


SST 19 - Sales tax: remission of penalty and general interest charge

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Sales Tax Ruling

Sales tax: remission of penalty and general interest charge

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Preamble

This document is a ‘public ruling’ for the purposes of section 77 of the *Sales Tax Assessment Act 1992* and may be relied upon by any person to whom it applies.

What this Ruling is about

1. Sales taxpayers have a number of obligations under the sales tax law. Failure to meet those obligations may result in prosecution (in some cases) or the imposition of a penalty or a charge. This Ruling explains the circumstances under which a person may become liable for penalties or the general interest charge (GIC).
2. The principles in this Ruling apply to all taxpayers, whether lodging quarterly or monthly.
3. Penalties or charges are imposed under various sections of the *Sales Tax Assessment Act 1992* (STAA) or the *Taxation Administration Act 1953* (TAA), at rates set out in the relevant sections, for reasons such as:
 - paying tax or other liabilities late;
 - failing to notify the Commissioner of liabilities not paid by the due date;
 - failing to provide information at the required time; and
 - making false statements.
4. Penalties also apply if the Commissioner uses the general anti-avoidance provisions to cancel a tax benefit.
5. The provisions dealing with penalties and charges recognise that there will be circumstances where it is fair for the penalty or charge to be reduced from the amount specified in the provision imposing it. As a result, the Commissioner is given the power to reduce (or remit) the penalty or charge imposed.
6. This Ruling also deals with the exercise of the power to remit penalties and charges and provides guidance on the factors that are taken into account. Each case is considered on its own facts and circumstances.

7. A given set of circumstances may result in a penalty or charge becoming payable under more than one section of the law. For example, if a person makes a false statement and later, when that statement is discovered to be false, further tax is recovered, a penalty may be imposed under section 97 of the STAA (in respect of the false statement) and a charge imposed under subsection 68(1) of the STAA (for unpaid tax). However, for the purposes of this Ruling, exposure to penalties and charges and factors affecting remission are considered in distinct categories and commented upon separately.

8. In this Ruling, the words *taxpayer* and *person* refer to and include individuals, companies, partnerships, bodies politic and trusts. Circumstances warranting remission for an individual will apply to companies, partnerships, bodies politic and trusts, if it can be said that those circumstances apply to the respective directors and officials, partners, office holders or trustees.

9. Penalty and charge calculations are generally based upon net tax payable after deducting credit entitlements (such as discounts allowed, bad debts, and returns inwards) which relate to the period in question. Where credits are identified later, these may reduce the penalties or charges previously imposed.

Changes to the penalty regimes from 1 July 1999

10. The sales tax law was amended from 1 July 1999 to replace the late payment and late return penalty arrangements with a GIC on outstanding amounts of tax and a failure to notify (FTN) penalty. The GIC also applies in place of late payment penalties in various other Acts administered by the Commissioner of Taxation.

11. The GIC¹ enables:

- the imposition of a charge based on a common single rate of interest for all types of tax where a correct payment is not received by the due date;
- the abolition of complex and punitive culpability elements that apply to late payments of some taxes; and
- simpler tax accounting and collection arrangements that allow the Australian Taxation Office (ATO) to better help taxpayers to minimise any escalation of amounts outstanding.

¹ For more information about the general interest charge, see paragraphs 16 to 31 of this Ruling.

Running balance accounts

12. From 1 July 1999, Part IIB of the TAA created a new system of running balance style accounts that can account for and administer sales tax debts and debts arising from other taxes administered by the Commissioner. The system enables a taxpayer's sales tax debts to be added together into one outstanding balance. The GIC is calculated on the running balance account deficit debt².

Failure to notify penalty

13. The TAA was amended with effect from 1 July 1999 to insert Division 2 as part of the new Part IIA. This Division provides for the working out of a FTN penalty that is imposed under the STAA on sales taxpayers who fail to notify the Commissioner when an amount of tax or other liability is due. The FTN penalty is designed to encourage taxpayers to notify the Commissioner when they are having difficulty in meeting their tax liabilities.

