

**SOUTH AUSTRALIA**



**STATE TAXATION OFFICE**

**Taxation Administration**

**Circular No. 159**

**TAXATION ADMINISTRATION ACT 1996  
APPLICATION OF INTEREST AND PENALTIES**

This Circular provides a guide to State Taxation Office (STO) policy on the imposition of the interest and penalty provisions of the *Taxation Administration Act 1996*. This Circular replaces previous Circulars which dealt with the application of penalties to individual tax heads.

The interest and penalty provisions of the *Taxation Administration Act 1996* apply in relation to the:—

- *Debits Tax Act 1994*
- *Financial Institutions Duty Act 1983*
- *Land Tax Act 1936*
- *Pay-roll Tax Act 1971*
- *Stamp Duties Act 1923*

**RATIONALE FOR CHARGING INTEREST AND PENALTY TAX**

The principles of self assessment and the power to impose penalties requires taxpayers to take reasonable care in calculating any tax liability and to pay this liability on time. Failure to do so may result in additional costs by way of interest and penalty.

Interest and penalty tax are imposed as a means of ensuring timely and accurate payment of taxes as well as protecting equity among taxpayers by making sure that those who fail to meet any tax obligation are not advantaged with respect to those who do. In general, interest is applied in cases of late payment and is intended to act as a disincentive to taxpayers using the Government as a source of finance.

Under the *Taxation Administration Act 1996*, a tax default occurs if a taxpayer fails to pay all or part of tax due. Tax includes interest and penalty tax. Interest and penalties can apply in cases of tax default.

Penalty tax is applied in cases where a tax default occurs as a result of a taxpayer failing to take reasonable care to avoid the default occurring or where the default was deliberate.

## DUE DATES BY WHICH TAX IS PAYABLE

The dates by which tax is payable are set out in each of the primary Acts. The table attached (Appendix A) is provided as a guide covering major, but not all, areas of tax payment contained within these Acts. Please note that in some particular cases the Acts allow for other arrangements regarding due dates for tax payment. **If taxpayers meet these requirements the issue of additional costs by way of interest and penalties will not arise.**

## INTEREST

### Legislative provisions

The *Taxation Administration Act 1996* (the Act) imposes interest in situations where a tax default occurs. A “tax default” is defined at Section 3 of the Act as:

*“... failure by a taxpayer to pay, in accordance with a taxation law, the whole or part of tax that the taxpayer is liable to pay.”*

Interest is charged daily using an annual rate. The provisions are found in Section 26 which sets the annual rate as being the sum of:

- the market rate; and,
- 8 per cent per annum.

The “market rate” will reflect the rate applicable from time to time under Section 214A(8) of the *Income Tax Assessment Act 1936* of the Commonwealth.

The following should be noted.

- The Commissioner has the discretion to remit interest.
- Interest can be applied to unpaid penalty tax.
- No interest is payable where the amount of interest calculated is under \$20.

## POLICY ON IMPOSITION OF INTEREST-MITIGATING CIRCUMSTANCES

Interest will be charged in all instances of tax default.

However, in imposing interest, consideration will be given to the following:

- Sufficient time will be allowed to take into account postal, or other delivery delays.
- Where an assessment which includes interest is issued, the amount of interest will remain fixed until the due date for payment shown on the assessment. If payment is not made by the due date, a reassessment will be made, with the additional interest recalculated in full to the date of the reassessment.

- In situations where documents are lodged for stamping under the *Stamp Duties Act 1923*, sufficient time will be allowed to take into account delays brought about by the need for the STO to make further enquiries into the circumstances of the matter.

The Commissioner will only remit interest in exceptional circumstances.

## **PENALTY TAX**

### **Legislative Provisions**

In addition to interest, penalty tax is imposed in certain instances of tax default. Section 30(2) of the Act states:

*“Penalty tax is not payable in respect of a tax default if the Commissioner is satisfied that the tax default was not a deliberate tax default and did not result, wholly or partly, from any failure by the taxpayer, or a person acting on the taxpayer’s behalf, to take reasonable care to comply with the requirements of a taxation law.”*

It follows that penalty tax will be imposed in instances where the Commissioner is satisfied that a tax default was deliberate, or was due to a failure to take reasonable care.

The amount of penalty tax is:

- where the tax default was deliberate, a flat 75% of the amount of tax which is unpaid;  
or,
- in any other case, a flat rate of 25% of the amount of tax which is unpaid.

Penalties will be reduced or increased in the following circumstances:

- where a taxpayer makes sufficient disclosure of a tax default while not the subject of a tax audit, the penalty tax will be **reduced** by 80%.
- where a taxpayer makes sufficient disclosure of a tax default while they are the subject of a tax audit, the penalty tax will be **reduced** by 20%.
- Where a taxpayer engages in obstructive conduct while the subject of a tax audit, the penalty tax will be **increased** by 20%.

The Commissioner has the discretion to remit penalty tax. No penalty tax is payable where the amount of penalty tax calculated is under \$20.

