



Interest and Penalty Tax

Taxation laws

The TAA and the following Acts administered by us are laws where interest and penalty tax may be applied:

Duties Act 1997

Gaming Machine Tax Act 2001

Health Insurance Levies Act 1982

Insurance Protection Tax Act 2001

Land Tax Act 1956

Land Tax Management Act 1956

Parking Space Levy Act 2009

Payroll Tax Act 2007

Unclaimed Money Act 1995

Payroll Tax Act 1971

▲ A regulation under any of those Acts ▲

Background

Part 5 of the *Taxation Administration Act 1996* (TAA) imposes interest and penalty tax on taxpayers who commit a 'tax default' under various taxation and revenue laws administered by the Office of State Revenue (OSR).

Rates of interest and penalty tax imposed by the TAA vary, depending on the circumstances under which a particular tax default arises.

The policy intent of these provisions is that the level of interest and penalty tax imposed should match the degree of culpability of the taxpayer.

If interest and penalty tax is imposed, the Chief Commissioner of State Revenue has a discretion to reduce or remit either or both by any amount.

Taxpayers who exercise reasonable care and those who voluntarily disclose their tax liability as soon as it is known will have less interest and/or penalty tax imposed than taxpayers who don't.

Liabilities to pay which attract interest and penalty tax

A tax, duty, levy or other amount which is payable under any of the laws listed below is an amount to which interest or penalty tax may be applied, if there is a tax default.

In addition, a failure to pay penalty tax imposed under the TAA is also a tax default, which may attract interest.

Tax defaults

A taxpayer commits a tax default by failing to make a payment (whether in whole or in part) or failing to submit a return in accordance with a taxation law.

Examples of a tax default that may attract interest and/or penalty tax are:

- failure to submit a land tax initial return/registration form by the due date (normally 31 March each year), when a landowner first becomes liable for land tax
- failure to pay an amount of tax, duty or levy specified in a Notice of Assessment, by the due date specified in the notice
- failure to pay an amount of unclaimed money within four months after the end of the financial year in which it becomes unclaimed
- failure to pay the appropriate amount of payroll tax by the seventh day following a month in which taxable wages exceeded the monthly threshold (**for more specific information on the application of interest and penalty tax to payroll tax defaults, please refer to Revenue Ruling PTA036 v2**).

Imposition of interest

Interest is calculated on a daily basis, from the end of the day on which an amount of tax should have been paid until the day on which the tax is paid. Interest is not calculated on unpaid interest.

There are two components of the interest rate imposed by the TAA:

1. **the market rate**, which is not regarded as a penalty but reflects revenue lost by the Government as a result of a tax default.

The market rate for each financial year will be adjusted quarterly in line with the 90-day Bank Accepted Bill Rate published by the Reserve Bank of Australia for the months of May, August, November and February immediately before the commencement of each quarter.

No interest is payable if the amount of interest in respect of each assessment is less than \$20.

A list of market rate interest rates that have applied since the commencement of the TAA on 1 January 1997 can be found at www.osr.nsw.gov.au

2. **the premium rate**, which is imposed to deter non-compliance and ensure that defaulting taxpayers are not advantaged when compared to taxpayers who meet their State taxation obligations.

The premium rate has been 8 per cent per annum since the commencement of the TAA on 1 January 1997.

Interest imposed on instalment payment plans

In cases where taxpayers are unable to meet their tax liability by the due date and they negotiate a special instalment plan, market and premium interest rates are applied from the original due date for payment until all outstanding tax is paid.

Voluntary disclosures prior to the start of an investigation

An investigation is considered to have started when OSR has issued a written notice to the taxpayer, advising that an investigation has commenced. Where a voluntary disclosure is made in writing before the issue of such a notice, interest at the market rate plus premium rate will apply to the assessment or reassessment of the tax liability.

Late payments on duties transactions and by registered clients (eg payroll tax, land tax, insurance, parking space levy) will not be treated as a voluntary disclosure before an investigation.

Voluntary disclosures during an investigation

Where a voluntary disclosure is made after the issue of a written notice to the taxpayer advising of the start of an investigation, the amount of interest imposed will be determined having regard to whether the default was within the taxpayer's control, whether the taxpayer took reasonable care, or whether there was intentional disregard of the law.

Remission of interest

The amount of interest imposed depends on the circumstances surrounding the tax default. As the market and premium rate interest is automatically imposed under the TAA following a tax default, any decision to impose anything less can only be implemented by way of remission.

The Chief Commissioner has a discretion to remit the premium rate or the market rate, or both, by any amount.

When interest may be remitted in full

The only occasion where the Chief Commissioner will exercise the discretion to remit both the market rate and the premium rate of interest is where there is evidence that the tax default was caused by circumstances outside the control of the taxpayer.

Examples of circumstances outside the control of the taxpayer include, but are not limited to:

- official postal and DX delays
- natural disasters such as bushfires, floods or earthquakes
- in the case of land tax, where the tax default has occurred because the land value has risen above the threshold since the last general valuation notice issued to the taxpayer by the Valuer-General
- circumstances where it is impossible to submit a return or pay on time (excluding financial incapacity).

