

Part E Interest Payable by the Commissioner

84 DELAYED REFUND INTEREST

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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84.1 PURPOSE

84.1.1 This chapter deals with the circumstances which attract delayed refund interest.

84.2 LEGISLATION

84.2.1 The legislation in relation to the payment of delayed refund interest is set out in the *Taxation (Interest on Overpayments and Early Payments) Act 1983* (T(IOEP)A).

84.2.2 Interest received from the Tax Office is assessable income when it is received (applied, credited or refunded) from the Tax Office (section 15-35 of the *Income Tax Assessment Act 1997*).

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

84.2.4 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.

84.2.5 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 TAA.

84.2.6 The Commissioner has authority under Division 3 of Part IIB to the TAA to apply an amount of interest payable to a taxpayer under the T(IOEP)A against any tax debt.

84.2.7 Entitlement to delayed refund interest occurs when a refund (required under section 8AAZLF of the TAA) takes place after the running balance account (RBA) interest day - Part IIIAA of the T(IOEP)A.

84.2.8 Accordingly, delayed refund interest is payable if:

- (i) the Commissioner has allocated (or for the purposes of section 12AC of the T(IOEP)A intends to allocate) a business activity statement (BAS) amount to an RBA of an entity after 1 July 2000, and:
 - an RBA surplus arises, or
 - a request for remission of penalty results in an RBA surplus; or
 - a request for a refund of a voluntary payment is made, **and**

- (ii) under subsection 8AAZLF(1) or 8AAZLF(2) of the TAA (as appropriate), the Commissioner is required to refund to the entity the whole or part of an RBA surplus for that RBA; and
- (iii) the refund takes place more than 14 days after the day on which the request was made or the refund was required to be paid to the entity (the RBA interest day).

84.2.9 The delayed refund interest is payable for the period from the end of the RBA interest day until the end of the day on which the refund takes place.

84.3 INTRODUCTION

84.3.1 Generally, delayed refund interest is payable where there has been a delay in refunding an RBA surplus to an entity pertaining to a BAS amount, and the entity has not materially contributed to that delay.

84.3.2 Divisions 3 and 3A of Part IIB of the TAA provide that RBA surpluses and credits that arise will usually be offset against an entity's tax liabilities before any remaining balance is refunded.

84.3.3 From 1 July 2000, delayed refund interest is payable in relation to an RBA established to account for BAS amounts if a refund that the Commissioner is required to give is not paid by the RBA interest day. However, delayed refund interest will not be paid where specified information (eg a notification under any of the BAS provisions or a further/fuller GST return that the entity is required to give to the Commissioner) has not been provided.

84.4 POLICY

84.4.1 Generally, where allowed by law, the Commissioner will offset any credit, refund, or interest payable to an entity against any other liability of the entity before refunding any remaining balance to the entity. (Refer to policy chapters entitled: [Allocation of payments or credits](#) and [Offsetting of refunds and credits against taxation and other debts](#)).

84.4.2 Delayed refund interest can be payable where an RBA surplus arises after the notification of BAS amounts and the Commissioner does not refund the surplus within 14 days after the day the surplus arose. Generally, the RBA surplus does not arise until the credit is allocated to the account. However, the Commissioner has adopted the approach to treat the day of lodgment of the activity statement as the day on which the RBA surplus arises.

84.4.3 Delayed refund interest can also be payable where, as a result of the remission of penalty, an RBA surplus arises in relation to BAS amounts, and the surplus is not refunded within 14 days after the day of the request for remission.

84.4.4 Delayed refund interest can also be payable where, after making a voluntary payment towards an anticipated BAS amount, an entity requests the Commissioner to refund the corresponding RBA surplus. Delayed refund interest is payable if the refund is not issued within 14 days after the day of the request.

84.4.5 However, tax law does not require the Commissioner to pay delayed refund interest in certain circumstances. The Commissioner will not pay delayed refund interest where the Commissioner needs to obtain further

information or notification that affects or may affect the amount that is refunded, ie where:

- an activity statement is lodged and does not disclose an amount against all labels on the statement where an entity has an expected liability for that period; or
- an entity makes an error on the activity statement (eg arithmetic error) and it is necessary to contact the entity to obtain other information to process the activity statement; or
- an entity has not nominated an account at a financial institution into which the refund should be paid, (except where the Commissioner has authorised that the refund payment be made in another way); or
- an entity has not given the Commissioner a notification that the entity is required to give the Commissioner under any of the BAS provisions (eg where the entity has outstanding activity statements or where the Commissioner has requested further or fuller GST returns).

84.4.6 In the situations outlined above delayed refund interest will only be payable where the Commissioner does not refund the surplus until after the period ending 14 days after the day when the entity provides the relevant information or return to the Commissioner.

84.4.7 However, the Commissioner will pay delayed refund interest where the Commissioner seeks merely to clarify/verify entries on an activity statement, and the refund takes place more than 14 days after the day the RBA surplus arises. Interest will be paid, even if the BAS amount is adjusted as a result of this checking, on the amount of the eventual refund. For example, where this process results in a reduced amount being refundable, interest would be paid on this reduced amount from the original RBA interest day. In the event that this process results in an increased amount being refundable, interest will be paid on the increased amount if it is refunded more than 14 days after the day the relevant information is received relating to this increased amount. Interest is also payable in this case on the primary amount to be refunded from the original RBA interest day.

84.4.8 Tax law allows the Commissioner to offset delayed refund interest against other taxation liabilities.

84.5 TERMS USED

84.5.1 'BAS amounts' means any debts or credits that arise directly under the BAS provisions.

84.5.2 'BAS provisions' means:

- (i) Part VII of the Fringe Benefits Taxation Assessment Act 1986 (FBTAA 1986); and
- (ii) the indirect tax law (within the meaning of Part VI of the TAA; and
- (iii) Parts 2-5 and 2-10 in Schedule 1 to the TAA (which are about the PAYG system); and
- (iv) the following:

- (a) section 221AZK of the ITAA 1936 in cases in which section 221AZKC ITAA 1936 applies (that section allows deferral of tax instalment payments);
 - (b) section 221AZKD ITAA 1936 (which requires notification of deferred tax instalment payments).
- (v) sales tax law as defined in section 5 of the *Sales Tax Assessment Act 1992*.

84.5.3 'Entity' means any of the following:

- a company;
- a partnership;
- a person in a particular capacity of trustee;
- a body politic;
- a corporation sole;
- any other person.

84.5.4 'Net amount' for GST purposes, is the sum of all GST payable on taxable supplies for the relevant period less the sum of all (GST) input tax credits attributable to that period.

84.5.5 RBA is an account established under section 8AAZC of the TAA.

84.5.6 'RBA interest day' for an RBA surplus means the 14th day after the latest of the following days:

- (i) either:
 - if section 12AA applies - the day on which the surplus arises; or
 - if section 12AB or 12AC applies - the day on which the relevant request is made;
- (ii) if, by the day applicable under paragraph (a), the person has not given the Commissioner a notification that is required for the refund under section 8AAZLG of the TAA and that is accurate so far as it relates to the refund - the day on which that notification is given to the Commissioner;
- (iii) unless the Commissioner has given a direction under subsection 8AAZLH(3) of the TAA - the day on which the person nominates a financial institution account for the purposes of that section.

84.5.7 '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.