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Public Ruling
Taxation Administration Act:
PENALTY TAX—HOME CONCESSIONS

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 sets out the principles the Commissioner will apply in deciding whether or not to remit penalty tax on the reassessment of a home concession¹ and the extent of any remission, and gives guidelines on how those principles apply.²
2. The *Duties Act 2001* (the Duties Act) provides concessions for the transfer duty imposed on certain dutiable transactions³ relating to homes, first homes and vacant land on which a first home is to be constructed (home concessions).⁴ The concessions are to help people buying residential land or constructing a residence on vacant land to be used as their principal place of residence.
3. The home concessions may be reduced or lost entirely on a reassessment if the taxpayer:
 - (a) disposes of all or part of the land within one year after occupation of the residence as their principal place of residence⁵
 - (b) disposes of the land before occupation of the residence as their principal place of residence⁶

¹ See following paragraphs for an overview.

² See Public Ruling TAA060.2—*Penalty tax* for the remission principles that will be applied in circumstances other than the reassessment of home concessions.

³ The types of dutiable transactions that may attract the transfer duty home concessions are set out in s.85 of the Duties Act.

⁴ Sections 91–94A of the Duties Act

⁵ Section 153 of the Duties Act. The disposal must be by way of transfer, lease or other granting of exclusive possession; or, in the case of a home or vacant land lease, surrendering the lease. A home or vacant land lease is a lease of residential land on which a home is constructed or of vacant land on which a first home is to be constructed and for which a premium, fine or other consideration is payable.

⁶ Section 154(1)(b)(i) of the Duties Act. The disposal must be by way of transfer, lease or other granting of exclusive possession; or, in the case of a home or vacant land lease, surrendering the lease.

- (c) does not occupy the residence as their principal place of residence within:
- (i) one year after the transfer date for the residential land⁷
 - or
 - (ii) two years after the transfer date for the vacant land.⁸
4. Where paragraph 3(a) applies, duty is reassessed so that the amount of the concession obtained is reduced in proportion with the part of the year for which the property was not occupied as a principal place of residence. Where paragraphs 3(b) or (c) applies, there is a total loss of the concession because the taxpayer never occupied the property as their principal place of residence.
5. The *Taxation Administration Act 2001* (the Administration Act) automatically imposes penalty tax in certain circumstances.⁹
6. Penalty tax applies in addition to any unpaid tax interest (UTI) that may be imposed under the Administration Act.¹⁰ Whereas UTI compensates the state for loss of use of funds due to non-payment or underpayment of primary tax¹¹, penalty tax is an administrative sanction for certain conduct by taxpayers.
7. One circumstance in which a taxpayer is liable for penalty tax is where the primary tax assessed on a reassessment (other than under a reassessment of a default assessment in which a penalty tax amount has been included) is more than the primary tax assessed on the original assessment or an earlier reassessment.¹²
8. Penalty tax will therefore apply to a reassessment for a home concession. The amount on which the penalty tax will be based (the primary tax difference) is the difference in primary tax between the current reassessment and either:
- (a) the original assessment
 - or
 - (b) the lowest primary tax assessed on an earlier reassessment.
9. Penalty tax is imposed at the rate of 75% of the primary tax difference.

⁷ Section 154(1)(b)(ii)(A) of the Duties Act

⁸ Section 154(1)(b)(ii)(B) of the Duties Act

⁹ Section 58 of the Administration Act

¹⁰ Sections 54–57 of the Administration Act and Public Ruling TAA060.1—*Remission of unpaid tax interest*

¹¹ Primary tax is a tax, levy or duty imposed under a revenue law: Schedule 2 Dictionary, Administration Act.

