PS LA 2011/20 - Payment and credit allocation

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This practice statement is issued under the authority of the Commissioner of Taxation and must be read in conjunction with Law Administration Practice Statement PS LA 1998/1. It must be followed by tax officers unless doing so creates unintended consequences or where it is considered incorrect. Where this occurs tax officers must follow their business line's escalation process.

SUBJECT: **Payment and credit allocation**

PURPOSE: **This practice statement outlines the payment and credit allocation policy to be applied to taxpayer accounts by the Australian Taxation Office (ATO).**

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BACKGROUND

1. The common law provides that a person who owes two debts to the same 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 taxpayer 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 taxpayer nor the ATO makes specific appropriation, the payment will normally be regarded as having been allocated against the earliest debt.

2. However, common law principles regarding allocation of payments and credits have been modified by legislation, for example section 8AAZLE of the *Taxation Administration Act 1953* (TAA). Section 8AAZLE of the TAA provides that the Commissioner is not required to take account of any direction of any entity when allocating payments and credits.

Accounts

3. Depending on a taxpayer's reporting responsibilities, tax obligations are recorded under several different account types. For example, the ATO 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 ATO is required to notify a taxpayer.

4. Other accounts include those that record the superannuation guarantee charge (SGC) and annually assessed fringe benefits tax (FBT). It is the aim of the ATO to provide taxpayers with a single integrated view to their account position in relation to all their tax obligations in the future.

5. Until all tax debts are recorded on the Integrated Core Processing (ICP) system in the ATO, taxpayers may have accounts stored on more than one computer system and will be subject to different allocation rules. For the purposes of correctly accounting for payments and credits, this practice statement should be read in conjunction with Operations Practice Note 2011/001 dealing with income tax and FBT payment and credit allocation in the ICP system.

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 via electronic funds transfer (EFT)
   - via Australia Post – using a personalised payment slip 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 an appropriate ATO biller code and payment reference number (PRN)
   - via credit card using the EFT code or PRN
   - via mail – using cheque or postal order, with accompanying personalised payment advice form or letter.

7. Payments made using these methods will be allocated to the account to which the payment relates (usually via the EFT code or PRN), however, the Commissioner will apply the payment against a tax debt recorded within an account in accordance with the order outlined in this practice statement. The order may sometimes be 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 superannuation guarantee charge (SGC) incurred for a quarter must be applied to nominal interest before the other components of the SGC).

8. Some payments that have been allocated to an account may need to be transferred where, following an error by the taxpayer or the ATO, they have been allocated to an account different to the one that the taxpayer had originally intended. This may occur in situations where:

   - the taxpayer supplied the wrong personalised payment advice form or used an incorrect PRN, or
   - the ATO 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 ATO processes.

9. Accordingly, these payments may need to be transferred to another account of the taxpayer (for example, from a taxpayer's income tax account to the same taxpayer's integrated client account containing BAS obligations) or to a related taxpayers' account (provided it is legal to do so). Most of these situations arise where taxpayers request the ATO to correct the error and such requests (if appropriate) are followed.

10. Subregulation 18(3) of the *Taxation Administration Regulations 1976* (TAR) specifies that a taxpayer must pay the amount of the debt in one payment unless the Commissioner agrees to allow the taxpayer to make more than one payment to satisfy the debt. However, in practice, payments are allocated to the appropriate accounts based on the method in which the payment is received.

11. From time to time taxpayers 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 taxpayer'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 ATO to the terms stipulated by the taxpayer. Moneys tendered need not be returned to the taxpayer, but advice should issue as soon as possible, informing the taxpayer 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 ATO and, where this is the case, the taxpayer will also be advised whether this proposal is acceptable or not. For example, the taxpayer's proposal may outline the time that they would like to pay their tax debts. Accepted proposals will usually be subject to additional conditions outlined by the ATO (for example, that where any amount is not paid by the original due date, general interest charge (GIC) will accrue).

13. Taxpayers sometimes offer payment of a tax debt in foreign currency. Subregulation 18(1) of the TAR stipulates 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 ATO is not prevented from accepting property in payment of tax where it is appropriate for maximising the collection of revenue. However, the ATO cannot be compelled to accept property except by law (the ATO 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 may compel the Commissioner to accept property such as shares in satisfaction of his rights as a creditor. 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 Law Administration Practice Statement PS LA 2011/16 Insolvency – collection, recovery and enforcement issues for entities under external 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 ATO or a person acting on behalf of the Commissioner (section 8AAZM of the TAA).

