

**Part E Interest Payable by the Commissioner****83 INTEREST ON OVERPAYMENTS**

*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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**83.1 PURPOSE**

83.1.1 This chapter outlines the main circumstances under which interest may be payable to a taxpayer in respect of particular overpayments.

**83.2 LEGISLATION**

83.2.1 The payment of interest on overpayments is governed by the *Taxation (Interest on Overpayments and Early Payments) Act 1983* (T(IOEP)A). The specific Parts of the T(IOEP)A that deal with overpayments are as follows:

<b>Part of the TIOEPA</b>	<b>Type of overpayment</b>
Part IIB	Overpayments resulting from income tax assessments
Parts IIC, IID, IIE, IIF	Overpayments relating to certain amendment assessments of surcharge or an advanced instalment
Part III	Overpayments resulting from decisions to which the T(IOEP)A applies (for example objections, appeals, certain amendments)
Part IIIA	Overpayments resulting from certain remissions, refunds and credits

83.2.2 Interest under the T(IOEP)A is payable at the annual rate or rates provided for in section 214A *Income Tax Assessment Act 1936* (ITAA 1936). Interest is calculated as simple interest, not compound interest (refer to the decision in *Consolidated Fertilizers Ltd v DCT* (1992) 23 ATR 305).

83.2.3 Interest is calculated to the nearest cent (0.5 cent increased to nearest cent) and amounts less than 50 cents are not refundable in accordance with Part IIIB of the T(IOEP)A.

83.2.4 Interest paid under the T(IOEP)A is assessable income under section 15-35 of the *Income Tax Assessment Act 1997* when it is received (applied, credited or refunded).

83.2.5 If an amount of interest has been paid to a non-resident, 10% of the interest is to be deducted under section 12-245 of the *Taxation Administration Act 1953* (TAA).

83.2.6 All statutory references below are to the T(IOEP)A unless otherwise indicated.

**Part IIB – interest on overpayments resulting from assessments**

- 83.2.7 Interest on overpayments may be payable as a result of the application of certain credits, known as ‘income tax crediting amounts’, at the time of processing an original return or at some later time. Interest under this Part only applies in relation to income tax related liabilities, and only in relation to assessments for the 1993-1994 and later income years where the crediting takes place on or after 1 July 1994.
- 83.2.8 If the Commissioner is satisfied that no tax is payable in relation to a year of income before the 2004-05 income year, the Commissioner is taken for the purposes of this Part to have made an assessment and issued a notice of the assessment that a nil amount of income tax is payable (subsections 8K(1) and 8K(2)). For the 2004-05 and later years of income, the meaning of assessment has been extended to include where the Commissioner has ascertained that there is no taxable income and that no tax is payable (as defined in subsection 6(1) of the ITAA 1936).
- (i) *Ordinary taxpayers*
- 83.2.9 For ordinary taxpayers (that is, taxpayers that are not taxed as companies or superannuation funds), an entitlement to interest will arise under subsection 8E(1) where, on original assessment:
- the ‘income tax crediting amounts’ exceed the sum of their income tax and related liabilities, listed under subparagraphs 8E(1)(d)(i) to (v), for the year of income; and
  - the notice of assessment is issued more than 30 days after the day on which the taxpayer lodged the relevant income tax return.
- The interest is calculated on the amount of the excess.
- 83.2.10 The liabilities under subparagraphs 8E(1)(d)(i) to (v) include:
- income tax payable for the year of income (after allowing any rebate, except a tax offset that is subject to the refundable tax offset rules, or deduction under subsection 100(2) of the ITAA 1936 and **before** allowing any crediting, applying or other payment) plus Medicare levy and any Medicare levy surcharge assessed on the taxable income (after adjustments);
  - additional tax for the year of income payable under Part VII of the ITAA1936;
  - a higher education contribution scheme (HEC) assessment debt or a compulsory repayment amount arising under the *Higher Education Support Act 2003*, notified on the assessment;
  - a student financial supplement (FS) assessment debt notified in the notice of assessment, and
  - interest for the year of income payable under section 102AAM of the ITAA 1936 (distributions from certain non-resident trust estates).
- 83.2.11 Interest may also be payable to ordinary taxpayers under subsection 8E(2), where an income tax crediting amount is not applied until after the income tax notice of assessment is issued (this is called a ‘post-notice crediting’). A common example of an entitlement under this subsection is where a taxpayer provides an additional payment summary that includes

additional income and pay as you go (PAYG) withholding credits after lodgment of the return and an original notice of assessment being issued.

