No 2 16 January 2026

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 Print Post Approved PP2550003/00591 Material: 43529030

PRACTITIONER ARTICLES

[19] New interest remission regime for NSW taxes

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The recent case of ***Phiwpang v Chief Comr of State Revenue [2025] NSWCATAD 282*** (18 November 2025) reminds us that it is now more difficult to have "premium" rate interest remitted by Revenue NSW ("**RNSW**") than it used to be. This is the consequence of 2024 amendments to s 25 of the *Taxation Administration Act 1996* (NSW) ("**TAA**") and to the new interest remission guidelines published by RNSW as a result. These developments and their significance are discussed below.

Background - the "standard" interest rate

The legislative regime under which interest can be imposed on tax defaults for NSW state taxes (eg, payroll tax, land tax, duty etc) is in Division 1 of Part 5 of the TAA. Under this regime:

- the "standard" interest rate applicable to a tax default is the sum of:
  - the "market" rate (which is adjusted quarterly in line with the Bank Accepted Bill rate published by the Reserve Bank); and
  - a "premium" rate (which courts have described as "penal in nature") of 8% pa; and
- interest is calculated daily on a taxpayer's unpaid tax amount (but does not accrue on unpaid interest the way that "general interest charge" imposed by the ATO does).

So, if a taxpayer had an unpaid tax amount of $100,000, then, for a day when the market rate was, say, 4% pa, the interest imposed on the taxpayer for that day would be 12%/365 x 100,000, ie $32.87.

RNSW's power to reduce the standard rate - former vs current position

The "standard" interest rate can be wholly or partly reduced (ie "remitted") under s 25 of the TAA.

Significantly, the wording of s 25 was amended effective 1 February 2024. In this regard:

- prior to amendment, s 25 simply stated that RNSW could, **in circumstances that RNSW considered appropriate** remit the standard interest rate by any amount; whereas
- after amendment, s 25 ("**revised s 25**") now states that RNSW may issue guidelines setting out how interest must be remitted and **if guidelines are issued, interest must be remitted only in accordance with those guidelines**.

On 1 July 2025, RNSW issued a set of "guidelines" pursuant to revised s 25 of the TAA. The guidelines are titled "TAA 001: Remission of Interest Guidelines" (the "**New Guidelines**"). The New Guidelines state, in effect, that interest can be remitted only in the following 3 situations and in the manner described below:

1. Up to 100% of the standard interest rate can be remitted where late payment is due to:
   - financial system network and/or payment platform failure;
   - RNSW's acts or omissions affecting the receipt of payment;
   - natural disaster making payment impossible; or
   - some other situations that Revenue NSW declares on its website.
2. Up to 25% of the standard interest rate can be remitted where:
   - the taxpayer makes a voluntary disclosure before investigation and RNSW is satisfied that the tax default was not within the control of the taxpayer;
   - the taxpayer is an individual who has received a land tax notice of assessment for the first time or has not

been liable to land tax for the last 3 years;
- the taxpayer is required to lodge and pay monthly and has either lodged or paid late only once in the last 24 months;
- industrial action has impacted the ordinary administration of the taxpayer's tax affairs and the taxpayer has otherwise taken reasonable care in managing their tax affairs;
- the taxpayer's affairs are managed under protective guardianship and as a result, the taxpayer did not and could not reasonably be expected to know of their liability; or
- sudden resignation, ill health or death resulted in key personnel not being available for a reasonable period to execute the ordinary administration of the taxpayer's affairs.

3. If Revenue NSW approves a payment plan, RNSW may remit some or all of the standard interest as part of that plan.

Significance of the new developments

As regards the **former** position on interest remission (ie the position before publication of the New Guidelines):

