

## ATO RECEIVABLES POLICY

### PART B The Collection of Taxation Debts

# Chapter 7 ALLOCATION OF PAYMENTS AND CREDITS

*The policy in this chapter is to be followed by Tax Office staff. We have made every effort to ensure it is technically accurate, but in the interests of clarity it has been written in 'plain English' and should not be read or interpreted like legislation. If you feel that something in the chapter is wrong or misleading, please advise the Tax Office.*

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**Key legislation:** Division 3 of Part IIB and section 8AAZL of the *Taxation Administration Act 1953*

## PURPOSE

1. This chapter deals with:
  - how payments can be made by taxpayers
  - payment allocation policy
  - credit allocation policy, and
  - refunds.

(The chapter should be read in conjunction with Chapter 33 'Running balance accounts' and Chapter 72 'Offsetting of refunds and credits against taxation and other debts').

## PRACTICE

2. Common law provides that a person who owes two debts to another person is entitled to appropriate a payment to one debt rather than another. If the person does not make an appropriation at the time of payment, then the creditor may make the appropriation. In some instances, the debtor may not have made an appropriation, but it is clear from the amount of the payment that it is to be allocated to a specific debt. If neither the debtor nor the creditor makes specific appropriation, the payment will normally be regarded as having been allocated against the earliest debt.
3. Common law principles regarding allocation of payments and credits have been modified by legislation.

## Accounts

4. Depending on a taxpayer's reporting responsibilities, tax obligations are recorded under several different account types. For example, the Tax Office maintains:

- an income tax account which records annually assessed income tax obligations together with related penalties and charges, and
  - an integrated client account which records obligations notified via an activity statement, including the pay as you go (PAYG) instalment amounts and any associated penalties and charges of which the Tax Office is required to notify a taxpayer.
5. Other accounts include those that record the superannuation guarantee charge (SGC) and annually assessed fringe benefits tax (FBT). It is the aim of the Tax Office to provide taxpayers with a single integrated view to their account position in relation to all their tax obligations in the future.

### **How payments can be made by taxpayers**

6. Taxpayers are obliged to make payments in relation to their liabilities by the due date. Taxpayers make payments for their liabilities/debts by sending payment:
- electronically - using an electronic funds transfer (EFT) code
  - via Australia Post - using a personalised payment advice form or, for those taxi drivers who are registered for goods and services tax (GST), using an Activity Statement Payment Card (a plastic payment card for business activity statement (BAS) prepayments only)
  - via BPAY - using appropriate ATO biller code and customer reference number, that is, EFT code (through phone, internet or in person at a bank) including the Activity Statement Payment Card
  - via mail - using cheque or postal order, with accompanying personalised payment advice form or letter.
7. These methods of payments are taken to be directions or instructions from the taxpayer.
8. Some payments that have been credited to an account may need to be transferred where there has been an error by the taxpayer or the Tax Office. This may occur in situations where:
- the taxpayer supplied the wrong personalised payment advice form or used the wrong EFT code, or
  - the Tax Office interpreted instructions in a letter incorrectly (subject to policy considerations hereinafter in relation to a payment's particular allocation) or there was a disruption with Tax Office processes.
9. Accordingly, these payments may need to be transferred to different taxpayers' accounts (provided it is legal to do so) or across different accounts for the same taxpayer/entity (for example, from a taxpayer's income tax account to the same taxpayer's integrated client account containing BAS obligations). Most of these situations arise where taxpayers request the Tax Office to correct the error and such requests (if appropriate) are followed.
10. The Taxation Administration Regulations specify that a debtor must pay the amount of the debt in one payment unless the Commissioner agrees to allow the debtor to make more than one payment to satisfy the debt. However, in practice, payments are allocated to the appropriate accounts on the basis of instructions from taxpayers although the Tax Office may apply the payment to a debt within the account contrary to the taxpayers' wishes. For example, a payment for less than the full amount of a current obligation may instead be applied to older debts maintained on the same account. Also, certain payments

are required by legislation to be matched with specific component debts (for example, payments in relation to SGC imposed for a quarter must be applied to nominal interest before other components).

11. From time to time debtors may purport to attach certain conditions to payments (for example that the Commissioner permit some arrangement or not take some action). In some cases, a letter accompanying the debtor's payment may be phrased in such a way as to imply that banking of the cheque denotes acceptance of stipulated conditions.
12. The banking of a cheque does not bind the Tax Office to the terms stipulated by the debtor. Moneys tendered need not be returned to the debtor, but advice should issue as soon as possible, informing the tax debtor that the amount is being retained unconditionally as payment towards their outstanding debt. The stipulated conditions may instead be treated as a proposal to the Tax Office and, where this is the case, the debtor will also be advised whether this proposal is acceptable or not. Accepted proposals will usually be subject to additional conditions outlined by the Tax Office (for example, that where any amount is not paid by the original due date, general interest charge (GIC) will accrue).
13. Debtors sometimes offer payment of a tax debt in foreign currency. While the Tax Office is not precluded from accepting such payments it cannot be compelled to accept foreign currency payments (except as required by law). The Taxation Administration Regulations stipulate that tax debts must be paid in Australian currency.
14. In some circumstances, the administrator of an insolvent company, which may have no significant assets that could be realised to pay a reasonable dividend to creditors, may offer equity in the company to creditors where it is possible the company can trade out of its difficulties.
15. The Tax Office is not prevented from accepting property in payment of tax where it is appropriate for maximising the collection of revenue. However, the Tax Office cannot be compelled to accept property except by law (the Tax Office will usually vote against any resolution that may result in a transfer of property rather than in payment of money). The *Corporations Act 2001* binds the Commissioner and, provided the provisions of the Corporations Act are complied with in the implementation of a Deed of Company Arrangement, the terms of the Deed compel the Commissioner to accept property such as shares. These shares would then be the property of the Commonwealth and would need to be registered in the name of the Commonwealth. This is discussed further in Chapter 20 'Voluntary administration'.
16. For the purposes of taxation laws, a payment in respect of a tax debt is taken not to have been made until it is received by the Tax Office or a person acting on behalf of the Commissioner.

## **PAYMENT ALLOCATION POLICY**

17. When payments are received, they are credited to taxpayers' **accounts** in accordance with the directions of a taxpayer although the Tax Office may apply the payment to a **debt** within the account at variance to the taxpayers' wishes.
18. A payment received for a greater amount than the balance of the account to which it is allocated will result in a surplus. This surplus credit will then be allocated in the order outlined in the section entitled 'Order of allocation'. Tax

Office systems automatically offset credits, although a manual offsetting process can apply in certain situations.

