PS LA 2011/28 - Superannuation guarantee - remission of additional superannuation guarantee charge imposed under subsection 59(1) of the Superannuation Guarantee (Administration) Act 1992

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PS LA 2011/28

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

SUBJECT:	**Superannuation guarantee – remission of additional superannuation guarantee charge imposed under subsection 59(1) of the *Superannuation Guarantee (Administration) Act 1992***
PURPOSE:	**To provide guidelines to tax officers for the remission, in whole or part, of the additional superannuation guarantee charge imposed under subsection 59(1) of the *Superannuation Guarantee (Administration) Act 1992***

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BACKGROUND

1. Part 7 of the *Superannuation Guarantee (Administration) Act 1992* (SGAA) imposes, by way of penalty, an additional superannuation guarantee charge (referred to as the 'Part 7 penalty') where the employer fails to provide when and as required:
   - a superannuation guarantee statement (SG statement) for a quarter, or
   - information relevant to assessing the employer's liability to pay the superannuation guarantee charge (SGC) for a quarter.[1]
2. This penalty commonly applies in two situations:
   - An employer lodges an SG statement for a quarter after the due date.[2]
   - The Commissioner makes a default assessment of the employer's liability for the SGC[3] as:
     - an employer has not lodged an SG statement for a quarter,
     - and the Commissioner is of the opinion that the employer is liable to pay SGC for the quarter.
3. The Part 7 penalty is equal to double the SGC payable for the quarter[4] (subject to remission as discussed in this practice statement).
4. The minimum amount of Part 7 penalty for a quarter is $20.[5]

[1] The SG statement or information may relate to an SGC arising from a failure to provide superannuation support for an employee or a failure to fulfil the choice of fund obligations for an employee in Part 3A of the SGAA.
[2] See subsection 33(1) of the SGAA.
[3] See section 36 of the SGAA and Law Administration Practice Statement PS LA 2007/10 Making default assessments: section 36 of the *Superannuation Guarantee (Administration) Act 1992* for ATO policy regarding default assessments.
[4] See subsection 59(1) of the SGAA.
[5] See subsection 59(3) of the SGAA.

5. Subsection 284-75(3) of Schedule 1 to the *Taxation Administration Act 1953* (TAA) imposes an administrative penalty where the Commissioner determines a tax-related liability[6] without the assistance of a return, notice or other document that is required by a specified time and necessary to determine the tax-related liability (referred to in this practice statement as the 'TAA default assessment administrative penalty').

6. The base penalty amount of the TAA default assessment administrative penalty is 75% of the tax-related liability.[7]

7. Therefore, where the Commissioner makes a default assessment of an employer's liability for the SGC, two different penalties apply.

8. The Commissioner may remit, in full or in part, the Part 7 penalty[8] and may do so as part of the assessment of the penalty (an audit decision) or after the penalty is assessed (an objection decision).

9. The Commissioner may remit, in full or in part, the TAA default assessment administrative penalty,[9] and may do so as part of the assessment of the penalty (an audit decision) or after the penalty is assessed (an objection decision). A tax officer need not give the employer written notice of a decision to fully remit the penalty, and the reasons for the decision.[10] If the TAA default assessment administrative penalty is not fully remitted, the Commissioner must:

   - assess the penalty and notify the employer of the liability for the penalty;[11] and
   - give the employer written notice of the decision to not fully remit the penalty, and the reasons for the decision.[12]

10. Employers have the right to object to an assessment of a Part 7 penalty in the manner set out in Part IVC of the TAA.[13] Although there is no separate right of objection against a decision on the remission of the Part 7 penalty, an objection against a penalty assessment includes a review of the penalty remission decision.

