



## REVENUE RULING

## TAA/FHOG 1.5

### PAYMENT ARRANGEMENTS

#### INTRODUCTION

1. This revenue ruling specifies the guidelines the Commissioner of State Revenue ('the Commissioner') will follow when considering whether to approve a tax payment arrangement under the *Taxation Administration Act 2003* ('TAA') or a repayment arrangement under the *First Home Owner Grant Act 2000* ('FHOG Act'), and the conditions to be included in such an arrangement ('payment arrangement').

#### BACKGROUND

2. When a taxpayer is required to pay an amount, the TAA provides the date by which the amount is due for payment for an assessment<sup>1</sup> or a reassessment.<sup>2</sup>
  - (a) Section 27 of the TAA provides for penalty tax to be applied to any amount not paid by the due date. Other than in accordance with section 29 of the TAA and the circumstances set out in Commissioner's Practice TAA 20 'Remission of Penalty Tax – For Late Payment', penalty tax imposed before an application for a payment arrangement is made will generally not be remitted.
  - (b) Any interest applied to an amount outstanding will be applied to both the primary amount payable and the penalty tax payable.
  - (c) An obligation to pay tax is not suspended or deferred by objection or review proceedings.<sup>3</sup>
3. When a first home owner grant applicant ('applicant') is required to repay an amount in relation to the first home owner grant ('grant'), the FHOG Act provides for the date by which the amount is due or an application for a payment arrangement is to be made.<sup>4</sup>
  - (a) Section 51(3) of the FHOG Act provides for penalty tax to be applied to any amount not paid by the due date.
  - (b) Any interest applied to an amount outstanding will be applied to both the primary amount payable and the penalty tax payable.
4. Under section 47 of the TAA and section 52 of the FHOG Act, the Commissioner may approve a payment arrangement that extends the time for payment of an amount owing or provides for payment of the amount in specified instalments.

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<sup>1</sup> Section 45 of the TAA provides for payment to be due on the date fixed or worked out in accordance with the relevant taxation Act, or otherwise on the date specified in the assessment notice.

<sup>2</sup> Section 24(5a) of the TAA provides for the due date to be at least 28 days after the date of the assessment notice.

<sup>3</sup> TAA s 33.

<sup>4</sup> Section 51 of the FHOG Act requires the applicant, within 28 days after the notice of the requirement, to either repay the amount of the grant or make a payment arrangement application.

- (a) The amount owing may include legal costs incurred by the Commissioner in recovery proceedings and costs incurred by the Commissioner to lodge or withdraw a memorial.<sup>5</sup>
  - (b) The Commissioner is not required to approve a payment arrangement and action cannot be brought in a court to compel the Commissioner to approve a payment arrangement.<sup>6</sup>
  - (c) If dissatisfied with the Commissioner's decision to not approve a payment arrangement in relation to payment due under a taxation Act, a taxpayer may apply directly to the State Administrative Tribunal ('SAT') for a review of the decision<sup>7</sup> within 60 days of being notified of the decision.
5. A payment arrangement may be made at any time<sup>8</sup> and may include:
- (a) conditions agreed with the taxpayer/applicant providing for the payment (and allowing for the remission) of interest at the prescribed rate<sup>9</sup> or at another rate fixed by or under the arrangement; and
  - (b) any other conditions the Commissioner considers appropriate.
6. If a payment arrangement is approved, the Commissioner will not commence or continue legal proceedings to recover outstanding tax except to the extent specified in the payment arrangement.
7. The Commissioner may, by written notice, amend a payment arrangement either by agreement with the taxpayer/applicant or as provided in the conditions of the arrangement.<sup>10</sup>
8. If payment is not made in accordance with the arrangement or the taxpayer/applicant does not comply with another condition of the arrangement, the Commissioner may cancel the arrangement by notice to the taxpayer/applicant.<sup>11</sup> If a payment arrangement is cancelled:
- (a) the whole of the amount outstanding, together with interest, becomes due and payable as from the date of the cancellation or the original due date for payment of the amount to which the arrangement applies, whichever is the later;<sup>12</sup> and
  - (b) interest continues to accrue until the outstanding amount to which the arrangement applied is paid;<sup>13</sup> and
  - (c) if the whole of the amount outstanding, along with any applicable interest and penalty tax, is not paid in full within 14 days of the date referred to in

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<sup>5</sup> TAA s 47(9), s 62(a), (b) and (ba); FHOG Act s 52(1A), s52A(1), s 60(1).