TERMS USED

17. The following terms are used in this practice statement:

Additional charges (or the GIC) – means the general interest charge, worked out in accordance with Part IIA 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 late payment penalty (LPP)/GIC, Part 7 of the *Superannuation Guarantee (Administration) Act 1992* (SGAA) penalty and the Part 7 of the SGAA 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 Tax Assessment Act 1986*

(ii) the indirect tax law (the GST law, the wine equalisation 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.

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

Grants Scheme debt – is an amount payable under t*he 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 *Income Tax Assessment Act 1997* (ITAA 1997). A group liability includes a PAYG instalment amount and the assessed amount of an annual income tax assessment.

IAS – instalment activity statement.

ITXSA contribution amount – in respect of a particular indirect tax law liability is the amount allocated to a participant of a GST joint venture or a member of a GST group under an indirect tax sharing agreement.

Net fuel amounts – arise under section 60-5 of the *Fuel Tax Act 2006*. A net fuel amount worked out in accordance with section 60-5, if 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 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 a payer's obligation to withhold amounts and pay them to the Commissioner as set out at Subdivision 16-B of Schedule 1 to the TAA. and the various provisions of the ITAA 1936 that require a taxpayer 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 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 encompasses all types of taxes, penalties and 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.

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

STATEMENT

Payment allocation policy

18. Generally, when payments are received they are allocated to the account to which the payment relates (usually via the EFT code or PRN) although the ATO may apply the payment to a tax debt within the account at variance to the taxpayers' wishes.

19. 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 will then be allocated as listed in the order of allocation (see paragraphs 34 and 35 of this practice statement). ATO systems will generally offset credits automatically against a taxpayer's other outstanding debts, although a manual offsetting process can apply in certain situations.

20. 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 coded 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, if any, SGC debt due for payment as listed in the order of allocation (see paragraphs 34 and 35 of this practice statement). Any remaining credit continues to be allocated against any unpaid tax debts as listed in the order of allocation (see paragraphs 34 and 35 of this practice statement) – once all outstanding debts (including certain other Commonwealth debts) are extinguished any remaining balance is able to be refunded.

Allocating payments to a specific tax debt

21. While the allocation of payments to an account via an EFT code or PRN will usually occur automatically, where a payment does not finalise all outstanding tax debts the ATO may later reconsider which specific tax debt on the account to apply the payment against.

22. Common examples which call for reconsideration 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 Law Administration Practice Statement PS LA 2011/18 Enforcement measures used for the collection and recovery of tax related liabilities and other amounts)
- Listed payments (see paragraph 25 of this practice statement) which are required to be identified or matched as separate component liabilities, or quarantined.

23. In these situations, the ATO could allocate the payments using the discretion available in section 8AAZLE of the TAA rather than by taking into account the taxpayers' instructions.

24. Generally, where the circumstances require the allocation of a payment to a specific tax debt, in the absence of a valid reason to make an exception, the policy will be:

- all payments will be allocated to earliest (oldest) debts within an account, except
- where the payment relates to a 'Listed Payment'.

25. The following situations involve payments which are referred to as listed payments which have their own specific allocation rules:

- full payment of taxation obligations
- administrative overpayment
- arrangements to pay tax-related liabilities by instalments
- payment agreements made under former section 222ALA of the ITAA 1936 prior to 1 July 2010
- 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
- GST Joint Venture or GST Group Indirect Tax Sharing Agreement (ITXSA) contribution amounts
- shortfall interest charge (SIC)
- late payment GIC
- SGC payments
- superannuation excess contributions tax payments

26. If a payment is not included as a 'Listed Payment', it will be allocated to the earliest tax debt within an account.

27. Once a payment has been allocated, it will generally be maintained unless there is a cause to review the allocation.

28. Payments received for reported PAYG withholding liabilities of a particular financial year will not be reallocated towards estimates raised for periods throughout that year that are the result of a reconciliation discrepancy. This recognises that, although the due date for the estimate liability will be the same as the due date of the underlying liability previously notified, the estimate liability was not an existing liability at the date of the payment.

29. Staff should advise taxpayers as soon as possible if payments are allocated in a manner different from that requested or indicated by them upon exercise of the Commissioner's discretion under section 8AAZLE of the TAA.

Credit allocation policy

30. Credits, other than payments, can arise on a taxpayer's account as a result of account adjustments, and in relation to credit entitlements at law. These include transfers, lodgment of a BAS/IAS, income tax return and credit assessments via amendment.

