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Public Ruling

Taxation Administration Act: IMPACT OF A REFUND ON UNPAID TAX INTEREST FOR ANOTHER OUTSTANDING LIABILITY

A public ruling, when issued, is the published view of the Commissioner of State Revenue (the Commissioner) on the particular topic to which it relates. It therefore replaces and overrides any existing private rulings, memoranda, manuals and advice provided by the Commissioner in respect of the issue(s) it addresses. Where a change in legislation or case law (the law) affects the content of a public ruling, the change in the law overrides the public ruling—that is, the Commissioner will determine the tax liability or eligibility for a concession, grant or exemption, as the case may be, in accordance with the law.

What this ruling is about

1. This public ruling clarifies how the Commissioner will exercise the discretion to remit unpaid tax interest (UTI) on an amount of primary tax payable and unpaid, if the taxpayer becomes entitled to a refund because of a reassessment decreasing a taxpayer's liability for tax under a separate assessment.
2. Part 5¹ of the *Taxation Administration Act 2001* (Administration Act) applies to the following revenue laws:
 - (a) *Duties Act 2001*²
 - (b) *Payroll Tax Act 1971* (Payroll Tax Act), except for payroll tax liabilities arising before 1 July 2005³
 - (c) *Land Tax Act 2010*⁴
 - (d) the repealed *Land Tax Act 1915*, except for land tax liabilities arising before 30 June 2009⁵
 - (e) *Betting Tax Act 2018*⁶

¹ Containing ss.54 and 60 of the Administration Act

² Sections 3 and 6(1) of the Administration Act

³ Sections 3 and 6(2) and (3) of the Administration Act and s.104(2) and (3)(c) of the Payroll Tax Act

⁴ Sections 3 and 6(4) of the Administration Act

⁵ Section 167 of the Administration Act and s.72(2) of the *Land Tax Act 1915*

⁶ Sections 3 and 6(5) of the Administration Act

- (f) royalty laws, being the royalty provisions of the *Mineral Resources Act 1989* (Mineral Resources Act) and the *Petroleum and Gas (Production and Safety) Act 2004* (Petroleum and Gas Act)⁷, except for liabilities for royalty-related amounts arising before 1 October 2020.⁸
3. Section 54 of the Administration Act deals with the imposition of UTI. It provides that a taxpayer must pay interest on the amount of primary tax⁹ payable by the taxpayer and unpaid from time to time commencing on the start date (as determined under s.54(5) of the Administration Act).
 4. Section 60 of the Administration Act provides the Commissioner with discretion to remit all or part of UTI.
 5. Public Ruling TAA060.1—*Remission of unpaid tax interest* sets out the Commissioner's general practice in relation to the exercise of discretion under s.60 to remit UTI.
 6. This ruling should be read in conjunction with TAA060.1.

Ruling and explanation

7. The imposition and remission of UTI are determined separately for each assessment¹⁰, including the entitlement to a refund¹¹ and the allocation of payments.
8. When exercising discretion to apply part or all of a refund amount to any other tax law liability of the taxpayer, the Commissioner will apply the amount to the liability from the time the amount becomes available.¹²
9. In circumstances where a refund of an amount has resulted from a reassessment decreasing a taxpayer's liability for tax, the amount does not become available until the reassessment has been made.

Example 1

On 1 August 2012, the Commissioner reassesses Company Pty Ltd's annual liabilities under the Payroll Tax Act for the 2008–09 and 2009–10 financial years. The 2008–09 reassessment reduces the taxpayer's primary tax liability from \$370,000 (paid on self assessment) to \$350,000, entitling the taxpayer to a refund of \$20,000.

The 2009–10 reassessment results in an increase of the taxpayer's primary tax liability from \$400,000 (paid on self assessment) to \$430,000; an increase of \$30,000.

As at 1 August 2012, s.38 of the Administration Act provides the Commissioner with a discretion to apply part or all of the refund for the 2008–09 liability to any tax law liability of the taxpayer at that time, or which the Commissioner reasonably expects may arise in the next 60 days. Failing that, the Commissioner must refund that amount to the taxpayer.

