# *PS LA 2014/4 - Administration of the penalty imposed under subsection 284 75(3) of Schedule 1 to the Taxation Administration Act 1953*

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# Practice Statement Law Administration

# PS LA 2014/4

*This law administration 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. ATO personnel, including non ongoing staff and relevant contractors, must comply with this law administration practice statement, unless doing so creates unintended consequences or is considered incorrect. Where this occurs, ATO personnel must follow their business line's escalation process.*

**SUBJECT:** **Administration of the penalty imposed under subsection 284-75(3) of Schedule 1 to the *Taxation Administration Act 1953***

**PURPOSE:** **This practice statement explains:**

- **the circumstances in which an entity becomes liable to a subsection 284-75(3) penalty, and**
- **how the penalty is assessed, including remission**

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## BACKGROUND

1. Part 4-25 of Schedule 1 to the *Taxation Administration Act 1953* (TAA)[1] sets out the uniform administrative penalties regime that applies to entities for failing to satisfy obligations under taxation laws.[2] Uniform penalties will apply where an entity fails to satisfy the same type of obligation under different taxation laws.

2. Subdivision 284-B imposes penalties relating to statements. An entity is liable to an administrative penalty under subsection 284-75(3) (the penalty) where:

   - they fail to lodge a return, notice or other document[3] by the due date for lodgment, and
   - the return, notice or other document is necessary for the Commissioner to accurately determine a tax-related liability[4] of the entity, and
   - the Commissioner determines[5] the tax-related liability without the assistance of that document.

3. The penalty was introduced to provide a measure of fairness. Otherwise, an entity that makes a false or misleading statement, or one that is not reasonably arguable, is subject to a penalty, but an entity that does not make a statement at all would not be subject to a penalty.[6] The base penalty amount (BPA) for this penalty is set at 75%[7] of the relevant tax-related liability, which is the same percentage that is used for intentional disregard of a taxation law for false or misleading statement penalty.

[1] All legislative references in this practice statement refer to Schedule 1 to the TAA unless indicated otherwise.
[2] References to 'taxation law' in Subdivision 284-B specifically exclude Excise Acts (as defined in subsection 995-1(1) of the *Income Tax Assessment Act 1997* ) – see paragraphs 65 and 66.
[3] Unless otherwise stated in this practice statement a return, notice or other document will be referred to generically as a 'document' or 'documents'. Paragraph 13 discusses the class of documents concerned.
[4] Term defined in paragraphs 67 and 68 of this practice statement.
[5] Law Administration Practice Statement PS LA 2007/24 *Making default assessments: section 167 of the Income Tax Assessment Act 1936 and other similar provisions*.
[6] See paragraph 1.49 of the Explanatory Memorandum to the A New Tax System (Tax Administration) Bill (No. 2) 2000.
[7] Subsection 284-90(1) table item 7, which explains how BPA is worked out.

4. The Commissioner must make an assessment of the amount of the administrative penalty.[8] Generally, the assessment of the penalty will occur at the same time as the assessment of the tax-related liability is issued. The penalty decision should be documented at the time the decision is made and recorded on the appropriate case management system.

5. The Commissioner:

   - may remit all or part of the penalty amount calculated[9]
   - must give a written notice to the entity of their liability to the penalty and the reasons why they are liable to pay the penalty, unless the penalty has been remitted in full.[10]

6. An entity that fails to lodge a document will also be liable to a penalty under Subdivision 286-C[11] for failing to lodge in the approved form by a particular day.[12]

7. The following aspects should be considered throughout the application of the administrative penalty process including any process of review under Part IVC or other reviews undertaken:

   - the purpose of the penalty regime, which is to encourage entities to take reasonable care in complying with their tax obligations
   - the principles underpinning the compliance model, including being fair to those entities wanting to do the right thing, and being firm but fair with those choosing to disengage and avoid their taxation obligations
   - the statements and principles in the *Taxpayers' Charter*. This means an entity should be treated as being honest, unless there is information which suggests otherwise
   - the individual circumstances of the case, giving appropriate consideration to the background and experience of the entity in a self-assessment environment
   - penalty decisions must be supported by the available facts and evidence.

## SCOPE

8. This practice statement applies to penalty decisions for failure to provide a document penalty imposed pursuant to subsection 284-75(3), including decisions relating to objections against the assessment of this penalty, made on or after the date of issue.