31. 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 listed in the order of allocation (see paragraphs 34 and 35 of this practice statement).

32. 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 (HECS) assessment debts, compulsory repayment amounts arising under the *Higher Education Support Act 2003* (HESA) or student financial supplementary scheme (SFSS) assessment debts as described in the *Student Assistance Act 1973* (SAA)
- credits for instalments such as GST instalments, PAYG instalments and FBT instalments or for amounts withheld
- GST net amounts less than zero
- net fuel amounts 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 FTB
- 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

33. Where there are no unpaid tax debts to allocate to, or apply a payment or a credit against, as listed in the order of allocation (see paragraphs 34 and 35 of this practice statement), 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.

Order of allocation

34. The following order of allocation applies only to payments which are not 'Listed Payments' or credits which are not 'Listed Credits'.

35. The order of allocation of payment, 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 SGAA of the SGAA penalty charges (LPP)
        - additional charge for the unpaid Part 7 of the SGAA penalty charges (GIC)
        - Part 7 of the SGAA penalty charges
        - additional charges for the unpaid total of the individual superannuation guarantee shortfall (LPP)
        - additional charge for the unpaid total of the individual superannuation guarantee shortfall (GIC)
        - the nominal interest component
        - the total of the individual superannuation guarantee shortfall.

        The same order is to be followed in applying payments to each subsequent pre 1 July 2003 period debt until all outstanding annual pre 1 July 2003 SGC debts are finalised, and then:

        Payments received for a quarterly SGC liability (relating to periods after 1 July 2003) are to 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 (GIC)
        - the total of the individual superannuation guarantee shortfall
        - the administration component

- additional charges for the unpaid Part 7 of the SGAA penalty charges (GIC)
- Part 7 of the SGAA penalty charges.

The same order is to be followed in applying payments to each subsequent post 1 July 2003 period debt 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 ATO 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
- FBT 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 dividend, interest and royalty withholding tax 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 taxpayer 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 taxpayer 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 269 of Schedule 1 to the TAA, 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.

EXPLANATION

Listed payments

Full payments of tax obligations

36. A full payment received in relation to a taxation 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.

37. 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.

38. However, part payments of taxation 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

39. Payments (made in full or part) in relation to an arrangement where the taxpayer 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 ATO.

40. Such payments are usually identified through accompanying personalised payment advice forms provided to the taxpayer. 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.

41. A payment arrangement may be required to be entered into for multiple debts that are maintained on different accounts, for example, the income tax account and the integrated client account. Generally, in these circumstances the instalment payments will allocated in a consecutive manner as listed in the order of allocation (see paragraphs 34 and 35 of this practice statement). However, circumstances may arise where it would be appropriate for the ATO to take a different approach to the allocation order, for example where there are multiple debts recorded on different accounts it may be more appropriate due to relevant considerations of the case to apply instalment payments in a concurrent manner against two or more accounts or some other order. Generally, in these circumstances it would be appropriate to apply the payments against the debts with the earliest due dates.

42. Where an arrangement is sought by a taxpayer involving BAS amounts, many of the debts will have the same due date. In this circumstance the ATO will usually require that payments received are allocated to the debts with the earliest due date and as listed in the order of allocation (see paragraphs 34 and 35 of this practice statement). For example, where there is an unpaid GST debt and PAYG withholding amount for the same reporting period, the ATO will usually require that the payments received in accordance with the arrangement be applied against the GST debt first.

43. Taxpayers should be informed at the earliest opportunity of the order in which the ATO proposes to apply the payments received in relation to the arrangement. The taxpayer 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 ATO 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 Law Administration Practice Statements PS LA 2011/21 Offsetting of refunds and credits against taxation and other debts and PS LA 2011/14 General debt collection powers and principles.

Administrative overpayment

44. An administrative overpayment is where an amount has been paid to a person by the ATO by mistake. The person is not entitled to the amount and the ATO requires the return of that payment to rectify the mistake.

45. 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.

Payment agreements made under former section 222ALA prior to 1 July 2010

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

47. Former section 222ALA of the ITAA 1936 has been repealed and this effect commences from 1 July 2010. However, 222ALA payment agreements made prior to 1 July 2010 continue in effect afterwards.

Payment of company liabilities arising under a remittance provision

48. 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 ATO will generally allocate the payment to that liability.