11. Employers have a right to object to an assessment of a TAA default assessment administrative penalty in the manner set out in Part IVC of the TAA.[14] Where the penalty remission decision has been made as part of the penalty assessment, an objection against the penalty assessment will include a review of the penalty remission decision. If the penalty remission decision has been made separately from the penalty assessment, the employer has a right to object against the penalty remission decision if:

   - the Commissioner has refused to remit to any extent the amount of the penalty, and
   - the amount of penalty payable after the refusal to remit exceeds two penalty units.[15]

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[6] The SGC is a tax-related liability as per item 60 of the table in subsection 250-10(2) of Schedule 1 to the TAA.
[7] See item 7 of the table in subsection 284-90(1) of Schedule 1 to the TAA.
[8] See subsection 62(3) of the SGAA.
[9] See subsection 298-20(1) of Schedule 1 to the TAA.
[10] See subsection 298-20(2) of Schedule 1 to the TAA.
[11] See sections 298-10 and 298-30 of Schedule 1 to the TAA.
[12] See subsection 298-20(2) of Schedule 1 to the TAA.
[13] See section 42 of the SGAA.
[14] See subsection 298-30(2) of Schedule 1 to the TAA.
[15] See subsection 298-20(3) of Schedule 1 to the TAA. Section 4AA of the *Crimes Act 1914* defines a penalty unit to mean $110.

12. If the Commissioner amends an SG assessment[16] to reflect an increased liability for the SGC, no Part 7 penalty is imposed on the additional amount of SGC if the original assessment was based on information provided by an employer. In such circumstances the penalty imposed is the TAA administrative penalty for making a false or misleading statement to the Commissioner.[17] If however, the Commissioner amends a default assessment to reflect an increased liability for SGC and the original assessment was not based on information provided by the employer, the relevant penalty imposed on the additional amount of SGC is the Part 7 penalty.[18]

13. If an SGC assessment is amended to reflect a reduced liability for the SGC, any assessment of the Part 7 penalty relating to that assessment must also be amended in proportion to the reduction in the SGC. For example, such amendments occur as a result of:

    - an objection decision, or
    - a decision by a Court or the Administrative Appeals Tribunal.

14. If a prosecution is instituted against an employer for an SG related matter, for example non compliance with a notice issued under paragraph 77(1)(a) of the SGAA, the employer is not liable to pay either the Part 7 penalty or the TAA default assessment administrative penalty (even if the prosecution is later withdrawn).[19]

15. The failure to lodge on time penalty under subsection 286-75(1) of Schedule 1 to the TAA does not apply to the late lodgment or non-lodgment of a return, notice, statement or other document under the SGAA.[20]

STATEMENT

Remission of the Part 7 penalty

16. Tax officers should use this practice statement as a guide in exercising the Commissioner's discretion to remit any part of the Part 7 penalty to ensure that employers are treated appropriately having regard to their circumstances, so that employers in like circumstances (so far as practicable) receive like treatment. Tax officers must obtain information relevant to the penalty remission decision and fully document the relevant evidence and the basis on which the penalty remission decision is made.

17. Any decision concerning the remission of the Part 7 penalty must have regard to the circumstances of the case including the effort made by the employer to comply with the obligation to self-assess the liability for SGC. Tax officers should bear in mind that the purpose of imposing penalties is to ensure employees' superannuation entitlements are protected and to encourage future voluntary compliance and continuing co-operation from employers. It is appropriate to treat genuine attempts to comply differently to situations where an employer does not make an effort to comply. This approach accords with principles of the Taxpayers' Charter and with the Compliance Model.

[16] The Commissioner has the power to amend an SGC assessment under section 37 of the SGAA.
[17] See subsection 284-75(1) of Schedule 1 to the TAA. The administration of this penalty is addressed in Law Administration Practice Statement PS LA 2006/2 Administration of shortfall penalty for false or misleading statement.
[18] The TAA default assessment administrative penalty is also applicable if the assessment was amended without the provision of information from the employer. In these circumstances the remission guidance provided in paragraph 26 of this practice statement also applies to the amended assessment.
[19] See section 8ZE of the TAA.
[20] See subsection 286-75(2) of Schedule 1 to the TAA.

18. A penalty remission decision should be made following the three step process outlined at paragraphs 20 to 25 of this practice statement.

19. In considering an objection against an assessment of the Part 7 penalty, tax officers should also consider relevant facts and circumstances that were applicable, but not known, when the original assessment of the penalty and any remission decision were made.

Step 1

20. Step 1 of the penalty remission process involves determining a basic level of remission having regard to the employer's attempt to comply with their superannuation guarantee (SG) obligations. The following table illustrates the level to which the Part 7 penalty might be remitted based on the employer's attempt to comply.