9. This practice statement provides guidelines on how the Commissioner's discretion in subsection 298-20(1) to remit the penalty may be exercised. There is no intention to lay down conditions that may restrict the exercise of the discretion. Nor does the practice statement represent a general exercise of the Commissioner's discretion. Rather, the guidelines are provided to:

   - help ATO staff in the exercise of the discretion, and
   - ensure that entities in like situations receive like treatment.

[8] Section 298-30.
[9] Section 298-20.
[10] Section 298-10.
[11] Law Administration Practice Statement PS LA 2011/19 *Administration of the penalty for failing to lodge documents in the approved form on time*.
[12] Unless an exception such as section 286-75(1A) applies.

## STATEMENT

### Administration of the subsection 284-75(3) penalty

10. The administration of the penalty involves three steps:

- Step 1. Establish if the entity is liable to the penalty
- Step 2. Assess the penalty
  - (a) determine the tax-related liability concerned
  - (b) calculate the BPA (including determining if the BPA is reduced[13]
  - (c) determine whether the BPA is increased under section 284-220
  - (d) determine the amount of penalty
  - (e) consider whether remission under subsection 298-20 is appropriate, and apply the remission decision
- Step 3. Notify the entity of their liability to pay the penalty amount[14] and the reasons why they are liable to pay the penalty. The Commissioner is not required to give written notice of the decision and the reasons for the decision to the entity where the penalty has been remitted in full.[15]

11. ATO staff must undertake each of these steps in the order in which they appear above. For example, assessment of the penalty cannot take place until the entity's liability to the penalty has been established. Each step is discussed in detail in paragraphs 12 to 60 of this practice statement.

## EXPLANATION

### Step 1: Establish if the entity is liable to the penalty

12. An entity will be liable to the penalty when they:

- fail to give a document to the Commissioner by the day it is required to be given, and
- that document is necessary for the Commissioner to determine a tax-related liability accurately, and
- the Commissioner determines the tax-related liability without the assistance of that document.

[13] Section 284-224 may apply.
[14] Section 298-10.
[15] Section 298-20 and refer to paragraph 48 of this practice statement.

### *Fails to give a document*

13. In the context of subsection 284-75(3), a 'return, notice or other document' is a class of document required by a taxation law to be given to the Commissioner by the entity or their agent in the approved form that is necessary for the Commissioner to accurately determine the entity's tax-related liability. The term 'other document' is not defined in the TAA and takes its ordinary meaning. In the context in which it appears in paragraph 284-75(3)(a), the meaning of the term is limited to documents of the same kind as those specifically mentioned earlier in the paragraph. That is, the term 'other document' refers to documents in the approved form that are required to be lodged and are used by the Commissioner to accurately determine a tax-related liability of the entity. The phrase 'other document' does not extend to documents such as non-lodgment advices,[16] tax invoices, fuel receipts or other business records of the entity.[17] Failing to give a document in the context of subsection 284-75(3) does not include documents required to be furnished or produced under statutory information gathering powers.

14. An entity may be subject to the penalty even if they lodge a document that does not provide for the material information to be given. For example, a sole trader registered for GST hired employees and withheld the correct amount from salaries or wages. The entity did not register for pay as you go withholding (PAYGW) and lodged an activity statement that did not include any PAYGW information as there was no PAYGW section within the form.[18] The entity will not have made a statement relating to their PAYGW even though they have lodged an activity statement. The penalty is applicable for the amounts the entity withheld but failed to report.

15. If the Commissioner has raised an original default assessment, the taxpayer has not subsequently lodged, and further matters affecting the quantum of the assessed tax-related liability are identified, an amended assessment may issue. Subsection 284-75(3) penalty applies to this amendment as the taxpayer has not lodged or made a statement. Subsection 284-75(1) penalty does not apply as there is no shortfall amount or false or misleading statement.

### *By the date it is required to be given*

16. Where a document is required to be lodged, the document is necessary for the Commissioner to accurately[19] determine the tax-related liability. Law Administration Practice Statement PS LA 2011/15 *Lodgment obligations, due dates and deferrals* provides guidelines on:

    - lodgment obligations including special lodgment requirements and lodgment requirements for certain classes of person
    - lodgment due dates and how these are determined, and
    - deferring the lodgment due date.