Director penalty notices (DPNs)

49. The ATO may issue a DPN on a director pursuant to Division 269 of Schedule 1 to the TAA (and previously under Division 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 that personalised payment advice forms are not provided in relation to a DPN, the director must advise the ATO that the respective payment is in relation to the DPN. If the payment is less than the full amount it will reduce the penalty owed on 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

50. The ATO 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 Law Administration Practice Statement PS LA 2011/4 Recovering disputed debts) where:

- statute requires the entitlement to a credit to be so allocated
- the credit relates to an amendment made to that disputed tax debt, or
- the taxpayer has entered into an arrangement with the ATO 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.

51. Once the ATO has allocated the payment or credit to the disputed debt, there will usually be no further appropriation. For further discussion, refer to Law Administration Practice Statements PS LA 2011/4 and PS LA 2011/21.

Current legal proceedings

52. Payments (made in full or in part) in respect of current legal proceedings filed by the Commissioner against the taxpayer will be allocated to those debts. Part payments in respect of these proceedings will 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

53. Generally, when applying payments to a case where judgment has been entered against a taxpayer, 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 taxpayer 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.

54. 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.

55. Furthermore subsection 101(3) of the CPA 2005 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

56. Where a payment is received in relation to the issue of a garnishee notice or similar type action by the Commissioner, the payment must be allocated to the respective component amounts that constitute the total amount payable included in the garnishee notice. The allocation of a payment for less than the full amount of the garnishee notice should be done in accordance with the principle of eliminating the highest priority earliest debt first as listed in the order of allocation (see paragraphs 34 and 35 of this practice statement).

    For example, XYZ Pty Ltd owes the following amounts:

    - 2005 income tax due date 1 December 2005 – $25,000
    - 2006 FBT due date 21 May 2006 – $20,000

    ABC Pty Ltd receives a garnishee notice in relation to the taxation debts owed by XYZ Pty Ltd. The garnishee notice requires ABC Pty Ltd to pay amounts it owes or holds in relation to XYZ Pty Ltd to the ATO up to the value of $45,000.

    ABC Pty Ltd owes XYZ Pty Ltd an amount of $30,000 and it pays this amount to the ATO.

In these circumstances the amount received from ABC Pty Ltd as a result of the garnishee should be allocated as follows:

- $10,000 to the income tax debt; and
- $20,000 to the FBT debt.

Voluntary payments

57. 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

58. Payment of dividends of less than 100 cents in the dollar received by the ATO 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 in paragraphs 53 to 55 of this practice statement under the subheading 'Secondary tax debts such as judgment debts and associated debts') that formed the ATO'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] NSWR 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 ATO will apportion dividends received as discussed above in order to identify the balance of unpaid amounts subject to director penalties. The ATO 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 RBA deficit debt.

59. Dividends received from insolvency administrations in relation to SGC liabilities should be allocated on a *pro-rata* basis. Non-priority dividends that do not follow the receipt of a priority dividend should be allocated in the order outlined above. Otherwise dividends in relation to SGC liabilities should be allocated as follows:

Company insolvencies under the Corporations Act

Priority dividends

For pre 1 July 2003 debts the order of allocation for payments of SGC priority dividends, subject to capping,[1] is as follows:

- the administration component
- the nominal interest component
- the total of the individual superannuation guarantee shortfall

pro rata to each annual SGC debt.

[1] For companies that went into liquidation, receivership or entered into a Deed of Company Arrangement on or after 31 December 2007, priority benefits paid to excluded employees, that is, directors, their spouses or relatives, will be subject to being capped under subsection 556(1A) of the Corporations Act. The capped amount will vary depending on the other benefits payable to that person under paragraph 556(1)(e) but the amount paid with respect to each excluded employee for the nominal interest and individual superannuation guarantee shortfall components will not exceed $2,000. As the administration component is not paid to the employee, it should not be included in the capped amount.

For post 1 July 2003 debts the order of allocation for payments of SGC priority dividends, subject to capping,[2] is as follows:

- the nominal interest component
- the total of the individual superannuation guarantee shortfall
- the administration component

pro rata to each quarterly SGC debt.

Non-priority dividends where priority dividends have already been received

For pre 1 July 2003 debts, the order of allocation for payments of non-priority SGC dividends which follow priority dividends is as follows:

- if priority dividends paid previously were subject to capping,[3] any balance outstanding for the nominal interest or individual superannuation guarantee shortfall for excluded employees
- additional charges for the unpaid Part 7 of the SGAA penalty charges (LPP)
- additional charge for the unpaid Part 7 of the SGAA penalty charges (GIC)
- Part 7 of the SGAA penalty charges
- additional charges for the unpaid total of the individual superannuation guarantee shortfall (LPP)
- additional charge for the unpaid total of the individual superannuation guarantee shortfall (GIC)

pro rata to each annual SGC debt.