Administrative overpayments³

14. From 1 July 1999, section 8AAZN of the TAA provides for the collection and recovery by the Commissioner of administrative overpayments made under the taxation laws. Where the Commissioner has given notice to a taxpayer in respect of an administrative overpayment, specifying a due date for payment of at least 30 days after the notice is given, the taxpayer is liable to pay the GIC on any of the overpaid amount that remains unpaid after the due date.

Date of effect

15. This Ruling applies to any exercise of a discretion, made after 24 May 2000, the date of issue of this Ruling, to remit penalties or charges imposed under the sales tax law.

² The running balance account 'deficit debt' means a balance in the account in favour of the Commissioner as represented by tax debts which remain unpaid.

³ 'Administrative overpayments' are amounts that the Commissioner has paid by mistake, being amounts to which the person is not entitled – for example, incorrect refunds of sales tax.

Ruling

General interest charge for unpaid tax

16. Subsection 68(1) of the STAA imposes the GIC on tax that is payable, but remains unpaid, after the due date. It is worked out daily on a compounding basis. In this context the tax payable includes:

- the tax shown as payable on a sales tax return;
- any further tax that should have been shown on a return;
- penalties imposed under sections, 95A, 96, 97 and 98 of the STAA (note that the due date in the case of these penalties will be the date shown on the notice of assessment); and
- any credit claim for which there was no entitlement.

17. The GIC applies where tax is underpaid (for example, because the tax payable shown on a return is lower than that actually payable) or delayed (for example, by liabilities being accounted for in a month later than they occurred). Penalties for false statements (see paragraphs 51 to 72) may also apply in these cases.

Calculation of the general interest charge

18. Subsection 68(1) of the STAA provides that a person is liable for the GIC on an unpaid amount for each day in the period that:

- (a) started at the beginning of the day by which tax was due to be paid; and
- (b) finishes at the end of the day on which all outstanding amounts of tax and/or GIC are paid.

19. In the usual case, tax will be due 21 days after the close of the period (either a month or quarter as the case may be) in which the transaction giving rise to the liability occurred. The GIC is calculated on that part of the running balance account that remains unpaid at the end of the period. The GIC calculation is based on the actual tax unpaid and, therefore, if a taxpayer pays part of the tax by the due date, the GIC is calculated on the balance.

20. The GIC is calculated daily on a compounding basis. The nominal annual interest rate, from which the daily effective rate is calculated, is set at the weighted average yield for the 13 week Treasury Note yield rate⁴ plus 8 percentage points. The daily effective

⁴ This amount is published in the *Commonwealth Government Gazette* every three

rate will be adjusted each quarter to reflect movements in the 13 week Treasury Note yield. The GIC for a day is worked out by dividing the nominal annual interest rate by the number of days in the calendar year.

21. Sections 91ZB and 91ZC of the STAA also impose the GIC on amounts that are either not deducted from payments, or are deducted but not paid to the Commissioner, in relation to goods covered under Part 7A of the STAA.⁵

Remission of general interest charge

22. Section 8AAG of the TAA provides that the Commissioner may remit all or part of the GIC payable. However, if a person is liable to pay the GIC because an amount remains unpaid after the time it is due to be paid, the Commissioner may only remit all or part of the GIC if the Commissioner is satisfied that:

- (i) the circumstances that contributed to the delay in payment of the debt were not due to, or caused directly or indirectly by, an act or omission of the person; **and** the person has taken reasonable action to mitigate, or mitigate the effects of, those circumstances; or
- (ii) the circumstances that contributed to the delay in payment of the debt were due to, or caused directly or indirectly by, an act or omission of the person; **and** the person has taken reasonable action to mitigate, or mitigate the effects of, those circumstances; **and** having regard to the nature of those circumstances, it would be fair and reasonable to remit the GIC or part of the GIC; or
- (iii) there are special circumstances by reason of which it would be fair and reasonable to remit the GIC or part of the GIC.

23. Any request for remission of the GIC is considered having regard to the taxpayer's individual circumstances.

24. The first two tests for remission (see subparagraphs 22(i) and 22(ii) above) indicate that it is necessary for the taxpayer to have taken reasonable steps to correct the circumstances that led to the late payment of sales tax and that it is unlikely that such offences will happen again. Where a taxpayer has not taken such steps, there is no basis for remission of the GIC unless the test in subparagraph 22(iii) above applies.

months.

