case
- your decision should be consistent with the principles of Our Charter and the Compliance model, recognising
  - 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
  - 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
- penalties imposed should not be remitted without just cause, arbitrarily or as a matter of course, your decision needs to be made in good faith and must be reasonable, considering all relevant matters and no irrelevant matters
- we must administer the discretion to remit penalties in a way that affects improvements in future compliance by taxpayers and provides certainty for those taxpayers, however, this objective should be achieved without causing unintended or unjust results.

6. Making the remission decision

Tax invoices and adjustment notes are key integrity measures under the goods and services tax (GST) system. They provide an audit trail and allow parties to the transaction to fulfil their obligations.

In making your decision about remission, you need to distinguish between those entities that are making a genuine effort to comply and those entities that make little or no effort to comply.

Consider what steps the entity has taken to satisfy its obligations. The amount of remission should reflect the efforts the entity has made.

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 obligations and their compliance history has been good, but their efforts 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.

Where there is evidence of fraud or evasion or deliberate avoidance, remission will also not be appropriate.

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.

7. Specific considerations relevant to the remission decision

This section of the Practice Statement provides specific situations which you may come across and the considerations relevant to each.

Where we have exercised the discretion to treat a document as a tax invoice

We have the discretion in certain instances to treat a document as a tax invoice, adjustment note or third party adjustment note, even if that document does not otherwise meet the requirements. Guidelines in relation to the exercising of this discretion are set out in Law Administration Practice Statement PS LA 2004/11 *Treating a document as a tax invoice or adjustment note*. However, even if this discretion is exercised, the supplier will still be liable to a penalty. You should apply the guidelines in this Practice Statement to your decision.

Where there are multiple failures to issue required documents

A penalty will be imposed on each occasion that an entity fails to fulfil its obligations. Often though, there is a singular offence which leads to the multiple failures and, in these instances, it may be appropriate to only raise a penalty once. This will not apply though where the entity has a history of disregarding their obligations.

Where there is genuine uncertainty about the need to issue documents

In some cases, the supplier may have failed in their obligations because they genuinely believed that their supply was not a taxable supply. In these instances, you should provide the supplier a reasonable opportunity to comply with their obligations. A reasonable opportunity is usually 28 days from the time they become aware, but this will depend on the circumstances of the case.

If they have still failed in their obligations after this time has elapsed, it will usually be appropriate not to remit the penalty.

8. Recording your decision

Your remission decision must be documented and this should include:

- 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
- the reasons for the remission decision (that is, your consideration of the circumstances relevant to the remission decision)
- any other relevant information.

9. Notifying the entity

If you have not remitted the penalty in full, you are required[11] to give the entity written notice of their liability to pay the penalty and of the reasons why. However, even if the penalty is remitted in full, you should advise the entity of your decision in writing.

In order to encourage future compliance, this notice should outline:

- the opportunity provided for them to comply
- why they are liable to the penalty
- the amount of the penalty imposed by law
- our discretion to remit the penalty
- the factors considered in the remission decision
- the evidence (or other material) relied on in making the remission decision
- the remission decision
- the amount of remission, if any
- the amount of penalty payable, if any, after remission.

The due date for any remaining penalty must be at least 14 days after the notice is given to the entity.[12]

10. Right of review

If the penalty remaining after your decision is more than 2 penalty units, an entity has the right to object against your decision.[13]

11. Examples

Example 1 – treating tax invoices as valid when errors are present

Tom and Jeff operate a GST-registered partnership that manufactures toys. The partnership has been issuing tax invoices since the start of GST to recipients

[11] Section 298-20 of Schedule 1 to the TAA.
[12] Section 298-15 of Schedule 1 to the TAA.
[13] Subsection 298-20(3) of Schedule 1 to the TAA.

who are generally wholesalers registered for GST. Jeff discovered there is a transposition error in the partnership's Australian business number (ABN) on the system which produces the tax invoices and the partnership ABN cannot be clearly ascertained.

The partnership has requested we treat the invoices issued as valid tax invoices. The guidelines contained in 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, we exercise the discretion to treat the invoices as valid tax invoices.

In this situation, section 444-30 of Schedule 1 to the TAA applies 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 we have exercised the discretion to treat these documents as valid tax invoices, the penalty should be remitted in full.

Example 2 – addressing multiple instances of errors when issuing tax invoices

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. She is advised of the decision to remit the penalty in full, the evidence relied on and the reasons to support this decision.