For post 1 July 2003 debts, the order of allocation for payments of non-priority SGC dividends is as follows:

- if priority dividends paid previously were subject to capping,[4] any balance outstanding for nominal interest or individual superannuation guarantee shortfall for excluded employees
- additional charges for the unpaid total of the individual superannuation guarantee shortfall (GIC)
- additional charges for the unpaid Part 7 of the SGAA penalty charges (GIC)
- Part 7 of the SGAA penalty charges.

pro-rata to each quarterly SGC debt.

[2] Ibid.
[3] Ibid.
[4] Ibid.

Individual insolvency administrations under the Bankruptcy Act 1966

Priority dividends

For pre 1 July 2003 debts, for insolvency administrations **after 5 May 2003,** the order of allocation for payments of SGC priority dividends, subject to capping,[5] should be as follows:

- the administration component
- the nominal interest component
- the total of the individual superannuation guarantee shortfall
- additional charge for the unpaid total of the individual superannuation guarantee shortfall (GIC)

pro-rata to each annual SGC debt.

For post 1 July 2003 debts, the order of allocation for payments of SGC priority dividends, subject to capping,[6] should be as follows:

- the nominal interest component
- the total of the individual superannuation guarantee shortfall
- the administration component
- additional charge for the unpaid total of the individual superannuation guarantee shortfall (GIC)

pro rata to each quarterly SGC debt.

Non-priority dividends where priority dividends have already been received

For pre 1 July 2003 debts, the order of allocation for payments of SGC non-priority dividends which follow priority dividends should be as follows:

- if priority dividends paid previously were subject to capping, any balance outstanding for nominal interest or individual superannuation guarantee shortfall for excluded employees
- additional charges for the unpaid Part 7 of the SGAA penalty charges (LPP)
- additional charge for the unpaid Part 7 of the SGAA penalty charges (GIC)
- Part 7 of the SGAA penalty charges
- additional charges for the unpaid total of the individual superannuation guarantee shortfall (LPP)
- additional charge for the unpaid total of the individual superannuation guarantee shortfall (GIC)

pro-rata to each annual SGC debt.

[5] Whilst the priority for SGC and GIC applies to administrations from 5 May 2003, the Commissioner can only apply the capping where the date of bankruptcy is on or after 31 December 2007; for personal insolvency agreements, if the agreement makes provision for distributions pursuant to section 109 of the Bankruptcy Act, the Commissioner will apply the capping if the date of the section 188 authority is on or after 31 December 2007. (The date of the section 188 authority is not the effective date of the Part X.) The capped amount will vary depending on the other benefits payable to that person under paragraph 109(1)(e) of the Bankruptcy Act, but the amount paid with respect to each employee for the nominal interest, individual superannuation guarantee shortfall components and additional charge for the unpaid total of the individual superannuation guarantee shortfall (GIC) will not exceed an amount calculated, and increased at the applicable CPI rate, according to regulation 6.02 of the *Bankruptcy Regulations 1996* for any individual employee; $3, 850 is the indexed amount at 1 July 2008. As the administration component is not paid to the employee, it should not be included in the capped amount.

[6] Ibid, note 5.

For post 1 July 2003 debts, the order of allocation for payments of SGC non-priority dividends, should be as follows:

- if priority dividends paid previously were subject to capping, any balance outstanding for nominal interest or individual superannuation guarantee shortfall for excluded employees
- additional charges for the unpaid total of the individual superannuation guarantee shortfall (GIC)
- additional charges for the unpaid Part 7 of the SGAA penalty charges (GIC)
- Part 7 of the SGAA penalty charges

pro-rata to each quarterly SGC debt.

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

60. Payments made (in full or in part) in relation to a head company (HC) group liability or a TSA contribution amount will be allocated as appropriated by the taxpayer. (For further discussion regarding TSAs see paragraphs 109 to 114 of this practice statement under the subheading 'Listed Credits').

GST joint venture or GST group indirect tax sharing agreement (ITXSA) contribution amounts

61. Payments (made in full or in part) in relation to a GST joint venture or GST group liability or an ITXSA contribution amount will be allocated as appropriated by the entity.

62. In relation to a GST joint venture the joint venture operator (the operator) bears the liability for the total GST payable by the joint venture. In the event that the operator does not pay the liability by the due date for payment then, under section 444-80 of Schedule 1 of the TAA, the joint venture participants (the participants) will become jointly and severally liable for the debt in the absence of a valid ITXSA.