19. For example, where a payment is initially allocated to an account which records the current obligations notified on a BAS/IAS and the payment was accompanied by a payment advice form for that account, and that payment exceeds the balance owing on that account, the remaining credit from that payment would then be allocated against the earliest debt due for payment of a SGC debt. Any remaining credit from that payment continues to be allocated against any unpaid tax debts in the order outlined in the section entitled 'Order of allocation' before any remaining balance is refunded.

### **Allocating payments to a specific tax debt**

20. While the crediting of payments directed by taxpayers to an account may be initially accepted at face value by the Tax Office, where a payment does not finalise all outstanding tax debts the Tax Office may at a later time need to consider which specific tax debt on the account to allocate the payment against.
21. Common examples which call for this consideration at a later time include:
  - a reconciliation of an account by matching payments and liabilities, which is required to isolate certain component debts in an account for example, when ascertaining an amount payable by directors in relation to a director penalty notice (see Chapter 14 'Personal liabilities of company directors')
  - a similar situation applies in relation to a payment agreement under section 222ALA of the *Income Tax Assessment Act 1936* (ITAA 1936) (222ALA agreements) for which payments must be identified and matched to liabilities to ensure appropriate amounts have been paid as per the agreement; this would need to be done to ascertain whether directors have become liable for a penalty and to determine the appropriate amount of the penalty
  - certain liabilities (referred to in the section entitled 'Listed payments') which are required to be identified or matched as separate component liabilities, or quarantined.
22. In these situations, the Tax Office would allocate the payments not taking into account taxpayers' instructions, using his discretion in section 8AAZLE of the *Tax Administration Act 1953* (TAA).
23. The payment policy to be applied in situations where the allocation of a payment to a specific tax debt needs to be considered is that:
  - all payments will be allocated to earliest debts within an account, except
  - where the payment relates to a 'Listed Payment'.
24. The following situations involve payments which are referred to as 'Listed Payments' which have their own specific allocation rules:
  - full payment of tax obligations
  - administrative overpayment
  - arrangements to pay tax-related liabilities by instalments
  - 222ALA agreements

- payment of company liabilities arising under a remittance provision
  - director penalty notices
  - disputed tax debts
  - current legal proceedings
  - secondary tax debts such as judgment debts and associated costs
  - garnishee notices
  - voluntary payments
  - dividends received from insolvency administrations
  - head company group liabilities and tax sharing agreements (TSA) contribution amounts
  - shortfall interest charge (SIC)
  - general interest charge (GIC) for late payment
  - superannuation guarantee charge payments
  - superannuation excess contributions tax payments
25. If a payment is not included in the 'Listed Payments', it will be allocated to the earliest tax debt within an account.
26. Once a payment has been allocated, it will generally be maintained unless there is a cause to review the allocation.
27. Staff should advise taxpayers as soon as possible if payments are allocated in a manner different from that requested or indicated by them.

## **CREDIT ALLOCATION POLICY**

28. Credits, other than payments, can arise on a debtor's account as a result of account adjustments, and in relation to credit entitlements at law. These include transfers, lodgment of a BAS or income tax return and credit assessments via amendment.
29. Generally the policy for credits is that they will be:
- allocated first to the account from which they originate, and
  - any excess will then be offset as set out in the section entitled 'Order of allocation'.
30. However, credits are often subject to specific rules with regard to their allocation. These credits are referred to as 'Listed Credits', and include:
- credits arising from account adjustments (including SIC and GIC remission)
  - PAYG credits allocated to any of: higher education contribution scheme (HEC) assessment debts, compulsory repayment amounts arising under the *Higher Education Support Act 2003* (HESA) or student financial supplementary scheme (FS) assessment debts
  - credits for instalments such as GST instalments, PAYG instalments and FBT instalments or for amounts withheld
  - GST net amount less than zero

- net fuel amount less than zero
- credit in respect of excise fuel payment schemes and other excise claims
- credits arising from delayed refund interest and interest on overpayments and early payments
- excess imputation credits
- credits relating to excess baby bonus – tax offset
- credits relating to or arising from Family Tax Benefit
- credits arising from HESA overpayments
- credits in relation to undischarged bankrupts
- credits in relation to deeds of arrangement
- credits in relation to GST groups
- credits in relation to GST joint ventures
- credits in relation to GST and PAYG withholding branches
- credits in relation to consolidated groups

## Refunds

31. Where there are no unpaid tax debts to allocate to, or apply a payment or a credit against, as outlined in the section entitled 'Order of allocation', before any amount is refunded to a taxpayer, it will be allocated first to any family tax benefit debts, provided the refund relates to income tax. Any remaining income tax refund or all other refundable amounts are then allocated to any child support debts of the Child Support Agency or are allocated to debts in relation to Social Security, Family Assistance or Student Assistance where a garnishee has been received from Centrelink. (Note, the Government has announced that family tax benefit overpayments for the 2000–01 financial year would not be recovered by using tax refunds).

## ORDER OF ALLOCATION

32. The order of allocation of a surplus created by the allocation of payments or credits on an account is as follows:
- (i) to any annual superannuation guarantee charge debts (that is, relating to periods **before** 1 July 2003), commencing with the debts that have the earliest due date, applying the payments in the following order:
    - the administration component
    - additional charges for the unpaid Part 7 of the *Superannuation Guarantee (Administration) Act 1992* penalty charges (late payment penalty)
    - additional charge for the unpaid Part 7 penalty charges (general interest charge)
    - Part 7 penalty charges

- additional charges for the unpaid total of the individual superannuation guarantee shortfall (late payment penalty)
- additional charge for the unpaid total of the individual superannuation guarantee shortfall (general interest charge)
- the nominal interest component
- the total of the individual superannuation guarantee shortfall.

The same order is to be followed in applying payments in each subsequent period until all outstanding annual SGC debts are finalised, and then

Payments received for a quarterly SGC liability (relating to periods after 1 July 2003) will be credited towards the earliest debt in the following the order:

- the nominal interest component
- additional charges for the unpaid total of the individual superannuation guarantee shortfall (general interest charge)
- the total of the individual superannuation guarantee shortfall
- the administration component
- additional charges for the unpaid Part 7 penalty charges (general interest charge)
- Part 7 penalty charges.