Degree of attempt to comply	**Level of penalty remission**	**The residual penalty is equivalent to:**
Genuine attempt to comply • An employer lodges an SG statement after the lodgment due date prior to Australian Taxation Office (ATO) compliance action.[21]	100% of the penalty imposed.	Nil of the SGC
Moderate attempt to comply • An employer lodges an SG statement after the lodgment due date in response to ATO compliance action.	87.5% of the penalty imposed.	25% of the SGC
Some attempt to comply • A default assessment is made based on information provided by the employer after the lodgment due date in response to ATO compliance action.	75% of the penalty imposed.	50% of the SGC
No attempt to comply • A default assessment is made where the employer has failed to lodge an SG statement or provide relevant information in response to ATO compliance action.	Nil of the penalty imposed.	200% of the SGC

Step 2

21. Step 2 of the penalty remission process involves determining whether a lower or higher level of remission is appropriate having regard to the employer's compliance history in relation to both:

    - their SG obligations, and

[21] The term 'ATO compliance action' is explained further in paragraph 27 of this practice statement.

- their obligations under other taxation laws.[22]

22. If the employer has:

- a good compliance history, the penalty remission may be increased by between 5% and 15% of the Part 7 penalty, or
- a poor compliance history, the penalty remission may be decreased by between 5% and 15% of the Part 7 penalty.

Step 3

23. Step 3 of the penalty remission process involves considering other relevant facts and circumstances to ensure that the resulting Part 7 penalty assessment is appropriate.

24. If, after considering such other relevant facts and circumstances, a tax officer determines that the resulting Part 7 penalty assessment would not be appropriate, they should consider increasing the level of penalty remission. Paragraph 40 of this practice statement provides a non-exhaustive list of other relevant facts and circumstances, and the amounts by which tax officers may consider increasing the level of penalty remission.

25. If such other relevant facts or circumstances are not present for those employers who have made no attempt to comply with their SG obligations, it may still be appropriate to consider increasing the level of penalty remission to up to 50% of the penalty. This may be appropriate to avoid a Part 7 penalty assessment that would be considered harsh in the particular circumstances.[23] However, such further penalty remission would not usually be appropriate if the employer:

- fully understood their SG obligations, but nevertheless failed to comply
- took steps to prevent or obstruct the ATO from determining its SGC liability, or
- took steps to evade payment of its SGC liability, such as through "phoenix" activities.

Remission of the TAA default assessment administrative penalty

26. Tax officers should consider remitting, in full, an employer's liability to the TAA default assessment administrative penalty. This is regardless of the extent to which the Part 7 penalty is remitted. The Part 7 penalty, being the penalty specifically provided for by the SGAA, is usually the appropriate penalty to apply where an employer fails to comply with their SG obligations.

EXPLANATION

Application of Step 1

ATO compliance action

27. For the purposes of this practice statement, ATO compliance action commences on the date an employer receives an audit notification letter.

[22] Taxation law is defined in subsection 995-1(1) of the *Income Tax Assessment Act 1997* (ITAA 1997) to mean an Act or part of an Act, of which the Commissioner has the general administration, and legislative instruments made under such an Act or part of an Act.

[23] See *Dixon as Trustee for the Dixon Holdsworth Superannuation Fund v. FC of T* [2008] FCAFC 54; 2008 ATC 20-015; 69 ATR 627.

Genuine attempt to comply

28. If the employer lodges an SG statement for a quarter after the lodgment due date, but before ATO compliance action commences, this may indicate that the employer has made a genuine attempt to comply with their SG obligations.

Moderate attempt to comply

29. If the employer lodges an SG statement for a quarter after the lodgment due date in response to ATO compliance action, this may indicate that the employer has made a moderate attempt to comply with their SG obligations.

Some attempt to comply

30. If the Commissioner makes a default assessment for a quarter based on information provided by the employer after the lodgment due date in response to ATO compliance action, this may indicate that the employer has made some attempt to comply with their SG obligations.

No attempt to comply

31. If the Commissioner makes a default assessment for a quarter due to the employer failing to lodge an SG statement or provide relevant information, this may indicate that the employer has made no attempt to comply with their SG obligations.