63. Similarly in relation to a GST group the representative member bears the liability for the GST payable by the GST group. In the event that the representative member does not pay the liability by the due date for payment then, under section 444-90 of Schedule 1 of the TAA, the GST group members (members) will become jointly and severally liable for the debt in the absence of a valid I ITXSA.

64. If a valid ITXSA exists then the liability of the participants may be limited to the extent provided in the ITXSA. Similarly for GST groups the existence of an ITXSA may limit the members liability to the extent provided in the ITXSA.

65. The ATO may receive payments from the operator or any of the participants in the joint venture. For GST group purposes the ATO may receive payments from the representative member or any of the members of the group.

66. A payment in relation to a joint venture or group liability will be allocated as appropriated by the entity, as follows:

- Payment by a participant or member where an ITXSA exists will be offset against the participant or member's liability under the ITXSA and will also reduce the related operator or representative member's liability.

- Payment by a participant or member where no ITXSA exists will be offset against the joint and several liability of the participant or member making the payment. It will also reduce the liabilities of all participants or group members as well as the related operator or representative member's liabilities.
- Payment by the operator or representative member where an ITXSA exists will be offset against the operator or representative member's liability and will also reduce each participant's or member's component liabilities but only in accordance with the liability breakdown detailed in the ITXSA and only to an extent equalling the related unpaid amount of the operator or representative member. In this respect, the ITXSA regime operates similar to the income tax consolidated group tax sharing agreement regime. Refer to the example provided at the third point under paragraph 114 in this practice statement.
- Payment by the operator or representative member where no ITXSA exists will be offset against the operator or representative member's liability and will also reduce the participants' or members' joint and several liabilities equally.

Shortfall interest charge

67. 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 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 the notice of assessment, and payment should be allocated against it accordingly.

Late payment GIC

68. 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.

69. 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 as listed in the order of allocation (see paragraphs 34 and 35 of this practice statement). 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.

70. The treatment of GIC for late payment outlined in paragraphs 68 to 69 of this practice statement 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.

SGC payments

71. SGC payments (made in full or in part) and additional SGC payments (made in full or in part) may be allocated to their corresponding annual or quarterly liability, where that liability is specified by the employer at the time of making the payment.

72. However, in discharging the employer's liability, the priority of allocation in respect of a SGC liability for a return period is as listed in the order of allocation (see paragraphs 34 and 35 of this practice statement). The order of allocation for quarterly debts reflects the Parliament's clear intention to prioritise payment of employee entitlements ahead of monies due to consolidated revenue.

73. Similarly, dividends in relation to SGC received from insolvency administrations are treated as a listed payment.

74. Once a SGC payment has been made against the components of an employer's liability, the ATO must subsequently pay or credit the employees' entitlements, that is, SGC shortfall and associated GIC and the nominal interest component. This will be the full payment for a single employee, and where there are multiple employees, pro rata is to apply on the basis of the amounts entitled by the employees.

Superannuation excess contributions tax payments

75. 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.

76. 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

77. Section 8AAZLD of the TAA provides priority for HECS 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 HECS 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

78. An entitlement to a tax credit for instalments payable in relation to GST instalments, PAYG instalments, amounts withheld from withholding payments or FBT instalments that arise upon the ATO 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

79. Amounts of input tax credits, the special credit for wholesale sales tax and amounts of GST attributable to 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 entity will be entitled to a corresponding credit. This credit will initially be applied to any other liabilities notified in the same BAS in the order outlined in subparagraph 35(vi) of this practice statement. Any GST credit remaining will be applied against the tax debts with the earliest due date for that account in the order outlined in subparagraph 35(vi) of this practice statement.

Net fuel amounts less than zero

80. Amounts of fuel tax credits and amounts of fuel tax (including appropriate adjustments) attributable to 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 entity will be entitled to a corresponding credit. This credit will initially be applied to any other liabilities notified in the same BAS in the order outlined in subparagraph 35(vi) of this practice statement. 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 subparagraph 35(vi) of this practice statement.

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

81. 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

82. Division 3 of Part IIB of the TAA enables interest payable to a taxpayer, 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)

83. 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 as listed in the order of allocation (see paragraphs 34 and 35 of this practice statement).

84. 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 as listed in the order of allocation (see paragraphs 34 and 35 of this practice statement).. 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.