<sup>6</sup> TAA s 48.

<sup>7</sup> Section 34(4) of the TAA applies because a decision of the Commissioner in relation to approving a payment arrangement is directly reviewable in accordance with section 47(8) of the TAA.

<sup>8</sup> Penalty tax may apply where an application for a payment arrangement is made after the due date for payment of the amount owing.

<sup>9</sup> The prescribed rate of interest is set out in regulation 5 of the *Taxation Administration Regulations 2003* or regulation 8 of the *First Home Owner Grant Regulations 2000*, as applicable.

<sup>10</sup> TAA s 47(4); FHOG Act s 52(4).

<sup>11</sup> TAA s 47(5); FHOG Act s 52(5).

<sup>12</sup> TAA s 47(6); FHOG Act s 53(6).

<sup>13</sup> TAA s 47(7); FHOG Act s 53(7).

paragraph (a), the Commissioner will pursue whatever course of action is appropriate in the circumstances to recover the outstanding amount.

9. Under the TAA, the Commissioner may lodge a memorial for registration against land<sup>14</sup> in the following circumstances:
  - (a) to register the charge on the land title if land tax is not paid by the due date;<sup>15</sup>
  - (b) to create a charge on land for unpaid transfer duty after the title to the land has been transferred in accordance with the transaction if:
    - (i) the duty payable on the transaction is not paid by the due date because the purported payment is dishonoured;<sup>16</sup> or
    - (ii) transfer duty payable as a result of a reassessment is not paid by the due date;<sup>17</sup>
  - (c) if landholder duty is not paid by the due date, to create a charge on any land the landholder's or a linked entity's entitlement to which was taken into account for the purposes of calculating the landholder duty payable.<sup>18</sup>
10. For the purposes of lodging a memorial, land tax or duty is taken not to be paid by the due date if a purported payment of the tax is dishonoured (even though the due date may not have arrived when the purported payment is dishonoured).<sup>19</sup>
11. The FHO Act provides for a memorial to be lodged against the title to the property for which a grant was received if the applicant holds a relevant interest in the property and is liable to pay an amount to be recovered under section 53 of the FHO Act.<sup>20</sup>

## RULING

12. Application for a payment arrangement must be made using the Commissioner's online form or in writing, except where specified in paragraph 21 of this ruling, and must provide:
  - (a) the reasons the taxpayer/applicant is seeking the payment arrangement;
  - (b) information concerning availability of funds to pay the outstanding amount; and
  - (c) any other information or documents the taxpayer/applicant considers relevant.

Where the Commissioner considers further investigation into the financial status of the taxpayer/applicant is necessary, detailed financial statements may be requested.

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<sup>14</sup> Including mining tenements.

<sup>15</sup> TAA s 76(2). Land tax is a first charge on land from the time it becomes payable regardless of whether an assessment notice has been issued, the tax is due for payment, a memorial has been registered, or the land is disposed of: TAA s 76(1).

<sup>16</sup> TAA s 77A(2); s 77A(6).

<sup>17</sup> TAA s 77A(3).

<sup>18</sup> TAA s 77A(4).

<sup>19</sup> TAA s 76(3) and s 77A(3). TAA s 76A(3) defines when a purported payment is *dishonoured*.

<sup>20</sup> FHO Act s 55(1).