Application of Step 2

Compliance history

32. An employer's compliance history is based upon their past behaviour, attitudes and actions in complying with their taxation law obligations. This is to be evaluated by objectively considering information in ATO records as well as information supplied by the employer and other parties.

33. For the purposes of this practice statement, an employer's compliance history is considered by reference to the period commencing three years before the commencement of the period subject to ATO compliance action and finishing on the date that ATO compliance action commences. For example, if the period subject to ATO compliance action is the quarters ended 31 December 2008 to 31 March 2011, and ATO compliance action commences on 1 October 2011, the employer's compliance history is the period between 1 October 2005 and 30 September 2011.

34. The four main obligations relevant to complying with taxation laws are registration, lodgment, reporting and payment. Tax officers should analyse the employer's compliance patterns in relation to these obligations.

35. The employer's SG compliance history should be given more weight than its compliance history in respect of its obligations under other taxation laws. This is to ensure that those employers who repeatedly do not comply with their SG obligations receive a Part 7 penalty assessment that:

- is appropriate and encourages them to lodge their SG statements on time and better protect the superannuation entitlements of employees, and

- helps to maintain a level playing field amongst employers by discouraging employers from obtaining an unfair competitive advantage by using unpaid SGC as working capital or otherwise.

36. The evaluation of an employer's SG compliance history should focus on:

- the number of quarters for which the employer has failed to lodge an SG statement by the due date, or for which the Commissioner has made a default assessment, and
- the degree of the employer's attempt to comply with their SG obligations.

37. Whilst a good compliance history is generally one where the obligations of complying with the taxation laws have been met, an employer does not necessarily need to have a flawless compliance history to be considered to have a good compliance history for the purposes of this practice statement. An employer may have a good compliance history even though there are isolated instances of non-compliance in respect of its SG and other taxation law obligations, particularly if there are extenuating facts and circumstances.

38. An employer that does not have a good compliance history does not necessarily have a poor compliance history. The existence of some culpable behaviour may preclude a conclusion that the employer has a good compliance history, but the level of that culpable behaviour may not warrant a conclusion that the employer's compliance history is poor.

39. However, an employer with an established history of non-compliance cannot be considered to have a good compliance history.

Application of Step 3

Other relevant facts and circumstances

40. Other relevant facts and circumstances, and the level of penalty remission that may be appropriate depending on the particular circumstances, include (but are not limited to):

- natural disasters, such as flood, bushfire, earthquake or the like[24] – consider increasing penalty remission to 100%
- individuals being determined, as a result of ATO compliance action, to be engaged under a contract that is wholly or principally for their labour,[25] but the employer has a reasonable argument for not treating the individuals as employees for SG purposes – consider increasing penalty remission to 100%
- the provision of incorrect advice or guidance by the ATO[26] – consider increasing penalty remission to 100%
- ill health of the employer or a key employee of the employer – consider increasing penalty remission to up to 50% (or higher, including to 100%

[24] Please note that under subsection 33(1A) of the SGAA the Commissioner may allow an employer to lodge an SG statement on a later day.

[25] The Commissioner's view on when an individual is considered to be an employee under section 12 of the SGAA is contained in Superannuation Guarantee Ruling SGR 2005/1 Superannuation guarantee: who is an employee?

[26] Law Administration Practice Statement PS LA 2008/3 Provision of advice and guidance by the Tax Office outlines the Commissioner's view on what is considered advice and guidance, and provides differing levels of protection in respect of the tax that would otherwise be payable, tax shortfall penalties and interest charges that may arise as a result of acting upon incorrect advice or guidance provided by the ATO.

depending on the nature of the business and the circumstances and severity of the ill health)

- the employer having provided documented evidence that it has taken steps to mitigate the circumstances that contributed to their non-compliance of their SG obligations – consider increasing penalty remission by between 5% and 10% of the penalty imposed, or
- the employer's non-compliance with their SG obligations occurring in their first year of operation, and their principals having no previous business experience – consider increasing penalty remission by between 5% and 10% of the penalty imposed.