85. A 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 the earliest GIC debts on the account.

Excess imputation credits

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

Credits relating to excess baby bonus – tax offset

87. The baby bonus is also a refundable tax offset. Accordingly, these tax offsets must be initially allocated against the relevant assessed income 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

88. The ATO may apply the whole or part of an income tax refund to any family tax benefit debts. Conversely, the ATO 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

89. 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 as listed in the order of allocation (see paragraphs 34 and 35 of this practice statement) prior to being refunded.

Credits relating to pre-insolvency periods

90. 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 as listed in the order of allocation (see paragraphs 34 and 35 of this practice statement). 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 as listed in the order of allocation (see paragraphs 34 and 35 of this practice statement).

91. For further information on credits in insolvency administrations refer to PS LA 2011/21.

Credits relating to post-insolvency periods

92. 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 as listed in the order of allocation (see paragraphs 34 and 35 of this practice statement). 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 as listed in the order of allocation (see paragraphs 34 and 35 of this practice statement).

93. 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*)

94. For further information on credits in insolvency administrations refer to PS LA 2011/21.

Credits in relation to GST groups

95. Under Division 48 of the GST Act, certain entities may elect to group, so that one entity within the group (representative member) deals with all the GST and net fuel amount obligations 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. In the event that the representative member does not pay the liability by the due date for payment then the contributing members will become jointly and severally liable for the debt in the absence of a valid ITXSA.

96. A payment made by or credit entitlement of the representative member or another member that is applied against their ITXSA contribution amount under a valid ITXSA may reduce the amount owed by the other members but only to an extent equalling the related unpaid amount of the representative member. In this respect, the ITXSA regime operates similar to the income tax consolidated group tax sharing agreement regime. Refer to the example provided at the third point in paragraph 114 of this practice statement.

97. Under subsections 8AAZLA(1) and 8AAZLB(1) of the TAA the ATO may apply any member's RBA surplus or excess credit against any tax debt of other members of that group. The ATO will, as a general rule, apply such surplus or credit amounts of a member initially against any tax liabilities due by that member as listed in the order of allocation (see paragraphs 34 and 35 of this practice statement).

98. If that member has no tax liabilities, the amount would then be allocated across the group as listed in the order of allocation (see paragraphs 34 and 35 of this practice statement) 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 as listed in the order of allocation (see paragraphs 34 and 35 of this practice statement). 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 superannuation guarantee debt due for payment in the group or if no such debts existed, to the member with the earliest PAYG withholding debt due for payment. Any such remaining surplus credit would continue to be allocated, as listed in the order of allocation (see paragraphs 34 and 35 of this practice statement), across the group until all tax debts within that group are finalised before being refunded.

99. However, where there is a valid ITXSA or where a member of the GST group is also a HC or subsidiary member of a consolidated group for income tax purposes, the legislative intent behind the introduction of the ITXSA and tax sharing agreement regimes is to be respected. Therefore, the order outlined above may be modified (refer to paragraphs 116 to 120 of this practice statement under the subheading 'Consolidated and GST groups').

Credits in relation to GST joint ventures

100. Under Division 51 of the GST Act entities may elect to enter into a GST joint venture and nominate one entity to be responsible for the GST reporting and payment obligations that relate to that joint venture operation.

101. 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.

102. In the event that the operator does not pay the liability by the due date for payment then the joint venture participants (participants) will become jointly and severally liable for the debt in the absence of a valid ITXSA.

103. A payment made by, or a credit entitlement of, the joint venture operator or another participant that is applied against their ITXSA contribution amount under a valid ITXSA may reduce the amount owed by the others participants. However, this is only to an extent equalling the related unpaid amount of the joint venture operator. In this respect, the ITXSA regime operates similar to the income tax consolidated group tax sharing agreement regime. Refer to the example provided at the third point in paragraph 114 of this practice statement.

104. The ATO may offset a participant's credit entitlements against any GST or fuel tax related debt incurred by the GST joint venture. The ATO will, as a general rule, apply credit entitlements of a participant as listed in the order of allocation (see paragraphs 34 and 35 of this practice statement) with the following modification – their credit entitlements will be applied against their GST joint and several or ITXSA liability last.

Credits in relation to GST and PAYG withholding branches

105. Under Division 54 of the GST Act and Subdivision 16-BA of Schedule 1 of the TAA, certain entities may elect to register their business operations as branches provided each branch has an independent accounting system and the branch can be identified by reference to its activities or location. If the ATO 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.

106. 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.

