


***ST 2123 - SALES TAX : EXTENSIONS OF TIME TO
PAY UNDER SECTION 28, SALES TAX ASSESSMENT
ACT (No. 1), REMISSIONS UNDER SUB-SECTION
29(2) OF ADDITIONAL TAX PAYABLE UNDER
SUB-SECTION 29(1) OF SALES TAX ASSESSMENT
ACT (No. 1).***

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TAXATION RULING NO. ST 2123

SALES TAX : EXTENSIONS OF TIME TO PAY UNDER SECTION 28,
SALES TAX ASSESSMENT ACT (No. 1), REMISSIONS UNDER
SUB-SECTION 29(2) OF ADDITIONAL TAX PAYABLE UNDER
SUB-SECTION 29(1) OF SALES TAX ASSESSMENT ACT (No. 1).

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I 1174709	EXTENSION OF TIME FOR PAYMENT OF SALES TAX ADDITIONAL (PENALTY) TAX : IMPOSITION AND REMISSION	SALES TAX ASSESSMENT ACT (NO. 1) SECTION 28, AND SUB- SECTION 29(1) AND 29(2)

PREAMBLE This ruling provides guidelines for the exercise of the
Commissioner's powers under:

- (i) section 28, Sales Tax Assessment Act (No. 1) to
grant extensions of time for payment, or permit
payments to be made by instalments; and
- (ii) sub-section 29(2), Sales Tax Assessment Act
(No. 1) to remit the statutory penalty for unpaid
tax payable under sub-section 29(1).

2. In providing the guidelines in this ruling there is no
intention of laying down any conditions which may restrict a
Deputy Commissioner in the exercise of his discretion.

3. In framing a policy covering extensions of time to pay
sales tax and remission of additional tax it is essential that
the policy be complementary to the overall collection and
recovery philosophy of the Taxation Office.

4. The sales tax law requires a sales tax return to be
lodged and the tax paid within 21 days of the close of the month
in which sales are made. If the tax is not paid by the due
date, additional tax is payable at the rate of 20% per annum
(10% per annum prior to 20 December 1984) on the amount of tax
unpaid. The Commissioner may, however, pursuant to sections 28
and 29 of the Sales Tax Assessment Act (No. 1):

- (a) extend the time for payment as he considers the
circumstances warrant; or
- (b) permit the payment of tax to be made by
instalments within such time as he considers the
circumstances warrant; or

- (c) remit the additional tax imposed or any part thereof.

5. The statutory rate of penalty of 20 per cent per annum arises automatically upon late payment of sales tax. The legislation plainly contemplates and intends that sales taxpayers comprehend the financial implications of late payment and arrange their affairs so that they will be able to pay the tax when it falls due. It is essential therefore that the additional tax imposed by the legislation be maintained in all but exceptional circumstances. Hence, where an extension of time for payment is granted it would normally be expected to be subject to additional tax from the original due date.

6. It follows that in most instances the purpose of granting an extension of time will be solely to provide the sales taxpayer with some arrangement to pay on the understanding that legal action will be deferred over the period of the extension. That is, an extension of time provides the Commissioner with an alternative to legal action to recover overdue debts from taxpayers who are unable to pay by the due date but who have the ability or potential to pay at some time in the future.

7. Consequently, where an extended due date is granted, recovery action will normally be held in abeyance but should be instituted if the taxpayer defaults on the terms of the extension. Sales taxpayers should be advised of this whenever an extension is granted.

8. As sales tax is a monthly recurring tax, debts can escalate quickly. Accordingly, the granting of further time for payment must be conditional upon tax for future months being paid by the normal due dates.

RULING

9. Requests for extension of time to pay sales tax should not be considered unless and until a properly completed and signed sales tax return has been lodged. The guidelines to be followed in considering requests for extension of time to pay sales tax and remission of additional (penalty) tax for late payment are set out in paragraphs 12 to 55 below. A summary of them is contained in paragraphs 10 and 11.