Angela and her agent discuss methods of avoiding issuing separate tax invoices for the same supply. They establish procedures where Angela would issue tax invoices for the supplies she made directly to recipients and no tax invoices would be issued by her 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.

Another occurrence of Angela and the agent issuing tax invoices in relation to the same supply is discovered. She 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.*

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

Example 3 – addressing multiple instances of separate errors

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 for supplies of at least $1,000, 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. She was advised of the decision to remit the penalty which arose including the reasons for this decision.

Elisa revises the system that generates tax invoices in relation to her supplies. This new system is fully compliant in all but one aspect in that the description of the goods supplied is ambiguous. As such, there is 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.

Elisa issues several invoices that use the insufficient description. A review of one of her customers brings this to our attention. Elisa explains the full extent of the actions she had undertaken to revise the tax invoices.

Elisa is liable to a penalty for failure to issue a tax invoice as required. However, she 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. She made a reasonable effort to improve her systems within a short timeframe once becoming aware of the problem.

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Business line: Frontline Compliance

Amendment history

17 October 2024

Part	Comment
Throughout	Content checked for technical accuracy and currency. Updated in line with current ATO style and accessibility requirements.

31 May 2018

Part	Comment
All	Updated to new format for Practice Statements.

12 September 2013

Part	Comment
Paragraph 18	Inserted (As Amended) to first dot point.
Related Rulings/Determinations	Inserted GSTR 2013/2. Deleted GSTR 2000/1. Inserted reference to AN2013/1.
Other references	Inserted: ANTS(GST) Adjustment Note Information Requirements Determination 2012/1 (As Amended) ANTS(GST) Adjustment Note Information Requirements Amendment Determination 2013.
Contact officer details	Updated.

13 June 2013

Part	Comment
Contact details	Updated.

8 December 2012

Part	Comment
Paragraph 18	Insert references to the GST Act.

21 November 2012

Part	Comment
Paragraph 18 and references	Update reference from 'A New Tax System (Goods and Services Tax) Adjustment Note Information Requirements Determination (No.1) 2000' to 'A New Tax System (Goods and Services Tax) Adjustment Note Information Requirements Determination 2012'.
Paragraph 28	Removal of current value of penalty unit.
Related practice statements	Updated.

21 November 2011

Part	Comment
Contact details	Updated.

29 October 2010

Part	Comment
Contact details	Updated.

17 September 2010

Part	Comment
Subject and Purpose headings	Insert reference to 'third party adjustment notes'.
Table of contents	Updated.
Paragraphs 4, 5, 9, 18, 19, 22, 33 to 36, 38 to 41, 52 to 54, 57 and 58	Insert reference to 'third party adjustment notes'.
Paragraph 12	Insert reference to subsection 134-20(2) of the GST Act.
Paragraph 13	Insert reference to 134-20(4) of the GST Act.
Paragraph 16	Insert reference to subsection 134-20(3) of the 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

Part	Comment
Paragraphs 14 and 23	Updates from 7 April 2010 removed.

12 April 2010

Part	Comment
Paragraph 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

Part	Comment
Related public rulings	Reference to MT 2008/D1 replaced with MT 2008/1.

2 September 2008

Part	Comment
Related public rulings	Reference to TR 94/4 replaced with MT 2008/D1.

5 March 2008

Part	Comment
Contact details	Updated.

16 October 2007

Part	Comment
Paragraphs 14 and 21	Increase value of taxable supply to $75.
Paragraph 16	Update reference to GST Regulations.

References

Legislative references	TAA 1953 Sch 1 288-45 TAA 1953 Sch 1 288-50 TAA 1953 Sch 1 298-15 TAA 1953 Sch 1 298-20 TAA 1953 Sch 1 298-20(3) TAA 1953 Sch 1 444-30 ANTS(GST)A 1999 29-70(2) ANTS(GST)A 1999 29-75(2) ANTS(GST)A 1999 29-75(3) ANTS(GST)A 1999 29-80(1) ANTS(GST)A 1999 29-80(2) ANTS(GST)A 1999 Div 19 ANTS(GST)A 1999 Div 134 ANTS(GST)A 1999 134-20(2) ANTS(GST)A 1999 134-20(3) ANTS(GST)A 1999 134-25(4) ANTS(GST)A 1999 134-25(6) ANTS(GST)A 1999 153-15 ANTS(GST)R 2019 29-80.01 ANTS(GST)R 2019 29-80.02
Other references	Compliance model Our Charter
Related Practice Statements	PS LA 2004/11
Related Rulings/Determinations	GSTR 2000/19

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