¹² Section 58(1)(c) of the Administration Act

10. The Commissioner may also increase the amount of the penalty tax by not more than 20% if satisfied that the taxpayer:
- (a) failed to advise the Commissioner on becoming aware that an assessment of their liability for tax was not, or is no longer, correct, and the correct liability is more than the amount stated in the assessment
- or
- (b) hindered or prevented the Commissioner from becoming aware of the nature and extent of their liability for tax.¹³
11. Penalty tax is an alternative to the prosecution of a taxpayer where they are liable to pay penalty tax because of an act or omission of a person, and the act or omission constitutes an offence against a tax law.¹⁴ Where the Commissioner commences a proceeding against a taxpayer for an offence and penalty tax has been imposed because of an act or omission of the taxpayer that constitutes the offence, penalty tax is only payable if the Commissioner withdraws the proceeding. If the Commissioner withdraws the proceeding, the Commissioner must make a reassessment to reinstate the penalty tax.¹⁵
12. Section 60 of the Administration Act allows the Commissioner to remit all or part of penalty tax.

Ruling and explanation

General principles

13. The decision to remit penalty tax is made by the Commissioner on a case-by-case basis, having regard to all relevant facts and circumstances including:
- (a) the nature and extent of the taxpayer's culpability
 - (b) the reason for the taxpayer's failure to meet their obligations
 - (c) that the purpose of the home concessions is to help people buying or constructing a residence to be used as their principal place of residence
 - (d) the nature and circumstances of any voluntary disclosure made by the taxpayer concerning the liability
 - (e) where an investigation has been, or is being conducted, in relation to the taxpayer's liability—the level of cooperation by the taxpayer with the Commissioner
 - (f) the taxpayer's previous failures to comply with the tax laws or any statute repealed by the tax laws.

¹³ Sections 58(3) and 28 of the Administration Act. Tax is primary tax, assessed interest or penalty tax: Schedule 2 Dictionary of the Administration Act.

¹⁴ Tax law is defined in Schedule 2 of the Administration Act

¹⁵ Section 59 of the Administration Act

14. Attachment 1 explains how the general principles would be applied by the Commissioner in particular cases. The categories are illustrative only, and each case must be considered on its merits.
15. Attachment 2 summarises the guidelines in Attachment 1 and the further remissions for voluntary disclosure referred to in paragraphs 20 to 23 of this public ruling.

Higher penalty tax if section 58(3) applies

16. Where the Commissioner decides to increase the amount of penalty tax because of circumstances referred to in s.58(3) of the Administration Act¹⁶, the increase will be applied to the amount of penalty tax payable after the Commissioner has applied the general principles for remission in paragraphs 13 to 15 (general principles for remission).
17. Attachment 2 does not take into account any increase in penalty tax to be applied under s.58(3) of the Administration Act.

Lower penalty tax for voluntary disclosure

18. Voluntary disclosure occurs where a taxpayer informs the Commissioner that they have failed to comply with an obligation under a tax law.

Example A

A taxpayer purchases a home for which a home concession is claimed, but fails to take up occupation due to an unexpected transfer of employment. The taxpayer notifies the Commissioner within the time specified under s.155 of the Duties Act.

19. A taxpayer can make a voluntary disclosure even though they are giving notice to the Commissioner outside the times required by the tax laws, of events or circumstances relating to a home concession they had previously obtained.

Example B

As for Example A, and the taxpayer notifies the Commissioner two years later (i.e. outside the time within which the notification should have been given under the Duties Act).

20. Voluntary disclosures assist the Commissioner to identify outstanding tax law liabilities.¹⁷ They also demonstrate the taxpayer's willingness to pay the right amount of tax. Accordingly, to encourage voluntary disclosures, penalty tax would usually be remitted to a greater extent in these cases than in cases where no voluntary disclosure has been made.
21. Remission for voluntary disclosure will depend on the circumstances and the level of disclosure in any given case. Factors to be considered include whether there has been a true and full disclosure of all relevant material facts necessary for the Commissioner to issue a correct assessment, and when the disclosure occurs.

¹⁶ See paragraph 10 of this public ruling.

¹⁷ Tax law liability is defined in Schedule 2 of the Administration Act.