[16] The lodgment of a 'return not necessary' advice in circumstances where a return is required does not give rise to the imposition of false and misleading statement shortfall penalty. Section 284-75(3) penalty is imposed as the entity has failed to provide the document required by law.
[17] An entity that does not keep or retain records may be liable to an administrative penalty under section 288-25.
[18] The form provided will generally contain a PAYG withholding section only if the entity is registered for PAYG.
[19] Without a lodged return the Commissioner can only estimate a tax-related liability.

## Step 2: Assess the penalty amount

### *Determine a tax-related liability*

17. The determination of a tax-related liability will vary according to the particular legislative context. There will be provisions which do not require an assessment to be made in order to raise a tax-related liability (such as PAYGW), whereas other taxing regimes (such as income tax), will require a formal determination such as an assessment to have been issued. A tax-related liability includes an estimated liability. The phrase 'determines the tax-related liability' in paragraph 284-75(3)(c) is sufficiently broad to include the making of an estimate of a PAYGW liability.[20]

18. Determining a tax-related liability without the assistance of a required document usually occurs after the Commissioner has:

- contacted an entity
- requested lodgment, and
- given the entity a reasonable opportunity to provide the relevant document prior to, and/or at the commencement of a tax examination.[21]

However, the Commissioner may make an assessment or otherwise determine the tax-related liability without having contacted an entity.[22] Where a second examination of an entity that has not lodged for that period results in an increased tax-related liability the entity will be liable to the penalty.[23]

### *Work out the BPA*

19. Where the penalty applies, the BPA is 75% of the tax-related liability.[24]

20. For documents required to be lodged on or after 4 June 2010,[25] the BPA is reduced under section 284-224[26] to the extent the entity, or their agent, treated a taxation law as applying in a particular way and that way agreed with:

- advice given to them or their agent by or on behalf of the Commissioner
- general administrative practice under that law, or
- a statement in a publication approved in writing by the Commissioner.

### *Increase the BPA*

21. If an entity was previously liable to the penalty, the BPA is increased by 20%.[27] The increase does not apply if the entity was previously liable to a different penalty, for example, a penalty under subsection 284-75(1) for making a false or misleading statement.

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[20] The liability to pay an estimate under section 268-20 is separate and distinct from the underlying liability in section 16-70.
[21] See Miscellaneous Taxation Ruling MT 2012/3.
[22] See PS LA 2007/24.
[23] The BPA is increased by 20% under paragraph 284-220(1)(e) in this circumstance.
[24] Subsection 284-90(1) table item 7.
[25] See section 284-215 for documents required to be lodged before 4 June 2010.
[26] Law Administration Practice Statement PS LA 2012/5 *Administration of penalties for making false or misleading statements that result in shortfall amounts*, paragraphs 111 to 117 discuss reduction of BPA under section 284-224.
[27] Paragraph 284-220(1)(e).

22. The term 'previously' in paragraph 21 refers to an earlier liability by the entity to the penalty. This requirement is satisfied:

- whenever a BPA is worked out earlier and whenever there is an earlier liability under subsection 284-75(3), or
- where a BPA is worked out under table item 7 of section 284-90 earlier during a tax examination covering several accounting periods.

23. Where a tax examination is being undertaken for multiple accounting periods, the applicable penalties should usually be calculated in the order of the accounting periods, so that the increase in BPA is applied to the later accounting periods.[28] There is no requirement that the entity was previously notified of the liability to the penalty for the increase to apply.

24. It is not relevant whether the previous liability was for another tax type, was remitted in full or ceased to be payable under section 8ZE of the TAA. If the entity was previously liable to the penalty under subsection 284-75(3) then any BPA for a subsequent liability for the penalty is increased by 20%.

### *Determine the amount of penalty*

25. If the BPA is not increased under section 284-220 the amount of penalty is the BPA. In other cases apply the formula in subsection 284-85(2) to determine the amount of penalty. The reduced form[29] of this formula is:

BPA + [BPA × Increase %]

### *Determine any remission of the penalty*

26. The Commissioner has the discretion to remit all or part of the penalty under subsection 298-20(1). ATO staff must consider the question of remission in each case where a penalty has been imposed based on all of the relevant facts and the particular circumstances of the entity and having regard to the purpose of the provision.