10. In brief, the position in relation to the granting of extensions of time to pay is as follows:

- (i) Extensions of time for payment should be seen as an alternative to legal action in respect of a taxpayer who is clearly unable to pay the debt when it falls due but has the ability or potential to pay at some time in the future.
- (ii) Taxpayers who suffer serious financial hardship as a result of drought, flood, bushfire or other natural disaster may be granted an extended due date with penalty accruing from that extended due date.
- (iii) With the exception of taxpayers so affected by natural disasters, all extensions of time are to be granted subject to additional tax from the

original due date. That is, use of an extended due date to alter the date from which penalty is calculated is restricted to natural disaster situations.

- (iv) Extensions of time are to be considered on two levels. Firstly, short-term arrangements to pay, where the debt will be discharged within three months of the due date, may be approved where the taxpayer provides reasonable arguments. Secondly, long-term payment arrangements (ie., those exceeding three months) should only be approved after careful consideration of the taxpayer's ability or potential to pay. It is expected that the debt would normally be extinguished over a six month period.
- (v) Where an extension of time is granted, all recovery action should be held in abeyance and only recommence if the taxpayer defaults on the terms of the payment arrangement.

11. In relation to remission of sub-section 29(1) additional tax the position, in brief, is as follows:

- (i) Requests for remission of additional tax must be considered within the terms of sub-section 29(2). Apart from cases where "special circumstances" (as referred to in (iii) below) exist, the taxpayer must be able to demonstrate that because of certain circumstances the tax was not able to be paid when it fell due and secondly, that all reasonable efforts to mitigate, or mitigate the effects of, those circumstances have been made.
- (ii) Where the circumstances were beyond the control of the taxpayer additional tax may be remitted in full. Where the circumstances were the result of the taxpayer's actions, additional tax may be remitted if it is fair and reasonable to do so but the remission should not bring the additional tax below 10 per cent per annum.
- (iii) Remissions under the "special circumstances" limb of sub-section 29(2) are normally limited to:
 - . hardship cases;
 - . those where the levying of additional tax is considered not worthwhile; and
 - . those where additional tax is to be reduced because of a credit amendment.

EXTENSIONS OF TIME TO PAY

12. Taxpayers requesting an extension of time to pay can be classified into three basic groups:

- (i) those seeking accommodation near the time of the due date in respect of the current month's debt, normally on the basis of short-term liquidity problems;

- (ii) those seeking arrangements to pay over a longer period of time because of more serious financial difficulties and who generally would have a number of months payments outstanding, with the application generally motivated by legal action instituted by the Taxation Office. This category would include cases where remission of additional tax might be appropriate (see paragraphs 38 to 55 below); and
- (iii) those whose inability to pay is caused by bushfire, flood, drought or some other natural disaster.

Short-Term Applications

13. Applications from taxpayers seeking accommodation near the due date can be further broken down into those:

- (i) who face short-term liquidity difficulties, have resources or facilities available to them to enable them to pay but who do not marshal those resources or tap those facilities to achieve payment in full by the due date. There will be reasons why they do not take the action available to them - it may be that they are not able to produce liquid funds quickly or that they simply find it inexpedient or unprofitable to do so; and
- (ii) who face short-term liquidity difficulties and find themselves unable to marshal resources or tap facilities. Short term liquidity problems may arise where the volume and/or value of goods sold on credit for a particular month has increased significantly and normal cash flows cannot cover the current sales tax commitment.

14. On conceptual grounds, it would not be appropriate, in the case of the first group, to grant any concessions for late payment. It is a pre-requisite in considering any extension application that the taxpayer has exhausted all avenues for obtaining the liquid funds necessary to pay the debt.

15. In relation to the second group of taxpayers an extension of time to pay beyond the 21st of the month may be appropriate where the taxpayer's financial circumstances warrant that action.

16. In practice,

applications to pay beyond the due date may be approved where reasonable grounds are furnished in support of the request but the extension must not exceed three months.

17. While the policy above applies with equal force to all taxpayers seeking an extension, care should be taken in considering applications from taxpayers whose past record indicates an unsatisfactory level of compliance in relation to the lodgment of returns and/or payment of tax. In these cases steps should be taken to make sure that the motivation for the application is an inability to pay and not merely an unwillingness to pay or a desire to delay institution of legal

recovery action.