- 83.2.12 Where there is a post-notice crediting, the income tax crediting amounts must exceed the sum of the amounts listed in subparagraphs 8E(2)(d)(i) to (v) for there to be an entitlement to interest. These liabilities are:
- income tax payable for the year of income as reduced by any rebate, deduction under subsection 100(2) of the ITAA 1936, crediting, applying or other payment made before the post-notice crediting;
  - additional tax for the year of income payable under Part VII of the ITAA 1936 immediately before the post-notice crediting;
  - a HEC assessment debt or a compulsory repayment amount arising under the *Higher Education Support Act 2003*, notified on the assessment, that is payable immediately before the post-notice crediting
  - a FS assessment debt notified on the assessment that is payable immediately before the post-notice crediting, and
  - interest for the year of income payable under section 102AAM of the ITAA 1936 (distributions from certain non-resident trust estates) immediately before the post-notice crediting.

The interest is calculated on the amount of the excess.

- 83.2.13 The periods for which interest is payable to ordinary taxpayers on the amount of the excess is as follows:

<b>Time of credit</b>	<b>Start date for interest calculation</b>	<b>End date for interest calculation</b>
On original assessment (notice crediting) Subsection 8F(1)	Beginning of the 30th day after the day on which the taxpayer furnishes the return	End of the day on which the notice of assessment is issued
After original assessment has issued (post-notice crediting) Subsection 8F(2)	Beginning of the day on which the assessment is issued	End of the day on which the post-notice crediting occurs

- 83.2.14 Where the taxpayer has made a payment of an income tax or related liability after the notice of assessment has issued and before a post-notice crediting, however, interest is payable on the amount of the excess income tax crediting amounts that are attributable to the payment from the beginning of the day the payment was made until the end of the day on which the post-notice crediting occurs. Interest on the remainder of the excess credits that are attributable to the post-notice crediting is calculated as described in the table above.

83.2.15 Interest is not payable on a payment if it attracts interest under Part III of the T(IOEP)A or it has already been taken into account in a previous application of Part IIB.

(ii) *Relevant entities, instalment taxpayers and full self-assessment taxpayers*

83.2.16 In relation to relevant entities, instalment taxpayers and full self-assessment taxpayers (for example companies (including corporate unit trusts and public trading trusts), superannuation funds, approved deposit funds and pooled superannuation trusts), subsection 8G(1) provides that interest will be payable where:

- the taxpayer lodges an income tax return
- the income tax crediting amounts exceed the sum of income tax payable (after allowing any rebate, except a tax offset that is subject to the refundable tax offset rules, or deduction under subsection 100(2) of the ITAA 1936 and **before** allowing any crediting, applying or other payment), additional tax payable under Part VII of the ITAA 1936 and interest payable under section 102AAM of the ITAA 1936 for the year of income, and
- the 'first crediting' takes place after a specified date.

The interest is calculated on the amount of the excess.

83.2.17 A full self-assessment taxpayer will be entitled to interest in this circumstance if:

- it lodges its return 30 days or more before the due date for payment of its assessed tax, and the first crediting occurs 30 days or more after the day on which the return was lodged, or
- it lodges its return less than 30 days before the due date for payment of its assessed tax (including after the due date), and the first crediting occurs after the due date for payment of the assessed tax.

83.2.18 An instalment taxpayer or a relevant entity will be entitled to interest in this circumstance if:

- it lodges its return 30 days or more before the final instalment day, and the first crediting occurs 30 days or more after the day on which the return was lodged, or
- it lodges its return less than 30 days before the final instalment day (including after the final instalment day), and the first crediting occurs after the final instalment day.

83.2.19 Subsection 8G(2) provides that interest will be payable in relation to relevant entities, instalment taxpayers and full self-assessment taxpayers, where:

- after the 'first crediting' there is a 'later crediting' of an income tax crediting amount against the taxpayer's income tax liabilities for the year; and
- the sum of the later income tax crediting amounts exceeds the sum of the following amounts:

- (a) income tax payable for the year of income as reduced by any rebate, deduction under subsection 100(2) of the ITAA 1936, crediting, applying or other payment made before the later crediting;
- (b) additional tax for the year of income payable under Part VII of the ITAA1936 immediately before the later crediting;
- (c) interest for the year of income payable under section 102AAM of the ITAA 1936 immediately before the later crediting.