The same order is to be followed in applying payments in each subsequent period until all outstanding quarterly SGC debts are finalised.

- (ii) to any RBA deficit debt which represents pay as you earn (PAYE) debts
- (iii) to any RBA deficit debt which represents prescribed payment system (PPS) debts
- (iv) to any RBA deficit debt which represents reportable payment system (RPS) debts
- (v) to any RBA deficit debt which represents sales tax debts
- (vi) to the RBA which records BAS amounts (these obligations are commonly notified on a BAS/IAS). When applying the payment to the component tax debts that have been allocated to this RBA, the payment will be allocated first to the debts with the earliest due date. Where the component tax debts allocated to this RBA have the same due date for payment, the Tax Office will apply payments in the following order:

- net amount for the GST (which includes wine equalisation tax and luxury car tax) and other amounts of GST;
- net fuel amounts greater than zero
- fringe benefits tax instalments
- PAYG withholding
- deferred company and superannuation fund instalments

- PAYG instalments
- administrative penalties, including GIC for late payment

The same order is to be followed in applying payments to each subsequent period until all outstanding component tax debts are finalised

- (vii) to any debt which represents interest and royalty withholding debts including any associated charges and penalties
- (viii) to any debt which represents only assessed fringe benefits tax debts including any associated charges and penalties
- (ix) to any debt which represents superannuation surcharge debts including any associated charges and penalties
- (x) to any debt which represents petroleum resource rent tax including any associated charges or penalties
- (xi) to any debt which represents excise debts (except diesel fuel rebate scheme debts) including any associated charges and penalties
- (xii) to any debt which represents grants or benefits scheme debts arising under the *Product Grants and Benefits Administration Act 2000* including any associated charges and penalties
- (xiii) to any debt which represents diesel and alternative fuels grants scheme (DAFGS) debts including any associated charges and penalties
- (xiv) to any debt which represents diesel fuel rebate scheme debts including any associated charges and penalties
- (xv) to any debt which represents a net fuel amount greater than zero (where the debtor is not registered or required to be registered for GST)
- (xvi) to any debt which represents franking deficit tax, over-franking tax or venture capital deficit tax including any associated charges and penalties
- (xvii) to any debt which represents superannuation self managed fund levy including any associated charges or penalties
- (xviii) to any debt which represents only assessed income tax debts including any associated charges and penalties
- (xix) to any debt which represents assessed superannuation excess contributions tax including any associated charges and penalties
- (xx) to any secondary tax debts (for example, the costs involved in obtaining a judgment against a tax debtor and subject to the requirements specified under the subheading below, entitled 'Secondary tax debts such as judgment debts and associated debts')
- (xxi) to any director penalty amount pursuant to Division 9 of Part VI of the ITAA 1936, commencing with the oldest period penalty amount until all penalty amounts are finalised
- (xxii) to any further tax debts which are due and payable, not including debts subject to dispute
- (xxiii) to any debt which represents tax debts that are subject to objection, review or appeal including any associated charges and penalties, and



- (xxiv) to any further amounts due to the Commonwealth directly under a taxation law, which are due but not yet payable.

## **LISTED PAYMENTS**

### **Full payments of tax obligations**

33. A full payment received in relation to a tax obligation, will be allocated to that respective tax debt regardless of whether there are earlier unpaid tax debts within that account. For example, payments received accompanied by a personalised payment advice form will be allocated to the corresponding account and if necessary, matched to the respective liability.
34. For example, the following common situations that would include full payment of the liabilities include:
- an annual income tax assessment
  - an RBA deficit debt advised by an RBA Statement, or
  - the balance payable under the BAS provisions for an activity statement.
35. However, part payments of tax obligations other than Listed Payments (discussed below) will be allocated to earlier tax debts within that account. Accordingly, where a taxpayer has lodged a BAS and only provided part of the payment towards the total liability, the payment will generally be allocated to earlier tax debts within that account.

### **Arrangements to pay tax-related liability by instalments**

36. Payments (made in full or part) in relation to an arrangement where the debtor has been granted permission to pay tax-related liabilities by instalments may be reviewed to ensure a taxpayer is complying with the terms of the arrangement. The payment received in accordance with such an arrangement will be allocated in the order as advised by the Tax Office.
37. Such payments are usually identified through accompanying personalised payment advice forms provided to the debtor. Payments received in accordance with such an arrangement will reduce the overall indebtedness of an account, and if necessary will be allocated to the earliest tax debts within that account.
38. In cases where the arrangement with the debtor involves the payment of more than one account, the payments received in accordance with this arrangement should generally be allocated to the debts with the earliest due date in the order outlined in the section entitled 'Order of allocation'.
39. Where an arrangement is sought by a debtor involving BAS amounts, the Tax Office will usually require that payments received are allocated to the debts with the earliest due date in the order outlined within the section entitled 'Order of allocation'. For example, where there is an unpaid GST debt and PAYG withholding amount for the same reporting period, the Tax Office will require that the payments received in accordance with the arrangement be applied against the GST debt first.
40. Debtors should be informed at the earliest opportunity of the order in which the Tax Office proposes to apply the payments received in relation to the arrangement. The debtors should always be advised in writing how their

entitlement to a tax credit that arises during the life of such an arrangement will be treated. The Tax Office will usually insist that such credits are retained in addition to instalments payable under the arrangement. In certain circumstances, however, the Commissioner will exercise discretion to refund these credits. This is discussed further in the policy chapters, Chapter 72 'Offsetting of refunds and credits against taxation and other debts', and Chapter 10 'Payment arrangements.

### **Administrative overpayment**

41. An administrative overpayment is where an amount has been paid to a person by the Tax Office by mistake. The person is not entitled to the amount and the Tax Office requires the return of that payment to rectify the mistake.
42. Where payment has been made (in full or in part) in relation to an administrative overpayment, the payment will be allocated to that overpaid amount.

### **222ALA Agreements**

43. A payment made (in full or in part) pursuant to a written agreement with the debtor in accordance with section 222ALA of the ITAA 1936 is allocated in the order detailed in the schedule attached to that written agreement.

### **Payment of company liabilities arising under a remittance provision**

44. Where it can be readily identified that a payment received has been made in respect of a particular liability of a company arising under a remittance provision (for example a PAYG withholding obligation), the Tax Office will generally allocate the payment to that liability.