Employer fully understanding their SG obligations

41. When considering the level of penalty remission for an employer that has made no attempt to comply with their SG obligations, there are circumstances that may indicate that the employer fully understood those obligations. Examples include where the employer:

    - has been previously subject to ATO compliance action relating to their SG obligations
    - has previously lodged an SG statement, or
    - is a tax or superannuation practitioner, such as a registered tax agent,[27] who would be expected to have a high level of knowledge of their SG obligations.

Employer taking steps to prevent or obstruct the ATO from determining its SGC liability

42. It is expected that during ATO compliance action, tax officers will receive reasonable co-operation from employers. However, a lack of co-operation alone does not indicate that an employer was actively seeking to prevent or obstruct the Commissioner from determining its SGC liability.[28] An action of a passive nature, such as not responding to an ATO letter, although unhelpful, is not active hindrance.

43. However, an employer will generally be viewed as taking steps to prevent or obstruct the Commissioner from determining its SGC liability, if there is:

    - repeated failure to keep appointments or supply information without an acceptable reason
    - repeated failure to respond adequately to reasonable requests for information (including excessive or repeated delays in responding to requests for information, not replying to requests for information, or supplying information that is either irrelevant or inadequate), or
    - failure to respond to a request for information pursuant to formal information gathering notices.

[27] See subsection 2(1) of the TAA.
[28] See *Ebner & Anor v. FC of T* [2006] AATA 525, and *Ciprian & Ors v. FC of T* [2002] AATA 746.

Examples

Example 1 – Partial remission – First year employer

44. *An employer has an SG shortfall amount for the quarter ended 31 March 2011, and in response to an audit notification letter issued on 14 October 2011 they do not lodge the required SG statement, but provide sufficient information for a default assessment of $3,000 SGC to be made on 1 November 2011.*

45. *Applying Step 1, the tax officer determines that the employer made some attempt to comply with their SG obligations and that the Part 7 penalty of $6,000 should be remitted by 75% ($4,500).*

46. *Applying Step 2, the tax officer notes that this is the first time the employer has not complied with its SG obligations, and that its compliance history in respect of its other taxation law obligations is good despite the employer having paid its Pay As You Go (PAYG) withholding amount for the quarter ended 31 March 2011 ten days after the due date. The tax officer determines that the level of penalty remission should be increased by 10% ($600).*

47. *Applying Step 3, the tax officer notes that the employer has been in operation since 1 December 2010, and determines that because the employer is in its first year of operations it would not be appropriate for the employer to be required to pay the residual 15% ($900) of the penalty. Therefore the tax officer determines that the level of penalty remission should be increased by a further 5% ($300).*

48. *The tax officer remits the Part 7 penalty by 90% ($5,400), leaving a residual 10% ($600) of the penalty to be payable by the employer.*

Example 2 – No remission – Employer fully understanding their SG obligations and obstruction

49. *Default assessments totalling $20,000 have been made on 20 October 2011 for an employer for the quarters ended 30 September 2010 to 30 June 2011. The employer has been subject to two previous audits (relating to the three year period between 1 July 2007 to 30 June 2010), where it was found that no attempt had been made to comply with its SG obligations, resulting in default SGC assessments being issued at the conclusion of each audit.*

50. *Applying Step 1, the tax officer determines that there should be no remission of the total Part 7 penalty of $40,000, as the employer made no attempt to comply with their SG obligations.*

51. *Applying Step 2, the tax officer notes that the employer has yet to lodge its income tax returns for the income years ended 30 June 2007 to 30 June 2010. That, coupled with the employer's poor SG compliance history before and during the period subject to ATO compliance action, indicates to the tax officer that the employer has a poor compliance history. The tax officer determines that no increase to the level of penalty remission is appropriate.*

52. *Applying Step 3, the tax officer considers that, based on the two previous audits, the employer should have fully understood its SG obligations. The tax officer also notes that during ATO compliance action the employer obstructed tax officers by repeatedly refusing to provide information when requested. On that basis, the tax officer determines that it is not appropriate to remit any of the total Part 7 penalty.*

53. *The tax officer does not remit any of the total Part 7 penalty, but the total TAA default assessment administrative penalty of $15,000 is remitted in full.*

Example 3 – Partial remission – Default assessments, no information provided

54. *The same facts as Example 2, except that the employer has not been subject to previous audits of its SG obligations and has no outstanding income tax returns. During the current audit, the employer:*