27. Relevant matters for the remission of penalty include that a major objective of the penalty regime is to promote consistent treatment by reference to specified rates of penalty. This objective would be compromised if the penalties imposed at the rates specified in the law were remitted without just cause, arbitrarily or as a matter of course.

28. The discretion to remit penalties, in whole or in part should be approached in a fair and reasonable way. Remission, in full or in part, will generally occur when:

- an entity has a genuine, yet mistaken, belief that lodgment was not required as opposed to an indifference to, or a rejection of, their obligation[30]
- an entity understood their obligation to lodge but circumstances beyond their control affected their ability to lodge[31]
- the amount of penalty imposed by law causes an unjust result[32]

[28] When multiple taxes are assessed, the order in which they are processed may determine which periods attract the increase.
[29] Reductions under section 284-225 for voluntary disclosures do not apply where no document has been lodged.
[30] See paragraphs 29 to 32 of this practice statement.
[31] See paragraphs 33 to 34 of this practice statement.

- there were credits available to offset the amount of the tax-related liability payable,[33] or
- there was extraordinary cooperation during an examination.[34]

### *Understanding of obligation to lodge*

29. In cases where an entity has a mistaken belief that lodgment was not required, remission may be appropriate depending on:
    - an entity's efforts to understand and comply with their obligation to lodge
    - whether there was some complexity surrounding the lodgment obligation, or
    - an entity's particular circumstances.
30. An entity may be considered to have made a genuine effort to understand their obligation to lodge if:
    - the entity did not just assume lodgment was not required, but sought advice[35] or undertook research about their obligation, or
    - the degree of care and investigation was commensurate with the resources available to the entity and similar to the level of care that a reasonable person in a similar situation would take to understand their obligations.
31. Remission in these cases would be appropriate to the extent of the entity's efforts to understand and comply with their lodgment obligation. ATO staff should ensure that they differentiate between entities:
    - with an honest misunderstanding of their lodgment obligation, or
    - where circumstances beyond their control preclude lodgment, and
    - entities that fail to manage, ignore or disregard their lodgment obligation.
32. Remission will generally not be appropriate in the following circumstances:
    - the entity understood, or should have understood, their lodgment obligation, or
    - the ATO has explained to the entity the obligation to lodge, or requested the entity to lodge the document, and after a reasonable time the entity has not lodged.

### *Circumstances beyond entity's control*

33. Remission may be appropriate in circumstances where an entity is unable to lodge because of circumstances beyond their control. Without limiting the Commissioner's discretion in relation to any particular case, this will include, but not be limited to, cases where the taxpayer is unable to lodge because of:
    - a natural disaster, such as a fire or a flood

[32] See paragraphs 35 to 38 of this practice statement.
[33] See paragraphs 39 to 40 of this practice statement.
[34] See paragraphs 41 to 45 of this practice statement.
[35] From the ATO or a tax professional.

- the ill health of the taxpayer or the ill health or death of key personnel, or
- impeded access to records.[36]

34. In determining the extent to which penalty should be remitted in these circumstances, ATO staff should take into account all relevant circumstances, including:
    - what event or events occurred and their impact on the capacity of an entity to prepare and lodge documents
    - whether the event has had a prolonged effect on the entity's capacity to lodge
    - whether the entity could have obtained assistance to lodge
    - the timing of the event
    - the efforts of the entity to prepare the document or assist the Commissioner in accurately assessing the liability.

### *Unjust result*

35. There will be cases where penalties imposed may not provide a just result to the entity. In such cases, the Commissioner may remit the penalty imposed by the law in whole or in part.

36. An unjust result may occur where the culpable behaviour of the taxpayer associated with the failure to provide a document to the Commissioner is disproportionately insignificant to the amount of penalty and charges imposed. The penalty rate of 75% and (90% where section 284-220 increase applies) were set by Parliament and their imposition does not of itself amount to an unjust outcome.