### **Director penalty notices (DPNs)**

45. The Tax Office may issue a DPN on a director pursuant to Div 9 of Part VI of the ITAA 1936. Where payment is received (in full or in part) in relation to a DPN this amount must be allocated to reduce the penalty on the director's account and the corresponding parallel liability on the company account (for example the relevant PAYG withholding amounts). Given personalised payment advice forms are not supplied for a DPN, the director must advise the Tax Office that the respective payment is in relation to the DPN. If the payment is less than the full amount it will reduce the penalty account for the director's account by that amount and will be allocated against the company's earliest PAYG withholding amounts for which the director has a parallel liability.

### **Disputed tax debts**

46. The Tax Office will allocate or apply a payment (made in full or part) or an entitlement to a tax credit towards tax debts which are in dispute and subject to objection, review or appeal (see Chapter 28 'Recovering disputed debts') where:
  - statute requires the entitlement to a credit to be so allocated or
  - the credit relates to an amendment made to that disputed tax debt; or
  - the debtor has entered into an arrangement with the Tax Office to direct such amounts towards those disputed tax debts (for example a 50/50 arrangement where a payment or credit would be allocated on a

*pro rata* basis against the disputed tax debts up to the value of 50% of the disputed debt until the period of deferral has expired. Any amounts offset over that amount will usually be refunded on request.)

47. Once the Tax Office has allocated the payment or credit to the disputed debt, there will usually be no further appropriation. For further discussion, refer to Chapter 28 'Recovering disputed debts' and Chapter 72 'Offsetting of refunds and credits against taxation and other debts'.

### **Current legal proceedings**

48. Payments (made in full or in part) in respect of current legal proceedings filed by the Commissioner against the tax debtor will be allocated to those debts. Part payments in respect of these proceedings would be allocated to the debts with the earliest due date that contribute to the balance of the claim.

### **Secondary tax debts such as judgment debts and associated costs**

49. Generally, when applying payments to a case where judgment has been entered against a tax debtor, payments made (in full or in part) will be allocated firstly against the judgment debt and then to the costs involved in obtaining the judgment before being allocated to the judgment interest. However, with effect from 15 August 2005, where judgment has been entered against a tax debtor in NSW State courts, the Civil Procedure Act 2005 (NSW) (CPA 2005) at section 136 requires that, 'Unless the court otherwise orders, any payment made on account of a judgment debt is to be appropriated:

- (a) firstly, towards such part of the judgment debt as comprises interest payable under section 101, and
- (b) secondly, towards the balance of the judgment debt'.

Section 136 of the CPA 2005 only relates to the application of payments on account of a judgment debt obtained in NSW State courts. However, in order to maintain consistent application of payments and credits in such matters, the Commissioner will treat credits in the same manner as payments for NSW judgment debts only.

50. Section 101 of the CPA 2005 as referred to above, covers only post-judgment interest from the date on which the judgment takes effect, or such later date as the court may order, as they relate to NSW judgment debts only.
51. Furthermore subsection 101(3) provides that interest is not payable on the amount of a judgment if the amount is paid in full within 28 days after the date on which the judgment takes effect, unless the court orders to the contrary.

### **Garnishee Notices**

52. Where a payment (in full or in part) is made in relation to the issue of a garnishee notice or similar type action by the Tax Office, the payment must be appropriated to the respective component amounts that constitute the total payable in that notice. Part payments in respect of a garnishee notice would be allocated to debts with the earliest due date that contribute to the balance of the notice.

### **Voluntary payments**

53. Payments made voluntarily (in full or in part) in respect of an anticipated tax debt will be appropriated to that anticipated tax debt, provided there are no other outstanding tax debts against which the payment can be allocated.

#### **Dividends received from insolvency administrations**

54. Payment of dividends of less than 100 cents in the dollar received by the Tax Office from insolvency administrations are allocated on a *pro rata* basis. They are apportioned to each tax-related liability and other debts (including costs and judgment interest and subject to the requirements specified under the subheading above entitled 'Secondary tax debts such as judgment debts and associated debts') that formed the Tax Office's claim in the administration that gave rise to that dividend. (This is in accordance with the decisions of *Turner Manufacturing Co. Pty. Ltd. v. Senes* [1964] NSW 692 and *Thompson v. Hudson* (1871), 6 Ch. App. 320). In addition, if more than one of the tax-related liabilities that make up a claim are RBA deficit debts then the part of the dividend allocated to an RBA is also to be apportioned on a *pro rata* basis amongst the component tax debts (and GIC on those tax debts) that establish that RBA deficit debt. Where director penalties are involved the Tax Office will apportion dividends received as discussed above in order to identify the balance of unpaid amounts subject to director penalties. The Tax Office will usually claim in respect of an entity's RBA deficit debt and therefore dividends received for less than 100 cents in the dollar will simply reduce the overall indebtedness of that RBA.
55. Further, priority or non-priority dividends in relation to SGC received from insolvency administrations must be allocated to corresponding SGC liabilities on a *pro-rata* basis. However, in discharging the employer's liability, the priority of allocation in respect of a SGC liability (annual or quarterly) is the same as expressed within the section entitled 'Order of allocation'.

#### **Head company group liabilities and tax sharing agreement (TSA) contribution amounts**

56. Payments made (in full or in part) in relation to a head company group liability or a tax sharing agreement contribution amount will be allocated as appropriated by the taxpayer. (For further discussion regarding TSAs refer to the section entitled 'Listed Credits').

#### **Shortfall interest charge**

57. For the 2004-05 and later years, where an income tax assessment is amended to increase the taxpayer's liability, an interest charge at a lower rate than GIC has been introduced for the shortfall period. This lower interest charge is known as the shortfall interest charge (SIC) and replaces GIC in the shortfall period (the due date of the earlier understated assessment until the day before the amended assessment issues). The shortfall and SIC is due and payable 21 days from when the taxpayer is given notice of the assessment, and payment should be allocated against it accordingly.

#### **General interest charge for late payment**

58. For the purpose of ascertaining the order that a payment will be allocated, and for no other purpose, GIC for late payment that has been notified is considered to be due for payment on the day that it is posted to the account. GIC that has

not been notified will have payments allocated against it after all other tax debts that are due for payment, which have been allocated to the account, have been paid.

