



Contents	Page
What this Ruling is about	1
Ruling and explanation	4
Date of effect	6
References	7
Attachment 1	8
Attachment 2	10

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. The *Duties Act 2001* (the Duties Act) provides concessional treatment of acquisitions¹ relating to first homes or land on which a first home is to be constructed and mortgages relating to homes, first homes or land on which a first home is to be constructed (home concessions).² The concessions are to assist people buying or constructing a residence to be used as their principal place of residence.
2. Until 31 July 2011, a concessional rate of transfer duty also applied to acquisitions relating to homes that were not first homes.³ Where liability for transfer duty arose before the removal of the concessional rate, the pre-amended home concession provisions continue to apply.⁴
3. The home concessions may be reduced or lost entirely on a reassessment if the taxpayer:
 - (a) disposes of all or part of the residential land or vacant land within one year after occupation of the residence as their principal place of residence⁵

¹ The types of dutiable transactions which may attract the transfer duty first home concession are set out in s.85 of the Duties Act.

² Sections 92-94A and 274-275 of the Duties Act.

³ Part 7, Division 3 of the *Community Ambulance Cover Levy Repeal and Other Legislation Amendment Act 2011*.

⁴ Section 628 of the Duties Act

⁵ Sections 153 and 291(1)(c) 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 first home or vacant land lease, surrendering the lease. A first home or vacant land lease is a lease of residential land on which a first 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.

- (b) disposes of the residential land or vacant land before occupation as their principal place of residence⁶ or
 - (c) does not occupy the residence as their principal place of residence within:
 - (i) one year after the transfer date for the residential land (for transfer duty)⁷
 - (ii) two years after the transfer date for the vacant land (for transfer duty)⁸
 - (iii) the later of one year after the transfer date for the residential land or when the mortgage was first signed (for mortgage duty where a home mortgage is given over residential land on which a residence is constructed)⁹
 - (iv) the later of two years after the transfer date for the residential land or when the mortgage was first signed (for mortgage duty where a home mortgage is given over residential land on which a residence is to be constructed)¹⁰.
4. Where paragraph 2(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 2(b) or (c) applies, there is a total loss of the concession as 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.¹¹
6. Penalty tax applies in addition to any unpaid tax interest (UTI) which may be imposed under the Administration Act.¹² While UTI compensates the State for loss of use of funds due to non-payment or underpayment of primary tax¹³, 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.¹⁴
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
- (a) the original assessment or
 - (b) the lowest primary tax assessed on an earlier reassessment,
- as the case may be.
9. Penalty tax is imposed at the rate of 75% of the primary tax difference.

⁶ Sections 154(1)(b)(i) and 291(1)(a) 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 first home or vacant land lease, surrendering the lease.

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

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

⁹ Section 291(1)(b) and (1B)(a) of the Duties Act

¹⁰ Section 291(1)(b) and (1B)(b) of the Duties Act

¹¹ Section 58 of the Administration Act

¹² Sections 54-57 of the Administration Act and Public Ruling TAA060.1 - *Remission of unpaid tax interest*

¹³ Primary tax is a tax, levy or duty imposed under a revenue law: Schedule 2 Dictionary, Administration Act.

