



Administrative Decisions Tribunal  
New South Wales

## TAA Decision Summaries

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# Tribunal Decisions Summaries

## *Imposition of Interest & Penalty Tax*

### 2012 Decision Summary

#### **AES Wiring Pty Limited and AKS Distributions Pty Limited v Chief Commissioner of State Revenue [2012] NSWADT 11**

**Date of Decision:** 01 February 2012

**Decision:** The decision under review is affirmed.

1. Remission of the market component of interest

The Tribunal was not satisfied that the market rate of interest imposed with respect to the default should be remitted. The Tribunal noted the market rate is only to be remitted where a default is entirely the fault of the Chief Commissioner, or where the taxpayer's default is due to circumstances beyond their control. The Tribunal was not satisfied that either of these situations arose in the present case.

2. Penalty tax and reasonable care

The Tribunal found that in all of the circumstances the taxpayers had not discharged the onus of proving that they had taken "reasonable care" to comply with the relevant taxation laws. The Tribunal took into account the apparent unreliability of the accountant's advice, as demonstrated over a period of time, and the failure of AKS to register for payroll tax for more than four (4) years after it began employing, either on a grouped basis or otherwise, despite the fact that AES, the company with which it was grouped, had previously been investigated for a default. (However, the Tribunal noted that the accountant had not been called to give evidence, and made no finding as to whether or not the accountant's advice had been a contributing factor in the tax defaults by the taxpayers.)

3. General discretion to remit penalty tax

The Tribunal was not satisfied that the taxpayers had demonstrated any other basis for it to exercise the discretion to remit the penalty tax under s.33 of the TAA.

*Catchwords:-*

Payroll tax - penalty and interest charged in consequence of a default; consideration of case law and legislation.

*Select this hyperlink to go to the summary:-*

[AES Wiring Pty Limited and AKS Distributions Pty Limited v Chief Commissioner of State Revenue \[2012\] NSWADT 11](#)