TR 93/D19 - Income tax: tax shortfall penalties: calculation of a tax shortfall and allocation of additional tax

UThis cover sheet is provided for information only. It does not form part of *TR 93/D19* - *Income tax: tax shortfall penalties: calculation of a tax shortfall and allocation of additional tax*

This document has been finalised by TR 94/3.

Australian Taxation Office

FOI status draft only - for comment

Draft Taxation Ruling TR 93/D19

page 1 of 11

Draft Taxation Ruling

Income tax: tax shortfall penalties: calculation of a tax shortfall and allocation of additional tax

Draft Taxation Rulings (DTRs) represent the preliminary, though considered, views of the Australian Taxation Office.

DTRs may not be relied on by taxation officers, taxpayers and practitioners. It is only final Taxation Rulings which represent authoritative statements by the Australian Taxation Office of its stance on the particular matters covered in the Ruling.

contents	para
What this Ruling is about	: 1
Ruling	2
Date of effect	6
Examples	7

What this Ruling is about

1. This Ruling outlines the general basis on which additional tax should be calculated under sections 226G, 226H, 226J, 226K, 226L and 226M (the shortfall sections) of the *Income Tax Assessment Act 1936* (ITAA).

Ruling

2. Additional tax under the shortfall sections is calculated in respect of a tax shortfall or part of a tax shortfall. While a tax shortfall is broadly the gross difference between the tax properly payable by a taxpayer and the tax that would have been payable by the taxpayer if it were assessed on the basis of the taxpayer's return, a tax shortfall will frequently need to be split into its component parts to determine the correct application of the shortfall sections.

3. The examples below illustrate the calculations to be followed in applying shortfall sections. The examples recognise that in the course of an audit a tax officer may detect a number of items that require adjustment, some of which may warrant penalty, some of which may not. In addition, there may be adjustments made in a taxpayer's favour which may or may not relate to the debit adjustments made. Further, the adjustments may be to income, deductions, rebates, foreign tax credits or offsets of franking deficit tax.

4. The basic rule is that if there is not a tax shortfall for a year then additional tax cannot be imposed. For example, if a taxpayer has omitted an amount of income, but the tax related to that matter is more than offset by an adjustment in the taxpayer's favour (whether or not



FOI status draft only - for comment

related to the omitted income), no additional tax would be payable. Accordingly, the examples below only cover situations where, after the various adjustments to the taxpayer's assessment, there is a tax shortfall. Although all of the examples assume that the taxpayer was taxable to start with, the same principles for calculating penalty would apply where a taxpayer had originally returned a loss, provided there was in fact a tax shortfall after all adjustments had been made.

5. The examples below are assumed to be in respect of assessments for the 1992-93 year of income for a resident individual taxpayer. The principles illustrated apply equally to the calculation of penalty under the shortfall sections for other kinds of taxpayers.

Date of effect

6. This Ruling (that is, the final Taxation Ruling based on this Draft Taxation Ruling) sets out the current practice of the Australian Taxation Office and is not concerned with a change in interpretation. Consequently, it applies from the date on which the shortfall sections commenced to operate.

Examples

7. The examples below are based around combinations of the following income/rebate/credit adjustments:

TAXABLE INCOME AS RETURNED / ASSESSED	(TIAR/A)	35,000
INCOME MISSTATEMENT NO. 1 (caused by recklessness - penalty 50%)	(IM NO.1)	1,000
INCOME MISSTATEMENT NO. 2 (caused by lack of reasonable care - penalty 25%)	(IM NO.2)	2,000
INCOME MISSTATEMENT NO. 3 (not culpable - no penalty)	(IM NO.3)	500
INCOME MISSTATEMENT NO. 4 (OVERSTATEMENT OF INCOME UNRELATED TO OTHER MISSTATEMENTS)	(UIM)	(300)
REBATE/CREDIT MISSTATEMENT NO. 1 (caused by recklessness - penalty 50%)	(R/C NO.1)	500
REBATE/CREDIT MISSTATEMENT NO. 2 (caused by lack of reasonable care - penalty 25%)	(R/C NO.2)	1,000
REBATE/CREDIT MISSTATEMENT NO. 3	(UR/C)	(400)

Draft Taxation Ruling

(UNDERSTATED REBATE/CREDIT UNRELATED TO OTHER REBATE/CREDIT MISSTATEMENTS)

NOTES:

- "income misstatements" may be either understated income amounts or overstated deductions, or a combination of both;
- "credits" for penalty purposes are foreign tax credits under Divisions 18, 18A and 18B of Part III of the ITAA, and offsets of franking deficit tax;
- for the purpose of calculating tax shortfalls in the following examples, 1992-93 resident individual rates of tax have been used;
- for the purpose of calculating interest in the following examples, the tax is assumed to have been avoided for a period of one year, and the rate of interest for the purpose of section 170AA of the ITAA is assumed to be 9.6% for that whole year.