⁷ 'Royalty provisions' means chapter 11 of the Mineral Resources Act, chapter 6 of the Petroleum and Gas Act and any other provision of those Acts to the extent they are administered by the Minister with Ministerial responsibility for the Administration Act.

⁸ Sections 3 and 6(6) – (9) of the Administration Act and s.887(2)(c) of the Mineral Resources Act and s.1020(2)(c) of the Petroleum and Gas Act

⁹ Defined in Schedule 2 of the Administration Act

¹⁰ Defined in Schedule 2 of the Administration Act

¹¹ Section 37 of the Administration Act

¹² Sections 38 and 40(1)(c) of the Administration Act

The refund for 2008–09 becomes available for the purposes of s.40(1)(c) of the Administration Act on the making of the reassessment for that liability on 1 August 2012. Consequently, it does not affect the accrual of UTI on the 2009–10 liability up to that date.

Under s.54 of the Administration Act, UTI will accrue on the \$30,000 primary tax payable but unpaid for that year on and from 22 July 2010.¹³ Until the 2008–09 reassessment is made and the Commissioner applies the refund to the 2009–10 year liability, or the taxpayer otherwise pays¹⁴ that liability, the 2009–10 liability remains unpaid and UTI continues to accrue.

Consequently, the reassessment for 2009–10 will include UTI on \$30,000 for the period 22 July 2010 to 1 August 2012 inclusive, at the applicable rates¹⁵, totalling \$7,815.85.

On 1 August 2012, the Commissioner exercises the discretion under s.38 to apply the \$20,000 refund for 2008–09 to Company Pty Ltd's total outstanding liability for 2009–10 of \$37,815.85. In accordance with s.42 of the Administration Act, the \$20,000 is applied first to UTI, then to the outstanding primary tax. From that time, the taxpayer has primary tax payable and unpaid for the 2009–10 year of \$17,815.85. Unpaid tax interest will continue to accrue on the outstanding amount until it is paid.

10. As outlined in Public Ruling TAA060.1, the Commissioner will consider the reasons UTI is imposed¹⁶ as well as all the relevant facts and circumstances of each particular case when deciding whether to remit all or part of the UTI.
11. Where a taxpayer is liable for UTI on an assessment¹⁷, the Commissioner will not generally remit UTI solely on the basis that the taxpayer:
 - (a) has made an overpayment for another tax law liability
 - (b) is entitled to a refund in relation to one or more other tax law liabilities.

Example 2

In the circumstances outlined in Example 1, the Commissioner would not remit any of the UTI accrued on the 2009–10 reassessment for the period 22 July 2010 to 1 August 2012.

This is because the UTI has been applied in accordance with the reasons UTI is imposed, and the refund did not become available for the Commissioner to apply to the outstanding liability under the 2009–10 reassessment until 1 August 2012.

¹³ Under s.63 of the Payroll Tax Act, annual returns for a year ending 30 June are due by 21 July. So, in this example, UTI accrues from 22 July 2010, when the relevant primary tax is payable and unpaid within the meaning of s.54 of the Administration Act.

¹⁴ Sections 29 and 29A of the Administration Act and ss.4 and 5 of the Taxation Administration Regulation 2012 prescribe how an amount payable under a tax law must be paid.

¹⁵ Section 8 of the Taxation Administration Regulation 2012: 22 July 2010 to 30 June 2011 (344 days) at 12.80%; 1 July 2011 to 30 June 2012 (366 days) at 13.00%; 1 July 2012 to 1 August 2012 (32 days) at 11.66%.

¹⁶ UTI is imposed to encourage the payment of tax on time and to compensate the state for the period tax has been unpaid.

¹⁷ Defined in the Schedule 6 Dictionary to the Administration Act: 'assessment means a determination, under part 3, of a taxpayer's liability for tax for which an assessment notice is given, and includes a reassessment.'

Date of effect

12. This public ruling takes effect from 1 October 2020.

Mark Jackson
Commissioner of State Revenue
Date of issue: 1 October 2020

References

Public Ruling	Issued	Dates of effect	
		From	To
TAA060.4.3	1 October 2020	1 October 2020	Current
TAA060.4.2	27 September 2018	1 October 2018	30 September 2020
TAA060.4.1	7 November 2013	7 November 2013	30 September 2018