

## ATO RECEIVABLES POLICY

### PART F Interest Payable by the Commissioner

# Chapter 83 INTEREST ON OVERPAYMENTS AND PAYMENTS OF SUPERANNUATION CO-CONTRIBUTION ENTITLEMENTS

*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.*

**Date of effect:** 24 July 2008 (This version replaces the 2006 version.)

**Key legislation:** *Taxation (Interest on Overpayments and Early Payments) Act 1983; Superannuation (Government Co-Contributions For Low Income Earners) Act 2003*

## PURPOSE

1. This chapter outlines the main circumstances where interest may be payable:
  - (i) in respect to particular overpayments of taxes
  - (ii) on certain amounts of tax on no-TFN contributions income of superannuation providers, and
  - (iii) when the Tax Office is required to make a superannuation co-contribution payment for a taxpayer but fails to pay on time or pays less than required.

## INTRODUCTION

2. Entitlement to interest on certain overpayments of tax debts is set out under the *Taxation (Interest on Overpayments and Early Payments) Act 1983* (T(IOEP)A).

Interest paid under the T(IOEP)A is assessable income under section 15-35 of the *Income Tax Assessment Act 1997* (ITAA 1997) when it is paid (refunded) to the taxpayer or applied to pay a liability to the Commonwealth.

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

Generally, if an amount of interest has been paid to a non-resident or applied to pay a liability to the Commonwealth, 10% of the interest is to be withheld under [section 12-245](#) of the *Taxation Administration Act 1953* (TAA).

3. Generally, the Commissioner is required under Division 3 of Part IIB of the TAA to apply an amount of interest payable to a taxpayer against any amount due to the Commonwealth directly arising under a taxation law, including any such amount due but not yet payable.

4. Taxpayers may also be entitled to interest in respect of certain co-contributions made under the *Superannuation (Government Co-Contributions for Low Income Earners) Act 2003* (Co-Contributions Act).

Note: This interest is not paid under the T(IOEP)A.

The interest that is payable forms part of the actual Government co-contribution and therefore is treated for all purposes in the same manner (for example, for taxation purposes).

Interest is payable when:

- (i) a co-contribution is paid late
- (ii) an underpayment is paid late
- (iii) when an underpayment is due to an administrative error.

The Government co-contribution is not assessable income in the hands of the superannuation entity or the individual (section 295-170 and Subdivision 301-B of the ITAA 1997).

5. Interest under the T(IOEP)A and Co-Contributions Act is not discretionary; it is an entitlement and must be provided where the legislative requirements are met.
6. Interest is payable at the base interest rate. Interest is calculated as simple interest, not compound interest (refer to the decision in *Consolidated Fertilizers Ltd* (1992) 23 ATR 305).
7. Specific Parts of the T(IOEP)A that deal with overpayments can be arranged 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 and IIG.	Overpayments relating to certain amended assessments of surcharge or an advanced instalment and interest on certain offsets relating to no-TFN contributions income of superannuation funds and retirement savings account (RSA) providers.
Part III	Overpayments resulting from decisions to which the T(IOEP)A applies (for example objections, Tribunal appeals, court decisions, certain amendments).
Part IIIA	Overpayments resulting from certain remissions, refunds and credits of particular taxes (including income tax, general interest charge and shortfall interest charge).

#### **Part IIB – interest on overpayments resulting from income tax assessments**

8. 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.

- (i) **Ordinary taxpayers**

9. For ordinary taxpayers (that is, taxpayers that are not full self-assessment taxpayers and 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.

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 *Income Tax Assessment Act 1936* (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);
- 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).

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 lodgement of the return and an original notice of assessment being issued.

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;
- 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.

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

Time of credit	Start date for interest calculation	End date for interest calculation
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

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.
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) Full self-assessment taxpayers**

16. In relation to 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) 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.
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.
18. Subsection 8G(2) provides that interest will be payable in relation to 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) 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.

19. The period for which interest is payable to a full self-assessment taxpayer on the amount of the excess under Part IIB, is the earlier of:
- the 30th day after the day on which the [person](#) furnishes the return of income for the [year of income](#), or
  - the due date for payment of the assessed tax,

until the end of the day on which the first crediting occurs.

20. 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, IIF and IIG – interest on overpayments resulting from certain amendments and interest relevant to interest-bearing tax and certain tax offsets relating to no-TFN contributions income of superannuation providers**

21. Interest is payable under Parts IIC, IID, IIE and IIF of the T(IOEP)A 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.*
22. 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, or
- 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.

23. Interest may also payable under Part IIG of the T(IOEP)A to a superannuation provider in certain circumstances where an individual quotes a TFN to the provider resulting in a tax offset under Subdivision 295-J of the ITAA 1997.

24. Interest will be payable where:

- an individual has quoted their TFN to their employer before the end of an income year
- their employer failed to comply with the requirements set out in section 299C of *Superannuation Industry (Supervision) Act 1993* which requires them to inform the superannuation provider to which they make contributions of the individual's TFN before the end of the income year
- due to the employer's failure to comply with section 299C of the *Superannuation Industry (Supervision) Act 1993* contributions made to that superannuation provider formed part of its no-TFN contributions income
- tax payable on that no-TFN contributions income (the interest-bearing tax) counted towards the no-TFN contributions tax offset of the superannuation provider for the current year, and
- the tax offset has been applied in an assessment in respect of the superannuation provider for the current year.