⁵ Part 7A of the STAA contains requirements for dealing with certain computer goods.

25. Factors that may help in determining whether to remit GIC under the first two tests include:

- whether the offence was caused by factors beyond the control of the taxpayer, e.g., industrial action of employees, the unforeseen collapse of a major debtor or the sudden ill-health of key personnel in small business situations;
- the period over which the failures to remit continued;
- whether the taxpayer has taken action to ensure that the circumstances that contributed to the late payment are unlikely to happen again;
- the speed with which the taxpayer identified and corrected the breach(es); and
- whether the remission would represent consistent application of this Ruling.

26. Where 'special circumstances' remission is sought, circumstances such as flood, fire, or other natural disaster or serious ill health are considered. The circumstances relied on must have prevented the taxpayer from making payments. The circumstances (for example, a fire that destroys the taxpayer's business records necessitating some reconstruction of records to determine the exact amount required to be paid) are not viewed in isolation, but in the light of their effect on the taxpayer's capacity to make the payment.

27. The GIC is commercially based and tax deductible. It is not intended as a punitive measure. One of the tests outlined in paragraph 22 must be satisfied to enable the GIC to be remitted.

28. A decision on the request for remission is based on information provided by the taxpayer as part of the request and from any other information available to the Commissioner, including information on any other debt types owed and other amounts paid after the due date. The Commissioner will not remit any GIC if there is insufficient relevant information.

29. In any case where a person believes that they have grounds for remission of the GIC they should write to the ATO setting out the reasons why the charge should be reduced.

General interest charge under Part 7A

30. The GIC is also imposed on several amounts required to be paid to the Commissioner under Division 4 of Part 7A of the STAA. Subsection 91ZB(1) imposes a penalty on an accredited person or on a retailer who fails to deduct the required sales tax under section 91X from payments made when purchasing Part 7A goods from an

unaccredited person. Subsection 91ZB(3) then imposes the GIC on the unpaid amount of the penalty payable under subsection 91ZB(1). Section 91ZC also imposes the GIC on the unpaid part of amounts required to be paid to the Commissioner under subsection 91Z(1).

Remission under sections 91ZB and 91ZC

31. While the Commissioner may remit the GIC payable under subsection 91ZB(3) and section 91ZC of the STAA,⁶ there is no remission power for the penalty payable under subsection 91ZB(1) for failing to deduct the required amount of sales tax. This penalty is equal to the amount of tax that should have been deducted under this section.

Penalty for failure to notify the Commissioner of an amount of sales tax payable or to provide information

32. From 1 July 1999, the sales tax law includes a penalty for failing to notify the Commissioner in a return, on or before the due date for lodging the return, of the amount of tax payable on an assessable dealing with goods. Where a FTN penalty has been incurred for failing to notify the Commissioner in a return of an obligation to pay a sales tax amount, a notice is sent to the taxpayer specifying a due date for payment of the penalty. The due date must be at least 30 days after the notice is given.

33. The FTN penalty imposed under section 95A of the STAA is worked out under subsection 8AAK(2) of the TAA as 8% per annum of the amount of tax payable. Where there is both a FTN penalty and unpaid tax, the penalty under section 95A will apply in addition to the GIC under section 68(1). If any amount of the FTN penalty remains unpaid after the due date for payment of the FTN, the GIC is payable on the unpaid amount.

34. The FTN penalty also applies under section 91Z(2A) of the STAA to an accredited person or to a retailer who fails to send to the Commissioner a form notifying him of the correct amounts of tax due to be paid on Part 7A goods under subsection 91Z(1).

⁶ Section 91ZB imposes a penalty where an accredited person or a retailer fails to deduct the required sales tax from payments made when purchasing goods from an unaccredited person.

Remission of the FTN penalty

35. Section 8AAM of the TAA enables the Commissioner to remit all or part of the FTN penalty if he is satisfied that the circumstances that contributed to the failure to notify were not due to, or caused directly or indirectly by, an act or omission of the taxpayer and the taxpayer has taken reasonable action to mitigate, or mitigate the effects of, those circumstances.

36. A decision to remit the penalty will be based upon information provided by the taxpayer as part of the request for remission and any other information available to the Commissioner. The Commissioner will not remit any FTN penalty if there is insufficient relevant information to make a decision.