page 4 of 11

FOI status draft only - for comment

EXAMPLE A:

INCOME INCREASE

TAXABLE INC	OME AS RETU	RNED / ASSESSED	(TIAR/A)	35,000
INCOME MISS	TATEMENT NC	0. 1 (penalty 50%)	(IM NO.1)	1,000
INCOME MISS	TATEMENT NC	0. 2 (penalty 25%)	(IM NO.2)	2,000
INCOME MISS	TATEMENT NC	0. 3 (no penalty 0%)	(IM NO.3)	500
	TATEMENT NC OVERSTATEMI	• •	(UIM)	(300)
TIAR/A			35,000	
Less UIM			<u>300</u>	
2000 0111			34,700	
Plus	IM NO.1	1,000	,	
	IM NO.2	2,000		
	IM NO.3	500		
Net Debit Adjust	tment		3,500	
Amended Taxab	le Income (ATI)		38,200	
Tax Shortfall				
Tax on ATI	38,200	9,886		
Less Tax on TIAR/A Plus	35,000	8,494		

Tax Shortfall

Adjusted Medicare Levy

Allocation of Tax Shortfall to Income Misstatements

IM NO.1	IM NO.2	IM NO.3
<u>1,000</u> x 1,432	<u>2,000</u> x 1,432	<u>500</u> x 1,432
3,500	3,500	3,500
= 409.14	= 818.28	=204.57

40

1,432

Penalties

IM NO.1	IM NO.2	IM NO.3
50% flat	25%flat	no penalty
409.14 x 50%	818.28 x 25%	
= 204.57	= 204.57	

Total Penalties = 204.57 + 204.57 = \$409.14

Interest

 $1432 \ge 9.6\% = \$137.47$ (deductible)

TR 93/D19



page 5 of 11

EXAMPLE B:

REBATE/CREDIT REDUCTION

TAXABLE INCOME AS RETURNED / ASSESSED (TIAR/A)	35,000
REBATE/CREDIT MISSTATEMENT NO. 1 (penalty 50%) (R/C NO.1)	500
REBATE/CREDIT MISSTATEMENT MO. 2 (penalty 25%) (R/C NO.2)	1,000
REBATE/CREDIT MISSTATEMENT NO. 3 (UR/C) (UNRELATED UNDERSTATED REBATE)	(400)
TIAR/A 35,000	
Amended Taxable Income (ATI)35,000	
Tax Shortfall	
Tax on ATI 35,000 8,494 Less	
Tax on TIAR/A 35,000 <u>8,494</u> 0	
Plus R/C No.1 500	
R/C No.2 <u>1,000</u>	
1,500 Less UR/C 400	
Less UR/C 1,100	
Tax Shortfall1,100	

Allocation of Tax Shortfall to Rebate/Credit Misstatements

R/C NO.1	R/C NO.2
<u>500</u> x 1,100	<u>1,000</u> x 1,100
1,500	1,500
= 366.66	= 733.33

Penalties

R/C NO.1	R/C NO.2
50% flat	25%flat
366.66 x 50%	733.33 x 25%
= 183.33	= 183.33

Total Penalties = 183.33 + 183.33 = \$366.66

Interest

 $1,100 \ge 9.6\% = \$105.60$ (deductible)

page 6 of 11

EXAMPLE C

INCOME INC	REASE, REBA	TE/CREDIT INCREAS	SE	
TAXABLE INC	COME AS RETU	JRNED / ASSESSED	(TIAR/A)	35,000
INCOME MISS	TATEMENT N	O. 1 (penalty 50%)	(IM NO.1)	1,000
INCOME MISS	TATEMENT N	O. 2 (penalty 25%)	(IM NO.2)	2,000
INCOME MISS	TATEMENT N	O. 3 (no penalty)	(IM NO.3)	500
INCOME MISS (UNRELATED			(UIM)	(300)
REBATE/CREI (UNRELATED			(UR/C)	(400)
TIAR/A Less UIM			35,000 300	
Plus	IM NO.1 IM NO.2 IM NO.3	1,000 2,000 500	34,700	
Net debit adjusti	ment		3,500	
Amended Taxab	le Income (ATI))	38,200	
Tax Shortfall				
Tax on ATI	38,200	9,886		
Less Tax on TIAR/A	35,000	<u>8,494</u>	1 202	
Plus Adjusted Medica Less	are Levy		1,392 40	
Unrelated Rebat	e (UR/C)		(400)	
Tax Shortfall			1,032	

Allocation of Tax Shortfall to Income Misstatements

IM NO.1	IM NO.2	IM NO.3
<u>1,000</u> x 1,032	<u>2,000</u> x 1,032	<u>500</u> x 1,032
3,500	3,500	3,500
= 294.85	= 589.71	= 147.42