The interest is calculated on the amount of the excess.

83.2.20 The periods for which interest is payable to a relevant entity, instalment taxpayer or full self-assessment taxpayer on the amount of the excess under Part IIB are as follows:

Time of Credit	Type of Company	Start date for interest calculation	End date for interest calculation
On the original assessment (first crediting)  Subsection 8H(1)	Full self-assessment taxpayers (2000-2001 and later income years)	Earlier of: <ul style="list-style-type: none"> <li>the beginning of the 30<sup>th</sup> day after the day on which the person furnishes the return of income for the year of income; and</li> <li>the beginning of the day of the due date for payment of the assessed tax</li> </ul>	The end of the day on which the first crediting occurs
	Relevant entities and instalment taxpayers (1999-2000 and earlier income years)	Earlier of: <ul style="list-style-type: none"> <li>the beginning of the 30<sup>th</sup> day after the day on which the person furnishes the return of income for the income year; and</li> <li>the beginning of the final instalment day in relation to the year of income</li> </ul>	The end of the day on which the first crediting occurs
After the original assessment has been made (later crediting)  Subsection 8H(2)	Full self-assessment taxpayers (2000-2001 and later income years)	The beginning of the day of the due date for payment of the assessed tax	The end of the day on which the later crediting occurs
	Relevant entities and instalment taxpayers (1999-2000 and earlier income years)	The beginning of the final instalment day in relation to the year of income	The end of the day on which the later crediting occurs

- 83.2.21 Where the taxpayer has made a payment of an income tax or related liability after the first crediting and before the later crediting, however, interest is payable on the amount of the excess income tax crediting amounts that are attributable to the payment from the beginning of the day the payment was made until the end of the day on which the post-notice crediting occurs.

**Parts IIC, IID, IIE, and IIF – interest on overpayments resulting from certain amendments**

- 83.2.22 Interest is payable under Parts IIC, IID, IIE and IIF where an amount of surcharge or an advance instalment is overpaid following certain amendments to assessments under the:

- Superannuation Contributions Tax (Assessment and Collection) Act 1997*

- *Termination Payments Tax (Assessment and Collection) Act 1997*
- *Superannuation Contributions Tax (Members of Constitutionally Protected Superannuation Funds) Assessment and Collection Act 1997*, and

83.2.23 Interest is payable under these Parts on the overpaid amount starting from the later of:

- the day on which the amount of the surcharge or advance instalment was paid;
- the day by which the amount of the surcharge or advance instalment was required to be paid;

and ends on the day on which the assessment was amended.

**Application of Part III – interest on overpayments resulting from decision to which the T(IOEP)A applies**

83.2.24 Interest is payable under Part III where an amount of ‘relevant tax’ is found to have been overpaid as a result of a ‘decision to which this Act applies’. The taxpayer is entitled to interest on the overpaid amount. Generally, overpayments that arise from an amended assessment that reduces the taxpayer’s liability to tax following a decision of the Commissioner, Administrative Appeal Tribunal or court upon an objection, will give rise to an entitlement to interest on overpayment.

83.2.25 The term ‘relevant tax’ is defined in subsection 3(1). It commonly includes:

- income tax (and other tax as defined in subsection 6(1) of the ITAA 1936);
- additional tax under Part VII of the ITAA 1936 and interest under section 170AA of the ITAA 1936 (in relation to the 1999-2000 and earlier income years);
- shortfall interest charge under Division 280 in Schedule 1 to the TAA (in relation to the 2004-2005 and later income years);
- goods and services tax; and
- fringe benefits tax.

Relevant tax does not comprise certain amounts, including:

- the general interest charge under subsection 204(3) ITAA 1936;
- PAYG instalments; or
- penalties under Part 4-25 of Schedule 1 to the TAA (for example, shortfall penalties and penalties for failing to lodge on time in relation to the 2000-2001 and later income years).

83.2.26 The term ‘decision to which this Act applies’ is defined in subsection 3(1). In relation to assessments for the 1993-1994 and later income years (in respect to decisions made after 1 July 1994), decisions that fall within this definition commonly include:

- a decision of the Commissioner on an objection
- a decision of the Administrative Appeals Tribunal (AAT) on an objection

- a decision of the court in relation to an objection, or a decision of the AAT in relation to an objection
- a decision of the Commissioner to amend an income tax assessment reducing the tax liability, including where the taxpayer has requested the amendment, and
- a decision of the Commissioner to amend an fringe benefits tax assessment reducing the liability to tax (but not where the taxpayer has requested the amendment).