- **Market rate**: Market rate interest could rarely be waived. Only exceptional circumstances would justify remission, such as where the tax default was entirely due to a fault of the Chief Commissioner or in situations completely out of the control of the taxpayer such as postal strikes, serious illness and natural disasters.
- **Premium rate**: Two points are noteworthy about the former position on premium rate interest remission:
  - First, in RNSW's former guidance about interest remission (which ceased to apply on 1 July 2025), CPN 024 and PTA 36v3, RNSW stated that it would remit the whole 8% premium rate: (i) where a taxpayer made a voluntary disclosure in writing before investigation; and (ii) in a number of additional situations if the tax default was payroll tax related.
  - Second, the discretion about whether to remit premium interest was relatively broad. In *Wan* [2025] NSWCATAP 54, the NCAT Appeal Panel held that factors to be taken into account in exercising the discretion were **not** limited to "reasonable care" and "exceptional circumstances". Other relevant factors (in a case where the taxpayer was liable to surcharge land tax) might, according to the Appeal Panel, include that: the taxpayer was assisted by a solicitor when they acquired the properties; there was no surcharge land tax when the taxpayer acquired the properties; the taxpayer never received the notice of assessment; there was a substantial delay where the taxpayer was not aware of their tax liability and this caused interest to build up; English was not the taxpayer's first language; the taxpayer regularly used the services of an accountant to file income tax returns (possibly suggesting some attempt to comply with tax obligations more generally).

So, in summary, the former position re remission of premium interest was that:

- for certain specified situations, RNSW had a fixed policy (set out in CPN 024 and PTA 36v3) of remitting the whole of the 8% premium rate interest; and
- for other situations, RNSW was required to take into account a wide range of factors in deciding whether to remit premium interest.

That former position contrasts quite markedly with the new position. Now that the New Guidelines have been published:

- RNSW can remit premium interest ONLY in accordance with New Guidelines; and
- provided RNSW correctly follows its own New Guidelines in making an interest remission decision (and assuming the New Guidelines are not themselves

successfully challenged under principles of administrative law), then, due to the wording of revised s 25 of the TAA, there seems to be little scope for a court or tribunal to override RNSW's decision.

This means (subject to comments below re "transitional rules") that if your client wants to know if they can have any of their RNSW interest bill remitted, the New Guidelines are now the "one-stop shop" for determining this. If your client's circumstances don't fall within one of the specific remission categories set out in the New Guidelines, then the answer seems to simply be "no" - there is nothing else to consider.

(This is not to say that there will no longer be *anything* to debate in relation to interest remission. The meaning of some of the expressions in the New Guidelines, and whether they apply to a particular taxpayer, may still be up for debate. Just for example, in the case of a voluntary disclosure before investigation, there might be an argument about whether or not the tax default was "within the control of the taxpayer".)

Transitional rules

The New Guidelines are stated not to apply to interest remission decisions where one of the following occurred before 1 July 2025:

- the initial request for interest remission;
- approval of a payment plan; or
- lodgment of an objection.

This is why, in *Phiwpang*, a case heard and decided by NCAT **after 1 July 2025**, the interest remission issue was determined by the Tribunal with reference to the former position. The Tribunal said "[The New Guidelines] do not apply in the present case because the objection in this matter predates the commencement date of 1 July 2025".

Conclusion

If RNSW has imposed interest on your client (and assuming the New Guidelines are valid as a matter of administrative law), the only way to have some or all of the interest remitted (unless your client objected to their assessment, or made a request for remission of interest, before 1 July 2025) is by showing that your client falls within one of the specific remission categories listed in the New Guidelines.

TAX PRACTICE UPDATE

[20] Contrived property development arrangements: Taxpayer Alert

TA 2026/1

The ATO has issued ***Taxpayer Alert TA 2026/1: Contrived property development arrangements between related parties that defer recognition of income and exploit tax losses*** (the Alert). The Alert highlights the ATO's concerns with certain property development arrangements between related parties involving long-term construction contracts that appear to be designed to create an artificial mismatch between the recognition of income from the property development activity and deductions claimed for the costs of development, such that tax on the profits may be indefinitely deferred. The losses generated are utilised within the group to obtain a tax advantage.

The ATO is concerned that the arrangements are contrived and designed to artificially separate the landownership and development activities, whereas the related parties are, in substance, undertaking a single economic activity of property development.

The ATO is actively reviewing arrangements involving long-term construction contracts that exhibit features similar to those described in the Alert. The ATO will also be publishing a draft practical compliance guideline for comment to accompany the Alert.