59. For example, a part payment in respect of the total amount payable notified in a BAS/IAS, generally will be first allocated to the RBA which records those obligations before it is also allocated against the non-RBA tax debts, with the earliest due date allocated to that account and the GIC for late payment of those tax debts. When applying this payment, the GIC that has been notified (usually in a monthly RBA statement but could also be by other means including telephone contact) is considered to be due for payment when it is posted to the account. Where this GIC is considered to be due for payment on the same date as the component debts allocated to the RBA, the payment would be allocated in the order outlined within the section entitled 'Order of allocation'. That is, the GIC is usually the last of these tax debts for that period to have the payment allocated against it before the same order is then followed in applying payments to the tax debts of each subsequent period. After all tax debts that are due for payment for each period have been paid, payments are then allocated to the GIC which has not been notified.
60. The treatment of GIC for late payment outlined above does not affect the Commissioner's ability to claim these additional charges as a due and payable tax-related liability, as prescribed in legislation, in other actions, for example in negotiations for an arrangement to pay a tax-related liability by instalments or in legal proceedings to recover such a liability.

#### **Superannuation guarantee charge (SGC) payments**

61. SGC payments (full or part) and additional SGC (full or part) payments will be allocated to their corresponding annual or quarterly liability, where that liability is specified by the employer at the time of making the payment.
62. However, in discharging the employer's liability, the priority of allocation in respect of a SGC liability is outlined within the section entitled 'Order of allocation'. The order of allocation for quarterly debts reflects the government's clear intention to prioritise payment of employee entitlements ahead of monies due to consolidated revenue.
63. Similarly, dividends in relation to SGC received from insolvency administrations are treated as a 'Listed Payment'.
64. Once a SGC payment has been made against the components of an employer's liability, the Tax Office must subsequently pay or credit the employees' entitlements, (that is, SGC shortfall and associated GIC and the nominal interest component) which will be the full payment for a single employee, and where there are multiple employees, prorata on the basis of the amounts entitled by the employees.

#### **Superannuation excess contributions tax payments**

65. Superannuation excess contribution tax payments will be allocated to their corresponding excess contribution tax assessment, where that liability is specified by the taxpayer at the time of making their payment.
66. Payments received from a superannuation provider in accordance with a release authority must be allocated to the corresponding superannuation excess contributions tax assessment.

## **LISTED CREDITS**

### **PAYG credits to be allocated first to HEC assessment debts, compulsory repayment amounts and FS assessment debts**

67. Section 8AAZLD of the TAA provides priority for HEC assessment debts, compulsory repayment amounts arising under the HESA and FS assessment debts from credit that arises under the PAYG system. For example, where an entitlement to a credit arises in relation to an income year for PAYG instalments payable or from amounts withheld from PAYG withholding payments, that credit will be allocated initially to any HEC assessment debt or any compulsory repayment amount, then to any FS assessment debt before being allocated against any income tax debts that are payable for that year. Former section 8AAZL(3) of the TAA still provides priority for these debts from provisional tax, tax instalment deductions, prescribed payment deductions, reportable payment deductions and certain natural resource and royalty payments that have been paid.

### **Credits for instalments**

68. An entitlement to a tax credit for instalments payable in relation to GST instalments, PAYG instalments or FBT instalments or amounts withheld from withholding payments that arise upon the Tax Office making an assessment of the annual returns for GST, income tax or FBT will be initially allocated to those respective assessed taxes for that income year.

### **GST net amounts less than zero**

69. Amounts of input tax credits, the special credit for wholesale sales tax and amounts of GST for the same tax period (including appropriate adjustments) must be set off against each other to produce a net amount in accordance with sections 7-5, 17-5 and 126-5 of the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act). Where the net amount of GST notified in an activity statement is less than zero the taxpayer will be entitled to a corresponding credit. This credit will initially be applied to any other liabilities notified in the same activity statement in the order outlined in paragraph 32(vi). Any GST credit remaining will be applied against the tax debts with the earliest due date for that account in the order outlined in paragraph 32(vi).

### **Net fuel amounts less than zero**

70. Amounts of fuel tax credits and amounts of fuel tax (including appropriate adjustments) for the same tax period must be set off against each other to produce a net fuel amount in accordance with section 60-5 of the *Fuel Tax Act 2006*. Where the net fuel amount for a particular period is less than zero, the taxpayer will be entitled to a corresponding credit. This credit will initially be applied to any other liabilities notified in the same activity statement in the order outlined in paragraph 32(vi) above. Any fuel tax credits remaining will be applied against the tax debts with the earliest due date for that account in the order outlined in paragraph 32(vi).

### **Credits in respect of excise fuel payment schemes and other excise claims**

71. An entitlement to a credit under any of the excise fuel payment schemes will initially be allocated against any liabilities owing under the particular scheme in

which the credit arises. Any credit in relation to an excise claim, either a refund or a drawback, will initially be allocated against any related excise debts.

### **Credits arising from delayed refund interest, interest on overpayments and early payments**

72. Division 3, Part IIB of the TAA enables interest payable to a tax debtor, arising under the *Taxation (Interest on Overpayments and Early Payments) Act 1983*, to be allocated against any tax debt owed. The interest will be initially allocated to the account to which it pertains.

### **Credits arising from account adjustments (including SIC and GIC remission)**

73. Credits arising from account adjustments are allocated against the account posting to which it pertains. Any excess credit is allocated in reduction of the oldest unpaid component debts due and payable on the account to which the adjustment is posted and then in the order outlined in the section entitled 'Order of allocation'.
74. A component liability may have previously been reduced by a payment/credit and then may also be subject to an account adjustment. In these situations, where an excess credit arises, it is allocated in reduction of the oldest unpaid component debts due and payable on the account to which the adjustment is posted and then in the order outlined in the section entitled 'Order of allocation'. However, it is noted that the excess credit is not a result of the account adjustment itself, but stems from the previous payment/credit. This is because the account adjustment merely returns the liability to its true position, and therefore the credit arises from the excess of the previous payment/credit.
75. An SIC or GIC remission posting should be allocated against the imposition posting to which it relates. However, at times, a GIC remission may not be easily identified with amounts which have been imposed. Where an excess credit arises from a GIC remission which has been applied to an original GIC amount, that excess credit should be applied to earliest GIC debts on the account.

### **Excess imputation credits**

76. Imputation credits are a refundable tax offset. These tax offsets must be initially allocated against the relevant assessed tax liability for the income year before they may then be allocated or allocated against any other tax debt.