83.2.27 In the case of a relevant entity or instalment taxpayer, where the overpaid amount is of the kind referred to in paragraph (a) of the definition of 'relevant tax' in subsection 3(1) (for example income tax), interest is calculated on the overpaid amount from the day the final instalment of tax for the relevant income year is payable and up until the day the overpaid amount is refunded or applied.

83.2.28 Generally, in all other cases the interest is payable on the overpaid amount for the period starting from the later of:

- the issue date of the relevant notice of assessment, determination or decision in relation to which the 'decision to which this Act applies' was made; and
- the day on which the amount of relevant tax was paid.

and ending on the day on which the amount of overpaid relevant tax is refunded or applied.

#### **Application of Part IIIA – interest on overpayments resulting from certain remissions, refunds and credits**

83.2.29 Generally, Part IIIA provides for an entitlement to interest where the Commissioner, as a result of a request by a taxpayer:

- remits under section 8AAG of the TAA, certain amounts of general interest charge that have been paid (for example, the general interest charge under subsection 204(3) incurred in relation to unpaid assessed income tax liabilities – a full list is provided under subparagraph 12A(1)(a)(i));
- remits, under section 280-160 in Schedule 1 to the TAA, the whole or part of an amount that has been paid to the Commissioner in respect of shortfall interest charge payable under Division 280 in that Schedule (subparagraph 12A(1)(a)(ia))
- refunds the whole or part of a payment made by a taxpayer on account of assessed income tax and certain related liabilities (for example, additional tax payable under Part VII of the ITAA 1936 – a full list is provided under subparagraph 12A(1)(a)(iv)); and

the refund, crediting or remission takes place more than 30 days after the day on which the request is made.

83.2.30 The following are **not** payments on account of income tax, a HEC assessment debt, a compulsory repayment amount arising under the *Higher Education Support Act 2003* or a FS assessment debt for the purposes of this Part:

- a deduction or payment under the collection and recovery provisions of Part VI (for example, PAYE instalments deducted from an employee's salary or wages); or
- an amount deducted or paid under section 20B of the *Loan (Income Equalisation Deposits) Act 1976* (the Income Equalisation Deposits Scheme for primary producers);

83.2.31 Interest is not payable under this Part in relation to amounts notified on an activity statement (for example, goods and services tax, PAYG withholding, PAYG instalments and fringe benefits tax instalments). Part IIIAA outlines when interest may be payable in relation to activity statement amounts (for further details refer to the chapter entitled, '[Delayed Refund Interest](#)'). Where an amount of the general interest charge that has been paid is remitted, an entitlement to interest may arise under Part IIIA (interest on overpayments) or Part IIIAA (delayed refund interest) but not both. That is, there is no double entitlement to interest in relation to the remission of an amount of the general interest charge.

83.2.32 Interest under Part IIIA is calculated on the amount remitted, refunded or credited from the beginning of the 30<sup>th</sup> day after the day on which the request was made and up until the end of the day on which the remission, refund or crediting takes place.

### 83.3 INTRODUCTION

83.3.1 The entitlement to interest on overpayments under the T(IOEP)A is not discretionary, and must be paid where the legislative requirements are met.

83.3.2 The Commissioner has authority under Division 3 of Part IIB to the TAA to apply an amount of interest payable to a taxpayer under that Act against any amount due to the Commonwealth directly under a taxation law, including any such amount not yet payable.

83.3.3 Interest under the T(IOEP)A 1983 is payable at the annual rate or rates provided for in section 214A ITAA 1936.

83.3.4 Interest is generally calculated as follows:

$$\text{(Number of days/365<sup>1</sup>)} \quad \times \quad \text{amount of overpayment} \quad \times \quad \text{interest rate for period}$$

83.3.5 Interest paid under the T(IOEP)A is assessable income under section 15-35 of the *Income Tax Assessment Act 1997* when it is received (applied, credited or refunded).

### 83.4 POLICY

83.4.1 Interest may be payable where the application of 'income tax crediting amounts', at the time of processing an original income tax return or at some later time, exceeds the tax payable notified of the notice of assessment.

83.4.2 Interest may also be payable on certain amounts overpayments that arise from an amended assessment that reduces the taxpayer's liability to tax

<sup>1</sup> Divide by 366 in leap years

following a decision of the Commissioner, Administrative Appeal Tribunal or court upon an objection. For example, where a taxpayer lodges an objection against a reviewable indirect tax decision, interest may be payable as a result of a successful objection or appeal in respect to goods and services tax, wine tax or luxury car tax.