37. The FTN penalty is designed to encourage taxpayers to notify the Commissioner if they are having difficulties meeting their tax liabilities. The Commissioner considers that it would only be in rare circumstances that failure to notify the ATO of a relevant liability was not caused by an act or omission of the taxpayer. The FTN penalty may be remitted in limited circumstances, such as natural disasters where records are destroyed, or sudden ill-health of key personnel in small business that may prevent the taxpayer from notifying the Commissioner of a liability.

38. The Commissioner will also consider the taxpayer's efforts to mitigate all the circumstances that led to the failure or delay in notifying. In doing so the Commissioner takes into account the means by which the taxpayer was able to notify him. The taxpayer would be expected to have taken all reasonable action possible to promptly lessen the severity of the circumstances that affected the taxpayer's ability to notify the Commissioner of the outstanding liabilities.

39. Each request for remission of the FTN penalty is considered on its merits and a decision made in light of particular circumstances.

Special basis for remission - tax paid

40. Where a taxpayer has failed to lodge a return by the due date, but has, before that time, either:

- made the payment relating to that return; or
- made an alternative arrangement for payment with the ATO, penalty under section 95A will be remitted in full.

Penalty for failure to provide other information

41. Section 96 of the STAA imposes a penalty equal to double the tax payable on any assessable dealing with goods where a person fails

to provide information (other than that covered by section 95A) as required. Where a penalty under section 96 applies, the taxpayer is also liable for the GIC under subsection 68(1) for each day the penalty remains unpaid.

42. The sales tax law provides the same maximum penalty for a simple failure to supply information on time as for repeated failures to provide information as required. In practice, the degree of fault in the act giving rise to the penalty imposition is reflected in the amount of penalty remission. The following paragraphs set out the typical remission that may be expected in the usual cases and explain factors warranting a departure from that standard (further decreasing or increasing the penalty).

Remission of penalty in typical cases

43. Section 100 of the STAA contains the power to remit any or all of the penalty imposed under section 96. A taxpayer who fails to provide information after being directed to do so by the Commissioner will be subject to a greater penalty than a person who simply fails to meet the requirements set out in the law.

Isolated failures to provide information

44. Persons who have simply failed, on an isolated occasion, to provide information when required under the law will ordinarily have the penalty reduced to an amount equal to 2% of the tax payable, unless there are factors that warrant a decrease in that figure (as set out in paragraphs 47 to 50).

Repeated failures to provide information

45. Persons who have repeatedly failed to comply with a direction to provide information, will ordinarily have the penalty reduced to an amount equal to 10% of the tax payable, unless there are factors that warrant an increase in that figure, such as:

- cooperation has not been reasonable and, as a result, there have been undue or excessive delays in the completion of official enquiries; or
- deliberate steps have been taken to conceal the information (for example, the falsification of records).

46. Each factor may warrant an increase of 50% in the penalty ordinarily imposed.

Mitigating factors

47. The typical rates of penalty set out in the previous paragraphs may be remitted further where mitigating factors are known to be present, or on the application by a taxpayer setting out those mitigating factors. The variation for mitigating factors will ordinarily be 50% of the penalty otherwise imposed.

48. A decrease from the suggested rates of penalty would be warranted where there are factors affecting the taxpayer's ability to comply with their normal obligations or a particular direction (as the case may be), such as:

- the taxpayer has genuine comprehension difficulties; or
- at the time the direction required action, the taxpayer or some immediate family member was suffering from serious illness or other similar problems.

49. Other factors that might be considered in justifying a decrease in the penalty include:

- any action taken by the taxpayer to minimise the delay or its effects; or
- the information was subsequently lodged voluntarily (note that this will not be considered a mitigating factor where a person has already been directed to provide a return or information under subsections 61(3) or 108(1)).

50. Where the delay in lodgment is a result of neglect, inadvertence or carelessness by the taxpayer, a decrease from the typical figure will not generally be warranted.

Penalty for false statements

51. If an amount of tax, that is lower than that properly payable, is paid because a person has made a false statement, then section 97 of the STAA imposes a penalty equal to double the extra tax payable. The penalty is payable where a person makes a false statement:

- to a taxation officer; or
- to someone else (say, a supplier or a lessor), for a purpose in connection with a sales tax law.

