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Revenue Circular GEN009.1 - Interest

CIRCULAR HISTORY

Circular number	Issued date	Dates of effect		Status
		From	To	
No 7	15 December 1989	15 December 1989	1 March 1999	Superseded
GEN009	16 June 2011	16 June 2011	26 July 2015	Superseded
GEN009.1	27 July 2015	27 July 2015		Current

PREAMBLE

1. The *Taxation Administration Act 1999* (TAA) is intended to ensure consistency in the administration and enforcement of ACT taxation legislation which is, under s 4, defined as a **tax law**.
2. Under s 5A of the TAA an offence against a **tax law** is an offence under the *Criminal Code 2002*.
3. Interest (and penalty) provisions play an integral role in tax administration as they aim to:
 - (a) deter non-compliance by making it unprofitable for taxpayers;
 - (b) promote equity among taxpayers by ensuring that those who meet their obligations are not disadvantaged in comparison with those who do not;
 - (c) encourage taxpayers to make full and immediate disclosure of any tax default;
 - (d) encourage taxpayers to pay their tax liabilities by the due date; and
 - (e) compensate the government for being denied the use of funds to which it is entitled.
4. Under Part 5 of the TAA, interest applies when a tax default occurs, being when a taxpayer fails to pay, in accordance with a tax law, the whole or part of any tax that the taxpayer is liable to pay. This includes when there has been a late payment of tax by a taxpayer or a tax shortfall where the taxpayer has paid less than the correct amount of tax.
5. If a tax default occurs, interest imposed is in addition to any penalty tax imposed. However, some TAA interest provisions do not apply to some tax laws. For example, under sections 19, 20 and 56 of the Rates Act, the following TAA interest provisions do not apply:
 - (a) section 52 (4) (failure to pay an instalment when due) does not apply to the payment of rates in instalments;
 - (b) section 25 (interest in relation to tax defaults);
 - (c) Division 5.2 (Penalty tax) and
 - (d) section 110 (interest payable on amounts to be paid by taxpayer).
6. Another example arises under section 19 of the Land Tax Act where section 25 of the TAA (interest in relation to tax defaults) does not apply to unpaid overdue land tax.
7. Finally, under section 6 of the Land Rent Act, the following TAA provisions do not apply:
 - (a) section 25 (interest in relation to tax defaults);
 - (b) Division 5.2 (Penalty tax); and
 - (c) section 110 (interest payable on amounts to be paid by taxpayer).

8. Taxpayers bear the onus of exercising reasonable care in the calculation and timely payment of their tax liabilities. Accordingly, taxpayers have a duty to inform themselves of their obligations under tax laws and to comply with those obligations in a timely fashion.
9. However, the Commissioner for ACT Revenue (the Commissioner) may exercise the discretionary powers contained in interest provisions to meet current standards of ethical, fair and reasonable tax administration. Taxpayers will be presumed to have dealt with their tax affairs openly and honestly unless evidence suggests otherwise.
10. On this basis, the Commissioner will assess or remit interest in accordance with this circular except where strict application of the circular would produce an unreasonable or inconsistent outcome. In this case, a practice stated in this circular may be varied in light of all the circumstances of the particular case.

CIRCULAR

11. **Part I** of this circular provides details of the interest provisions under the TAA as applicable to tax laws (excluding the Land Rent Act, Land Tax Act, and Rates Act) and also sets out the general manner in which the Commissioner will administer interest provisions.
12. **Part II** of this circular provides details of interest provisions in the Duties Act, Land Rent Act, Land Tax Act, and Rates Act.
13. Penalty tax is dealt with separately from interest: see Revenue Circular **GEN006**.
14. Interest and penalties in relation to the *First Home Owner Grant Act 2000* are also dealt with separately: see Revenue Circular **FHOG001.1**.