- 83.4.3 Interest on overpayment may also payable where the Commissioner, as a result of a request by a person, remits the general interest charge, or credits or refunds certain payments and the refund, crediting or remission takes place more than 30 days after the day on which a request is made by an entity.
- 83.4.4 The Tax Office will provide written details to a taxpayer pertaining to any amount of overpayment interest that the taxpayer receives. If the interest has been offset against any outstanding taxation debts, the taxpayer will also be advised in writing as to the nature and date of the offset.

## 83.5 TERMS USED

- 83.5.1 Compulsory repayment amount means amounts that are treated under Subdivision 154-D of the *Higher Education Support Act 2003* as if they were income tax.
- 83.5.2 FS assessment debt means amounts that are treated under subsection 12ZN(1) of the *Student and Youth Assistance Act 1973* as if they were income tax.
- 83.5.3 ‘Full self-assessment taxpayer’ is defined under subsection 6(1) of the ITAA 1936. It includes companies (including corporate unit trusts and public trading trusts), superannuation funds, approved deposit funds and pooled superannuation trusts. The term ‘full self-assessment taxpayer’ applies to the 2000-2001 and later income years.
- 83.5.4 HEC assessment debt means amounts that are treated under subsection 106U(1) of the *Higher Education Funding Act 1988* as if they were income tax.
- 83.5.5 ‘Income tax crediting amount’ is defined in subsection 3(1) of the T(IOEP)A. It includes credits that are applied against income tax (such as PAYG withholding and PAYG instalment credits) and tax offsets, including the refundable tax offsets under section 67-25 of the *Income Tax Assessment Act 1997* (the most common of these are the private health insurance tax offset, the first child (baby bonus) tax offset, and the franked distributions tax offset).
- 83.5.6 ‘Instalment taxpayer’ is defined in subsection 221AZK(1) of the ITAA 1936. It includes companies (including corporate unit trusts and public trading trusts), superannuation funds, approved deposit funds and pooled superannuation trusts. The term ‘instalment taxpayer’ applies to the years of income from the 1994-1995 income year (the 1995-1996 income year for entities classified as large) to the 1999-2000 income year.
- 83.5.7 ‘Relevant entity’ is defined in section 221AK of the ITAA 1936. It includes companies (including corporate unit trusts and public trading trusts), superannuation funds, approved deposit funds and pooled superannuation trusts. The term ‘relevant entity’ applies to the years of income from the 1989-1990 income year to the 1994-1995 income year (the 1995-1996 income year for entities classified as large).
- 83.5.8 ‘Relevant tax’ includes:

- (i) any of the following:
    - (a) tax as defined in subsection 6(1) of the ITAA 1936;
    - (b) additional tax under Part VII of the ITAA 1936;
    - (c) general interest charge under section 170AA of the ITAA 1936;
    - (d) shortfall interest charge under Division 280 in Schedule 1 to the TAA;
    - (e) interest under section 102AAM of the ITAA 1936;
    - (f) instalments under section 221AZK of the ITAA 1936;
    - (g) amounts that are treated under subsection 106U(1) of the *Higher Education Funding Act 1988* as if they were income tax;
    - (h) amounts that are treated under subsection 12ZN(1) of the *Student and Youth Assistance Act 1973* as if they were income tax;
  - (ii) withholding tax as defined in subsection 6(1) of the ITAA 1936
  - (iii) tax, or additional tax, referred to in subsection 93(1) of the *Fringe Benefits Tax Assessment Act 1986*;
  - (iv) Goods and Services Tax (GST) assessed under *A New Tax System (Goods and Services Tax) Act 1999*;
  - (v) an amount payable to the Commissioner under section 16-80 of Schedule 1 to the TAA;
  - (vi) penalties for failure to withhold PAYG under subdivision 16-A (other than 16-50) in Schedule 1 to the TAA
  - (vii) indirect tax within the meaning of subsection 20(1) of the TAA, and
  - (viii) penalties or charges payable under Division 4 of Part VI to the TAA.
- The full meaning of 'relevant tax' is set out in subsection 3(1) of the T(IOEP)A.

83.5.9 'Shortfall interest charge' (SIC) means the charge worked out under Division 280 in Schedule 1 to the *Taxation Administration Act 1953*.