### **Credits relating to excess baby bonus - tax offset**

77. The baby bonus is also a refundable tax offset. Accordingly, these tax offsets must be initially allocated against the relevant assessed tax liability for the income year before any residual amount can be allocated against any other tax debt or refunded.

### **Credits relating to or arising from family tax benefit**

78. The Tax Office may apply the whole or part of an income tax refund to any family tax benefit debts. Conversely, the Tax Office may apply the whole or part of a family tax benefit credit (other than child care benefits) to any primary tax debts.

### **Credits from HESA overpayments**

79. Where a person pays an amount to the Commonwealth under Division 151 of the HESA and the amount exceeds the total debts owed under Chapter 4 of the HESA, the excess may be applied against the person's primary tax debts in the order of allocation prior to being refunded.

### **Credits relating to pre-insolvency periods**

80. Credits relating to pre-insolvency periods will first be allocated against pre-insolvency debts regardless of whether the entity has or has not been released from those debts. Such credits will first be allocated to pre-insolvency debts on the account on which the credit originates, and then in the order outlined in the section entitled 'Order of allocation'. Any further or remaining credit will then be allocated against any post-insolvency debts on the account on which the credit originates and then against any other post-insolvency debts in the order outlined in the section entitled 'Order of allocation'.
81. For further information on credits in insolvency administrations refer to Chapter 72 'Offsetting of refunds and credits against taxation and other debts'.

### **Credits relating to post-insolvency periods**

82. Credits relating to post-insolvency periods will be allocated first to post-insolvency debts. Such credits will first be allocated to post-insolvency debts on the account on which the credit originates, and then in the order outlined in the section entitled 'Order of allocation'. If the entity has not been released from its pre-insolvency debts, any remaining post-insolvency credit will be allocated against any pre-insolvency debts on the account on which the credit originates and then against any other pre-insolvency debts in the order outlined in the section entitled 'Order of allocation'.
83. As credits under the excise fuel payment schemes do not come within the operation of the Division 3 of Part IIB of the TAA these types of credits relating to post-insolvency periods generally cannot be set-off against pre-insolvency debts. One exception to this restriction is when there has been an appointment of a receiver; as such an appointment does not impact on the rights of unsecured creditors, including a right of legal set-off.

(Note: credits under the excise fuel payment schemes do not include fuel tax credits under the *Fuel Tax Act 2006*)

84. For further information on credits in insolvency administrations refer to the Chapter 72 'Offsetting of refunds and credits against taxation and other debts'.

### **Credits in relation to GST groups**

85. Under Division 48 of the GST Act, certain entities may elect to group, so that one entity within the group (the representative member) deals with all the GST and net fuel amount debts of the group. The representative member is liable for all the GST and net fuel amount debts of the group and is entitled to all the input tax credits and associated fuel tax credits of the members of the group; however, all members of the group are jointly and severally liable to pay the group's GST and net fuel amount debts. Further, the Tax Office may apply any member's RBA surplus or excess credit against any tax debt of other members of that group. The Tax Office will, as a general rule, apply such surplus or credit amounts of a member initially against any tax liabilities due by that member in



the order specified in the section entitled 'Order of allocation'. However, where a member of the GST group is also a head company (HC) of a consolidated group this order may be modified (for more detailed information, refer below in this section under the subheading 'Allocation of payment received by the Commissioner for a consolidated group').

86. If that member has no tax liabilities, the amount would then be allocated across the group in the order outlined in the section entitled 'Order of allocation', commencing with the member that has the debts with the earliest due date for each tax type. For example, the surplus would then be allocated to the member in the group with the earliest debt due for payment of SGC debts in the order outlined in the section entitled 'Order of allocation' until all superannuation guarantee debts are finalised for that member. Any remaining surplus credit would then be allocated to the member with the next earliest due for payment of superannuation guarantee debts in the group or if no such debts existed, to the member with the earliest debt due for payment of PAYE debts. Any such remaining surplus credit would continue to be allocated, in the order outlined in the section entitled 'Order of allocation', across the group until all tax debts within that group are finalised before being refunded.

#### **Credits in relation to GST joint ventures**

87. Under Division 51 of the GST Act taxpayers may elect to enter into a GST joint venture and nominate one taxpayer to be responsible for the GST reporting and payment obligations that relate to that joint venture operation.
88. The nominated joint venture operator is liable for all GST and fuel tax debts and is entitled to receive all input tax and fuel tax credits attributable to the joint venture participants to the extent they relate to the GST and fuel tax activities of the joint venture.
89. Additionally, each GST joint venture participant is jointly and severally liable for the GST liabilities and fuel tax debts incurred by the joint venture. The Tax Office may offset a participant's credit entitlements against any GST or fuel tax related debt incurred by the GST joint venture. The Tax Office will, as a general rule, apply credit entitlements of a participant in the order specified in the section entitled 'Order of allocation', with the following modification - their credit entitlements will be applied against their GST joint and several liability last.

#### **Credits in relation to GST and PAYG withholding branches**

90. Under Division 54 of the GST Act and Subdivision 16-BA of the TAA, certain taxpayers may elect to branch their business operations provided each branch has an independent accounting system and the branch can be identified by reference to its activities or location. If the Tax Office registers a GST or PAYG withholding branch, each branch will lodge their own BAS separately and make corresponding payments of BAS liabilities or receive BAS refunds.
91. Although GST and PAYG withholding branches operate as distinct entities, the parent entity still bears the ultimate legal responsibility for lodging the branches' activity statements and making corresponding payments. The parent entity is also required to lodge a separate activity statement for activities not included in the activity statement of its GST and PAYG withholding branches.
92. Generally, the Tax Office will not offset an available credit entitlement between branches and the parent entity. However, the Tax Office may do so if there are tax debts due (even where they are not yet payable) by any of the branches or

the parent entity. The Tax Office will, as a general rule, apply such credit entitlements of a branch initially against any of their own tax liabilities.

93. If the branch has no tax liabilities, the amount would then be allocated across the branches and parent entity in the order outlined in the section entitled 'Order of allocation', commencing with the entity that has the oldest period tax debt for each tax type.