PART I—Interest

Overarching interest provisions—TAA

15. Under Division 5.1 of the TAA in its application to a tax law:
 - (a) section 25 provides for payment of interest on overdue or unpaid amounts for the Duties Act, the Ambulance Levy, the Payroll Tax Act, the Energy Industry Levy and the Utilities Network Facilities Tax Act (daily interest). Section 25 does not apply to the Land Rent Act, the Land Tax Act and the Rates Act; and
 - (b) section 26 provides the method of determining the rate of interest.
16. Under Division 10.3 of the TAA in its application to a tax law:
 - (a) section 110 provides that Division 5.1 applies where interest is to be paid by a taxpayer following the determination of an objection. This provision does not apply to the Land Rent Act, the Land Tax Act and the Rates Act; and
 - (b) section 111 provides that if a taxpayer is entitled to a refund following the determination of an objection or decision of the tribunal, the Commissioner must pay interest calculated on a daily basis from the date of its payment by the taxpayer until the date of the refund at the market rate component determined under section 26 of the TAA. This provision applies to all tax laws.
17. If a tax default occurs, interest is calculated on the amount of tax unpaid on a daily basis from the day after the due date for payment until the day on which the tax is paid. The TAA applies unless a tax law specifies that particular provisions do not apply. In these cases, the tax law will have its own interest provisions (see **Part II** of this circular).

18. Interest is also payable if a tax default occurs in relation to unpaid penalty tax but is not payable on any unpaid interest.

Calculation of interest—section 26 TAA

19. Section 26 of the TAA provides that the interest rate is the sum of the market rate component and the premium component.

20. The premium component is 8 per cent per annum. The market rate component is the rate in force for the day under the relevant determination.¹ If no market rate is determined, the applicable rate is the monthly 90-day bank bill rate² worked out in accordance with the following table.

If the day is....	the monthly 90-day bank bill rate is....
In the 1st 6 months of a year	(a) if, before 1 January of the year, the monthly 90-day bank bill rate for the previous November had been published—that rate; or (b) if paragraph (a) does not apply—the last monthly 90-day bank bill rate published before 1 January of the year.
In the 2nd 6 months of a year	(a) if, before 1 July of the year, the monthly 90-day bank bill rate for the previous May had been published—that rate; or (b) if paragraph (a) does not apply—the last monthly 90-day bank bill rate published before 1 July of the year.

Interest rate prevails over interest otherwise payable—section 28 TAA

21. Under section 28 of the TAA, the interest rate determined under the TAA for an amount of unpaid tax prevails over any other interest rate, including under a judgment debt, until the tax is paid.

Remission of interest—section 29 TAA

22. Under section 29 of the TAA, the Commissioner may remit all or part of the market rate component or the premium component of interest, or both, in certain circumstances.³ The Commissioner can only remit the market rate component if satisfied that the circumstances are exceptional.

- a. There is a high threshold on remitting interest, to ensure equity amongst taxpayers who have paid liabilities on time.
- b. In practice, the Commissioner will remit interest only when the legislation produced an extraordinary and unintended consequence.

Payroll Tax Act

Interest payable on unpaid payroll tax

23. Under section 25 of the TAA, interest is payable on unpaid payroll tax in accordance with section 26 of the TAA.

¹ Under section 139 (1) (b) of the TAA (Determination of amounts payable under tax laws).
² The monthly average yield of 90-day bank accepted bills published by the Reserve Bank of Australia for a particular month.
³ If no penalty tax is payable under section 31 (6), or penalty tax has been reduced under section 32 or 33, or penalty tax has been remitted in whole or in part under section 37.

24. Where a registered employer fails to pay the correct amount of tax for a month by the due date, interest will apply from the day after the due date until the actual date of payment.
25. Where an employer has a tax default and is assessed on one or more prior financial years, interest is calculated for each separate financial year's liability. The interest on the tax default is based on the amount due for a full financial year. For example, where an investigation determines a tax default in the first financial year of a three-year audit and the assessment is issued in the third year, interest will be calculated from the day following the due date for payment, 21 July (year 1) to the applicable date in year 3.
26. Interest will be charged up to the day the Commissioner receives all of the information required to enable an assessment or reassessment to be made.
27. Where an assessment (or reassessment) that includes interest is issued, the amount of interest will remain fixed until the due date for payment shown on the Notice of Assessment. If payment is not made by the due date, the interest will be recalculated in full and any additional interest will be payable.