13. The Commissioner will take into account the following matters when considering whether to approve a payment arrangement:
  - (a) past payment history of the taxpayer/applicant associated with the payment of taxes under any taxation Act or the lodgment of instruments or returns;
  - (b) whether or not the amount of the taxpayer's total debt is likely to increase in the future;
  - (c) the prospects of longer term recovery of the full amount of the debt; and
  - (d) any other matters the Commissioner considers relevant in the circumstances of the particular case.
14. A payment arrangement will be approved where the taxpayer/applicant:
  - (a) demonstrates an inability to raise sufficient funds to pay the outstanding amount by the due date; or
  - (b) demonstrates that payment of the outstanding amount by the due date would cause financial hardship; or
  - (c) provides other convincing reasons for requiring a payment arrangement;and
  - (d) demonstrates a capacity to pay the outstanding amount in accordance with the proposed payment arrangement; and
  - (e) agrees to the payment of interest at the prescribed rate or some other rate fixed by or under the arrangement in relation to both the primary debt and any applicable penalty.
15. A payment arrangement may include any conditions the Commissioner deems appropriate to secure an amount owing until the payment has been made in full. Where the TAA or FHOG Act provide for lodgment of a memorial, the Commissioner may register such a charge, regardless of whether lodgment of a memorial is specified as a condition of the payment.
16. Payment arrangements will usually be approved for a fixed period and confined to the shortest period consistent with the taxpayer/applicant's ability to meet the payment obligations.
17. A payment arrangement application will be denied where the taxpayer/applicant does not provide sufficient information to enable the Commissioner to make an informed decision on the application.

### ***Payroll tax, betting tax and insurance duty***

18. Payroll tax, betting tax and insurance duty payment arrangements will usually only be approved in respect of assessments for past years and/or periods.
19. Where a taxpayer applies for a payment arrangement after having been approved for a payment arrangement in a previous assessment period, increasing the frequency with which future returns are lodged may be a condition of approval.

## Land tax

20. An approved payment arrangement supersedes the payment options set out in the *Land Tax Assessment Regulations 2003*.<sup>21</sup>
21. A request for an extension of up to one month to pay an amount owing to the Commissioner does not need to be made in writing. However, sufficient information must be provided to enable the Commissioner to determine whether paragraphs 13 and 14 of this ruling apply to the request.
22. Where an extension of one month or less is approved:
- (a) written notice of the approval will not be provided to the taxpayer unless specifically requested; and
  - (b) if the application was made after the original due date for payment, the amount will include penalty tax applicable under section 27 of the TAA; and
  - (c) if the full amount outstanding is not paid on or before the extended due date, the payment arrangement will be cancelled and the full amount of primary tax and penalty tax will become immediately due and payable.
23. A payment arrangement may also be approved where the taxpayer:
- (a) receives a land tax assessment notice within nine months from the date of issue of the previous year's assessment notice; and
  - (b) has not contributed to the delay in making either assessment; and
  - (c) indicates the circumstances above contribute to their difficulty in meeting their payment obligations.
24. If a payment arrangement is approved under paragraph 23:
- (a) any interest applied to the amount owing will usually be remitted in full if all required payments are made by the due date; and
  - (b) the date for payment of the amount due, or of the final instalment, will usually be calculated from the issue date of the assessment notice in accordance with the following table:

Months between assessment notices	Due date
Greater than 0, but less than or equal to 1	11 months
Greater than 1, but less than or equal to 2	10 months
Greater than 2, but less than or equal to 3	9 months
Greater than 3, but less than or equal to 4	8 months
Greater than 4, but less than or equal to 5	7 months
Greater than 5, but less than or equal to 6	6 months
Greater than 6, but less than or equal to 7	5 months
Greater than 7, but less than or equal to 8	4 months
Greater than 8, but less than or equal to 9	3 months

<sup>21</sup> The Land Tax Assessment Regulations provide for the payment of land tax in one discounted payment, or two or three specified instalments.