37. An entity liable to the penalty may also be liable to a penalty under section 286-75 (penalty for failing to lodge documents on time). The remission treatment of the penalties will differ according to the penalties that apply and the action or actions that lead to each penalty.[37]

38. An unjust result does not arise simply because both penalties apply. The penalties apply for different purposes and the actions of the taxpayer that lead to the penalties can differ significantly. However, the total amount of penalty and interest charge should be considered to ensure it represents a defendable and reasonable amount, having regard to the circumstances.[38]

### *Credits available to offset the amount of the tax-related liability payable*

39. For income tax, certain credits relating to an accounting period do not form part of the calculation of the tax-related liability for the period. They are particulars of the statement of account between the taxpayer and the Commissioner and are not components of the tax-related liability under the assessment.[39] They include credits such as PAYGW instalment credits and withholding amounts and Tax File Number withholding amounts.

[36] Access to records may also include access to technology.
[37] See PS LA 2011/19 for further guidance on remitting failure to lodge penalty.
[38] *FC of T v. Traviati* [2012] FCA 546; 2012 ATC 20-321 per Middleton J at paragraph 92-104.
[39] *Commissioner of Taxation v. Ryan* (1998) 82 FCR 345; 98 ATC 4323 per Merkel J at ATC 4339.

40. Remission is appropriate where these credits[40] are available for the accounting period, that when applied, reduce the payable amount of the tax-related liability determined. The penalty is remitted to 75% (90% where section 284-220 increase applies) of the amount of the tax-related liability that remains payable after those credits are applied.

### *Cooperation during an examination*

41. The Commissioner expects that ATO staff will typically receive reasonable cooperation from entities and their representatives, and such cooperation, including the provision of information and answering questions, will not automatically result in a remission of penalties.

42. However, an entity which provides a level of cooperation that exceeds reasonable cooperation during an examination may be given remission. For example, by providing information or records that the Commissioner has not requested and which were outside the scope of the audit, that assist in the accurate determination of an increased tax related liability, an entity may receive up to an 80% remission of the BPA involved. This aligns with making a voluntary disclosure that alerts the Commissioner to issues outside the scope of an audit in shortfall penalty cases.

43. Remission may also be appropriate where the entity provides the Commissioner with information which allows the Commissioner to determine the tax-related liability or part of the liability. Remission of up to 20% (or 15 percentage points) may be appropriate depending on the timeliness of the information and whether the information was new to the Commissioner.

44. Remission for cooperation should generally not be considered where the taxpayer knowingly failed to lodge the required documents.

45. The provision of information requested during an examination and not supplied should not result in remission of penalty because the entity supplies it at objection. As the Commissioner generally gives the entity an opportunity to lodge the required documents before imposing the penalty, and the entity would have had the opportunity to cooperate in the accurate determination of the tax-related liability, this remission should be given for cooperation at examination and not at objection, unless the entity was unaware of the examination.

## Step 3: Notify the entity of their liability

46. The Commissioner must make an assessment of the amount of an administrative penalty under Division 284.[41] The Commissioner must also give a written notice to the entity of their liability to the penalty and the reasons why they are liable to pay the penalty, unless the penalty has been remitted in full.[42]

[40] This principle does not apply to refunds or credits used to offset other tax-related liabilities as explained in Law Administration Practice Statement PS LA 2011/21 *Offsetting of refunds and credits against taxation and other debts*.
[41] Subsection 298-30(1).
[42] Section 298-10 and subsection 298-20(2).

47. These written notices must set out the findings on material questions of fact and refer to the evidence or other material on which those findings were based. The law does not specify when the explanation must be supplied. ATO staff should ensure the reasons are supplied prior to, at the same time as, or as soon as possible after, the entity has been notified of the assessment of the penalty.

48. If the penalty has been remitted in full, the law does not require the Commissioner to give reasons for the decision. However, where these situations do occur, it is expected the entity will be given a summary of the reasons for the decision. The only exception is where there is some operational requirement making it impractical.[43]

49. Complete reasons[44] for the penalty decisions must be recorded on the appropriate ATO systems.

## Objection rights

50. An entity that is dissatisfied with an assessment of penalty may[45] object against it in the manner set out in Part IVC of the TAA.[46] The grounds of the objection may include any or all elements of the penalty assessment.

51. In the usual situation where a remission decision is made as part of an assessment of penalty, the affected entity that is dissatisfied with the assessment will include in their objection any grounds about their dissatisfaction with the remission. If a penalty has been remitted in full there is no right of objection as the entity cannot then be dissatisfied with the decision.