¹⁴ Section 58(1)(c) of the Administration Act

10. Also, the Commissioner may increase the amount of the penalty tax by not more than 20% if satisfied that the taxpayer:
- (a) failed to advise the Commissioner upon becoming aware that an assessment of the taxpayer's 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 the taxpayer's liability for tax.¹⁵
11. Penalty tax is an alternative to the prosecution of a taxpayer where the taxpayer is 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 law¹⁶. 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 proceedings. If the Commissioner withdraws the proceeding, the Commissioner must make a reassessment to reinstate the penalty tax.¹⁷
12. Section 60 of the Administration Act allows the Commissioner to remit all or part of penalty tax.
13. In deciding what penalty tax (if any) should be remitted on a reassessment of a home concession, the Commissioner will take into account the fact that the taxpayer may fail to occupy a residence, or not occupy it for a year, for the following reasons.
- (a) After claiming the concession, there was an unexpected change of circumstances (eg. the taxpayer's relative suffers ill health or the taxpayer voluntarily accepts a new job in a different location at a higher salary). It is considered that penalty tax should not apply in these cases, if the required notice is given to the Commissioner under the Duties Act. In these cases, the taxpayer has not set out to exploit or abuse the concession but has unexpectedly encountered circumstances leading to a change in their previous plans.
 - (b) Prior to claiming the concession, the taxpayer intended to occupy the residence for less than a year because they were to leave the area at that time (eg. a foreign executive being sent to Queensland for a short-term appointment). Usually, for these cases, no penalty tax would apply if the required notice is given to the Commissioner under the Duties Act. In these cases, the taxpayer genuinely occupied the home as their principal place of residence for the maximum period of time for which they were in the area concerned.
 - (c) After claiming the concession, and without a change of circumstances referred to in paragraph 12(a), the taxpayer failed to occupy or chose to dispose of the property principally for financial gain. Penalty tax is appropriate in these cases because the change that has occurred is to pursue some financial advantage or benefit. However, if the required notice is given, a significant remission of penalty tax would usually be appropriate, as the taxpayer has not set out to exploit or abuse the concession.
 - (d) Prior to claiming the concession, the taxpayer 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. In these cases, a higher level of penalty tax is appropriate because the concessions were not conferred to assist property speculators or investors.

¹⁵ 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.

¹⁶ Tax law is defined in Schedule 2 of the Administration Act

¹⁷ Section 59 of the Administration Act

- (e) Prior to claiming the concession, the taxpayer never intended to occupy the home as their principal place of residence. In these cases, a high level of penalty tax is appropriate and the Commissioner will not remit penalty tax as, in claiming the concession, the taxpayer has provided false and misleading information to the Commissioner.
14. This Public Ruling sets out the principles the Commissioner will apply in deciding whether or not to remit penalty tax and the extent of any remission and gives guidelines on how those principles apply in the above cases.¹⁸ However, a taxpayer's conduct in any given case may affect the Commissioner's decision as to the appropriate level of remission and will be taken into account accordingly.

Ruling and explanation

General principles

15. 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 assist people buying or constructing a residence to be used as their principal place of residence
 - (d) where an investigation has been, or is being conducted, in relation to the taxpayer's liability—the level of co-operation by the taxpayer with the Commissioner and
 - (e) the taxpayer's previous failures to comply with the tax laws or any statute repealed by the tax laws.
16. Attachment 1 gives guidance on 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.
17. Attachment 2 summarises the guidelines in Attachment 1 and the further remissions for voluntary disclosure referred to in paragraphs 19 to 23 of this Public Ruling.

Higher penalty tax if section 58(3) applies

18. Where the Commissioner decides to increase the amount of penalty tax because of circumstances referred to in s.58(3) of the Administration Act¹⁹, the increase will be applied to the amount of penalty tax payable after the Commissioner has applied the general principles for remission in paragraphs 14 to 16 (general principles for remission).
19. 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 See Public Ruling TAA060.2 – *Penalty tax* for the remission principles that will be applied in circumstances other than the reassessment of home concessions.

¹⁹ See paragraph 9 of this Public Ruling.

20. 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 two years later (i.e. outside the time within which the notification should have been given under the Duties Act).

21. A taxpayer can make a voluntary disclosure even though they are giving notice to the Commissioner, as 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 within the time specified in s.155 of the Duties Act.

22. Voluntary disclosures assist the Commissioner to identify outstanding tax law liabilities²⁰. 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.
23. The extent of the additional remission for voluntary disclosure will depend upon the circumstances and the level of disclosure in any given case. Factors to be considered will include whether there has been a true and full disclosure of all relevant material facts necessary for the Commissioner to issue a correct assessment.
- (a) For Attachment 1, Categories 1 and 2, the Commissioner would usually remit the penalty tax as follows.
- (i) If voluntary disclosure is made as required by ss.155 or 291 of the Duties Act before the taxpayer knows about an investigation—remit the penalty tax by 15 percentage points (i.e. remit the calculated penalty tax²¹ by 15% of the primary tax difference).
 - (ii) If voluntary disclosure is made before the taxpayer knows about an investigation but not as required by ss.155 or 291 of the Duties Act—remit the penalty tax by 10 percentage points (i.e. remit the calculated penalty tax by 10% of the primary tax difference).
 - (iii) If disclosure is made immediately after the taxpayer knows about an investigation—remit the penalty tax by 5 percentage points (i.e. remit the calculated penalty tax by 5% of the primary tax difference).
- (b) For Attachment 1, Category 3, the Commissioner would usually remit the penalty tax as follows.
- (i) If voluntary disclosure is made before the taxpayer knows about an investigation—remit the penalty tax by 45 percentage points (i.e. remit the calculated penalty tax by 45% of the primary tax difference).

