


IT 2211 - Income tax: failure to make deductions from prescribed payments, or from salary or wages - remission of penalties in cases of voluntary disclosure.

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TAXATION RULING NO. IT 2211

INCOME TAX: FAILURE TO MAKE DEDUCTIONS FROM PRESCRIBED PAYMENTS, OR FROM SALARY OR WAGES - REMISSION OF PENALTIES IN CASES OF VOLUNTARY DISCLOSURE.

F.O.I. EMBARGO: May be Released

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| REFERENCE NO: | SUBJECT REFS: | LEGISLAT. REFS: |
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| I 1124145 | FAILURE TO MAKE DEDUCTIONS (PAYE AND PPS) REMISSION OF PENALTIES FOR VOLUNTARY DISCLOSURES | 221EAA 221YHH 221N 221YHL |

OTHER RULINGS ON TOPIC: IT 2172 IT 2210

PREAMBLE This ruling provides guidelines for the exercise of the Commissioner's discretion under sections 221N and 221YHL in cases involving a voluntary disclosure of a failure to make deductions from salary or wages or from prescribed payments. Guidelines for remission of penalty in all other cases of failure to deduct are provided in rulings IT 2172 (PAYE) and IT 2210 (PPS). In providing these guidelines there is no intention of laying down any conditions which may restrict a Deputy Commissioner in exercising his discretion. To the extent that earlier rulings or guidelines are intended to be retained, they have been incorporated in this ruling.

RULING 2. As a matter of policy, penalty imposition rates involving cases of genuine voluntary disclosure will generally be at a rate equivalent to half the normally imposed penalty rate as provided for by IT 2172 and IT 2210. Thus non-government bodies will qualify for a remission of the flat component of the penalty to 20% of the undeducted amount. The late payment component will continue to be imposed at 20% per annum. Non-Commonwealth government bodies will receive a remission of penalty to 10% per annum of the undeducted amount.

3. In order to qualify for concessional treatment a voluntary disclosure must:

- (i) be a full and true disclosure including all material facts; and
- (ii) not be due, directly or indirectly, to departmental activities in connection with the

affairs of the taxpayer concerned under any of the Acts administered by the Commissioner.

4. In relation to 3(i), the disclosure must be complete in order to obtain the reduced penalty. Therefore the total under-deduction or non-deduction must be revealed. If during an inspection of records a further failure to deduct is discovered the employer/payer would not qualify for concessional treatment unless the additional offence was insignificant. It may be claimed that the additional failure to deduct was not disclosed as it was believed that no deduction was required. In such cases the circumstances surrounding the employment or contractual arrangement should be considered. If it proves to be similar to the disclosed offence no concessional treatment would be warranted. If in relation to the further failure to deduct there is a genuine dispute as to the requirement for a deduction and the circumstances are not similar to the disclosed offence concessional treatment could be warranted.

5. Further, if a past offence has occurred which was similar in nature to the disclosed offence no concessional treatment would be warranted.

6. In connection with paragraph 3(ii) above, disclosures are sometimes claimed to be voluntary when, in fact, they are prompted by departmental action which has already been initiated and which may have indicated to the taxpayer that his affairs are under scrutiny. For instance, an audit of the taxpayer's income tax affairs or an investigation into sales tax matters may have commenced. Such disclosures should not be treated as voluntary.

7. Similarly, a disclosure made by a taxpayer consequent upon departmental action concerned with a partnership, trust or private company with which he is connected is not regarded as voluntary in the sense of warranting the concessional treatment. On the other hand investigation or inspection action relating to a relative of the taxpayer or in the taxpayer's district may be accepted as a voluntary disclosure so long as no departmental action concerning the taxpayer himself or an associated partnership, trust or private company has been initiated.

8. This ruling applies only to cases involving a failure to deduct. It is not envisaged that a failure to remit deductions could qualify as a voluntary disclosure.

COMMISSIONER OF TAXATION

8 November 1985

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