52. If a remission decision is made after an assessment of the penalty, the entity may object to the separate remission decision in the manner set out in Part IVC of the TAA if the amount remaining after remission is more than two penalty units.[47]

53. If the taxpayer objects to the primary tax-related liability and the outcome of the objection results in a reduction of that amount, the amount of the penalty is proportionally reduced. This is a recalculation and not a remission decision. Therefore, no objection rights attach to the recalculation. This is not a new penalty and the due date for payment of the penalty remains the same as set out in the original notice of assessment of penalty.

54. If an entity lodges a document after the Commissioner has raised assessments for (or otherwise determined) the tax-related liability, the penalty should be adjusted to the extent the Commissioner reduces the tax-related liability in line with that document.

## Prosecution

55. Where entities fail to comply with their lodgement obligation the Commissioner can seek to have the offence prosecuted.

[43] This includes high volume compliance activities.
[44] Section 25D of the *Acts Interpretation Act 1901* sets out rules about the contents of a statement of reasons.
[45] Subject to the requirement in paragraph 51.
[46] Subsection 298-30(2).
[47] Subsection 298-20(3) for penalty units – see section 4AA of the *Crimes Act 1914*.

56. Where prosecution action is instituted, the entity is not liable to pay a civil or administrative penalty for the same offence.[48] This is so even if the prosecution is later withdrawn.

## Examples

57. The following examples are illustrative and not exhaustive. They have been simplified to show various aspects of the administration of the penalty and exercise of the Commissioner's discretion to remit. The examples are not intended to prescribe the level of information required to properly determine whether or not the discretion should be exercised, nor the only reasonable remission outcome. In practice, a higher level of detail about the facts and circumstances of the particular case would need to be obtained and considered to reach a conclusion on whether it is appropriate for the Commissioner to exercise his discretion to remit.

### *Example 1 – Illness*

58. Glenn has not lodged income tax returns for three years.

When contacted, Glenn says he suffers from a medical condition and has been unable to attend to his tax affairs due to poor health. He is given reasonable time to attend to his affairs and is contacted on a number of occasions. However, he still does not comply with the request to lodge.

ATO staff decide to raise default assessments based on employer records. These records show Glenn held full-time employment with this employer for the past three years with minimal absence from work and had PAYGW amounts withheld from payments made to him.

In these circumstances, Glenn is liable to the penalty. The penalty is partially remitted to offset the PAYGW credits.

Although Glenn's illness may have affected his health, he was able to maintain full-time employment. There is no indication he could not also lodge his tax return. Additionally, since he could have sought assistance with his lodgment obligations, for example from a registered agent, and he has not made any effort to attend to his obligations, no further remission is warranted.

### *Example 2 – Unaware of lodgment obligation*

59. Helen is a beneficiary of a discretionary trust and did not lodge an income tax return because she believed her ordinary income was not enough to require lodgment. She was unaware that the trustee of the trust had exercised their discretion to appoint some of the income to her for the relevant income year. Helen's compliance history is good.

During an examination of Helen's taxation affairs, she explains she did not have the information relating to the trust distribution necessary to accurately report her income. She attempted to contact the trustee to obtain the information but was unsuccessful. Helen provides ATO staff with details of all her known income and asks the Commissioner to determine her taxable income.

[48] Section 8ZE of the TAA.

In these circumstances, Helen is liable to the penalty. However, ATO staff consider that either a significant portion of the penalty should be remitted or the penalty remitted in full.[49] In this case Helen:

- was unaware of her obligation to lodge
- had a genuine belief that lodgment was not required
- attempted to obtain information in order to lodge, and
- cooperated fully during the examination.

***Example 3 – Disregard reminders to lodge***

60. Richard, an individual, has lodged activity statements reporting sales for the financial year and has been reporting and paying GST quarterly.

Richard did not lodge an income tax return for the entity generating sales for the relevant year before the due date for lodgment. The ATO reminded him by multiple written requests of the obligation to lodge an income tax return. No return was lodged despite the reminders.

The ATO gave Richard notice of our intention to undertake a tax examination which would result in the raising of a default assessment if the return was not lodged within a specified period of time. The ATO provided him with a position paper containing details of the facts and evidence which would be used to make the assessment.

Richard did not respond to the position paper or lodge the return within the specified period of time or cooperate during the tax examination. The ATO issued a default assessment and imposed the penalty.

