

---

## **Chapter 6**

# ***Relief from certain tax shortfall penalties for taxpayers who engage tax practitioners***

---

### **Outline of chapter**

6.1 Item 16 of Schedule 1 to this Bill amends the administrative penalty provisions in Schedule 1 to the *Taxation Administration Act 1953* (TAA 1953) to provide that, in certain circumstances, taxpayers who engage a tax agent or BAS service provider are not liable for the administrative penalties that ordinarily apply for making a false or misleading statement resulting in a shortfall amount.

### **Context of amendments**

#### **Operation of current provisions**

6.2 A single administrative penalty regime applies to all taxation laws administered by the Commissioner of Taxation (the Commissioner).

6.3 Division 284 of Schedule 1 to the TAA 1953 sets out the circumstances in which administrative penalties apply. There are two broad categories of administrative penalties provided under the Division:

- Subdivision 284-B – penalties relating to statements, including penalties for making a false or misleading statement resulting in shortfall amounts; and
- Subdivision 284-C – penalties relating to schemes.

6.4 Under subdivision 284-B, subsection 284-75(1) currently provides that a taxpayer is liable to an administrative penalty if they or their agent makes a statement to the Commissioner that is false or misleading in a material particular, and this results in a shortfall amount.

6.5 A shortfall amount is the difference between the amount of tax, credit or payment entitlement calculated based on a taxpayer's statement

and that amount calculated based on a statement that is in accordance with the law. A shortfall amount arises where the tax liability is less, or the credit or payment entitlement is more, than it would have been if the statement had not been false or misleading.

6.6 The amount of administrative penalty is calculated by using the formula specified in section 284-85 of Schedule 1 to the TAA 1953, namely, the base penalty amount as worked out under section 284-90 adjusted upwards under section 284-220 or downwards under section 284-225 for aggravating and mitigating factors.

6.7 Section 284-90 provides that the base penalty amount for subsection 284-75(1) is calculated as a percentage of the shortfall amount. The applicable percentage depends on whether the shortfall amount resulted from:

- intentional disregard of a taxation law by the taxpayer or their tax agent (item 1 of section 284-90);
- recklessness by the taxpayer or their tax agent as to the operation of a taxation law (item 2 of section 284-90); or
- failure by the taxpayer or their tax agent to take reasonable care to comply with a taxation law (item 3 of section 284-90).

6.8 Currently, even where a taxpayer engages a registered tax agent, and tells them everything necessary to lodge a complete and accurate tax return, taxpayers are liable for careless mistakes. Thus, taxpayers are currently penalised for their own failure to take reasonable care, or their tax agent's failure to take reasonable care, if it results in a shortfall amount.

### **Rationale for changes**

6.9 With the introduction of self assessment, the burden of applying the taxation laws to individual circumstances was shifted in some respects from the Commissioner to taxpayers. To relieve taxpayers of some of the associated risk, this Bill provides that taxpayers who engage a tax agent or BAS service provider and provide them with all relevant information ought not to be penalised for the carelessness of their tax agent or BAS service provider. This approach is possible now that the new tax practitioner framework allows effective action to be taken to improve the performance of tax agents or BAS service providers where necessary.

6.10 Taxpayers are not relieved from administrative penalties for their own or their tax agent's or BAS service provider's recklessness or intentional disregard of the taxation law. Similarly, there is no 'safe harbour' where tax avoidance schemes are involved. (Subdivision 284-C of Schedule 1 to the TAA 1953 provides for penalties relating to schemes.) However, in situations where a taxpayer becomes liable for an administrative penalty for making a false or misleading statement due to the recklessness or intentional disregard of the law by their tax agent or BAS service provider, the Commissioner may exercise the penalty remission power (see section 298-20 of Schedule 1 to the TAA 1953). If the facts or reasonable inferences indicate that the taxpayer and the tax agent or the BAS service provider colluded in making the false or misleading statement, remission of the penalty would not be appropriate.

### **Summary of new law**

6.11 This Bill amends the administrative penalty provisions in Schedule 1 to the TAA 1953 to provide that taxpayers who demonstrate that they have taken reasonable care by engaging a registered tax agent or BAS service provider and providing them with all relevant taxation information are not liable for penalties for the tax agent's or BAS service provider's careless errors.

### **Comparison of key features of new law and current law**

<i>New law</i>	<i>Current law</i>
By engaging a tax agent or BAS service provider and providing them with all relevant taxation information, taxpayers are not liable for an administrative penalty for making a false or misleading statement resulting from the carelessness of their tax agent or BAS service provider.	Taxpayers are liable for an administrative penalty for making a false or misleading statement resulting from their own and their tax agent's carelessness.

### **Detailed explanation of new law**

6.12 Under these amendments, taxpayers demonstrate that they have taken reasonable care by engaging a registered tax agent or BAS service provider and providing their tax agent or BAS service provider with all relevant taxation information. As a result, they are not liable to pay the

penalty for a shortfall amount resulting from the careless making of a false or misleading statement. *[Schedule 1, Item 16, subsection 284-75(1A) of Schedule 1 to the TAA 1935]*

### **Example 6.1**

George, a self-funded retiree, had interest bearing accounts with several different financial institutions. George kept all statements received from these financial institutions and provided these to Alex, a registered tax agent, who prepared and lodged his tax return.

When preparing George's tax return, Alex had relied entirely upon the statements provided by George. However, in calculating the interest income, Alex accidentally omitted a quarterly interest payment from one of the financial institutions.

On audit of George's income tax return, it was found that George had a shortfall amount. However, as George has provided Alex with all the relevant information he will not be liable for a shortfall penalty due to Alex's error.

6.13 In order to demonstrate that they have provided all relevant taxation information to their tax agent or BAS service provider, a taxpayer must:

- provide accurate and complete information in response to questions asked by the tax agent or BAS service provider; and
- bring to the tax practitioner's attention all information which they would reasonably expect to be necessary to enable the provision of the tax agent service or BAS service correctly.

### **Example 6.2**

Stephen engages Maria, a registered BAS service provider, to prepare his quarterly BAS. He provides Maria with details of income and expenditure. When Maria asks Stephen whether this includes all of the relevant information she requires to prepare the BAS, Stephen confirms that he has provided all the relevant information. Maria then prepares the BAS based on the information provided by Stephen. The BAS is signed by both parties and lodged with the Tax Office.

An audit of the BAS reveals that cash receipts totalling \$10,000 have been omitted from the BAS resulting in a shortfall amount. Documentation kept by Maria shows that Stephen had failed to provide all relevant information to her and he is therefore liable for an administrative penalty for making false or misleading statement resulting in a shortfall amount.

## **Application and transitional provisions**

6.14 These amendments will apply in relation to statements required to be given on or after the date of commencement. *[Schedule 1, Item 19]*