### **Credits in relation to consolidated groups**

94. Under Division 721 of the *Income Tax Assessment Act 1997*, wholly-owned groups of entities can elect to consolidate and thereafter be treated as a single entity for income tax purposes. Broadly, this means that the subsidiary entities lose their individual income tax identities and are treated as parts of the HC of the consolidated group for the purposes of determining the income tax liability during the period in which they are members of the group.
95. Liability to pay the income tax attributable to group activities rests with the HC. If the HC does not pay a group liability by the due date (the HC's due time) all entities that were members of the group for a part of the liability period (the contributing members) become jointly and severally liable for that group liability. However joint and several liability is avoided by the contributing members if just before the HC's due time the particular group liability was covered by a tax sharing agreement (TSA) that reasonably allocated the liability amongst the parties to that agreement, and that agreement is provided when requested by the Tax Office. Where a group liability is covered by a TSA a particular contributing member may have no liability or be liable for only a portion of the group debt.
96. A member's full joint and several liability or allocated liability under a TSA does not become due and payable until 14 days after the Tax Office gives the entity written notice. (Refer to Chapter 35 'Collection of consolidated group liabilities' for further details).
97. The consolidated group regime does not enable the offsetting of one entity's refunds or credits against the debts of another entity except where both entities are members of a GST group for the purposes of Division 48 of the GST Act. The law in relation to offsetting should be distinguished from the legislation that makes entities jointly and severally liable for a liability.

### **Allocation of payment received by the Commissioner for a consolidated group**

98. Because the membership of a consolidated group may change from one liability period to another, and the implications that this may have on the application of other tax laws on the members (former and current members), some divergence from the usual policy of applying payments and credit entitlements to tax debts with the earliest due date is warranted.
99. The Tax Office may receive payments from the HC or, following a demand being issued to a subsidiary member, from that member. A payment in relation to a HC group liability or a TSA contribution amount will be allocated as appropriated by the taxpayer. Accordingly, payments by the HC or subsidiary members will be allocated as follows:
  - A payment to the Tax Office by a subsidiary member in relation to their TSA component amount will be offset against that subsidiary member's TSA liability and will also reduce the related HC liability.

- A payment to the Tax Office by a subsidiary member in relation to a HC group liability where they are jointly and severally liable will be offset against that liability and will also reduce all related subsidiary members' liabilities and the related HC liability.
- A payment to the Tax Office by the HC where an effective TSA exists will be offset against the HC group liability and will also reduce the related subsidiary members' component amounts but only to the extent that it reduces each subsidiary member's liability to an amount equaling the HC liability (that is, in some cases there will be no reduction in the subsidiary member's component amount). For example, where the HC group liability for a period is \$10,000,000 and an effective TSA exists determining that subsidiary member A's TSA component amount for that period is \$4,000,000 and subsidiary member B's TSA component amount is \$2,000,000, payments received from the HC will have the following effect:

Payment received from the head company	Balance of the head Company's group liability	Balance of the subsidiary member A's related TSA component amount	Balance of the subsidiary member B's related TSA component amount
	10,000,000	4,000,000	2,000,000
5,000,000	5,000,000	4,000,000	2,000,000
2,000,000	3,000,000	3,000,000	2,000,000
1,500,000	1,500,000	1,500,000	1,500,000
1,500,000	Nil	Nil	Nil

- A payment to the Tax Office by the HC where members are jointly and severally liable will be offset against the HC group liability and will also reduce the related subsidiary members' liabilities.
- Any other unpaid PAYG instalment liability or associated administrative penalty of the HC for other years of income, commencing with the liability that has the earliest due date.

**Allocation of refunds and credits for a consolidated group**

100. When an income tax assessment is made in relation to the HC, the Tax Office will initially apply any credit entitlements, including tax offsets and credit for PAYG instalments payable, to the assessed tax payable for that income year. Where the credit exceeds the assessed tax payable the remaining credit will then be allocated to the HC's PAYG instalment obligations for that income year, commencing with the instalment that has the earliest due date and its associated administrative penalties (including SIC and GIC). Any remaining credit would then be allocated in the following order:

- Any other unpaid assessed tax or associated administrative penalty of the HC, commencing with the liability that has the earliest due date.
- Any other liability of the HC in the order specified in the section entitled 'Order of allocation'.

A credit in relation to PAYG instalments for choosing a varied instalment rate or estimating a benchmark tax will be initially allocated to the related instalment

liability.

## **Consolidated and GST groups**

101. Where the HC and subsidiary members of a consolidated group are also members of a GST group the Tax Office may apply any member's refund or credit against any tax debt of other members of the group. When offsetting in this scenario, the legislative intent behind the introduction of the TSA regime is to be respected. That is, a refund or credit of a subsidiary member will not be allocated to any HC group liability or another subsidiary's joint and several consolidated group liability or TSA component amount where that liability is covered by an existing TSA that includes the subsidiary member. (Refer to Chapter 72 'Offsetting of refunds and credits against taxation and other debts' for further details).
102. The Tax Office will, as a general rule, apply a HC or subsidiary member refund or credit entitlement initially against their own tax liabilities in the order specified in the section entitled 'Order of allocation', subject to the modifications in relation to the HC outlined above in the section entitled 'Listed credits'.
103. If that HC or member has no tax liabilities, the amount would then be allocated across the consolidated group in the order outlined in the section entitled 'Order of allocation' commencing with the HC or member that has the debts with the earliest due date for each tax type. For example, the surplus would then be allocated to the HC or member in the group whom had the earliest debt due for payment of SGC debts in the order outlined in the section entitled 'Order of allocation' until all superannuation guarantee debts are finalised for that HC or member. Any remaining surplus credit would then be allocated to the HC or member with the next earliest debt due for payment of superannuation guarantee debts in the group or if no such debts existed, to the HC or member with the earliest debt due for payment of PAYE debts. Any such remaining surplus credit would continue to be allocated in the order outlined in the section entitled 'Order of allocation', across the group until all tax debts within that group are finalised (subject to the modifications in relation to the legislative intent behind the TSA regime mentioned in the section entitled 'Listed credits') before being refunded.

## **TERMS USED**

Additional charges (or the GIC) – means the general interest charge, worked out in accordance with Division 1 of the TAA, that a person is liable to pay when a provision of an Act, of which the Commissioner has general administration, makes the person liable. For example, a person is liable to pay the charge if an amount that the person must pay to the Commissioner is not paid on time.