    - *advised that they have been unable to find the information that has been requested, but*
    - *acknowledged that they have SGC liabilities for the relevant quarters, and*
    - *request that default assessments be made based on the amounts of salary and wages disclosed on the 30 June 2011 income year PAYG Payment Summaries lodged in July 2011.*

55. *Applying Step 1, the tax officer determines that there should be no remission of the total Part 7 penalty of $40,000, as the employer has made no attempt to comply with their SG obligations.*

56. *Applying Step 2, the tax officer notes that the employer has no outstanding lodgments or debts in relation to its other taxation law obligations. However, due to the employer's poor SG compliance history during the period subject to ATO compliance action, the tax officer determines that the employer does not have a good compliance history, and that no increase in the level of penalty remission is appropriate.*

57. *Applying Step 3, the tax officer considers that not remitting any of the penalty imposed would be harsh taking into account that the employer acknowledged that they had SGC liabilities for the relevant quarters, did not take steps to prevent or obstruct the ATO from determining its SGC liabilities and suggested a basis on which to resolve the matter.*

58. *The tax officer remits the total Part 7 penalty by 50% ($20,000), leaving a residual 50% ($20,000) to be payable by the employer. The total TAA default assessment administrative penalty of $15,000 is also remitted in full.*

Example 4 – Full remission – SG statement not lodged on time because of natural disaster

59. *An employer has an SG shortfall amount for the quarter ended 30 June 2011. In October 2011, the employer is selected for an audit of their SG obligations, and in response to the ATO compliance action, the employer lodges the required SG statement with a self-assessed SGC of $3,000 on 3 November 2011. The employer advises the tax officer that the SG statement was not lodged on time because its business premises were badly damaged by floods which occurred on 14 August 2011, 14 days before the SG statement was due to be lodged.*

60. *Applying Step 1, the tax officer determines that the employer made a moderate attempt to comply with their SG obligations, and that the Part 7 penalty of $6,000 should be remitted by 87.5% ($5,250).*

61. *Applying Step 2, the tax officer notes that, in addition to the late lodgment of this SG statement, the employer lodged its SG statement for the quarter ended 31 March 2009 21 days after the due date, and had lodged its business activity statements for the quarters ended 31 March 2009 to 30 September 2009 and paid the relevant amounts only after receiving lodgment reminders from the ATO. The tax officer determines that the employer neither has a good or poor compliance history, and that the level of penalty remission should remain unchanged.*

62. *Applying Step 3, the tax officer determines that the employer's inability to lodge the SG statement for the quarter was due to the damage to its business premises caused by the floods. Further, it may not have been possible in the circumstances for the employer to have made a request to lodge an SG statement on a later date. The tax officer therefore decides that it would not be appropriate for the employer to be required to pay the residual 12.5% ($750) of the penalty.*

63. *The tax officer remits the Part 7 penalty in full.*

Example 5 – Full remission – Employer's genuine belief that they do not have to pay SG contributions for a particular person

64. *Default SGC assessments totalling $25,000 have been made for the quarters ended 31 March 2009 to 30 June 2011 on 20 October 2011 against an employer in respect of an individual determined by the Commissioner to be an employee. The employer, throughout the audit process contends that the individual was a contractor for the relevant quarters and not an employee, and advises they will lodge objections to the default SGC assessments.*

65. *Applying Step 1, the tax officer determines that there should be no remission of the total Part 7 penalty of $50,000, as the employer has made no attempt to comply with their SG obligations.*

66. *Applying Step 2, the tax officer notes that, apart from the periods covered by the default assessments, the employer has complied with its SG and other taxation obligations. The tax officer determines that the employer does not have a poor compliance history, considering that the employer's non-compliance with its SG obligations was based upon their reasonable argument put forward that the individual was not an employee. On that basis, the tax officer determines that the employer has a good compliance history, and that the level of penalty remission should be increased by 15% ($7,500).*

67. *Applying Step 3, the tax officer determines that, but for the employer's reasonable argument that the individual was not an employee, it would have complied with its SG obligations. On that basis, the tax officer determines that it would not be appropriate for the employer to be required to pay the residual 85% ($42,500) of the total penalty.*

