

REVENUE CIRCULAR GEN009.3
Interest – <i>Taxation Administration Act 1999</i> and tax laws
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Introduction

The *Taxation Administration Act 1999* (TAA) makes general provision in relation to the administration and enforcement of ACT tax laws under section 4 of the TAA. One of the purposes of the TAA is to make general provision in relation to the imposition of interest.

Other tax laws also contain provisions about the imposition of interest in relation to those particular taxes.

This circular provides details of the interest provisions under tax laws. It also sets out how the Commissioner for ACT Revenue (the Commissioner) administers discretionary powers under interest provisions.

This circular should be read in conjunction with the latest version of Revenue Circular *Penalty Tax* (GEN006.3), which deals with penalty tax provisions. Interest and penalties in relation to the *First Home Owner Grant Act 2000* are also dealt with separately: see the latest version of Revenue Circular *Offences and Penalties* (FHOG001).

All circulars are available at www.revenue.act.gov.au.

How this circular is applied

The Commissioner exercises the discretionary powers under interest provisions to meet current standards of ethical, fair and reasonable tax administration.

On this basis, the Commissioner applies interest in accordance with this circular except where strict application would produce an unreasonable or inconsistent outcome.

A practice stated in this circular may be varied by the Commissioner in light of all the circumstances of the particular case.

Responsibilities of taxpayers

Taxpayers are expected to:

- exercise reasonable care in the calculation and timely payment of their tax liabilities;
- inform themselves of their obligations under tax laws; and
- comply with those obligations in a timely fashion.

Taxpayers are also encouraged to declare, voluntarily, any tax liabilities as soon as they are known.

The Commissioner presumes that taxpayers have dealt with their tax affairs openly and honestly, unless evidence suggests otherwise.

Purpose of interest

Interest (and penalty tax) plays an integral role in tax administration as it aims to:

- deter non-compliance by making it unprofitable for taxpayers;
- promote equity among taxpayers by ensuring that those who meet their obligations are not disadvantaged in comparison with those who do not;
- encourage the full and immediate disclosure of any tax default;
- encourage the payment of tax liabilities by the due date; and
- compensate the government for being denied the use of funds to which it is entitled.

Interest under tax laws

Divisions 5.1 and 10.3 of the TAA (the TAA interest provisions) contain general provisions for the imposition of interest, which apply to all tax laws unless a law specifies otherwise.

Taxes subject to the TAA interest provisions include:

Tax	Tax law
Conveyance duty Landholder duty Motor vehicle duty	<i>Duties Act 1999</i> (Duties Act)
Ambulance levy	<i>Emergencies Act 2004</i> , schedule 1
Payroll tax	<i>Payroll Tax Act 2011</i> (Payroll Tax Act)
Energy Industry Levy	<i>Utilities Act 2000</i> , part 3A
Utilities Network Facilities Tax	<i>Utilities (Network Facilities Tax) Act 2006</i>

The *Rates Act 2004* (Rates Act), *Land Tax Act 2004* (Land Tax Act) and *Land Rent Act 2008* (Land Rent Act) specifically exclude certain TAA interest provisions from applying:

- For rates:
 - section 52 (4) (failure to pay an instalment when due)
 - section 25 (interest in relation to tax defaults)
 - section 110 (interest payable on amounts to be paid by taxpayer)do not apply – see Sections 19, 20 and 56 of the Rates Act.
- For land tax: section 25 of the TAA (interest in relation to tax defaults) does not apply to unpaid overdue land tax – see section 19 of the Land Tax Act.
- For land rent:
 - section 25 (interest in relation to tax defaults)
 - section 110 (interest payable on amounts to be paid by taxpayer)do not apply to unpaid overdue land rent – see section 6 of the Land Rent Act.

TAA interest provisions

Tax defaults

Under section 25 of the TAA, a taxpayer is liable to pay interest if a tax default happens. A tax default is defined in the dictionary to the TAA as ‘a failure by a taxpayer to pay, in accordance with a tax law, the whole or part of tax that the taxpayer is liable to pay’.