52. A false statement means a statement⁷ (whether made orally or in writing) that:

⁷ Other than a statement made in a document produced under paragraph 108(1)(c) of the STAA: see subsection 97(3).

- is false or misleading in a material particular; or
- omits any matter or thing without which the statement is false or misleading in a material particular.

53. Common examples of false statements include:

- the understatement of sales tax payable in a return;
- the overstatement of credit claims; or
- incorrectly quoting a registration number or exemption declaration.

54. A duty of care rests with taxpayers to ensure that their statements and disclosures are truthful and complete. If a taxpayer is unsure about the tax treatment of an item, taking care would involve the taxpayer making reasonable enquiries to resolve the issue. In the case of marginal or contentious issues, a taxpayer should make a full and accurate disclosure to the ATO, rather than risk a penalty under section 97.

Remission of penalty

55. Under section 100 of the STAA, the Commissioner may remit any or all of the penalty imposed under section 97. An intention to deceive need not be present for penalty to apply under section 97; a statement that is false is still subject to penalty, although it may have been made honestly. However, while an intention to deceive is not a factor in the application of penalty, matters such as intent, knowledge and honesty are taken into account in considering penalty remission.

56. Taxpayers who have deliberately made false statements in an attempt to avoid a known liability are treated less favourably than taxpayers who have made false statements honestly. The degree of remission therefore relates to the culpability (or blameworthiness) of the taxpayer.

57. The factors to be considered when determining the extent of a taxpayer's culpability are listed below. The descriptions are given labels for ease of reference:

Deliberate statement

- the taxpayer's statement was deliberately made without belief in its truth or was intended to mislead in the face of a known liability or obligation.
-

Reckless statement

- the taxpayer's statement, although neither known to be untrue nor dishonestly made, was made recklessly or rashly without any real basis in fact or regard to the consequences.

Careless statement

- the taxpayer's statement was careless, meaning that it was made as a result of negligence or thoughtlessness, producing a result which a person with the taxpayer's knowledge and education could reasonably have been expected to recognise as incorrect or at least subject to doubt.

Honest Mistake

- the taxpayer's statement, although false, occurred through an inadvertent error or honest mistake, producing a result that the taxpayer could not reasonably have been expected to recognise as incorrect. This category would also include the circumstance where the taxpayer has made the statement as a result of being genuinely misled by actions of the ATO.

Acting on professional advice

58. The question often arises as to which category of penalty applies where a taxpayer understates tax after they have acted on the advice of a professional taxation adviser⁸. There may be instances where, despite taking advice, a person nevertheless makes false statements honestly or deliberately, recklessly, or carelessly. Where a person makes a false statement as a consequence of having acted upon professional advice received, it will not be an excuse to say that the advice was provided by another person. However, where:

- an adviser provides soundly based advice that a proposed course of conduct conforms with published ATO views;
- the taxpayer makes a false statement by acting in accordance with the advice; and

⁸ This refers only to penalty for false statements. Penalties that apply when tax benefits are cancelled under the anti-avoidance provisions are dealt with in paragraphs 73 to 78.

- in the period between receiving the advice and making the false statement there has been no legislative change or any alteration to the ATO's published view, the false statement will be regarded as having been honestly made.

Typical remission according to culpability

59. The table below sets out typical rates of penalty for the culpability descriptions given in paragraph 58. These rates do not take into account the mitigating or aggravating circumstances referred to in paragraphs 61 to 63 and assume a reasonable level of co-operation (see paragraph 66) by the taxpayer.

Penalty for false statements

60.

Culpability type (see paragraph 58)	Rate of penalty
Deliberate statement	60%
Reckless statement	30%
Careless statement	15%
Honest mistake	Nil

Mitigating and aggravating factors

61. The extent to which the penalty will be remitted may also be influenced by other factors. The variation from the rates given in the table at paragraph 60 will ordinarily be 20% of the typical penalty for each factor. The circumstances outlined in the paragraphs below are illustrative and not exhaustive.