²⁰ Tax law liability is defined in Schedule 2 of the Administration Act.

²¹ 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.

- (ii) If voluntary disclosure is made immediately after the taxpayer knows about an investigation—remit the 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.

Example C

A taxpayer purchases a home for which a home concession is claimed and takes up occupation within 12 months after the transfer date. The taxpayer then sells the home six months after taking up occupation, as part of a profit-making arrangement. The taxpayer notifies the Commissioner of the home's disposal five months after the sale (i.e. outside the time within which the notification should have been given under the Duties Act), but in doing so, intentionally fails to provide all relevant information. The information provided suggests that the home was sold 10 months after taking up occupation, rather than six.

Upon noticing some inconsistencies in the information provided, the Commissioner notifies the taxpayer that an investigation is to be conducted in relation to the claim for the home concession. Immediately after receiving the notification, the taxpayer admits that not all relevant information was provided initially and that the sale of the home in fact occurred six months after taking up occupation.

The Commissioner issues an assessment for a further \$1,000 in duty. Penalty tax of \$750 would automatically be imposed under s.58(2)(c) of the Administration Act. Ordinarily, under the guidelines outlined in this Ruling, the taxpayer's circumstances would fall within Attachment 1, Category 2 of the Ruling. Consequently, the Commissioner would initially remit the penalty tax to \$300, being 30% of \$1,000. Further, due to the taxpayer's initial intentional failure to provide all relevant information, the Commissioner could decide to increase the amount of penalty tax payable by 20% to \$360, under s.58(3) of the Administration Act. Finally, the Commissioner could take into account that the taxpayer has voluntarily disclosed all relevant facts and their prior indiscretion immediately after being notified of an investigation and therefore remit the penalty tax payable by 5 percentage points (5% of \$1,000), to \$310, in accordance with paragraph 22(a)(iii) of this Ruling. (\$360 represents 36% of \$1,000. Consequently, the penalty tax is further remitted to reflect the voluntary disclosure to \$310, being 31% of \$1,000.)

However, given the taxpayer's conduct when initially notifying the Commissioner of the home's disposal, the Commissioner may consider that remission of the penalty tax to \$310 is inappropriate and choose to remit a lesser amount, so that a greater amount in penalty tax is payable.

Date of effect

25. This Public Ruling takes effect from 1 August 2011.

References

Public Ruling	Issued	Dates of effect	
		From	To
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

Superseded

Attachment 1

Guidelines for remission of penalty tax in the event of a reassessment under ss.153, 154 or 291 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 first home transfer duty, or home mortgage duty, concession (home concession). The categories provide a guide only and each case must be considered on its merits. The Commissioner will request the production of evidence establishing 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 prior to, or within one year after, taking up occupation as their principal place of residence.

Example 1

Shortly after acquiring their home and claiming the first home and home mortgage concessions, 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 first home and home mortgage concessions were 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. The taxpayer's residence is constructed within two years after the transfer date for the land and the taxpayer begins occupying the residence as soon as final inspection is approved. Soon after occupying the residence, the taxpayer is transferred interstate for work. The taxpayer sells 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, before returning to the United States, the taxpayer purchases a home for use as their principal place of residence during the nine-month period, claims the first home concession, occupies the home for that period and then sells the home upon the expiry of their employment contract.

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
- prior to claiming the concession, intended to sell or lease all or part of the residence as a profitmaking 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, the taxpayer claims the first home concession and occupies 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. The taxpayer accepts the offer and sells 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 would be made for any voluntary disclosure.

After claiming a home concession under the Duties Act, a taxpayer does not take up occupation of the residence because the taxpayer 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 first 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, the taxpayer has no intention of building a home on the land and intends 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 17.

Category	Notification as required under Duties Act and before knowing of an investigation (%)	Voluntary disclosure late but before knowing of an investigation (%)	Voluntary disclosure immediately after being notified of an investigation (%)	No notification or voluntary disclosure (%)
1	0	5	10	15
2	15	20	25	30
3	30	30	60	75