

TR 94/2 - Income tax: remission of additional tax imposed by subsection 223(1): transitional arrangement for 1992-93 substituted accounting periods other Rulings on this topic IT 2517; TR 92/10

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Taxation Ruling

Income tax: remission of additional tax imposed by subsection 223(1): transitional arrangement for 1992-93 substituted accounting periods

other Rulings on this topic

IT 2517; TR 92/10

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*This Ruling, to the extent that it is capable of being a 'public ruling' in terms of Part IVAAA of the **Taxation Administration Act 1953**, is a public ruling for the purposes of that Part. Taxation Ruling TR 92/1 explains when a Ruling is a public ruling and how it is binding on the Commissioner.*

What this Ruling is about

1. This Ruling provides guidelines for the remission of additional tax imposed under subsection 223(1) of the *Income Tax Assessment Act 1936* (ITAA) in respect of taxpayers who have adopted an accounting period that commences before 1 July 1992 in lieu of the 1992-93 year of income.

Ruling

2. Where a taxpayer has adopted an accounting period in lieu of the 1992-93 year of income that commences before 1 July 1992, subsection 223(1) will continue to operate so as to impose additional tax for the whole of the substituted accounting period. In such cases, the additional tax that would be imposed under Taxation Ruling IT 2517 will be remitted to the extent that only a culpability penalty will be assessed. Interest will apply in accordance with section 170AA of the ITAA. However, this Ruling does not restrict authorised officers when exercising the discretion to remit subsection 223(1) additional tax. Each case should be considered on the basis of its own facts and circumstances.

3. Taxation Ruling TR 92/10 is extended to apply to substituted accounting periods for the purpose of calculating the culpability component of additional tax, and Taxation Ruling IT 2517 is modified accordingly. Other Rulings dealing with the imposition of additional tax are:

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- TR 94/3 Calculation of tax shortfall and allocation of additional tax;
- TR 94/4 Reasonable care, recklessness and intentional disregard;
- TR 94/5 Reasonably arguable;
- TR 94/5 Voluntary disclosures; and
- TR 94/7 Exercise of the Commissioner's discretion to remit penalty.

Date of effect

4. This Ruling applies where the Commissioner's discretion to remit subsection 223(1) additional tax is exercised after the date on which this Ruling is issued.

Explanations

5. Section 170AA of the ITAA was amended by the *Taxation Laws Amendment (Self Assessment) Act 1992* (SAA) so that a taxpayer may be liable to pay interest under that section, in relation to an amended assessment, notwithstanding that the taxpayer may also be liable to pay additional tax under Part VII of the ITAA in relation to the same matter which led to the assessment being amended. This changed operation of section 170AA applies to assessments for the 1992-93 year of income and all subsequent years of income.

6. The change to section 170AA was designed to complement the tax shortfall penalties also introduced by the SAA. However, while the changes to section 170AA apply in respect of *all* 1992-93 year and subsequent assessments (including assessments for accounting periods adopted in lieu of the 1992-93 year), the tax shortfall penalties apply only to the 1992-93 and subsequent years but *not* to statements made in that part of substituted accounting periods prior to 30 June 92 (i.e. the date on which the repeal of section 223 is effective).

7. The repeal of section 223 of the ITAA is effective from 30 June 92. However, subsection 34(7) of the Taxation Laws Amendment (Self Assessment) Act 1992 states that, "Despite the repeal of section 223 by this Act, that section continues to apply in so far as its continued application results, because of statements, in additional tax in respect of an accounting period adopted in lieu of the 1992-93 year of income and commencing before 1 July 1992". Section 223, therefore, continues to be the operative provision for the imposition of

penalties for taxpayers with accounting periods commencing before 1 July 1992 that are in lieu of the 1992-93 year of income.

8 The effect is that taxpayers who have adopted accounting periods in lieu of the succeeding 30 June will, in respect of amended assessments for the 1992-93 year of income that increase their liability to pay tax, face the prospect of a per annum amount (as per IT 2517) being imposed under *both* section 170AA and subsection 223(1).

9. To prevent these taxpayers facing this problem, the Commissioner will use his discretion under subsection 227(3) to remit any additional tax attracted under subsection 223(1) on a basis which does not include any per annum component. This will leave the per annum component to be calculated via the operation of section 170AA.

10. As the period covered by the substituted accounting periods falls, in part, in the 1991-92 income year, it is appropriate for TR 92/10 to also govern the calculation of the culpability component in these cases. IT 2517, which would otherwise apply, is modified accordingly.

Example

11. The following example illustrates the operation of this Ruling:

- Company A balances on 31 December in lieu of the succeeding 30 June;
- for the year ended 31 December 1992 (in lieu of the standard 1992-93 year of income) the taxpayer returns a liability of \$1m on 15 September 1993;
- following an audit of the company's affairs, an amended assessment issues to the company on 15 September 1995 for a further \$1m of tax;
- in issuing the amended assessment the Commissioner determines that the taxpayer is liable to pay additional tax under subsection 223(1);
- additional tax and interest would be calculated as follows:
 - additional tax (s.223(1)): (say) 25% of \$1m
(i.e., 200% penalty remitted to a culpability penalty only of 25%) = \$250,000
 - interest (170AA): (say) 9.6% of \$1m for 2 years.
(N.B. rate of interest for illustrative purposes only)
= \$192,000

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- note that the interest under section 170AA is deductible to the company under subsection 51(5).

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- additional tax
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legislative references

- ITAA 170AA; ITAA 223(1);
ITAA 227(3)