FOI status draft only - for comment

page 7 of 11

IM NO.1IM NO.50% flat25% flat294.85 x 50%589.71= 147.42= 147.42

IM NO.2 25%flat 589.71 x 25% = 147.42 IM NO.3 no penalty

Total Penalties = 147.42 + 147.42 = \$294.84

Interest

1,032 x 9.6% = \$99.07 (deductible)

page 8 of 11

FOI status draft only - for comment

500

(300)

500

(400)

EXAMPLE D

INCOME INCREASE, REBATE/CREDIT REDUCTION TAXABLE INCOME AS RETURNED / ASSESSED (TIAR/A) 35,000 **INCOME MISSTATEMENT NO. 1 (penalty 50%)** (IM NO.1) 1,000 INCOME MISSTATEMENT NO. 2 (penalty 25%) (IM NO.2) 2,000 INCOME MISSTATEMENT NO. 3 (no penalty) (IM NO.3) **INCOME MISSTATEMENT NO. 4** (UIM) (UNRELATED OVERSTATEMENT) REBATE/CREDIT MISSTATEMENT NO. 1 (penalty 50%) (R/C NO.1) REBATE/CREDIT MISSTATEMENT MO. 2 (penalty 25%) (R/C NO.2) 1,000 **REBATE/CREDIT MISSTATEMENT NO. 3** (UR/C)(UNRELATED UNDERSTATED REBATE) TIAR/A 35,000 Less UIM 300 34,700 Plus 1,000 IM NO.1 IM NO.2 2,000 IM NO.3 500 Net debit adjustment 3,500 38,200

Amended Taxable Income (ATI)			
Tax Shortfall			
Tax on ATI Less	38,200	9,886	
Tax on TIAR/A	35,000	<u>8,494</u>	1392

D1		1572	
Plus Adjusted Medicare	Levy	40	1 422
Plus			1,432
R/C NO.1	500		
R/C NO. 2	1000		
UR/C	<u>(400)</u>		
			1,100
Tax Shortfall			2,532

Allocation of Tax Shortfall to Income and Rebate/Credit Misstatements

TR	93/D	19

FOI status draft only - for comment		page 9 of
IM NO.1	IM NO.2	IM NO.3
<u>1,000</u> x 1,432	<u>2,000</u> x 1,432	<u>500</u> x 1,4
3,500	3,500	3,500
= 409.14	= 818.28	= 204.57
R/C NO.1	R/C NO.2	
<u>500</u> x 1,100	<u>1,000</u> x 1,100	
1,500	1,500	
= 366.66	= 733.33	
Penalties		
IM NO.1	IM NO.2	IM NO.3
50% flat	25%flat	no penalty
409.14 x 50%	818.28 x 25%	1 2
= 204.57	= 204.57	
R/C NO.1	R/C NO.2	
50% flat	25%flat	
366.66 x 50%	733.33 x 25%	
= 183.33	= 183.33	

Interest

 $2532 \ge 9.6\% = \$243.07$ (deductible)

page 10 of 11

FOI status draft only - for comment

EXAMPLE E

INCOME REDUCTION, REBATE/CREDIT REDUCTION TAXABLE INCOME AS RETURNED / ASSESSED (TIAR/A) 35,000 **INCOME MISSTATEMENT NO. 4** (UIM) (300)(OVERSTATEMENT) REBATE/CREDIT MISSTATEMENT NO. 1 (penalty 50%) (R/C NO.1) 500 REBATE/CREDIT MISSTATEMENT MO. 2 (penalty 25%) (R/C NO.2) 1,000 **REBATE/CREDIT MISSTATEMENT NO. 3** (UR/C)(400)(UNRELATED UNDERSTATED REBATE) TIAR/A 35,000 Less UIM 300 Amended Taxable Income (ATI) 34,700 **Tax Shortfall** Tax on ATI 34,700 8,380 Less Tax on TIAR/A 35,000 8,494 (114)Less Medicare Levy (3.75)Plus R/C No.1 500 R/C No.2 1,000 1,500 Less UR/C 400 1,100 Tax Shortfall 982.25

Allocation of Tax Shortfall to Rebate/Credit Misstatements

R/C NO.1	R/C NO.2
<u>500</u> x 982.25	<u>1,000</u> x 982.25
1,500	1,500
= 327.41	= 654.83

Penalties

R/C NO.1	R/C NO.2
50% flat	25%flat
327.41 x 50%	654.83 x 25%
= 163.70	= 163.70

Total Penalties = 163.70 + 163.70 = \$327.40

Interest

982.25 x 9.6% = \$94.29 (deductible)



FOI status draft only - for comment

page 11 of 11

Commissioner of Taxation

22 April 1993

ISSN 1039 - 0731

ATO references 93/2071-7 NO BO

Not previously released to the public in draft form

\$1.10 Price

FOI index detail reference number

subject references

- additional tax -
- _ calculation
- _ self assessment
- tax shortfall _

legislative references

ITAA 170AA; ITAA 226G; -ITAA 226H; ITAA 226J; ITAA 226K; ITAA 226L; ITAA 226M