22. For Attachment 1, Categories 1 and 2, the Commissioner would usually remit the penalty tax as follows.
- (a) If voluntary disclosure is made before the taxpayer is notified of an investigation under Part 7 of the Administration Act (an investigation) and before they receive a prompt¹⁸ from the Commissioner to comply with an obligation under a tax law (a prompt)—remit the calculated penalty tax¹⁹ in full.
 - (b) If voluntary disclosure is made before the taxpayer is notified of an investigation and within 30 days after they receive a prompt—remit the calculated penalty tax in full.
 - (c) If voluntary disclosure is made before the taxpayer is notified of an investigation but 30 days or more after they receive a prompt—remit the calculated penalty tax by 10 percentage points (i.e. remit the calculated penalty tax by 10% of the primary tax difference).
 - (d) If disclosure is made immediately after the taxpayer is notified of an investigation—remit the calculated penalty tax by 5 percentage points (i.e. remit the calculated penalty tax by 5% of the primary tax difference).
23. For Attachment 1, Category 3, the Commissioner would usually remit the penalty tax as follows.
- (a) If voluntary disclosure is made before the taxpayer is notified of an investigation and before they receive a prompt—remit the calculated penalty tax in full.
 - (b) If voluntary disclosure is made before the taxpayer is notified of an investigation and within 30 days after they receive a prompt—remit the calculated penalty tax in full.
 - (c) If voluntary disclosure is made before the taxpayer is notified of an investigation but 30 days or more after they receive a prompt—remit the calculated penalty tax by 45 percentage points (i.e. remit the calculated penalty tax by 45% of the primary tax difference).
 - (d) If disclosure is made immediately after the taxpayer is notified of an investigation—remit the calculated penalty tax by 15 percentage points (i.e. remit the calculated penalty tax by 15% of the primary tax difference).
24. Where the Commissioner decides to remit part of the penalty tax for voluntary disclosure, the reduction will be applied to the amount of penalty tax payable after the Commissioner has applied the general principles for remission and taken into account any increase in the penalty tax under s.58(3) of the Administration Act.
25. Even though the Commissioner may exercise the further remissions for voluntary disclosure outlined under paragraphs 20 to 24, the Commissioner may make a lesser or no further remission for the voluntary disclosure if, on balance, the taxpayer's behaviour concerning their failure to meet their obligations for the transaction, and in the course of all their dealings with

¹⁸ For the purposes of this ruling, a communication will constitute a prompt when expressly identified as such in the communication from the Commissioner to the taxpayer.

¹⁹ Calculated penalty tax means the amount of penalty tax worked out after applying the general principles for remission and applying s.58(3) where appropriate.

the Commissioner in general, makes remission pursuant to those paragraphs inappropriate in the Commissioner's view.

Date of effect

26. This public ruling takes effect from the date of issue.

Mark Jackson
 Commissioner of State Revenue
 Date of issue: 9 March 2020

References

Public Ruling	Issued	Dates of effect	
		From	To
TAA060.3.7	9 March 2020	9 March 2020	Current
TAA060.3.6	1 February 2016	1 February 2016	8 March 2020
TAA060.3.5	3 July 2012	1 July 2012	31 January 2016
TAA060.3.4	12 August 2011	1 August 2011	30 June 2012
TAA060.3.3	15 April 2010	15 April 2010	31 July 2011
TAA060.3.2	3 July 2009	30 June 2009	14 April 2010
TAA060.3.1	24 February 2009	24 February 2009	29 June 2009
Supersedes Revenue Ruling TA 4.3	2 January 2007	1 January 2007	23 February 2009

Attachment 1

Guidelines for remission of penalty tax in the event of a reassessment under ss.153 or 154 of the *Duties Act 2001* of a home concession

This attachment illustrates circumstances in which the Commissioner would consider remission and the extent of remission when making a reassessment in relation to a previous claim for a transfer duty home concession or first home concession (home concession). The categories are a guide only, and each case must be considered on its merits. The Commissioner may request evidence that the claimed category applies, such as evidence from third parties.

