

**SOUTH AUSTRALIA**



**RevenueSA**

**Taxation Administration**

**Circular No. 261**  
(Replaces Circular No. 159)

**TAXATION ADMINISTRATION ACT 1996**  
**APPLICATION OF INTEREST AND PENALTY TAX**

This Circular provides a guide to RevenueSA's application of the interest and penalty tax provisions of the *Taxation Administration Act 1996* ("the TAA"). The interest and penalty tax provisions of the TAA apply in relation to the following primary Acts:-

- *Land Tax Act 1936*
- *Pay-roll Tax Act 1971*
- *Stamp Duties Act 1923*

**RATIONALE FOR CHARGING INTEREST AND PENALTY TAX**

Interest and penalty tax play an integral role in taxation administration. Interest is applied as a means of encouraging taxpayers to meet their obligations on time, to offset the opportunity cost to Government of not having the use of the principal tax sum for the period that it remains unpaid, and to provide equity to all taxpayers. Penalty tax is applied to ensure timely payments and compliance with State tax legislation.

The policy intent of the interest and penalty tax provisions is that the level of interest and penalty tax should reflect the individual degree of culpability in relation to unpaid tax and that taxpayers should be encouraged to voluntarily declare any tax liabilities as soon as they are known. This is important given that South Australian taxation legislation predominantly adopts the principles of self-determination, which places the onus on taxpayers to exercise reasonable care in the calculation and timely payment of their tax liabilities.

## TAX DEFAULT

A tax default occurs when a taxpayer fails to pay, by the due date, the whole or part of any tax that the taxpayer is liable to pay.

The dates by which a tax liability 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 interest and penalty tax will not arise.**

## APPLICATION OF INTEREST – PART 5, DIVISION 1 OF THE TAA

The TAA imposes interest in circumstances where a tax default occurs. Interest is charged daily using an annual rate. The interest provisions are found in sections 25 to 29 of the TAA, which set the annual rate as being the sum of:

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

The market rate, based upon the ninety-day day Bank Accepted Bill rate, is published by the relevant Minister, the Treasurer, by way of a notice in the South Australian Government Gazette. The market rate from 7 July 2005 is 5.68% per annum and is subject to annual review. To ascertain the current rates, contact should be made with this Office, or by viewing RevenueSA's website at <http://www.revenuesa.sa.gov.au/circulars/interest.pdf>. A history of applicable interest rates since the commencement of the TAA is attached at Appendix B.

The following should be noted:-

- The Commissioner of State Taxation (“the Commissioner”) has the discretion to remit some, or all, of the interest if the taxpayer can demonstrate that all reasonable steps have been taken to meet their tax obligation, or that they were unable to comply due to circumstances beyond their control.
- The exercise of the Commissioner’s discretion is a non-reviewable decision and cannot be the subject of an objection or appeal.
- Interest can be applied to unpaid penalty tax.
- Interest is not applied to unpaid interest.

**Interest will be charged in all instances of a tax default, however, where the interest calculated is less than \$20, no interest will be payable.**

In imposing interest, consideration will be given to the following:-

- Reasonable postage and delivery times.
- Where an assessment that includes interest is issued, the amount of interest will remain fixed until the due date for payment shown on the Notice of Assessment. If payment is not made by the due date, a re-assessment will be made with the additional interest recalculated in full to the date of the re-assessment.
- 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 RevenueSA to make further enquiries into the circumstances of the matter.

#### **APPLICATION OF PENALTY TAX – PART 5, DIVISION 2 OF THE TAA**

In addition to interest, penalty tax is imposed in certain instances of a tax default. Section 30(2) of the TAA 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 a taxpayer has failed to satisfy the Commissioner that the tax default was not deliberate, or was not due to a failure to take reasonable care.

The amount of penalty tax is:

- 75% of the amount of tax unpaid where the tax default was deliberate; or
- 25% of the amount of tax unpaid in any other case.

Penalty tax will be adjusted 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% of that penalty tax;
- 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% of that penalty tax;
- where a taxpayer engages in obstructive conduct while the subject of a tax audit, the penalty tax will be **increased** by 20% of that penalty tax;

- where a taxpayer adheres to the conditions outlined in Circular 257, “Introduction of Quarterly Instalments and Penalty Tax Changes” in relation to Land Tax Assessments, the Commissioner will in the first instance, remit the rate of penalty tax of 25% to 5% of the amount of primary land tax outstanding, provided the Final Notice is paid in full by the due date. For additional information regarding the application of penalty tax in relation to land tax, Circular 257 can be accessed by viewing RevenueSA’s website at <http://www.revenuesa.sa.gov.au/circulars/c257.html>;
- 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 RevenueSA to make further enquiries into the circumstances of the matter;
- penalty tax imposed is in addition to interest;
- penalty tax is not applied to unpaid interest or penalty tax previously imposed.