18. While some sales taxpayers may be attempting to delay payment of their tax obligations without recourse to other avenues available to them, it is likely that maintenance of the 20 per cent rate of penalty will ensure that these cases are kept to a minimum. Accordingly, when advising taxpayers that an extension has been granted, it should be made clear that it is subject to additional tax accruing from the original due date.

Long-Term Applications

19. Applications for longer term payment arrangements (i.e., greater than three months) should be examined more closely and a full assessment of the taxpayer's financial position undertaken. Where an extension of time is warranted it should also be subject to additional tax at the full statutory rate of 20 per cent per annum measured from the original due date.

20. In dealing with these applications, three basic points need to be considered. Firstly, it must clearly be demonstrated that the taxpayer does not have the means necessary to discharge the liability when it falls due.

21. Inability on the part of the taxpayer to pay the tax by the due date could be demonstrated by, for instance, a total lack of cash reserves, claims to cash, recourse to borrowings, ownership of realizable assets, etc. at that time.

22. If it is considered that the taxpayer is in a position to pay the debt by the due date, then legal action for recovery should proceed if the amount is left unpaid after that date.

23. Secondly, where a taxpayer has demonstrated an inability to pay by the due date, an extension should then only be granted where it can further be demonstrated that the taxpayer will, within the period for which an extension may be granted, have the ability or potential to pay the debt. This could be demonstrated by, for instance, future claims to cash, improved seasonal trading conditions, etc.

24. If a taxpayer's past record indicates an unsatisfactory level of compliance in relation to the lodgment of returns and/or payment of tax then, as mentioned earlier, care should be taken to ensure that the application for extension is motivated by an inability to pay and not merely an unwillingness to pay or a desire to delay institution of legal recovery action.

25. Taxpayers frequently seek extensions of time to pay in circumstances in which business operations are concerned and viability of the business is in doubt. These requests for extension may be precipitated by legal action taken by the Taxation Office and often involve requests for payment concessions longer than three months. The common arguments advanced in support of an extension are that the business can trade out of its difficulties and that to precipitate legal action to wind-up the business may lead to employees being retrenched. Arguments such as the threat of retrenchment, while in themselves having merit, are not generally decisive.

26. An argument which weighs against approval of a long term extension in the circumstances described in the preceding paragraph is that the granting of such an extension would be equivalent in effect to the business receiving a loan not available to its competitors. Furthermore, the trade creditors of the business could, in such circumstances, be disadvantaged by the failure of the Taxation Office to act sooner to recover outstanding amounts.

27. As indicated earlier, the purpose of granting an extension of time is to provide the Commissioner with an alternative to legal action. It is only a viable alternative where the taxpayer can demonstrate an ability or potential to pay the debt by instalments or some other reasonable arrangement. If it is reasonably clear that the taxpayer will not or cannot pay the debt then it is inappropriate for the Commissioner to grant payment concessions and legal action for recovery should proceed.

28. In the more serious cases, the ability or potential to pay will often have to be judged by reference to the actions of the taxpayer's other creditors. Where the taxpayer's creditors have decided to stay recovery proceedings or extend further credit, it may be appropriate in the circumstances for the Taxation Office to adopt a similar position even though the debt may not be fully discharged for some time in the future. This course would only be appropriate where the taxpayer's tax liability (including amounts owing in respect of income tax, tax instalment deductions or deductions from prescribed payments) will not increase over the period of the extension.

29. Where an extension of time is granted, and given that the extension would be subject to additional tax from the original due date at 20 per cent per annum, consideration may need to be given to whether the additional tax should be maintained at that level. Remission of additional tax in these cases should be considered according to the guidelines set down in paragraphs 38 to 55 below.

30. The third point to be considered is the period for which the extension may be granted. No hard and fast rules can be laid down and much will depend upon the individual circumstances of each taxpayer. Nevertheless, payment arrangements normally should be granted on the basis that they relate only to the current debt, i.e., all future monthly payments are to be made by the due date and, secondly, that the debt must be progressively reduced. It is expected that the debt would normally be extinguished over a six month period but a longer period may be allowed where the debt is substantial and a six month limit would impose serious hardship.