68. *The tax officer remits the total Part 7 penalty in full. The total TAA default assessment administrative penalty of $18,750 is also remitted in full.*

Example 6 – Partial remission – Repeated late lodgment of SG statements

69. *An employer has SG shortfall amounts for the quarters ended 30 June 2010 to 31 December 2010, and lodges the required SG statements for each of these quarters with the total self-assessed SGC of $10,000 on 24 March 2011. In October 2011, the employer is selected for ATO compliance action.*

70. *Applying Step 1, the tax officer determines that the employer has made a genuine attempt to comply with their SG obligations, and that for the purposes of Step 1 the total Part 7 penalty of $20,000 should be remitted in full.*

71. *Applying Step 2, the tax officer notes that the employer also lodged late the SG statements for the quarters ended 30 September 2008 to 31 March 2009 without being prompted by the ATO, but it has complied with its other taxation law obligations. The tax officer determines that, because of the employer's repeated late lodgment of its SG statements both before and during the period subject to ATO compliance action, it has a poor compliance history and that the level of penalty remission determined in Step 1 should be decreased by 15% ($3,000).*

72. *Applying Step 3, the tax officer determines that there are no other relevant facts and circumstances, and that it would be appropriate for the employer to pay the residual 15% ($3,000) of the total penalty. Therefore the tax officer determines that the level of penalty remission should not be either increased or decreased.*

73. *The tax officer remits the total Part 7 penalty by 85% ($17,000), leaving a residual 15% ($3,000) penalty payable by the employer.*

Amendment history

Date of amendment	Part	Comment
30 March 2012	Contact details	Updated contact officer and telephone number
19 October 2011	Paragraphs 33, 44, 46, 47, 59 and 69	Some dates used for illustrative purposes have been amended to ensure that they correctly align with the practice statement's date of effect of 15 September 2011.
20 February 2012	Paragraph 12 Paragraphs 2 and 14 Footnotes Example 4	Updated to reflect when an amount of Part 7 penalty may be increased upon an increase in an assessment of the SGC. Minor changes made for readability. Editing changes to some footnotes. Editing changes for readability.

Subject references	Part 7 penalty penalty remission superannuation guarantee charge superannuation guarantee charge assessment superannuation guarantee statement TAA default assessment administrative penalty
Legislative references	Crimes Act 1914 4AA ITAA 1997 995-1(1) SGAA 1992 SGAA 1992 12 SGAA 1992 Part 3A SGAA 1992 33(1) SGAA 1992 33(1A) SGAA 1992 35 SGAA 1992 36 SGAA 1992 37 SGAA 1992 42 SGAA 1992 Part 7 SGAA 1992 59(1) SGAA 1992 59(3) SGAA 1992 62(3) TAA 1953 2(1) TAA 1953 8ZE TAA 1953 Part IVC TAA 1953 Sch 1 250-10(2) TAA 1953 Sch 1 284-75(1) TAA 1953 Sch 1 284-75(3) TAA 1953 Sch 1 284-90(1) TAA 1953 Sch 1 286-75(1) TAA 1953 Sch 1 286-75(2) TAA 1953 Sch 1 298-10 TAA 1953 Sch 1 298-20(1) TAA 1953 Sch 1 298-20(2) TAA 1953 Sch 1 298-20(3) TAA 1953 Sch 1 298-30 TAA 1953 Sch 1 298-30(2) TAA 1953 Sch 1 388-55(1)
Related public rulings	SGR 2005/1
Related practice statements	PS LA 2006/2 PS LA 2007/10 PS LA 2008/3
Case references	*Dixon as Trustee for the Dixon Holdsworth Superannuation Fund v. FC of T* [2008] FCAFC 54; 2008 ATC 20-015; 69 ATR 627 *Ebner & Anor v. FC of T* [2006] AATA 525; (2006) 63 ATR 1073; 2006 ATC 2263 *Ciprian & Ors v. FC of T* [2002] AATA 746; 2002 ATC 2099; (2002) 50 ATR 1257
Other references	
File references	1-2ACKESG

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Other Business Lines consulted	TechNet representatives Charter Review team Law and Practice

Guide to three step Part 7 penalty remission process