**No penalty tax is payable where the amount of penalty tax calculated is less than \$20.**

#### **REMISSION OF PENALTY TAX – SECTION 34 OF THE TAA**

The Commissioner has the discretion to remit penalty tax by any amount. The decision to remit penalty tax is made by the Commissioner on a case-by-case basis, having regard to all relevant facts and circumstances including:-

- (a) the nature and extent of the taxpayer’s culpability;
- (b) the reason for the taxpayer’s failure to meet their obligations;
- (c) previous failures by the taxpayer to comply with any South Australian taxation legislation;
- (d) the level of co-operation exhibited by the taxpayer with the Commissioner where an investigation has been, or is being conducted in relation to the taxpayer’s liability; and
- (e) the legislative provisions for the assessment and their purpose.

Appendix C provides general guidance on how the general principles would be applied by the Commissioner in particular cases. **The categories and cases are illustrative only and each case will be considered on its merits.**

The exercise of the Commissioner’s discretion is a non-reviewable decision and cannot be the subject of an objection or appeal.

## **Requests for Remission of Interest or Penalty Tax**

All requests for a remission of interest and/or penalty tax must be, in the first instance, made in writing to the Commissioner.

## **Voluntary Disclosures**

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 state the identity of the taxpayer(s), the nature, period and amount of the tax default and provide an explanation of how the tax default occurred. RevenueSA will generally not accept a disclosure from a group member of a pay-roll tax group as voluntary, if another member of that group has been notified of an investigation.

The unsolicited payment of a liability to stamp duty or the unsolicited lodgement of documents liable for stamp duty after the expiration of the statutory time for payment will generally be considered to be a voluntary disclosure.

## **COMPLIANCE ACTIVITY**

Penalty tax and interest 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 RevenueSA officer conducting the audit.

## **OBJECTIONS - PART 10, DIVISION 1 OF THE TAA**

In instances where an objection to the Commissioner's assessment or re-assessment has been lodged with the Minister pursuant to sections 82 or 84 of the TAA, interest will continue to accrue in accordance with Part 5 Division 1 of the TAA, ie, market rate plus 8% per annum.

Where the objection is decided in favour of the taxpayer, any overpaid tax will be refunded in accordance with Part 4 of the TAA, together with interest at the market rate, which is gazetted from time to time and applied under Part 5 of the TAA.

Interest is calculated daily, from the “relevant date” to the date it is refunded, where the relevant date means the latter of either:-

- (a) the date of payment of the amount overpaid; or
- (b) the date on which the Commissioner made the assessment or decision to which the objection relates.

Additional information relating to applicable interest rates can be obtained by referring to Appendix B, contacting this Office, or by viewing RevenueSA’s website at <http://www.revenuesa.sa.gov.au/circulars/interest.pdf>.

In relation to penalty tax, any penalty tax assessed as payable to the point of lodgement of the objection will stay in force until the outcome of the objection is known. No further penalty tax will be assessed after the date of the objection.

### **EXTENSIONS OF TIME TO LODGE**

The TAA 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 an ongoing extension of time to lodge a return or relate to a single set of circumstances. In cases where an extension of time is granted, the imposition of penalty tax will generally be suspended provided the return and payment is received on or before the new due date. Taxpayers and taxpayer agents are encouraged to make use of these provisions only in circumstances of genuine need.

### **FURTHER INFORMATION**

***Location:***

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Ground Floor  
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RevenueSA  
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## APPENDIX A

## DUE DATES FOR PAYMENT OF TAXES

| <b>Tax</b>                                          | <b>Due Date</b>                                                                                                                                                                                                                                                | <b>Principal Act</b>         | <b>Relevant Section(s)</b> |
|-----------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------|----------------------------|
| Land tax                                            | thirty days from service of notice                                                                                                                                                                                                                             | <i>Land Tax Act 1936</i>     | 19                         |
| Pay-roll tax                                        | seventh day of each month                                                                                                                                                                                                                                      | <i>Pay-roll Tax Act 1971</i> | 11 & 15                    |
| Stamp duty on general documents lodged for stamping | two months from the date of execution of the document<br><b>or</b><br>for documents executed outside South Australia, two months from the date of receipt of the document in SA or six months from the date of execution of the document, whichever is earlier | <i>Stamp Duties Act 1923</i> | 20                         |
| Rental business                                     | twenty-first day of each month                                                                                                                                                                                                                                 | <i>Stamp Duties Act 1923</i> | 31F                        |
| General insurance                                   | fifteenth day of each month                                                                                                                                                                                                                                    | <i>Stamp Duties Act 1923</i> | 36                         |
| Life Insurance                                      | Thirty-first day of January in each year                                                                                                                                                                                                                       | <i>Stamp Duties Act 1923</i> | 34<br>& Regulation 18      |
| Motor vehicles                                      | fourteen days after the date of registration, or fourteen days after the date of transfer of registration of a motor vehicle                                                                                                                                   | <i>Stamp Duties Act 1923</i> | 42B                        |

## APPENDIX B

## TAXATION ADMINISTRATION ACT 1996

## HISTORY OF INTEREST RATES - FROM 1 JANUARY 1997

The following interest rate table shows the effective interest rate for refunds (market rate) and tax defaults since the commencement of the Act.

