

- Data matching (for instance, by comparing taxpayer data against information reported by investment entities, financial institutions and other regulated entities to the tax authority or to other regulators), including use of big data;
- Risk profiling (for instance, by focusing on areas that present a higher risk to revenue, including offshore secrecy arrangements, refund fraud, identity crime and organized crime);
- Random audits/tax verifications; and
- Community reporting (such as whistle-blowers, tip-offs, etc.).

### C. Voluntary Disclosure Programs

**Voluntary disclosure programs (VDPs) have become increasingly popular with tax administrations in recent years—in particular as access to taxpayer information both from domestic and foreign sources increases.** The objective of VDPs is to offer taxpayers substantial reduction of tax penalties in exchange for voluntarily disclosing past non-compliance.

**Any reduction in penalties under a VDP should not extend to interest payable by a participant.** As discussed earlier, interest is compensatory in nature as it seeks to compensate the government for the deprivation of the earning capacity of the amount underpaid, and therefore should not, as a general rule and a matter of principle, be reduced or waived.

**Penalty reduction should only be granted where disclosure is genuinely voluntary.** This is because the objective of a VDP is to facilitate the collection of taxes that would otherwise not be uncovered by way of audit or investigation. In other words, penalties should not be reduced if taxpayers have come forward only upon or after investigation or audit.

**A VDP should be designed to ensure that taxpayers are adequately incentivized to come forward and disclose their past failures.** First, the tax penalties as provided under the laws, as well as the reduction in penalties offered under the VDP, must be substantial in order for it to be sufficiently attractive for taxpayers to step forward. However, penalties should not be completely removed for a participant under a VDP to ensure horizontal fairness with compliant taxpayers. Second, there must be credible and effective ongoing audit and enforcement efforts by the tax authority. Taxpayers will not be inclined to participate in the VDP if there is no reasonable chance of being caught for their previous non-compliance. Third, the VDP should be well publicized so that taxpayers are aware of the opportunities and advantages thereunder.

**Failure to make a voluntary disclosure should be taken into account in determining the culpability of a taxpayer upon subsequent discovery of any irregularities or errors.** In a jurisdiction where the tax authority exercises administrative penalty discretion, such failure of a delinquent taxpayer to avail of the VDP should be seen as an aggravating factor, unless there are good reasons why the taxpayer was unable to participate in the VDP.

# APPENDIX A

## SAMPLE LATE PAYMENT INTEREST PROVISION

**Drafting note:** The title “Director-General” is used for the purposes of the sample provisions in both Appendix A and Appendix B but this title should be substituted with the actual designation used in a particular country such as “Commissioner” if that is the title that applies.

### 1. Late payment interest

- (1) Subject to subsection (8), a person who fails to pay tax on or before the due date for payment is liable for late payment interest at the prescribed rate on the amount unpaid calculated for the period commencing from the date the payment was due to the date the payment is made.
- (2) When calculating interest under subsection (1) in respect of an adjusted assessment, the due date for the payment of the tax is the date on which tax became payable under the original assessment without regard to any extension of time to pay that may have been granted.
- (3) Any interest paid by a person under subsection (1) must be refunded to the person to the extent that the amount to which the interest relates is found not to have been payable.
- (4) Late payment interest payable by a person in respect of withholding tax is borne personally by the person and is not recoverable from any other person.
- (5) Interest payable under this section is computed on a daily compounding basis.
- (6) The Director-General may serve a taxpayer liable for late payment interest with notice of the amount of late payment interest payable by the taxpayer and the due date for payment.
- (7) A notice of the amount of late payment interest payable by a taxpayer may be included in any other notice, including a notice of a taxation assessment, served by the Director-General on the taxpayer.
- (8) When—
  - (a) the Director-General notifies a taxpayer in writing of the taxpayer’s outstanding tax liability under a tax law (including in a taxation assessment); and
  - (b) the taxpayer pays the balance notified in full within the time specified in the notification (including late payment interest payable up to the date of the notification), late payment interest does not accrue for the period between the date of notification and the date of payment.
- (9) Interest payable under this section is in addition to any administrative penalty imposed under sections [●] or any fine imposed under sections [●] in respect of the same act or omission.
- (10) The total amount of late payment interest payable by a taxpayer in respect of an unpaid tax liability must not exceed the amount of the liability.
- (11) In this section, “tax” includes customs duty and excise tax imposed under the Customs legislation but does not include late payment interest.