## **Remission of interest**

25. In addition to circumstances specified elsewhere in this ruling, the Commissioner may remit some or all interest payable under a payment arrangement if satisfied there are good reasons for doing so.
26. A tax liability that is subject to a payment arrangement may be reduced because of a reassessment.<sup>22</sup> When this occurs, interest continues to apply to the amount that remains payable under the reassessment. The Commissioner will remit the portion of interest that is the difference between the interest payable on the original assessment and the interest payable on the reassessment.

### *Example*

A payment arrangement is approved for a duties assessment of \$500,000. The interest charge under the arrangement is \$10,000.

Following a successful objection, the duty is reduced to \$250,000. The interest that applies to this amount is \$5,000.

The Commissioner will remit interest of \$5,000 on the payment arrangement.

## **Where an objection is lodged**

27. If a taxpayer/applicant lodges an objection within 60 days after the assessment or decision<sup>23</sup> and applies for a payment arrangement:
  - (a) subject to paragraph 27(f), approval will be given to extend the time for payment of the amount in dispute until the objection is determined unless the Commissioner considers the objection was only lodged in an attempt to defer the time for payment;
  - (b) approval will be subject to the taxpayer/applicant agreeing to pay interest under the arrangement at the prescribed rate;
  - (c) the extended payment date will be 14 days from the date of the notice determining the objection;
  - (d) any interest or penalty tax already accrued in respect of the amount subject to the objection will not necessarily be included in an approved payment arrangement;
  - (e) any other amounts due as a primary amount payable will still be due in accordance with the relevant date for payment unless a separate payment arrangement has been entered into in respect of those amounts; and
  - (f) an instalment payment arrangement in relation to a return-based tax (such as payroll tax or insurance duty) will be considered but an arrangement to extend the time for payment until the objection is determined will generally only be approved in exceptional circumstances.

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<sup>22</sup> This includes a reassessment following a successful objection or appeal, a reassessment on application from the taxpayer, or a reassessment on the Commissioner's initiative. A complete assessment following an interim assessment is not a reassessment.

<sup>23</sup> The Commissioner may approve a further period under section 36 of the TAA or section 28 of the FHOG Act.

28. If a payment arrangement has been approved and the objection is subsequently disallowed, interest required to be paid under the payment arrangement will generally not be remitted.

***Further reviews, appeals and cases stated***

29. If application for a payment arrangement is made in circumstances where:
- (a) the taxpayer/applicant applies to the SAT for review of the Commissioner’s decision on their objection;
  - (b) the taxpayer appeals a SAT decision;
  - (c) the taxpayer lodges an appeal with the Minister in accordance with section 20 of the *Land Tax Assessment Act 2002*; or
  - (d) the Commissioner states a case on a question of law to the Supreme Court, approval will usually be given to extend the time for payment of the amount in dispute where the taxpayer/applicant demonstrates they will suffer financial hardship if required to pay the amount prior to determination.
30. A payment arrangement approved in relation to paragraph 29 will usually:
- (a) extend the time for payment for a fixed period or until the determination of the review/appeal, whichever occurs first; and
  - (b) include a condition requiring the taxpayer/applicant to provide the Commissioner with financial or other relevant information at regular intervals; and
  - (c) include a condition requiring the taxpayer/applicant to take all reasonable steps to have the review/appeal heard as soon as possible.
31. If a payment arrangement has been approved and the application for review or appeal is subsequently disallowed, or the question of law is subsequently determined in the Commissioner's favour, any interest required to be paid under the payment arrangement will generally not be remitted.

**RULING HISTORY**

Revenue Ruling	Effective Dates	
	From	To
TAA 1.0	September 2006	July 2008
TAA 1.1	July 2008	March 2011
TAA 1.2	March 2011	11 February 2018
TAA/FHOG 1.3	12 February 2018	31 December 2018
TAA/FHOG 1.4	1 January 2019	16 July 2019
TAA/FHOG 1.5	17 July 2019	Current