

Revenue Ruling

Emergency Services Funding Act 1998

ESL002

PENALTY LEVY & INTEREST

Preamble

This Ruling advises levy payers and their representatives of the Commissioner of State Taxation's (the "Commissioner"):

- ▶ imposition of interest and penalty levy on levy payers who default on their Emergency Services Levy (ESL) fixed property liabilities; and
- ▶ use of his discretion (as delegated) to remit interest and/or penalty levy pursuant to Sections 17J(6) and 17K(4) of the *Emergency Services Funding Act 1998*.

Section and Part references in this Information Circular relate to the *Emergency Services Funding Act 1998* (the "Act"), unless otherwise stated.

Ruling

Defaults

The ESL on fixed property is imposed annually on land ownership (based on capital property values) as at 30 June and Notices of Assessment (Notice/s) are sent to levy payers from August to September each year.

Full payment is due 43 days from the date of issue of the Notice. A failure to pay by the due date stipulated in the Notice constitutes a default pursuant to Section 17I.

A default attracts interest and penalty levy per Sections 17J and 17K respectively. A Final Notice including interest and penalty levy is then issued to a levy payer.

Where a levy payer requests to pay their ESL by way of four consecutive monthly instalments, a default will not occur unless the levy payer fails to pay the relevant instalment amount by the due date specified on the Instalment Notice.

Penalty Levy & Interest on Defaults

A 25% penalty levy is imposed on accounts in default as the levy payer failed to take reasonable care to comply with their ESL obligations by not complying with the Notice issued. Generally speaking, a failure to pay an ESL liability pursuant to a Notice will result in the imposition of interest and 25% penalty levy on the principal ESL liability.

However, as is the case with land tax, an 80% remission of the penalty levy such that the penalty levy is reduced to 5% of the principal ESL liability is automatically granted on the condition that the levy payer will comply with the due date in the Final Notice. Accordingly, the outstanding ESL liability in the subsequent Final Notice will only include a 5% penalty levy, but full interest.

Interest and the 5% penalty levy will be included in the Final Notice only if the amounts exceed \$20 (respectively) as no interest or penalty levy is payable where the interest or penalty levy calculated is less than \$20 (Section 17J(4)). Should the

interest or penalty levy imposed not exceed \$20 by the time the Final Notice is to be issued, the Final Notice will not stipulate any interest or penalty levy as being payable.

Should the levy payer default on the Final Notice, interest will continue to accrue from the due date stipulated in the original Notice and the penalty levy will be reinstated to 25%.

A failure to pay the Final Notice will result in the matter being referred to RevenueSA's Debt Management Services (DMS). As stated, the 25% penalty levy is reinstated and interest will now accrue on the penalty levy inclusive amount. A demand letter is issued by DMS providing a further 17 days for payment.

DMS will impose more significant penalty levy if required.

Penalty Levy & Interest on Instalment Defaults

Upon the issue of an original Notice, a levy payer has the option to contact RevenueSA and request to pay their ESL liability by way of four monthly instalments. If granted, RevenueSA will issue the levy payer with a new Notice with four instalment due dates. A failure to pay one of the ESL monthly instalments results in the full outstanding liability becoming due and payable. That is, the option to pay via instalments is lost.

A Final Notice will therefore be issued for the full outstanding liability with penalty levy and interest calculated on that liability (i.e. not just the instalment amount). Again, the 25% penalty levy is automatically remitted by 80% to 5% on the condition that the levy payer will comply with the Final Notice due date.

Rate & Calculation of Interest

The rate of interest imposed is the sum of the following two components:

- ▶ the market rate of interest as defined under the *Taxation Administration Act 1996* (TAA). See **Information Circular No 80** (and successive versions) for the relevant market rate of interest set each financial year under the TAA. For the 2016-17 financial year, the market rate is 2.01%; and
- ▶ 8%.

With respect to the imposition of interest, the following factors should be noted:

- ▶ interest is imposed on a daily basis from the due date stipulated in the Notice;
- ▶ as stated, no interest is payable where the interest calculated is less than \$20 (Section 17J(4));
- ▶ consideration will be given to electronic clearing delays from the due date in the Notice before applying interest. That is, RevenueSA understands that a levy payer may have paid their account on the due date notwithstanding the amount has not been cleared via electronic payment methods;
- ▶ where a Notice that includes interest is issued, the amount of interest will remain fixed until the due date for payment shown on the Notice; and

- ▶ Section 17M(1) states that the Commissioner must notify the levy payer of any interest imposed by serving a Notice on the levy payer. In the normal billing cycle, this Notice would constitute the Final Notice in the first instance.