| Period                          | Refunds | Defaults |
|---------------------------------|---------|----------|
| 1 January 1997 to 30 June 1997  | 10.5%   | 18.5%    |
| 1 July 1997 to 31 December 1997 | 9.8%    | 17.8%    |
| 1 January 1998 to 30 June 1998  | 8.8%    | 16.8%    |
| 1 July 1998 to 31 December 1998 | 8.8%    | 16.8%    |
| 1 January 1999 to 30 June 1999  | 8.8%    | 16.8%    |
| 1 July 1999 to 30 June 2000     | 4.8%    | 12.8%    |
| 1 July 2000 to 30 June 2001     | 5.95%   | 13.95%   |
| 1 July 2001 to 7 July 2004      | 4.89%   | 12.89%   |
| 8 July 2004 to 6 July 2005      | 5.51%   | 13.51%   |
| 7 July 2005 onwards.            | 5.68%   | 13.68%   |



## APPENDIX C

### GUIDELINES FOR REMISSION OF PENALTY TAX

This Appendix illustrates circumstances in which the Commissioner may consider remission and the extent of the remission. **The categories and cases provide a guide only and each case must be considered on its merits.** The Commissioner may request the production of further evidence.

#### Reasonable Care

Penalty tax will not be imposed where taxpayers can show that they have taken reasonable care in the conduct of their tax affairs. 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 RevenueSA.

In determining whether or not a taxpayer has taken reasonable care, RevenueSA will consider factors including, the taxpayer's knowledge of tax legislation, commercial experience and access to expert advice.

The following situations, whilst not exhaustive, may indicate that a taxpayer or a representative of a taxpayer has taken reasonable care:

- (a) the taxpayer has maintained appropriate and proper recording systems;
- (b) the taxpayer has taken reasonable steps to be aware of their taxation obligations and has familiarised themselves with the relevant legislation so as not to overlook the legislative requirements;
- (c) the taxpayer has applied any relevant public rulings in good faith;
- (d) the taxpayer has sought professional advice or private rulings for uncertain or complex matters where no public ruling applied or their circumstances differed from those described in a public ruling;
- (e) the taxpayer has acted in good faith in applying any independent tax advice received;
- (f) the taxpayer has observed any private ruling received and has notified RevenueSA if there have been any changes in the information on which the ruling was formed;
- (g) the taxpayer acted promptly to seek advice or provide information once made aware, from any source, that they might have a tax liability; or
- (h) the taxpayer has sought a formal decision from RevenueSA before relying on any legislative exemption or concession, which requires the Commissioner to exercise his discretion.

#### Circumstances beyond a taxpayer's control

Circumstances beyond the control of the taxpayer or the person acting on behalf of the taxpayer, who has made every reasonable effort to mitigate the effect of these circumstances, 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; or
- (d) computer breakdowns including third party systems such as Electronic Funds Transfer (“EFT”), Internet, BPay and Interactive Voice Response (“IVR”).

**NOTE: financial incapacity is NOT considered to be a circumstance outside the taxpayer’s control.**

#### **Intentional disregard of a taxation law**

Intentional disregard of a taxation law includes 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 a taxpayer’s intention (eg, admission by taxpayer) or can be inferred from the surrounding circumstances and conduct of the taxpayer.

Examples of this conduct, which may demonstrate intentional disregard of a taxation law, include:

- (a) use of contrived or artificial avoidance schemes which prove to be legally flawed;
- (b) tax evasion or fraud;
- (c) knowingly making false or misleading records or statements;
- (d) knowingly concealing relevant facts on a tax liability;
- (e) ignoring a private or public ruling of which the taxpayer is aware, particularly on a matter where the law is clearly established;
- (f) failing to assess in accordance with well established principles of tax law;
- (g) failing to meet a tax liability after being advised of its existence by RevenueSA or another person; or
- (h) repeating a tax default on a same matter or a closely related matter.

#### **Concealment or hindrance of an investigation**

Concealment or hindrance of an investigation includes circumstances where a taxpayer, having been informed by the Commissioner that an investigation is to be carried out and before the investigation is completed, taking steps to prevent or hinder the Commissioner from becoming aware of the tax default.

**PENALTY TAX GUIDELINE SUMMARY**

| <b>Penalty Category</b>                                                                                                                                    | <b>Rate</b><br>% | <b>Sufficient Disclosure before Investigation</b><br>% | <b>Sufficient Disclosure during Investigation</b><br>% | <b>Concealment or Hindrance</b><br>% |
|------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------|--------------------------------------------------------|--------------------------------------------------------|--------------------------------------|
| Reasonable care or circumstances beyond the control of the taxpayer or their agent and the taxpayer has taken reasonable steps to mitigate the tax default | 0                | 0                                                      | 0                                                      | 0                                    |
| Standard penalty                                                                                                                                           | 25               | 5                                                      | 20                                                     | 30                                   |
| Intentional disregard of a taxation law                                                                                                                    | 75               | 15                                                     | 60                                                     | 90                                   |

Historical Use Only