

Revenue Ruling 2006

Public Ruling

Ruling Number	: PUB-GEN-2006-1
Title	: Interest and Penalty Tax
Tax Line	: Duties, Land Tax, Pay-roll Tax
Legislative Reference	: <i>Taxation Administration Act 1997</i>
Previous Ruling	:
Date of Ruling	: 15 May 2006
Attachments	:

Preamble

Interest and penalty tax provisions play an integral role in tax administration as they encourage voluntary compliance by:

- promoting equity amongst taxpayers by ensuring that those who meet their obligations are not disadvantaged in comparison with those who do not;
- deterring non compliance by imposing a cost burden for non compliance; and
- compensating the government for being denied the use of funds to which it is entitled

The *Taxation Administration Act 1997*(the TAA) was introduced to provide consistent administrative provisions for those Acts defined as “taxation laws” in the TAA. The TAA applies to:

- the *Pay-roll Tax Act 1971* from 1 July 1998;
- the *Land Tax Act 2000* from 1 January 2001; and
- the *Duties Act 2001* from 1 July 2001.

The *Financial Institutions Duty Act 1986*, the *Taxation (Reciprocal Powers) Act 1993* and the *Debits Duties Act 2001* ceased to be taxation laws effective from 1 July 2001, 19 December 2002 and 1 July 2005 respectively following the repeal of those Acts.

It should be noted that the *First Home Owner Grant Act 2000* (“FHOG Act”) is not a taxation law and therefore this ruling does not apply to that Act. Part 4 of the FHOG Act contains the penalty provisions relating to applications for the grant.

The policy intent of the interest and penalty tax provisions is that the level of penalty tax should match the degree of culpability (that is, the extent to which the taxpayer is responsible for the failure to pay the amount due) and that taxpayers should be encouraged to voluntarily declare any tax liabilities as soon as they are known. This is important given that Tasmanian taxation legislation frequently adopts the principle of self-assessment that places the onus on taxpayers to exercise reasonable care in the calculation and timely payment of their tax liabilities. The State Revenue Office (SRO) will start from the presumption that taxpayers have dealt with their tax affairs openly and honestly and that consequently any error is due to ignorance rather than deliberate intent.

The Commissioner of State Revenue (the Commissioner) must exercise the discretionary powers contained in the interest and penalty tax provisions to meet contemporary standards of ethical, fair and sensible tax administration. Delegated SRO staff will assess or remit interest and penalty tax in accordance with this ruling. However, those staff will be responsible for identifying situations where strict application of the ruling would produce outcomes which are unreasonable and inconsistent with the stated policy objectives. In such cases it may be necessary to vary the practices stated in this ruling.

The application of the penalty tax provisions of the TAA to duty assessments under Chapter 2 of the *Duties Act 2001* is currently under review. At present the lodgement of duty instruments are treated as voluntary disclosures for penalty tax purposes where an investigation under Part 9 of the TAA has not commenced.

Ruling

1. This ruling provides for the application of interest and penalty tax on a tax default and commences on 15 May 2006.

Tax and a Tax Default - Section 3 of the TAA

2. Tax means:
 - (a) a tax or duty payable under a taxation law; and
 - (b) interest and penalty tax; and
 - (c) any other amount payable by a taxpayer under a taxation law.
3. A "tax default" occurs when there has been a failure by a taxpayer to pay all or part of the tax in accordance with the requirements of a taxation law. For example, a "tax default" occurs when there has been a late payment of tax by a taxpayer or a representative of a taxpayer, or where an amount less than the full amount due is paid..

Interest – Section 34

4. Where a "tax default" occurs, interest is calculated on the amount of unpaid tax on a daily basis from the end of the last day for payment until the day upon which the unpaid tax is paid.
5. Interest is payable on unpaid tax and unpaid penalty tax but is not payable on any unpaid interest. Interest is also payable where judgment has been given by, or entered in, a Court for a debt that is for, or includes, an amount of unpaid tax.

Interest rate – Section 35

6. The applicable interest rate consists of the following components:
 - (a) a market rate component to reimburse the Government for the financing cost incurred through the late payment of tax. The current market rate is 4.8 per cent per annum calculated on a daily basis. The rate can be adjusted by the Treasurer prescribing and gazetting a new rate or the rate can be based on the daily average of the 90 day Bank Accepted Bill rate for the preceding May of each financial year; and
 - (b) a premium rate component to deter late payment of tax and to compensate the Government for the costs of administering approved arrangements for payment of tax by a taxpayer. This rate is a fixed rate of 8 per cent per annum calculated on a daily basis.