Taxpayers Affected By Natural Disaster

31. The financial difficulties experienced by taxpayers affected by natural disaster are generally of a serious and long-term nature. Accordingly, the factors relevant to considering applications for extension of time to pay in these cases are similar to those in paragraphs 19 to 30 above.

32. Formal extensions of time to pay may be granted to persons who suffer serious financial hardship as a result of

natural disaster, with any additional tax to be measured only from the extended due date. The discretion to formally substitute an extended due date in the place of the original due date, and thereby restrict the calculation of additional tax to the period after the extended due date is, as a general rule, to be used only in these cases.

33. Finally, blanket extensions of time to taxpayers in a particular industry or region are not to be granted. Each case must be considered on its merits.

Extension Free of Additional Tax or at a Reduced Rate (Remission)

34. As indicated previously, but subject to paragraph 32 above, extensions granted should normally be subject to additional tax at the full statutory rate from the original due date. However, depending upon the information available at the time the request for extension is made, there may be cases where the extension can be granted free of additional tax or at a reduced rate, i.e., additional tax may be remitted. The conditions under which the Commissioner may remit additional tax for late payment are discussed in detail in paragraphs 38 to 55 below.

35. Where an extension is granted on the basis of a reduced rate of additional tax, the taxpayer is to be advised that the extension is subject to additional tax at the full statutory rate from the original due date but may be remitted in full or in part provided that the terms of the extension are adhered to.

Taxpayers Receiving Government Assistance

36. Special mention needs to be made of applications for extension of time received from taxpayers who, because of financial difficulties, are in receipt of Government assistance in the form of subsidies, business loans or similar funds. In this regard it is reiterated that in order for a taxpayer to qualify for extended time to pay the criteria outlined earlier must be satisfied. The fact that a business concern is helped over its financial difficulties by loans or other assistance from either Federal or State Government instrumentalities does not, in itself, constitute sufficient ground for the granting of payment concessions. In other words, it is not open to the Commissioner, having regard to the strictly limited nature of his statutory functions, to assist other activities of the Commonwealth, or State Government activities, by allowing collection of debts to remain in abeyance over an extended period and in effect to increase the assistance determined by the legitimate authority.

Continuing Extensions

37. Permanent or continuing extensions for further time to pay should not be granted. Each month's payment should be viewed in isolation and a decision made on the basis of the circumstances affecting that month.

REMISSION OF ADDITIONAL TAX FOR LATE PAYMENT

38. The practical application of sub-section 29(2) must be considered in the light of Parliament's desire to tighten the

rules for remission of additional tax and thereby ensure that the financial penalties for late payment of sales tax are not reduced in effect.

39. Under the scheme of the legislation, the processing of an application for remission of additional tax involves two basic considerations:

- (i) the conditions to be met before an application will be considered; and
- (ii) the factors which will determine whether remission should be granted.

Conditions to be Met Before Application Considered

40. The primary requirement before a case can be considered for remission is that it must clearly be demonstrated that the taxpayer did not have the means necessary to discharge the liability when it fell due.

41. Inability to pay sales tax could be demonstrated by, for instance, a total lack of cash reserves, claims to cash, recourse to borrowing, ownership of realizable assets, etc. at that time.

42. If the taxpayer is unable to demonstrate an inability to pay the debt on or before the due date then the application for remission should be refused.

Factors Determining Whether Remission Should be Granted

43. Under the legislation the Commissioner is permitted to remit additional tax on one of three grounds :

- (i) if the circumstances that led to the delay in payment were not caused by an act or omission of the taxpayer and the taxpayer has taken reasonable action to mitigate, or mitigate the effects of, the circumstances that led to the delay (paragraph 29(2)(a)); or
- (ii) notwithstanding that the circumstances leading to the delay were caused by the taxpayer, where the taxpayer has taken reasonable action to mitigate, or mitigate the effects of, those circumstances and it is fair and reasonable to remit additional tax in view of the nature of those circumstances (paragraph 29(2)(b)); or
- (iii) the taxpayer's circumstances qualify as special circumstances by reason of which it would be fair and reasonable to remit the additional tax (paragraph 29(2)(c)).