Circumstances warranting further remission

62. A decrease from the rates suggested in paragraph 60 may be warranted where:

- at the time of making the statement or omission the taxpayer or an immediate family member was suffering from serious illness or other similar problems;
- the taxpayer suffered from genuine comprehension difficulties;
- the taxpayer's technical knowledge and experience were poor and the matters involved were complex;

- the taxpayer and his or her representatives have positively co-operated (see the explanation in paragraphs 64 to 67) during ATO enquiries; or
- the circumstances of the underpayment are such that the taxpayer has passed on a portion of the tax to arm's length customers and is unable to recover the tax from those customers.

Circumstances warranting increase

63. An increase from the suggested rates in paragraph 60 may be warranted where:

- deliberate steps have been taken to conceal the evasion of tax, for example, keeping a second set of accounts or falsifying records;
- the taxpayer has involved third parties, for example, employees, in corruption or collusion;
- there has been previous tax evasion by or on behalf of the taxpayer;
- the taxpayer originally made a false statement unknowingly, and although he or she subsequently became aware of the mistake or omission, failed to notify the ATO; or
- co-operation has been less than reasonable and, as a result, there have been undue or excessive delays in the completion of official enquiries.

Level of taxpayer co-operation

64. The previous paragraphs refer to the level of taxpayer co-operation as a basis for decreasing or increasing the suggested penalty figure. This is intended to encourage taxpayers to help the ATO to establish the correct liability to sales tax, but does not restrict taxpayers' rights. A taxpayer is not required to agree with the ATO's views to qualify for further remission for positive co-operation. Similarly, refusal by a taxpayer (or his or her representatives) to answer questions or provide documents where a genuine claim of legal professional privilege exists will not be taken as a lack of co-operation.

65. Positive co-operation occurs when the conduct of taxpayers or their representatives has been more than reasonably co-operative. For example, a taxpayer admits to a false statement after the commencement of an audit and this results in a significant saving in time and resources in completing the audit.

66. Reasonable co-operation occurs when a taxpayer answers all reasonable questions honestly, to the best of his or her ability and provides books and records promptly.

67. Less than reasonable co-operation occurs when a taxpayer causes delays in the completion of official enquiries, or fails to answer relevant and reasonable questions honestly, to the best of his or her ability.

Voluntary disclosure of a false statement

68. Taxpayers who voluntarily disclose that they have breached the taxation law are treated more leniently than those who do not come forward voluntarily. Where a taxpayer voluntarily admits to a false statement, the penalty that would have applied according to the table at paragraph 60 if the breach had been discovered through ATO action will be reduced by 80%.

69. To qualify for this concessional treatment, a voluntary disclosure must:

- be in writing;
- contain all relevant material facts; and
- not be made as a result of any ATO activity relating to the taxpayer's sales tax liability.

70. Disclosures are sometimes claimed to be voluntary when they are prompted by ATO action. In line with our long standing practice designed to encourage taxpayers to come forward, some disclosures that do not meet the description in paragraph 69 are nevertheless given similar treatment. For example, where a person is notified of an impending audit and is granted a deferment to conduct a prudential audit, disclosures made before the deferment expires will be treated as if they were voluntary (unless they relate to liabilities that were known or ought to have been known before the contact by ATO).

71. Note that any disclosure that does not meet the description of a voluntary disclosure in paragraphs 69 to 70 may nevertheless be accorded concessional treatment by an auditor on the basis of positive co-operation as set out in paragraph 65.

72. Concessional treatment only applies to matters actually disclosed. If, for example, a taxpayer makes a voluntary disclosure about a particular classification of goods and subsequent enquiries reveal other incorrect classifications, the concessional treatment will only apply to the matters disclosed.

Penalty where anti-avoidance provisions apply

73. Section 98 of the STAA imposes a penalty where the Commissioner applies section 93A to cancel a tax benefit under a scheme, the dominant purpose of which was to obtain a tax benefit. The amount of penalty imposed by section 98 is an amount equal to double the amount of that tax benefit.

Remission of penalty

74. In each instance the scheme will have been entered into deliberately and, therefore, the remission in a typical case will reflect the same level of culpability as in the case of deliberate false statements. In the absence of mitigating or aggravating circumstances, the penalty will be remitted to 75% of the tax benefit obtained.

Mitigating and aggravating factors

75. The extent to which the penalty will be remitted will be influenced by other factors that either warrant a decrease or an increase in the amount in a typical case. The variation will ordinarily be 20% of the penalty otherwise imposed for each factor.