Minimum amount of interest – Section 36

7. Where the interest amount calculated on unpaid tax is less than \$20, no interest will be imposed.

Remission of interest – Section 38

8. The Commissioner may remit all or some of the market rate and/or premium rate components of the interest rate.

Remission of interest –Market rate

9. In considering the remission of the market rate component of interest, the Commissioner will consider the opportunity costs of revenue forgone as a result of a “tax default” and the exposure to the risks and uncertainty of revenue loss. Thus the market rate component of interest will only be remitted in exceptional circumstances.
10. The market rate component may be remitted (except in circumstances where the taxpayer or the person acting on their behalf failed to exercise “reasonable care”) where the taxpayer demonstrates that tax has been paid in error to another jurisdiction or the Australian Taxation Office (ATO) and full payment of tax was received by that jurisdiction or the ATO on or before the due date of the tax liability. Where the actual tax liability payable in Tasmania is greater than the amount paid and received by that jurisdiction or the ATO, remission is possible if the taxpayer pays the differential tax amount in Tasmania by a date specified by the Commissioner.

Remission of interest –Premium rate

11. The Commissioner may remit all or some of the premium rate where:
 - (a) the market rate component of interest is partially or fully remitted;
 - (b) a taxpayer or person acting on behalf of the taxpayer took reasonable care to comply with the taxation law;
 - (c) the tax default is due to unforeseen circumstances beyond the control of the taxpayer or the person acting on behalf of the taxpayer and the taxpayer took all reasonable steps to avoid or mitigate the tax default;
 - (d) the SRO contributed substantially to the taxpayer’s error.

Penalty tax – Section 39

12. Penalty tax is imposed in addition to interest where a “tax default” occurs.
13. The Commissioner has discretion to remit penalty tax by any amount and would remit all penalty tax if satisfied:
 - (a) that a taxpayer or person acting on behalf of the taxpayer took reasonable care to comply with the taxation law; or
 - (b) the “tax default” occurred solely because of circumstances beyond the control of the taxpayer or the person acting on behalf of the taxpayer.
14. There is no penalty tax imposed on any unpaid penalty tax or unpaid interest (Section 39(3)).

Penalty Tax Rates – Sections 40 and 41

15. The two standard (base) rates of penalty tax to be applied to unpaid tax are:
 - (a) 25 per cent of the unpaid tax; or
 - (b) 75 per cent of the unpaid tax; if the taxpayer has shown intentional disregard of a taxation law.
16. The two standard penalty tax rates will vary in the following circumstances:
 - (a) rates are reduced by 80 per cent if a voluntary disclosure is made before an investigation commences (Section 41(1));
 - (b) rates are reduced by 20 per cent if a voluntary disclosure is made after an investigation commences but before the investigation is finished (Section 41(2));
 - (c) rates are increased by 20 per cent if the taxpayer hinders or conceals information in an investigation.

The resulting penalty rates are reflected in the table below (paragraph 17).

The criteria for determining when an investigation commences and when an investigation is completed are detailed in paragraph 28 below.

17. The indicative rates of penalty tax are as follows:

Penalty Tax Category	Prime Rate %	Voluntary Disclosure Before Investigation Commences %	Voluntary Disclosure During Investigation %	Concealment or Hindrance %
Reasonable care or circumstances beyond the control of the taxpayer or taxpayer's agent	0			
Standard penalty tax	25	5	20	30
Intentional disregard of a taxation law	75	15	60	90

Minimum amount of penalty tax – Section 43

18. Penalty tax will not be imposed if it is less than \$20.

Remission of penalty tax – Section 45

19. The Commissioner has the discretion to remit part or the entire amount of the penalty tax. The following are circumstances where the Commissioner may fully remit penalty tax:

- (a) where tax has been paid in error to another jurisdiction or the ATO and full payment of tax was received by that jurisdiction or the ATO on or before the due date of the tax liability. Where the actual tax liability payable in Tasmania is greater than the amount paid and received by that jurisdiction or the ATO, remission may be granted if the taxpayer pays the differential tax amount in Tasmania by a date specified by the Commissioner (except in circumstances where the taxpayer or the person acting on their behalf failed to exercise “reasonable care” or where the tax default was outside the taxpayer’s control); or
- (b) the SRO has substantially contributed to an error by providing incorrect or misleading written advice to a taxpayer who has relied on that advice to determine a tax liability. The SRO would recognise such a situation only where the particular advice given was premised on the information provided by the taxpayer and there is no reason in the mind of a reasonable prudent person to doubt the accuracy of the advice. The SRO will only be bound where the facts disclosed by the taxpayer and upon which the advice was provided were accurate and comprehensive.
- (c) Refer to Clause 26 below in relation to duty assessments.

Definition of key terms

The key terms used in this ruling are as follows.

Taxpayer

20. A taxpayer means an individual taxpayer or a member of a group of taxpayers.

Unpaid Tax

21. Unpaid Tax refers to a tax liability under a taxation law, which has not been fully discharged. Where, at the time the tax default occurred, there is an overpayment of tax by the taxpayer in a particular tax line, such overpayment can be offset against the unpaid tax within the same tax line or in another tax line so that interest or penalty tax is payable on the net amount of unpaid tax only.

Reasonable care

22.