Factors Beyond the Control of the Taxpayer

44. The Commissioner's power to remit additional tax under the first limb is limited to those cases where it can be clearly demonstrated that factors beyond the taxpayer's control, and which were clearly unpredictable, prevented the making of

adequate provision to meet the obligation by the due date. Such circumstances include bushfires, floods, drought, hail damage, sudden ill-health of key personnel in sole trader or small business situations, strikes, etc, i.e., exceptional circumstances leading to a temporary reduction of the taxpayer's cash inflow.

45. Subject to the taxpayer demonstrating that reasonable steps have been taken to mitigate, or mitigate the effects of, the circumstances that contributed to the late payment (see paragraphs 51 and 52 below) a full remission of additional tax would be appropriate in these cases.

Factors Subject to the Control of the Taxpayer

46. To qualify for remission under this category it must be able to be demonstrated that some specific event or decision affected the taxpayers ability to pay. Remission may then be granted only where it is fair and reasonable to do so having regard to the nature of that specific event or decision. On this latter point, what is a "fair and reasonable" event must be interpreted in light of Parliament's clear intention that a taxpayer's affairs should be organised so that taxes can be paid on time.

47. Remission may be appropriate therefore where the inability to pay is caused by a business decision taken by the taxpayer which, although it may have been a reasonable decision to take at the time, resulted in a loss or other adverse and unforeseen consequences for the taxpayer, e.g., a decision to invest in trading stock which subsequently the taxpayer is unable to sell.

48. However, applications for remission of additional tax based on generalisations such as "adverse business conditions affecting the industry" or "general economic downturn" should be refused. The taxpayer would have to demonstrate, for instance, that the downturn caused the collapse of a major debtor which led to a significant reduction in cash flow, or that there has been a substantial loss of turnover.

49. Other reasons for late payment which may be put forward as being due to adverse business conditions include the need to further extend credit terms in order to maintain sales, or the need to pay other liabilities in preference to taxation debts in order to sustain operations. These reasons, while having merit in themselves, are not considered to be fair and reasonable for purposes of granting a remission and applications made on this basis should be refused.

50. Subject to the taxpayer demonstrating that reasonable steps have been taken to mitigate, or mitigate the effects of, the circumstances that contributed to the late payment (refer paragraphs 51 and 52 below) additional tax may be remitted, but it should not be remitted to below a level of 10 per cent per annum from the original due date.

Steps Taken to Mitigate, or Mitigate the Effects of, Circumstances that Contributed to Delay in Payment

51. In this regard the taxpayer will need to show that

steps have been taken to either mitigate the circumstances that led to the inability to pay, or mitigate the effects of those circumstances. Thus, for example, where the inability to pay is caused by the collapse of a major debtor, remission may be granted where it can be demonstrated that the taxpayer had taken whatever action was possible to secure payment of the debt.

52. In cases of inopportune business decisions as discussed at paragraph 47 above it will need to be shown that the taxpayer has paid that proportion of the tax that can be paid, e.g., where the taxpayer has attempted to progressively reduce the debt through periodic instalments. However, actual payment of a proportion of the tax is not necessary where this course was not available to the taxpayer.

Special Circumstances

53. Where the Commissioner is satisfied that there are special circumstances by reason of which it would be fair and reasonable to remit the additional tax, he may do so.

54. Full remission under the "special circumstances" criterion is normally to be limited to the following situations:

(a) any cases of serious financial hardship not otherwise covered in this ruling;

(b) imposition of additional tax is considered not worthwhile, i.e.,

; or

(c) the additional tax was imposed incorrectly.

(Whilst usually effected by the remission process, this category in essence is concerned with corrective transactions other than remissions in a strict sense.)

55. No other circumstances should lead to remission under the special circumstances criterion without the matter having first been referred to Head Office for direction.

COMMISSIONER OF TAXATION

18 May 1985

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