


***IT 2214 - Income tax: remission under sub-section 227(3) (previously sub-section 226(3)) of additional tax for late lodgment imposed by section 222 (previously sub-section 226(1)) of the Income Tax Assessment Act in cases of voluntary disclosure of non-lodgment of returns***

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TAXATION RULING NO. IT 2214

INCOME TAX: REMISSION UNDER SUB-SECTION 227(3)  
(PREVIOUSLY SUB-SECTION 226(3)) OF ADDITIONAL TAX FOR  
LATE LODGMENT IMPOSED BY SECTION 222 (PREVIOUSLY  
SUB-SECTION 226(1)) OF THE INCOME TAX ASSESSMENT ACT IN  
CASES OF VOLUNTARY DISCLOSURE OF NON-LODGMET OF RETURNS

F.O.I. EMBARGO: May be released

REF

H.O. REF: S 104/1/40 P1  
85/3623-6

DATE OF EFFECT:

B.O. REF:

DATE ORIG. MEMO ISSUED:

F.O.I. INDEX DETAIL

REFERENCE NO:	SUBJECT REFS:	LEGISLAT. REFS:
I 1124187	LODGMET OF RETURNS	161
	ADDITIONAL (PENALTY)	
	TAX	222
	REMISSION OF ADDITIONAL	227(3)
	(PENALTY) TAX IN CASES	226(1) (REPEALED),
	OF VOLUNTARY DISCLOSURE	226(3) (REPEALED),
	OF NON-LODGMET OF	
	RETURNS	

PREAMBLE

As a result of the introduction of the Prescribed Payments System, several requests have been received for advice on the treatment to be afforded persons who voluntarily disclose past income tax evasion through non-lodgment of income tax returns.

2. This ruling provides guidelines for the exercise of the Commissioner's discretion under sub-section 227(3) to remit the statutory penalty imposed by section 222. These guidelines replace those contained in Taxation Ruling No IT 2070 which covered the remission under sub-section 226(3) of additional tax imposed by sub-section 226(1). To the extent that the earlier ruling is intended to be retained, it has been incorporated in this ruling.

3. Amendments to the taxation laws that commenced to apply from 14 December 1984 brought about the repeal of sub-sections 226(1) and 226(3) of the Income Tax Assessment Act and, in their place, introduced section 222 and sub-section 227(3) respectively. The repealed section 226(3) will however, still apply to situations where additional tax, by way of penalty, has been raised pursuant to sub-section 226(1).

FACTS

4. Every person, unless specifically exempted, is required by law to lodge an income tax return on or before 31 August each year (or at such time as is allowed) disclosing his total income derived during the twelve months ended 30 June.

5. Apart from leaving themselves open to prosecution in the civil courts, persons who fail to lodge full and complete returns of all their income by the required date become liable to pay substantial additional tax by way of penalty imposed under the income tax law. Repealed sub-section 226(1) imposed penalty equivalent to 100 per cent of the tax assessed. Section 222 (effective on and after 14 December 1984) imposes penalty equal to double the amount of tax payable in respect of the year of income.

6. However, it is a long standing practice of the Commissioner to treat leniently persons who come forward voluntarily and disclose the fact that returns have not been lodged in the past where a liability existed.

RULING

7. Where a person comes forward and voluntarily lodges income tax returns or makes acceptable arrangements to lodge the returns in the near future and complies with that arrangement, the person is to be afforded concessional treatment as follows:

1. Prosecution action under the taxation law in respect of non-lodgment of income tax returns will not be pursued; and
2.
  - (i) in the case of debit assessments, remission of the statutory additional (penalty) tax to an amount calculated at the rate of 10 per cent per annum (5 per cent per annum for periods prior to 14 February 1983) of the lesser of tax assessed or tax payable measured from the time the return was due to be lodged, subject to a maximum in respect of any year of 50 per cent of the tax assessed;
  - (ii) in the case of credit assessments (i.e. tax instalment credits exceed the tax payable or tax assessed), a full remission of the statutory additional (penalty) tax; or
  - (iii) in the case of multiple assessments, where there are both debit assessments and credit assessments, each assessment should be considered individually and penalty remitted in accordance with (i) or (ii), regardless of whether the net result of all assessments combined is a debit or a credit to the taxpayer.

8. To qualify for this concessional treatment the voluntary disclosure of non-lodgment of income tax returns must -

- (i) not be due, directly or indirectly, to departmental activities in connection with the affairs of the person concerned under any of the Acts administered by the Commissioner; and

- (ii) include returns for at least two years of income prior to the year in which returns are currently being demanded.

9. In relation to (i), 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 person that his/her affairs are being investigated. Such action may comprise indirect enquiries (e.g. at the person's bank), direct enquiries of the person such as an initial interview prior to demand action or a request for a statement of assets and liabilities, or an investigation of his/her liability to other taxes. For instance, non-lodgment may be disclosed by a person consequent upon his/her investigation for the purpose of sales tax or in connection with tax instalments deducted from salary or wages of employees under the PAYE system. Such disclosures should not be treated as voluntary. The mere listing of a person's name for future demand action does not, however, preclude the possibility of a voluntary disclosure on his/her part.

10. Similarly, a disclosure made by a person consequent upon departmental action concerned with a partnership, trust or private company with which he/she is connected is not regarded as voluntary in the sense of warranting the concessional treatment. On the other hand, a disclosure by a person following the investigation of one of his/her relatives or other persons in the district may be accepted as a voluntary disclosure so long as no departmental action concerning the person or an associated partnership, trust or private company has been initiated.

11. Concessional treatment should also be afforded to a person who, in connection with the Prescribed Payments System, states on an Application for Income Tax File Number form that returns have not been lodged in the past. The mere application for a file number, without any indication of a past lodgment liability does not, however, warrant the granting of concessional treatment in respect of late lodgment penalty.

12. In relation to 8(ii) above, concessions for voluntary disclosure of non-lodgment of income tax returns are only to be afforded where the lodgment includes at least the current year return plus the two preceding years returns (subject of course to the criterion in paragraph (i) being satisfied.) This requirement applies regardless of whether the person has lodged returns previously. Where the lodgment comprises something less than the current year and two preceding years returns the person is to be regarded as merely lodging late and the normal rules for remission of late lodgment penalty are to apply.

COMMISSIONER OF TAXATION  
12 September 1985

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