### **Policy on imposition of Penalty Tax**

A taxpayer will be considered to have taken reasonable care if he or she is deemed to have tried his or her best to comply with a State taxation obligation. Circumstances taken into account include a taxpayer’s experience, education, skill and other pertinent matters and application or other wise of

penalty rests on the assumption that a taxpayer had exercised the care that a reasonable, ordinary person would exercise in order to comply with tax obligations. In such cases a taxpayer may not be liable to pay penalty tax.

### **Submissions regarding Penalty Tax**

Where a taxpayer believes he or she may be subject to penalties due to failing to pay tax by the due date, every effort should be made to advise the Commissioner of the reasons for the tax default so that an accurate assessment may be made.

Sufficient detail and evidence of the circumstances surrounding the tax default will need to be supplied for the Commissioner to be satisfied whether the taxpayer has exercised reasonable care in attempting to meet taxation obligations. Submissions should be made in writing at the time of lodging the return or lodging documents for assessment of stamp duty, or by contacting this Office as detailed below.

While each case must be treated individually, there are circumstances where tax defaults may, in the absence of evidence to the contrary, be considered to have occurred as a result of a failure by a taxpayer (or a representative) to take reasonable care to comply with the provisions of a taxation law.

In cases where it is considered that reasonable care has not been taken, the amount of the penalty tax will be **25%** of the amount of the tax default. Examples of such cases include instances where:

- a taxpayer has been given written notification that a tax default has occurred and has failed to rectify the situation within the time stipulated in the notification;
- a taxpayer has failed to keep adequate records. (in such a case the failure to take reasonable care would have been an act of omission);
- a taxpayer's only reason for the occurrence of a tax default was that it resulted from an oversight.

Given the particular nature of stamp duty on documents, as the taxpayer is submitting the document and therefore essentially makes a voluntary disclosure, the penalty will be 5% instead of 25%.

Imposition of a penalty tax of 75% for a deliberate tax default will depend on the circumstances of each case.

If a further tax default occurs following an assessment to which penalty has already been applied, the rate of penalty tax applied may, subject to the circumstances of the case, be increased.

The Commissioner will only remit penalty in exceptional circumstances and each case will be considered on its merits.

### **COMPLIANCE ACTIVITY**

Penalties will be applied to tax defaults identified as a result of compliance activities where the taxpayer has not exercised reasonable care to avoid the default occurring or where the default was deliberate.

Taxpayers always have the opportunity to make a disclosure of a tax default prior to the commencement of a tax audit and the issue of a notice of investigation. Full disclosure will reduce the rate of penalty applied by 80%.

Taxpayers wishing to make a disclosure of a tax default during a tax audit should, in the first instance, discuss the matter with the STO Officer conducting the audit.

Interest will be applied from the date of the occurrence of the tax default to the date of commencement of the investigation. Interest will also be applied if periods of delay by the taxpayer or his or her representative occur during the investigation.

### **Extensions of time to lodge**

The *Taxation Administration Act 1996* contains provisions which allow the Commissioner to approve extensions of time for lodgement of instruments and payment of tax in cases of genuine need. Details can be obtained from the contact points below. The extension may be a permanent extension of time to lodge a return or relate to a single set of circumstances. In cases where an extension of time is granted, interest will continue to accumulate (although the imposition of penalty will generally be suspended). Taxpayers and taxpayer agents are encouraged to make use of these provisions only in circumstances of genuine need.

### **FURTHER INFORMATION?**

#### ***Location***

State Taxation Office  
Taxpayer Services  
Ground Floor  
State Administration Centre  
200 Victoria Square East  
ADELAIDE SA 5000

#### ***Postal***

Commissioner of State Taxation  
State Taxation Office  
Box 2250 GPO  
ADELAIDE SA 5001

#### ***Telephone***

Pay-roll Tax	(08) 8204 9880
Land Tax	(08) 82049870
FID/Debits Tax	(08) 8204 9888
Stamp Duties	(08) 8226 3750

#### ***Facsimile***

(08) 8226 3805

#### ***Website***

<http://www.treasury.sa.gov.au/tax.html>

October 1997

COMMISSIONER OF STATE TAXATION

## APPENDIX A

## DUE DATES FOR PAYMENT OF TAXES

Tax	Due Date	Principal Act	Relevant Section(s)
Debits tax	14 <sup>th</sup> of each month	<i>Debits Tax Act 1994</i>	11
Financial institutions duty	21 <sup>st</sup> of each month	<i>Financial Institutions Duty Act 1983</i>	22; 27; 30A
Land tax	30 days from service of notice	<i>Land Tax Act 1936</i>	19
Pay-roll tax	7 <sup>th</sup> of each month	<i>Pay-roll Tax Act 1971</i>	15
Stamp duty on general documents lodged for stamping	2 months from the date of execution of the document <b>or</b> for documents executed outside South Australia, 2 months from the date of receipt of the document in SA or 6 months from the date of execution of the document, whichever is earlier	<i>Stamp Duties Act 1923</i>	20
Rental business	21 <sup>st</sup> of each month	<i>Stamp Duties Act 1923</i>	31F
General insurance	15 <sup>th</sup> of each month	<i>Stamp Duties Act 1923</i>	36
Motor vehicles	date of registration, or date of transfer of registration of a motor vehicle	<i>Stamp Duties Act 1923</i>	42B