# APPENDIX B

## SAMPLE ADMINISTRATIVE PENALTIES PROVISIONS

### 1. Tax shortfall penalty

- (1) This section applies where—
  - (a) a person makes a statement to a taxation officer that is false or misleading in a material particular or omits from a statement made to a taxation officer any matter or thing without which the statement is false or misleading in a material particular; and
  - (b) the tax liability of the person, or any other person, computed on the basis of the statement is less than it would have been had the statement not been false or misleading (the difference being referred to in this section as the “tax shortfall”).
- (2) Subject to subsections (3) and (4), a person to whom this section applies is liable for a tax shortfall penalty equal to—
  - (a) when the statement or omission was made knowingly or recklessly, 75% of the tax shortfall; or
  - (b) in any other case, 20% of the tax shortfall.
- (3) The amount of a tax shortfall penalty imposed under subsection (2) on a person is increased by—
  - (a) 10 percentage points when this is the second application of this section to the person; or
  - (b) 25 percentage points when this is the third or a subsequent application of this section to the person.
- (4) The amount of a tax shortfall penalty imposed under subsection (2) on a person is reduced by 10 percentage points when the person voluntarily discloses to the Director-General the statement or omission to which this section applies before the earlier of—
  - (a) discovery by the Director-General of the tax shortfall; or
  - (b) the commencement of an audit of the tax affairs of the person to whom the statement relates.
- (5) No tax shortfall penalty is payable under subsection (2) when—
  - (a) the person who made the statement did not know and could not reasonably be expected to know that the statement was false or misleading in a material particular;
  - (b) subject to subsection (6), the tax shortfall arose as a result of a taxpayer taking a reasonably arguable position on the application of a revenue law to the taxpayer’s circumstances in lodging a self-assessment return; or
  - (c) the failure was due to a clerical or similar error, other than a repeated clerical or similar error.
- (6) A position taken by a taxpayer in making a self-assessment that is contrary to a public ruling in force is not regarded as a reasonably arguable position for the purposes of subsection (5)(b).
- (7) Nothing in subsection (5) prevents the imposition of late payment interest in respect of a tax shortfall when the tax is not paid by the due date for payment.
- (8) For the purposes of this section, a statement made to a taxation officer includes a statement made, in writing or orally, in any of the following circumstances—
  - (a) in an application, certificate, declaration, notification, tax return, objection, or other document lodged under a revenue law, or a Customs entry lodged under the Customs legislation;
  - (b) in information furnished under a revenue law;
  - (c) in a document provided to a taxation officer otherwise than pursuant to a revenue law;
  - (d) in an answer to a question asked of a person by a taxation officer;
  - (e) in a statement to another person with the knowledge or reasonable expectation that the statement would be passed on to a taxation officer.

## 2. False or misleading statement penalty

- (1) This section applies where—
  - (a) a person makes a statement to a taxation officer that is false or misleading in a material particular or omits from a statement made to a taxation officer any matter or thing without which the statement is false or misleading in a material particular; and
  - (b) either—
    - (i) there is no tax shortfall; or
    - (ii) a tax refund for the person, or any other person, computed on the basis of the statement is more than it would have been had the statement not been false or misleading (the difference being referred to in this section as the “excess refund”).
- (2) Subject to subsection (3), a person to whom this section applies is liable for a false or misleading statement penalty equal to—
  - (a) in the case where there is no tax shortfall —
    - (i) when the statement or omission was made knowingly or recklessly, [1% of the person’s total taxable income for the preceding year of assessment or \$1,000, whichever is higher]; or
    - (ii) in any other case, [0.5% of the person’s total taxable income for the preceding year of assessment or \$500, whichever is higher]; or
  - (b) in the case of a tax refund,
    - (i) when the statement or omission was made knowingly or recklessly, 75% of the excess refund; or
    - (ii) in any other case, 20% of the excess refund.
- (3) No false or misleading statement penalty applies when—
  - (a) the person who made the statement did not know and could not reasonably be expected to know that the statement was false or misleading in a material particular;
  - (b) subject to subsection (4), the tax refund arose as a result of a taxpayer taking a reasonably arguable position on the application of a revenue law to the taxpayer’s circumstances in lodging a self-assessment return; or
  - (c) the failure was due to a clerical or similar error, other than a repeated clerical or similar error.
- (4) A position taken by a taxpayer in making a self-assessment that is contrary to a public ruling in force is not regarded as a reasonably arguable position for the purposes of subsection (3)(b).
- (5) Section 1(8) applies in determining whether a person has made a statement to a taxation officer.

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