A tax default may include:

- a late payment – where a taxpayer pays tax after its due date;
- an underpayment of tax or tax shortfall – where the taxpayer has paid less than the correct amount of tax; or
- a failure to notify – such as, not lodging a notification or return with the ACT Revenue Office of a tax liability, for land tax or payroll tax.

Interest is also payable if a tax default occurs in relation to a failure to pay penalty tax under division 5.2 of the TAA. It 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.

Interest is not payable in relation to a failure to pay interest – see section 25(2) of the TAA, or if the amount of tax otherwise payable under a tax law is less than \$20 – see section 27 of the TAA. For the purposes of section 27 of the TAA, a tax law does not include the Land Rent Act, the Land Tax Act or the Rates Act.

Interest rate

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

The market rate component is:

- for the first six months of a calendar year—the monthly 90-day bank bill rate for the month of November before 1 January of the year; and
- for the second six months—the monthly 90-day bank bill rate for the month of May before 1 July of the year.

The monthly 90-day bank bill rate refers to the average yield of 90-day bank accepted bills published by the Reserve Bank of Australia over the month of May or November, whichever applies. The monthly 90-day bank bill rates are available at www.rba.gov.au.

The premium component is fixed at 8 per cent per annum.

Remission of TAA interest

Under section 29 of the TAA, the Commissioner may remit all or part of the interest payable by a person if the Commissioner considers it appropriate in the circumstances. In deciding whether to remit, the Commissioner may have regard to the following:

- where no penalty tax is payable, or penalty tax has been reduced or remitted in whole under the TAA
- circumstances where the ACT Revenue Office may have contributed to any delays, errors or omissions in assessing the tax default.

Meeting one or more of these criteria does not necessarily mean that reasonable care has been taken – all factors leading to the tax default are taken into consideration.

Generally, however, as interest is imposed under legislation there is necessarily a high threshold on remitting interest to ensure equity amongst taxpayers who have paid liabilities on time. In practice, the Commissioner will remit interest only when the legislation produced an extraordinary and unintended consequence, such as where the ACT Revenue Office is at fault, or where the legislation has produced an unforeseen outcome.

Interest on amounts under objection

Section 105 of the TAA provides that the fact that an objection or review is pending does not affect the assessment or decision to which the objection or review relates, and tax (including interest) may be recovered as if no objection or review were pending.

Section 110 of the TAA applies when interest is to be paid by a taxpayer following the determination of an objection. This provision does not apply to the Rates Act or Land Rent Act.

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 payment by the taxpayer until the date of the refund at the market rate component. This provision applies to all tax laws.

Interest rate prevails over interest otherwise payable

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.

Arrangements for payment of tax

Under section 52 of the TAA, the Commissioner may extend the time for payment of tax by a taxpayer or accept the payment of tax by instalments, subject to conditions (for example, about the payment of interest) that the Commissioner may determine.

Duty interest

Overdue or unpaid amounts of duty are subject to the TAA interest provisions.

Deferred duty interest

In relation to deferred duty, interest is applied in accordance with section 75AD of the Duties Act. Section 75AD (2) states that the Minister may determine by disallowable instrument the conditions to which a deferral arrangement is subject, including conditions to fix the rate of interest charged on the amount payable under the arrangement.

The deferred duty interest rate is determined as the market rate component under section 26 of the TAA and is payable as simple daily interest on the amount of deferred duty unpaid.

Deferred Lease Variation Charge interest

Under section 279AC of the *Planning and Development Act 2007* the conditions of a deferral arrangement for the Lease Variation Charge (LVC) may be determined by the Treasurer by disallowable instrument, including the rate of interest charged on the amount payable under the arrangement.

Land rent interest

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. The land rent interest rate is determined in alignment with the TAA interest rate.

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.

The Commissioner may remit or refund all or part of the interest under section 23 (5) of the Land Rent Act.

Land tax interest

Under section 19 of the Land Tax Act, interest on land tax is worked out, for each calendar month that the amount remains unpaid, by reference to the first day of that month. Interest applies on the total amount of overdue land tax unpaid on the day when the interest is worked out, at the interest rate applying on that day. If an amount remains unpaid for part of a calendar month, interest is payable for the whole month. The land tax interest rate is determined in alignment with the TAA interest rate i.e. it is the sum of the market rate and premium rate

Under section 19A of the Land Tax Act, liability for interest also arises if the owner of a parcel of land fails to comply with section 14 of the Act. Section 14 requires a relevant person to tell the Commissioner within 30 days if there is a change of circumstances that would cause land tax to become payable for a parcel of land.