When the premium rate of interest may be remitted

Where there is evidence that a taxpayer took reasonable care or where a voluntary disclosure was made before the commencement of an investigation, the premium rate of interest may be remitted.

How requests for remissions of interest should be made

Requests for remission of interest should generally be made to the Chief Commissioner in writing. Requests for remission of minor amounts may also be made by telephone. All requests should detail the circumstances surrounding the tax default and the reasons why the interest should be remitted.

When interest will not be remitted

Where a tax default was within the taxpayer's control and the taxpayer or an adviser had not taken reasonable care, interest will not be remitted.

Examples of circumstances when interest will not be remitted due to a taxpayer failing to take reasonable care are:

- errors made by taxpayers as a result of their failure to keep complete and accurate records
- dishonoured cheques (unless due to a bank or financial institution's error)
- adviser's fault (and reasonable care has not been taken)
- monthly/annual payroll tax return lodged/tax paid after due date
- assessments not paid by due date as shown on notice of assessment
- failure to follow a public ruling.

Imposition of penalty tax

If a tax default occurs, penalty tax may be payable, but is not imposed on interest or on any other amount of penalty tax already imposed.

Amount of penalty tax imposed

The amount of penalty tax imposed will be:

- i) nil (zero per cent) where there is evidence that:
 - a) the tax default occurred solely because of circumstances outside the control of the taxpayer (or their representative) or
 - b) a taxpayer (or taxpayer's representative) took reasonable care to comply with the taxation law.

When determining if a taxpayer took 'reasonable care', the Chief Commissioner has regard to whether the taxpayer, in appropriate circumstances:

- kept complete and accurate records; and
- made diligent efforts to understand and comply with the law; and
- sought expert advice on uncertain or complex matters; and
- was honest and open in their dealings with us.

Other relevant factors will also be considered such as:

- the taxpayer's knowledge of tax legislation
- commercial experience
- access to expert advice

The above are indicative only.

Meeting one or more of these criteria does not necessarily mean that reasonable care has been taken. All of the circumstances resulting in a tax default will be considered in determining whether reasonable care has been taken.

- ii) up to 30 per cent, depending on the circumstances, where taxpayers (or their representatives) failed to take reasonable care but there was no intentional disregard of the law (see Table of Penalty Tax Rates)
- iii) between 15 per cent and 90 per cent, depending on the circumstances, where there is intentional disregard of a taxation law by taxpayers (or their representatives)(see Table of Penalty Tax Rates)

Examples of intentional disregard are:

- making false or misleading statements or keeping false records
- concealing relevant facts
- deliberate acts of non-compliance with legislation

- failure to keep relevant records in the English language for the required period or making them readily accessible
 - ignoring a private ruling
 - failure to meet a tax liability after being advised of it.
- iv) increased by 20 per cent if the taxpayer hinders or conceals information after an investigation has commenced (see Table of Penalty Tax Rates).

Reduction of penalty tax

A taxpayer is entitled to a reduction in the penalty tax rate if the taxpayer voluntarily makes a written disclosure which enables the Chief Commissioner to determine the nature and extent of the tax default.

The rate of penalty tax is reduced by 80 per cent if the written disclosure is made before the Chief Commissioner commences an investigation and by 20 per cent if a written disclosure is made after an investigation is commenced (see Table of Penalty Tax Rates).

From 1 July 2009, this does not apply to registered taxpayers if a voluntary disclosure is made after a failure to lodge a return or pay tax in accordance with the relevant legislation.

Remission of Penalty Tax

For remissions to be considered, additional information (which was previously not available and considered when the penalty tax was initially imposed) must be provided.

How should requests for remission of penalty tax be made?

Requests to OSR for the remission of penalty tax generally must be made in writing, documenting the circumstances surrounding the tax default and reasons why the penalty tax should be remitted.

MORE INFORMATION



www.osr.nsw.gov.au



1300 556 814



8:30 am – 5:00 pm
Monday to Friday

Help in community languages is available.

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Table of penalty tax rates

Where reasonable care is not taken but no intentional disregard of the law	
20 per cent	if a voluntary disclosure is made in writing during an investigation
25 per cent	if a voluntary disclosure is not made
30 per cent	if taxpayers take steps to hinder the Chief Commissioner's investigation after being advised that an investigation is to be carried out
Where there is intentional disregard of the law	
15 per cent	if a voluntary disclosure is made in writing before an investigation has commenced
60 per cent	if a voluntary disclosure is made in writing during an investigation
75 per cent	if a voluntary disclosure is not made
90 per cent	if taxpayers take steps to hinder the Chief Commissioner's investigation after being advised that an investigation is to be carried out

Note: Although the legislation provides for it, no penalty tax will be imposed where a voluntary disclosure is made in writing before the commencement of an investigation, unless there is intentional disregard of the law.