PART II—Specific interest-related provisions in the Duties Act, Land Rent Act, Land Tax Act and Rates Act

28. As noted, some TAA interest provisions do not apply to some tax laws. In this case, interest is applied:
 - (a) on deferred duty amounts—under section 75AD of the Duties Act (simple daily interest);
 - (b) on overdue or unpaid land rent amounts—under sections 21 and 22 of the Land Rent Act (simple monthly interest);
 - (c) on the total unpaid amount of land tax, including penalty tax—under sections 19 and 19A of the Land Tax Act (monthly compound interest);
 - (d) on overdue or unpaid rates amounts—under section 21 (and section 56) of the Rates Act (monthly compound interest);and
 - (e) on deferred rates amounts—under section 48 (3) and (4) of the Rates Act (simple daily interest).

Duties Act

29. Except for interest charged on amounts of duty deferred under section 75AB of the Duties Act, interest on overdue or unpaid amounts of duty is applied under Division 5.1 of the TAA (see **Part I** of this circular).

Deferred payments – home buyers—section 75AD

30. Under section 75AD of the Duties Act, the Minister may determine conditions to which a deferral arrangement is subject, including conditions to fix the rate of interest charged on the amount payable under the arrangement.
31. Interest is charged daily at the rate determined under section 26 of the TAA on the amount of deferred duty unpaid.

Land Rent Act

Interest payable on unpaid land rent—section 21

32. Under section 21 of the Land Rent Act, a lessee of a land rent lease who fails to pay an amount of land rent by the payment date is liable to pay interest at the rate determined by the Minister under

section 139 of the TAA on the amount of unpaid land rent from the day the amount becomes payable until the day the amount is paid.

Calculation of interest on unpaid land rent—section 22

33. Under section 22 of the Land Rent Act, interest on an amount of unpaid land rent is calculated, for each calendar month that the amount remains unpaid, on the 1st day of that month at the interest rate applying to that day on the total unpaid land rent due on the day the interest is calculated. If an amount remains unpaid for part of a calendar month, interest is payable for the whole month.
34. Section 25 (interest in relation to tax defaults), Division 5.2 (penalty tax) and section 110 (interest payable on amounts to be paid by taxpayer) of the TAA do not apply to unpaid overdue land rent.

Land Tax Act

Interest payable on overdue land tax—section 19

35. Under section 19 of the Land Tax Act, compound interest on an amount of unpaid overdue land tax is calculated, for each calendar month that the amount remains unpaid, on the 1st day of that month at the interest rate applying to that day on the total overdue amount due on the day the interest is calculated. If an amount remains unpaid for part of a calendar month, interest is payable for the whole month. However, note from the following example that interest is charged from the 16th day of each month.

Example

Fred's land tax is due on 15 August. He doesn't pay it until 5 October. Fred has to pay interest for the overdue period from 16 August to 5 October. Because of the operation of section 19 (2), Fred is charged interest for the period from 16 August to 15 October. Interest for the month from 16 August to 15 September is at the rate applying on 16 August, which is the 1st day of the 1st month that the amount remains unpaid: see section 19 (1). Interest for the month from 16 September to 15 October is at the rate applying on 16 September, which is the 1st day of the 2nd month that the amount remains unpaid: see section 19 (1).

36. Section 25 of the TAA (interest in relation to tax defaults) does not apply to unpaid overdue land tax.

Interest payable on land tax if no disclosure that residential land is rented—section 19A

37. Under section 14 of the Land Tax Act, the owner of a residential property is required to tell the Commissioner if the property is rented. If the owner fails to comply with this section, the owner is liable to pay interest on the amount of land tax from the end of 30 days after the 1st day of the 1st quarter for which the tax is imposed.
38. Compound interest on the amount of land tax due is calculated, for each calendar month that the amount is payable, on the 1st day of that month at the interest rate applying to that day on the total amount due on the day the interest is calculated. If an amount of land tax is payable for part of a calendar month, interest is payable for the whole month.