Additional superannuation guarantee charge – applies to a period (annual or quarterly) and is comprised of the shortfall LPP/GIC, Part 7 penalty and the Part 7 penalty LPP/GIC. (LPP does not apply to quarterly additional superannuation guarantee charge)

BAS – business activity statement.

BAS amounts – any debts or credits that arise directly under the BAS provisions.

BAS provisions – means:

- (i) Part VII of the *Fringe Benefits Taxation Assessment Act 1986*

- (ii) the indirect tax law (the GST law, the wine tax law, the luxury car tax law and the fuel tax law), and
- (iii) Parts 2-5 and 2-10 of Schedule 1 to the TAA (which are about the PAYG system).

Contributing member – an entity that was a subsidiary member of a group for at least part of the period to which the group liability relates.

Contribution amount – in respect of a particular group liability is the amount allocated to a TSA contributing member under a tax sharing agreement.

Credit – includes an amount that the Commissioner must pay to a taxpayer under a taxation law, whether or not described as a credit.

Excess non-RBA credit – will exist when the payment or credit is greater than the non-RBA tax debt to which it has been allocated.

Excise claims – include applications for refunds or drawbacks by entities that conduct business activities with controlled commodities, more specifically:

- refunds occur where excise duty has been overpaid and the client is entitled to a refund of the amount of overpaid duty, and
- drawbacks occur where excise duty has been paid and the goods have been exported and the client is entitled to a refund of the amount of duty paid.

Excise fuel payment schemes – means any of the following:

- Diesel and alternative fuels grants scheme
- Diesel fuel rebates payable under either the *Excise Act 1901* or the customs diesel fuel rebate provisions of the *Customs Act 1901*
- Fuel sales grants scheme
- Product stewardship (oil)
- Energy grants (credits) scheme

Family tax benefit debt – is an amount payable under *A New Tax System (Family Assistance) (Administration) Act 1999*.

Grants Scheme debt – is an amount payable under the *Diesel and Alternative Fuels Grants Scheme Act 1999* and/or the *Product Grants and Benefits Administration Act 2000*.

Group liability – is one of the tax-related liabilities referred to in subsection 721-10(2) of the ITAA 1997. A group liability includes a PAYG instalment and an annual income tax assessment.

IAS – instalment activity statement.

Net fuel amounts – arise under section 60-5 of the *Fuel Tax Act 2006*. A net fuel amount, greater than zero, is a debt payable to the Commissioner.

Non-RBA tax debt – means a primary or secondary tax debt but does not include an RBA deficit debt. A debit assessment for income tax or a debit net amount in respect of a tax period for the goods and services tax and the GIC payable as a result of paying these amounts after they are due for payment are all examples of non-RBA tax debts.

Primary tax debt – means any amount due to the Commonwealth directly under a taxation law, including any such amount that is not yet payable. Primary tax debts are

usually allocated to an RBA where they then are combined with other primary tax debts, payments and credits to form the balance of that RBA. For example, a primary tax debt includes a debit assessment for income tax and the GIC that would accrue as a result of paying this amount after it is due for payment. An RBA deficit debt is also a primary tax debt.

RBA – means a running balance account established under section 8AAZC of the TAA to keep account of the primary tax debts, payments and credits allocated to that RBA. For the purposes of establishing an RBA, GIC that has accrued in relation to non-RBA tax debts and an RBA deficit debt cannot be allocated to an RBA (an RBA deficit debt is subject to GIC under section 8AAZF of the TAA).

RBA deficit debt – means a balance on an RBA in favour of the Commissioner, where the total amount of due and payable primary tax debts allocated to the RBA are greater than the payments and credits allocated to that RBA.

RBA surplus – means a balance on an RBA in favour of the entity, where the primary tax debts allocated to the RBA are less than the payments and credits allocated to that RBA.

Remittance provisions – include the various provisions of the ITAA 1936 that require a debtor to remit:

**prior to 1 July 2000,**

- deductions made from reportable payments
- tax instalment deductions made from payments of salary and wages
- deductions from prescribed payments
- deductions made from natural resource payments or unattributed payments; and
- dividend, interest and royalty withholding taxes

**on or after 1 July 2000**

- A payer's obligations to pay withheld amounts to the Commissioner are set out at Subdivision 16-B TAA, specifically, amounts withheld under the PAYG withholding system.

Secondary tax debt – means an amount that is not a primary tax debt, but is due to the Commonwealth in connection with a primary tax debt (for example an amount due to the Commonwealth under an order of a court made in a proceeding for recovery of a primary tax debt).

Shortfall interest charge (SIC) – replaces GIC on shortfall amounts from the due date of the earlier understated assessment until the day before the amended assessment issues, where 2004-05 and later year income tax assessments are amended increasing the taxpayer's liability. Section 280-105 of Schedule 1 to the TAA provides the formula for calculation of the charge. It is based upon a base interest rate and uplift factor of 3%.

Superannuation excess contributions tax assessment – means an assessment of excess concessional contributions tax or excess non-concessional contributions tax assessed under Division 292 of the ITAA 1997.

Superannuation guarantee charge – applies to a period (annual or quarterly) and is comprised of nominal interest, superannuation guarantee shortfall and the administration component.

Tax debt – means a primary tax debt or a secondary tax debt. It includes grants scheme debts administered under the provisions of the *Product Grants and Benefits Administration Act 2000* but not grants scheme debts under the *Diesel and Alternative Fuels Grants Scheme Act 1999*.

Tax-related liability or liability – is a term used to define any pecuniary liability to the Commonwealth arising directly under a taxation law (including a liability the amount of which is not yet due and payable). It thus encompasses all types of taxes, penalties, additional charges for late payment, (including amounts previously defined under the ITAA 1936 as 'tax' and under the SGAA as 'Superannuation guarantee charge'). A table which lists the tax-related liabilities is found at section 250-10 of Schedule 1 to the TAA. This includes excise and diesel fuel rebate debts administered under the provisions of the *Excise Act 1901*, diesel fuel rebate debts administered under the 'diesel fuel rebate Customs provisions' of the *Customs Act 1901*, grants scheme debts administered under the provisions of the *Diesel and Alternative Fuel Grants Scheme Act 1999* and the *Product Grants and Benefits Administration Act 2000*, and net fuel amount debts arising under the *Fuel Tax Act 2006*.

TSA contributing member – is a contributing member that is party to a tax sharing agreement.

#### **Chapter 7 - Archived version**

Version 4 – July 2006 (will link to chapter 7 pdf)
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