25. The interest is payable for a period from the day the interest-bearing tax on the no-TFN contributions income was paid or the day the interest-bearing tax was required to be paid (whichever is the later) until the day on which the assessment of the no-TFN contributions income tax offset is made. The interest is payable on each amount of interest-bearing tax.

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

26. 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 Appeals Tribunal or a court decision in relation to an objection, will give rise to an entitlement to interest on overpayment.

27. The term 'relevant tax' is defined in section 3C. It commonly includes:

- income tax (and other tax as defined in subsection 6(1) of the ITAA 1936)
- interest under section 170AA of the ITAA 1936 (in relation to the 1999–2000 and earlier income years)
- shortfall interest charge under Division 280 of Schedule 1 to the TAA (in relation to the 2004–05 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) of the 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 2000-01 and later income years).

28. The term 'decision to which this Act applies' is defined in subsection 3(1). In relation to assessments for the 1993–94 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
- 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), and
- a decision about foreign revenue claims made under Subdivision 263-A of Schedule 1 to the TAA.

29. Interest is payable on the overpaid amount for the period starting from the later of:

- the day on which the 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**

30. 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 of 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.

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 Chapter 84 '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.
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.

**Entitlement to interest under Parts 2 and 5 of the *Superannuation (Government Co-Contributions For Low Income Earners) Act 2003***

33. A taxpayer will be entitled to a payment of interest by the Commissioner, under the co-contributions scheme, where the Commissioner:
  - (i) does not make a payment of a taxpayer's co-contribution entitlement before the relevant payment date (section 12 of the Co-Contributions Act), or
  - (ii) makes a payment which is less than the taxpayer's co-contribution entitlement **and** does not pay this amount by the relevant payment date (section 21 of the Co-Contributions Act.).
34. Additionally, if by an 'administrative error' the Commissioner has underpaid the amount of co-contribution, the taxpayer will be entitled to interest on the underpaid amount as outlined in section 22 of the Co-Contributions Act

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35. 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 on the notice of assessment.
36. Interest may also be payable on certain 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. 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.
37. Interest on overpayments may also be 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.
38. Taxpayers may be entitled to interest in relation to the Government co-contribution for low income earners where the amount is not paid or is underpaid by the relevant date. Interest may also be payable where an underpayment of the co-contribution



has occurred due to an administrative error. The interest that is payable forms part of the Government co-contribution amount.

39. 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.

## TERMS USED

Administrative error – in the context of section 22 of the *Superannuation (Government Co-Contributions for Low Income Earners) Act 2003* includes, but is not limited to, a keying error.

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.

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.

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 2000–01 and later income years.

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.

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).

Objection – as it appears in this chapter refers to a formal objection lodged by a taxpayer in accordance with Part IVC of the *Taxation Administration Act 1953*.

Payment date – for the purposes of determining whether a taxpayer has an entitlement to interest under the *Superannuation (Government Co-Contributions for Low Income Earners) Act 2003* is taken to mean 60 days after the Commissioner has received all of the information, required by the Act or requested by the Commissioner under the Act, necessary to make a determination.

Relevant tax – As defined in Section 3C of the T(IOEP)A, relevant tax includes the following:

Relevant taxes	
Item	Type of tax
5	Tax as defined in subsection 6(1) of the Tax Act
15	General interest charge under section 170AA of the Tax Act
20	Shortfall interest charge under Division 280 in Schedule 1 to the <i>Taxation Administration Act 1953</i>
25	Interest under section 102AAM of the Tax Act
40	Amounts that are treated under subsection 106U(1) of the <i>Higher Education Funding Act 1988</i> as if they were income tax
45	Amounts that are treated under Subdivision 154-D of the <i>Higher Education Support Act 2003</i> as if they were income tax

50	Amounts that are treated under subsection 12ZN(1) of the <i>Student and Youth Assistance Act 1973</i> as if they were income tax
55	Withholding tax as defined in subsection 6(1) of the Tax Act
80	An amount payable to the Commissioner under section 16-80 in Schedule 1 to the <i>Taxation Administration Act 1953</i>
85	An amount payable to the Commissioner under subsection 222AJA(3) of the Tax Act
90	An amount payable to the Commissioner under Subdivision 16-A (other than section 16-50) in Schedule 1 to the <i>Taxation Administration Act 1953</i>
92	An amount payable to the Commissioner under Subdivision 263-A (about foreign revenue claims) in Schedule 1 to the <i>Taxation Administration Act 1953</i>
95	Trust recoupment tax, applied penalty tax or penalty tax, as defined in subsection 3(1) of the <i>Trust Recoupment Tax Assessment Act 1985</i>
110	Tax, or additional tax, referred to in subsection 93(1) of the <i>Fringe Benefits Tax Assessment Act 1986</i>
120	Tax within the meaning of subsection 85(1) of the <i>Petroleum Resource Rent Tax Assessment Act 1987</i>
145	Indirect tax within the meaning of subsection 995-1(1) of the <i>Income Tax Assessment Act 1997</i>
150	A penalty or charge payable under Subdivision 105-D in Schedule 1 to the <i>Taxation Administration Act 1953</i>
155	GST assessed under the <i>A New Tax System (Goods and Services Tax) Act 1999</i>

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

#### **Chapter 83 - Archived version**

Version 4 – July 2006 (will link to chapter 83 pdf)
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