Interest on Penalty Levy

Interest is also imposed on an outstanding penalty levy. In these circumstances, interest is calculated on the sum of the outstanding ESL liability and the penalty levy. Interest may only be imposed on a penalty levy inclusive amount once the levy payer has been notified of the penalty levy being imposed and has consequently defaulted on that Notice (Sections 17J(3)(b) and 17M(3)).

Accordingly, in situations where a levy payer has defaulted on both their Notice and Final Notice, two interest calculations are required:

- ▶ the first being the interest calculated on the principal ESL liability, that interest being included in the Final Notice. The Final Notice will also include the first notification to the levy payer that a penalty levy has been imposed; and
- ▶ the second calculation being the interest calculated on the principal ESL liability and the penalty levy on account of the levy payer defaulting on the Final Notice.

Calculation of Penalty Levy

Penalty levy is imposed on defaults that constitute deliberate defaults or where the levy payer (or their agent) failed to take reasonable care to comply with the requirements.

A levy payer's circumstances must be extraordinary in order to satisfy the Commissioner that their default was not due to a failure to take reasonable care to comply with the Act. This is largely due to the levy payer being notified of their liability by issue of the Notice.

The amount of penalty levy is as follows:

- ▶ in the case of a deliberate default, 75% the amount of the unpaid levy; and
- ▶ in the case of a failure to take reasonable care to comply with the Act, 25% the amount of the unpaid levy.

As stated above, the Final Notice contains an automatic 80% remission of the 25% penalty levy on the condition the Final Notice due date is complied with. Once a levy payer's account has progressed to DMS on default of the Final Notice, the 25% penalty levy will be reinstated. Further, interest will now accrue on the penalty levy inclusive amount (i.e. the principal ESL liability plus the 25% penalty levy) as the levy payer has been notified of the imposition of a penalty levy and has defaulted with respect to that amount.

DMS may then impose a 75% penalty levy for additional defaults as the case may be, dependent on the level of levy payer co-operation or belligerence which may evidence a deliberate default.

Remission of Penalty Levy & Interest

Due to drafting differences between the TAA and the Act, the remission of interest and penalty levy on outstanding ESL liabilities may not necessarily accord with remission practices for other tax head liabilities.

Besides the automatic penalty levy remission discussed above, remissions will only be provided in extraordinary circumstances where the relevant default was outside the control of the levy payer. A non-exhaustive list of circumstances where a remission may be warranted is as follows:

- ▶ to facilitate payment of the principal ESL liability (i.e. out of court settlements and DMS negotiations);

- ▶ where a levy payer can prove that they did not receive a Notice;
- ▶ where a levy payer incorrectly referenced the payment or paid an incorrect tax line such as land tax, that payment having been received on time;
- ▶ where a levy payer is awaiting a decision from the Department of Communities & Social Inclusion regarding a general remission and concession application;
- ▶ where the levy payer is in administration or liquidation and the ability to recover the full outstanding liability is jeopardised;
- ▶ where an *ex gratia* scheme applies to meet the principal ESL liability;
- ▶ where the Minister for Finance grants *ex gratia* relief for the principal ESL liability; and
- ▶ where RevenueSA failed to place a lock on the levy payer's account and penalty levy and interest were thus incorrectly imposed.

Remissions of interest may comprise any of the following:

- ▶ a remission to the market rate of interest;
- ▶ a remission to the 8% rate of interest;
- ▶ an amendment to the period in which interest is charged; and
- ▶ a full remission.

Remissions of penalty levy can be in full or part.

Unlike the TAA, the Act does not provide guidance on the reduction or remission of interest and penalty levy. When considering the merits of a levy payer's request for a remission, compliance history, level of co-operation, culpability and the list of circumstances above will all be considered.

Finally, it should be noted that the imposition of interest:

- ▶ represents the loss in investment opportunity for the Government in not having those funds at its disposal; and
- ▶ provides a method of ensuring that levy payers who pay on time are not disadvantaged or treated inequitably to those levy payers in default.

Accordingly, where grounds for remission exist, the remission of penalty levy will be considered a priority in lieu of a remission of interest.

Further Information

Further information can be obtained from RevenueSA.

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History

This Revenue Ruling is effective from 8 May 2017.

This is the first Revenue Ruling issued on this topic.

Graeme Jackson
COMMISSIONER OF STATE TAXATION

10 May 2017