ATO staff managing the case decided that no remission was appropriate as:

- there were no related credits available
- lodgment of the return was not beyond the control of the taxpayer
- the taxpayer was reminded several times about the obligation to lodge, and
- the taxpayer did not cooperate during the tax examination.

## DEFINITIONS

### Accounting period

61. Accounting period is the period for which the tax-related liability or credit is calculated. The period is not necessarily a financial year and may differ according to the type of tax involved.

### Base penalty amount

62. In the context of Division 284, subsection 995-1(1) of the *Income Tax Assessment Act 1997* (ITAA 1997) states that the BPA for calculating the amount of an administrative penalty is worked out under section 284-90.

63. The BPA is the starting point for the calculation of an administrative penalty.

[49] The amount of penalty remission would depend on the consideration of a more comprehensive set of facts than was presented in the example.

### Entity

64. Entity has the meaning given by section 960-100 of the ITAA 1997 as:

(a) an individual

(b) a body corporate

(c) a body politic

(d) a partnership

(e) any other unincorporated association or body of persons

(f) a trust

(g) a superannuation fund

(h) an approved deposit fund

### Taxation law

65. Taxation law is defined in subsection 2(1) of the TAA as having the meaning given by the ITAA 1997. Subsection 995-1(1) of the ITAA 1997 relevantly defines 'taxation law' as an Act of which the Commissioner has the general administration and any legislative instruments made under such an Act. It also includes part of an Act (and associated legislative instruments) to the extent that the Commissioner has the general administration of the Act.

66. References to 'taxation law' in Subdivision 284-B specifically exclude Excise Acts (as defined in subsection 995-1(1) of the ITAA 1997).

### Tax-related liability

67. Tax-related liability is defined in subsection 995-1(1) of the ITAA 1997 as having the meaning given by section 255-1.

68. Section 255-1 provides that a tax-related liability is a pecuniary liability to the Commonwealth arising directly under a taxation law (including a liability the amount of which is not yet due and payable).

### Amendment history

| Date of amendment | Part | Comment |
|---|---|---|
| 6 May 2020 | Other references | Updated Chief Executive Instruction (CEI) title. |

| | |
|---|---|
| Subject references | penalties<br>remission of penalties |
| Legislative references | TAA 1953 2(1)<br>TAA 1953 8ZE<br>TAA 1953 Pt IVC<br>TAA 1953 Sch 1 16-70<br>TAA 1953 Sch 1 255-1<br>TAA 1953 Sch 1 268-20<br>TAA 1953 Sch 1 Pt 4-25<br>TAA 1953 Sch 1 Div 284<br>TAA 1953 Sch 1 Subdiv 284-B<br>TAA 1953 Sch 1 284-75(1)<br>TAA 1953 Sch 1 284-75(3)<br>TAA 1953 Sch 1 284-75(3)(a)<br>TAA 1953 Sch 1 284-75(3)(c)<br>TAA 1953 Sch 1 284-85(2)<br>TAA 1953 Sch 1 284-90<br>TAA 1953 Sch 1 284-90(1)<br>TAA 1953 Sch 1 284-215<br>TAA 1953 Sch 1 284-220<br>TAA 1953 Sch 1 284-220(1)(e)<br>TAA 1953 Sch 1 284-224<br>TAA 1953 Sch 1 284-225<br>TAA 1953 Sch 1 Subdiv 286-C<br>TAA 1953 Sch 1 286-75<br>TAA 1953 Sch 1 286-75 1(A)<br>TAA 1953 Sch 1 288-25<br>TAA 1953 Sch 1 298-10<br>TAA 1953 Sch 1 298-20<br>TAA 1953 Sch 1 298-20(1)<br>TAA 1953 Sch 1 298-20(2)<br>TAA 1953 Sch 1 298-20(3)<br>TAA 1953 Sch 1 298-30<br>TAA 1953 Sch 1 298-30(1)<br>TAA 1953 Sch 1 298-30(2)<br>ITAA 1936 167<br>ITAA 1997 960-100<br>ITAA 1997 995-1(1)<br>Excise Act 1901<br>Acts Interpretation Act 1901 25D<br>Crimes Act 1914 4AA |
| Related public rulings | Miscellaneous Taxation Ruling MT 2012/3 |
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| File references | 1-4LPRW8K |
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