Remission of interest—section 36

39. Under section 36 of the Land Tax Act, the Commissioner may remit all or part of an amount of interest payable by a person in relation to land tax if the Commissioner is satisfied that it is fair and reasonable having regard to:
 - (a) any circumstances that contributed to the delay in payment of the land tax; or
 - (b) any other relevant matter.

40. Although Division 5.1 of the TAA does not apply to the Land Tax Act, the Commissioner treats all remissions of interest under the Land Tax Act in the same way as remissions under the TAA. Thus, the market rate component of interest is only remitted in exceptional circumstances, such as where the ACT Revenue Office is at fault, and/or where the legislation has produced an unforeseen outcome (see paragraph 22 above). It is the taxpayer's responsibility to be aware of their liabilities. Being unaware of a land tax liability is not an extraordinary circumstance.

Interest on refund—section 37

41. Under section 37 of the Land Tax Act, if the Commissioner is satisfied that an assessment of land tax payable for a parcel of land has been wrongly made because of an administrative error and, because of the error, a person has overpaid land tax for the parcel, the Commissioner may pay interest to the owner at the market rate component determined under section 26 of the TAA, worked out from the date of the overpayment or a later date the Commissioner considers appropriate.

Rates Act

42. Section 25 (interest in relation to tax defaults), Division 5.2 (penalty tax) and section 110 (interest payable on amounts to be paid by taxpayer) of the TAA do not apply to unpaid overdue rates.

Interest payable on unpaid overdue rates—section 21

43. Under section 21 of the Rates Act, interest on the amount of unpaid overdue rates is calculated, for each calendar month that the amount remains unpaid, on the 1st day of that month at the interest rate applying to that day on the total amount due on the day the interest is calculated. If an amount is unpaid for part of a calendar month, interest is payable for the whole month.

44. Under section 22 of the Rates Act, rates (including interest) payable in relation to a parcel of rateable land are a charge on the interest held by the owner of the parcel.

Interest payable on deferred amounts—section 48 (4) and (5)

45. Under section 48 (4) and (5) of the Rates Act, interest on a deferred amount is payable from the due date for payment until the earlier of the day the amount is paid and the day the deferral is revoked i.e. the date of the deferral determination or (for an amount deferred after that date) the date interest would be payable under section 21 of that Act but for the determination. A person who becomes indebted to the Territory for an amount under this section must pay interest on the amount at the rate determined under section 26 of the TAA.

Interest payable on unpaid amounts payable but not paid after deferral revoked—section 56

46. Under section 56 of the Rates Act, interest is payable on any unpaid amount payable but not paid after a deferral is revoked under section 55 (recovery of deferred amounts), calculated in the same way as interest on overdue rates is worked out under section 21 of the Rates Act.

47. Under section 56 (3) of the Rates Act, section 25 of the TAA (interest in relation to tax defaults) does not apply to the unpaid amount.

Remission of interest—section 43

48. Under section 43 of the Rates Act, the Commissioner may remit all or part of an amount of interest payable by a person in relation to rates if the Commissioner is satisfied that it is fair and reasonable having regard to:

- (a) any circumstances that contributed to the delay in payment of the rates; or
- (b) any other relevant matter.

49. Although Division 5.1 of the TAA does not apply to the Rates Act, the Commissioner treats all remissions of interest under the Rates Act in the same way as remissions under the TAA. Thus, the market rate component of interest is only remitted in exceptional circumstances (see paragraph 22 above).

Interest on refund—section 44

50. Under section 44 of the Rates Act, if the Commissioner is satisfied that an assessment of rates payable for a parcel of land has been wrongly made because of an administrative error and, because of the error, a person has overpaid rates for the parcel, the Commissioner may pay interest to the owner at the market rate component determined under section 26 of the TAA worked out from the date of overpayment or a later date the Commissioner considers appropriate.

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