Category 1—Remission of penalty tax to 15%

If this category applies, the Commissioner would usually consider partial remission of the penalty tax imposed so that the taxpayer is liable only for an amount equivalent to 15% of the primary tax difference.

Case A—Unexpected change of circumstances

After claiming a home concession under the Duties Act, a taxpayer, due to an unexpected change of circumstances, either:

- does not take up occupation of the residence

or

- disposes of the residential land before, or within one year after, taking up occupation as their principal place of residence.

Example 1

Shortly after acquiring their home and claiming the home concession, but before taking up occupation, the taxpayer's daughter suffers from a major illness requiring long-term care. The taxpayer sells the home and moves in with her daughter to take care of her. Medical evidence will be required by the Commissioner to establish these facts.

Example 2

Within 12 months after acquiring their home (for which the home concession was claimed) and taking up occupation, the taxpayer receives an offer of employment in another location. They move out and rent the home.

Example 3

A taxpayer acquires vacant land and claims the concession for land on which a first home is to be constructed. Their residence is constructed within two years after the transfer date for the land, and they begin occupying the residence as soon as final inspection is approved. Soon after occupying the residence, the taxpayer is transferred interstate for work. They sell the residence.

Case B—Genuine short-term residence

After claiming a home concession under the Duties Act, a taxpayer disposes of the residential land within one year after taking up occupation as their principal place of residence, but always intended to occupy for less than the full year because they were to leave the area at that time.

Example 4

A taxpayer who is a United States citizen is employed in Queensland under a nine-month contract. Knowing that they will be residing permanently in Queensland for that time, they purchase a home for use as their principal place of residence during the nine-month period. The taxpayer claims the home concession, occupies the home for that period and then sells the home when their employment contract expires, before returning to the United States.

Category 2—Remission of penalty tax to 30%

If this category applies, the Commissioner would usually consider partial remission of the penalty tax imposed so that the taxpayer is liable only for an amount equivalent to 30% of the primary tax difference.

A taxpayer either:

- failed to occupy or chose to dispose of the property principally for financial gain, after claiming the concession and without an unexpected change of circumstances

or

- before claiming the concession, intended to sell or lease all or part of the residence as a profit-making or investment arrangement, within 12 months of taking up occupation of the property.

Example 5

A taxpayer intends to purchase a home to live in for six months, before selling it for a profit. At the time of acquiring the home, they claim the home concession and occupy the home as their principal place of residence for five months.

Example 6

Shortly after acquiring vacant land and claiming the first home concession (but before constructing a residence and taking up occupation), the taxpayer unexpectedly receives an attractive offer for the sale of the land. They accept the offer and sell the land.

Category 3—No remission of penalty tax

This category applies to the exclusion of the other categories. If this category applies, the Commissioner would usually not remit penalty tax. However, remission may be made for voluntary disclosure.

After claiming a home concession under the Duties Act, a taxpayer does not take up occupation of the residence because they never intended to occupy the home as their principal place of residence.

Example 7

A taxpayer intends to purchase a home for renovation and resale, without taking up occupation, but claims the home concession regardless of this intention.

Example 8

A taxpayer acquires vacant land and claims a concession for land on which a first home is to be constructed. However, they have no intention of building a home on the land and intend to construct a unit complex for investment purposes.

Attachment 2

Home concession clawback penalty tax guideline summary

This attachment summarises the guidelines in Attachment 1 and further remissions referred to in this public ruling. Percentages in this table are percentages of the primary tax difference.

The percentages shown below do not take into account any increase in penalty tax to be applied under s.58(3) of the Administration Act referred to in paragraph 16.

Category	Notification before notice of investigation and before prompt (%)	Notification before notice of investigation and within 30 days after prompt (%)	Notification before notice of investigation but more than 30 days after prompt (%)	Voluntary disclosure immediately after being notified of an investigation (%)	No notification or voluntary disclosure (%)
1	0	0	5	10	15
2	0	0	20	25	30
3	0	0	30	60	75