Circumstances warranting further remission

76. A decrease from the suggested rate would be warranted where:
- the taxpayer and his or her representatives have positively co-operated during ATO enquiries; or
 - the circumstances are such that the taxpayer has passed a portion of the tax benefit on to arm's length customers and is unable to recover the tax from those customers.

Circumstances warranting increase

77. An increase from the suggested rate would be warranted where:
- deliberate steps have been taken to conceal the scheme or the taxpayer has involved third parties in collusion;
 - tax benefits relating to schemes entered into by or on behalf of the taxpayer have previously been cancelled;
 - or

- co-operation has been less than reasonable and, as a result, there have been delays in the completion of official enquiries.

Level of taxpayer co-operation

78. The comments regarding the level of taxpayer co-operation made in paragraphs 64 to 67 apply for the purposes of this penalty.

Financial hardship

79. These guidelines for remission have generally been concerned with examining those reasons or factors that have contributed to the taxpayer being liable for penalty. The ATO may also consider the taxpayer's capacity to pay. We will assess the effect that the penalty will have on the taxpayer, having regard to his or her net assets and potential earning or borrowing capacity.

80. Where the level of penalty determined according to these guidelines would cause serious financial hardship for the taxpayer, further remission of penalty may be warranted. The extent of any further remission will depend on the facts in each case.

Assessment of penalty and due date

81. Subsection 99(1) of the STAA requires the Commissioner to make assessments of penalty payable under sections 96, 97 and 98 (as described earlier in this Ruling). Notice of the assessment may be included in any other notice of assessment that relates to the same person. The penalty imposed will be due for payment on the day specified in the notice of assessment. This day must be at least 14 days after the date of issue of the assessment.

Review of decisions

GIC under sections 68, 91ZB and 91ZC of the STAA

82. There is no provision for lodging an objection against the imposition of the GIC. However, a taxpayer may ask for a review by lodging a request in writing setting out the circumstances that led to the late payment of the tax or other liability and the basis on which remission is sought.

83. A decision not to remit the GIC may be reviewed by the Federal Court under the *Administrative Decisions (Judicial Review) Act 1977*.

FTN penalty under section 95A of the STAA

84. There is no provision for objection against the imposition of the FTN penalty. However, a taxpayer may ask for a review by lodging a request in writing setting out the circumstances that led to the failure to notify and the basis on which remission is sought.

85. A decision not to remit the FTN penalty may be reviewed by the Federal Court under the *Administrative Decisions (Judicial Review) Act 1977*.

Penalty under sections 96, 97 and 98 of the STAA

86. Objections may be lodged against assessments of penalty imposed under sections 96, 97 and 98⁹. The requirements of the objection and appeal provisions are set out in Part IVC of the TAA.

87. The Administrative Appeals Tribunal may only review a decision relating to the remission of penalty imposed under sections 96 (failure to provide other information), 97 (false statement) and 98 (cancellation of tax benefits) of the STAA if:

- the amount of penalty to be reviewed is greater than \$20; and
- the penalty exceeds 20% per annum of the tax properly payable¹⁰.

Previous Rulings

88. This Ruling replaces Taxation Ruling SST 3 *Sales Tax: guidelines for penalty remission* which is withdrawn with effect from 24 May 2000, the date of issue of this Ruling.

Detailed contents list

89. Below is a detailed contents list for this Sales Tax Ruling:

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⁹ See section 107 of the STAA.

¹⁰ See Section 14ZT of the TAA.

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Commissioner of Taxation

24 May 2000

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	- STAA 91ZB (3)
<i>Related Rulings/Determinations:</i>	- STAA 91ZC
- ST (NS) 5	- STAA 93A
- IT 2246	- STAA 95A
	- STAA 96
<i>Subject references:</i>	- STAA 97
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<i>Legislative references:</i>	- TAA 8AAK (2)
- STAA 61	- TAA 8AAM
- STAA 61 (3)	- TAA 8AAZN
- STAA 68	- TAA 14ZT
- STAA 68 (1)	- TAA Part IIB
- STAA 77	- TAA Part IVC
- STAA 91X	- AD(JR) Act
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