- (a) Penalty tax will not be imposed where **a taxpayer or a person acting on behalf of the taxpayer** can show that they have taken reasonable care to comply with the taxation legislation. The reasonable care standard requires taxpayers to keep complete and accurate records, make diligent efforts to understand and comply with the law, seek expert advice on uncertain or complex matters and be honest in their dealings with the SRO. In determining whether or not reasonable care has been taken, the SRO will consider a range of factors including the knowledge of the tax legislation, commercial experience, access to expert advice and familiarity with the English language.
- (b) The following situations, whilst not exhaustive, may indicate that a taxpayer or a person acting on behalf of the taxpayer has taken reasonable care:
 - (i) appropriate recording systems have been maintained;
 - (ii) reasonable steps have been taken to become familiar with the legislative requirements of the relevant piece of legislation;
 - (iii) any relevant public rulings have been applied in good faith;
 - (iv) in relation to complex matters, professional advice has been sought and relied upon;
 - (v) any independent tax advice received has been applied in good faith;
 - (vi) any private ruling received has been followed and the SRO has been notified if there have been any changes in the information on which the ruling was formed;
 - (vii) advice or information has been sought or provided promptly once made aware, from any source, that a tax liability may have arisen;
 - (viii) a formal decision has been sought from the SRO before relying on any legislative exemption or concession which requires the Commissioner to exercise his discretion or grant approval.

Circumstances beyond a taxpayer's control

23. Examples of circumstances beyond the control of **the taxpayer or the person acting on behalf of the taxpayer** include the following:
- (a) postal or delivery delays, but not where the taxpayer could arrange for an alternative means of delivery because the taxpayer is aware of the likelihood of a delay;
 - (b) fires, flood or other natural disasters;
 - (c) key personnel not available due to sudden resignation, illness or death;
 - (d) unavailability of the taxpayer due to illness or accident;
 - (e) computer breakdowns including third party systems such as Electronic Funds Transfer systems.

Note: Financial incapacity to pay **cannot** be considered a circumstance outside the taxpayer's control.

Intentional disregard of a taxation law

24.

- (a) Intentional disregard of a taxation law means circumstances where the "tax default" is caused by a deliberate act or omission by **the taxpayer or the person acting on behalf of the taxpayer**. This is determined on the basis of direct evidence of intention (eg admission by taxpayer) or can be inferred from the surrounding circumstances and conduct of the taxpayer or the person acting on their behalf.
- (b) Examples of conduct which may demonstrate intentional disregard of a taxation law include:
 - i) use of contrived or artificial avoidance schemes which prove to be legally flawed;
 - ii) tax evasion or fraud;
 - iii) knowingly making false or misleading records or statements;
 - iv) knowingly concealing relevant facts on a tax liability;
 - v) ignoring a private or public ruling of which the taxpayer is aware, particularly on a matter where the law is clearly established.

- vi) failing to assess in accordance with well established principles of tax law;
- vii) failing to meet a tax liability after being advised of its existence by the SRO or another person;
- viii) repeating a tax default on a same matter or a closely related matter;
- ix) disregarding notices or correspondence issued by the Commissioner;
- x) accruing state tax liabilities in a Statement of Financial Position (that is, a balance sheet) but not making the relevant payments to the Commissioner.

Concealment or hindrance of an investigation

25. Concealment or hindrance of an investigation refers to the situation where a taxpayer, having been informed by the Commissioner that an investigation is to be carried out and before the investigation is completed, took steps to prevent or hinder the Commissioner from becoming aware of the nature and extent of the tax default.

Voluntary disclosures

26. The unsolicited payment of a liability to duty or the unsolicited lodgement of documents liable for duty after the expiration of the statutory three-month time for payment will generally be considered to be a voluntary disclosure. However, if the circumstances leading to payment of duty produce inequitable outcomes with other taxpayers, the penalty tax rate for voluntary disclosures will not be applied. However, as noted in the preamble to this ruling, the existing policy in relation to duty assessments is currently under review.

27. A voluntary disclosure must be in writing and provide sufficient information to determine the nature and extent of the "tax default". A voluntary disclosure must reveal the identity of the taxpayer or a group of taxpayers, and must enable the nature, period and amount of the "tax default" to be readily identified. The SRO would not accept a voluntary disclosure from a member of a land tax or pay-roll tax group if another member of that group has been advised of an upcoming investigation.

Commencement and completion of an investigation

28. An investigation begins either when the SRO informs a taxpayer in writing that an investigation relating to the taxpayer is to be conducted or on the first use of coercive powers available under the TAA (for example, upon receipt of a Notice issued in accordance with Section 65 of the TAA) or other relevant legislation in respect of the taxpayer. If any member of a taxpayer group has been informed of an impending investigation as noted above, then I consider that all members of a taxpayer group have been informed of an investigation. An investigation is completed when the SRO has provided a taxpayer with a formal letter stating that the SRO has completed the investigation.

Please note that rulings do not have the force of law. Each decision made by the SRO is made on the merits of each individual case having regard to any relevant ruling.

Enquiries in relation to this Revenue Ruling should be directed to the Research, Analysis and Legislative Review Section on telephone 03 6233 2694 or e-mail at revenuereview@treasury.tas.gov.au. Copies of this ruling may be obtained from our Web site at www.sro.tas.gov.au by selecting "Resources" and then "Rulings".

All rulings must be read subject to Revenue Ruling PUB-GEN-2005-5.



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