Under section 19A (2) of the Land Tax Act interest must be paid on the land tax from the end of 30 days after the first day of the first quarter for which the land tax is imposed. Interest is otherwise worked out in the same way as section 19 (1).

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, worked out from the date of the overpayment or a later date the Commissioner considers appropriate.

Remission of land tax interest

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 considers it appropriate in the circumstances.

The Commissioner approaches all remissions of interest under the Land Tax Act in the same way as remissions under the TAA, that is, the Commissioner will only remit interest in exceptional circumstances (see **Remission of TAA interest**). It is the taxpayer's responsibility to be aware of their liabilities. Being unaware of a land tax liability is not an exceptional circumstance.

Payroll tax interest

Payroll tax under the *Payroll Tax Act 2011* is subject to the TAA interest provisions.

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.

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.

Interest will be charged up to the day that the Commissioner receives all of the information required to enable an assessment or reassessment to be made.

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.

Rates interest

Under section 21 of the Rates Act, interest on rates is worked out, for each calendar month that the amount remains unpaid, by reference to the first day of that month. Interest applies on the total amount of overdue rates unpaid on the day when the interest is worked out, at the interest rate applying on that day. If an amount remains unpaid for part of a calendar month, interest is payable for the whole month. The rates interest rate is determined in alignment with the TAA interest rate.

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 worked out from the date of overpayment or a later date the Commissioner considers appropriate.

Remission of rates interest

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 considers it appropriate in the circumstances.

The Commissioner approaches all remissions of interest under the Rates Act in the same way as remissions under the TAA, that is, the Commissioner will only remit interest in exceptional circumstances (see **Remission of TAA interest**).

Deferred rates interest

Under section 48 of the Rates Act, a person who becomes indebted to the Territory for a deferred amount of rates payable for a parcel of land must pay interest at the market rate component.

Interest must be paid from the date of deferral until the deferred amount is paid, or if the deferral determination is revoked before that date, the date of the revocation.

The date of deferral is determined under section 48 (5) of the Rates Act as the date that the deferral determination is made (for amounts payable at that date) or the date that interest would begin to be payable under section 21 of the Act (for an amount deferred after the determination is made).

If a deferral determination is revoked, interest is payable on the unpaid amount in accordance with sections 55 and 56 of the Rates Act. Interest is worked out in the same way as section 21 of the Act.

Objections to interest

Under section 100 of the TAA a taxpayer may lodge a written objection with the Commissioner if the taxpayer is dissatisfied with:

- an assessment, other than a compromise assessment, that is shown in a notice of assessment given to the taxpayer;
- a decision mentioned in schedule 1 or schedule 2 of the TAA; or
- a decision made under a tax law that is prescribed under that law for section 100 of the TAA.

Objections can be lodged to the following decisions:

- a refusal to remit interest under section 29 of the TAA;
- a decision to impose a condition under section 52 of the TAA (for example, about the payment of interest);
- a refusal to remit interest under section 36 of the Land Tax Act;
- a refusal under section 37 of the Land Tax Act to pay interest on an overpayment of land tax, or to pay interest from a date other than the date of overpayment;
- a refusal to remit interest under section 43 of the Rates Act;
- a refusal under section 44 of the Rates Act to pay interest on an overpayment of rates, or to pay interest from a date other than the date of overpayment.

The taxpayer bears the burden of demonstrating to the Commissioner's satisfaction the existence of any facts they assert when they submit an objection with the Commissioner.

Determinations of objections to interest are not reviewable by the ACT Civil and Administrative Tribunal (other than decisions in relation to interest on overpayment of rates or land tax).

More information about taxpayers' rights is provided in the latest version of Revenue Circular *Your Rights* (GEN005).

Signed

Kim Salisbury
Commissioner for ACT Revenue
5 July 2019