107. Generally, the ATO will not offset an available credit entitlement between branches and the parent entity. However, the ATO 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 ATO will, as a general rule, apply such credit entitlements of a branch initially against any of their own tax liabilities.

108. If the branch has no tax liabilities, the amount would then be allocated across the branches and parent entity as listed in the order of allocation (see paragraphs 34 and 35 of this practice statement), commencing with the entity that has the oldest period tax debt for each tax type.

Credits in relation to consolidated groups

109. Under Division 721 of the ITAA 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.

110. 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 TSA that reasonably allocated the liability amongst the parties to that agreement, and that agreement is provided when requested by the ATO. 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.

111. 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 ATO gives the entity written notice.

112. Under subsections 8AAZLA(1) and 8AAZLB(1) of the TAA the Commissioner is able to offset one entity's refunds or credits against the debts of another entity 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

113. Because the membership of a consolidated group may change from one liability period to another, and because of 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.

114. The ATO 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 ATO 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 ATO 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 ATO 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 equalling 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 ATO 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

115. When an income tax assessment is made in relation to the HC, the ATO 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 as listed in the order of allocation (see paragraphs 34 and 35 of this practice statement).

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

116. Where the HC and subsidiary members of a consolidated group are also members of a GST group the ATO may apply any member's refund or credit against any tax debt of other members of the group. When allocating payments and credits in this scenario, the legislative intent behind the introduction of the TSA and ITXSA regimes is to be respected.

117. Therefore, a refund or credit of a subsidiary member of a consolidated group 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 PS LA 2011/21.)

118. Similarly, a refund or credit of a member of a GST group will not be allocated to any amount covered under subsection 444-90(1) of Schedule 1 of the TAA beyond its ITXSA contribution amount where that subsection 444-90(1) amount is covered by a valid ITXSA

119. The ATO will, as a general rule, apply a HC, subsidiary member or GST group member refund or credit entitlement initially against their own tax liabilities as listed in the order of allocation (see paragraphs 34 and 35 of this practice statement), subject to the modifications in relation to the HC outlined above.

120. If that HC or member has no tax liabilities, the amount would then be allocated across the consolidated group or GST group as listed in the order of allocation (see paragraphs 34 and 35 of this practice statement) 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 that had the earliest debt due for payment of SGC debts as listed in the order of allocation (see paragraphs 34 and 35 of this practice statement) 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 PAYG instalment debts. Any such remaining surplus credit would continue to be allocated as listed in the order of allocation (see paragraphs 34 and 35 of this practice statement), 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.

Legislative references	ITAA 1936 222ALA ITAA 1997 Div 292 ITAA 1997 Div 721 ITAA 1997 721-10(2) TAA Pt IIA TAA 8AAZC TAA 8AAZF TAA Pt IIB Div 3 TAA 8AAZL(3) TAA 8AAZLA(1) TAA 8AAZLB(1) TAA 8AAZLD TAA 8AAZLE TAA 8AAZM TAA Sch 1 Pt 2-5 TAA Sch 1 Pt 2-10 TAA Sch 1 Subdiv 16-B TAA Sch 1 Subdiv 16-BA TAA Sch 1 Div 269 TAA Sch 1 280-105 TAA Sch 1 444-80 TAA Sch 1 444-90 TAA Sch 1 444-90(1) A New Tax System (Family Assistance) (Administration) Act 1999 Bankruptcy Act 1966 Bankruptcy Act 1966 109 Bankruptcy Act 1966 109(1)(e) Bankruptcy Act 1966 188 Corporations Act 2001 Corporations Act 2001 556(1A) Corporations Act 2001 556(1)(e) Customs Act 1901 Diesel and Alternative Fuels Grants Scheme Act 1999 Excise Act 1901 FBTAA 1986 Pt VII Fuel Tax Act 2006 Fuel Tax Act 2006 60-5 GST Act 7-5 GST Act 17-5 GST Act Div 48 GST Act Div 51 GST Act Div 54 GST Act 126-5 Higher Education Support Act 2003 Product Grants and Benefits Administration Act 2000 Student Assistance Act 1973 SGAA 1992 Taxation (Interest on Overpayments and Early Payments) Act 1983 Civil Procedure Act 2005 (NSW) 101 Civil Procedure Act 2005 (NSW) 101(3) Civil Procedure Act 2005 (NSW) 136 Bankruptcy Regulations 1996

	Bankruptcy Regulations 1996 6.02 Taxation Administration Regulations 1976 18(1) Taxation Administration Regulations 1976 18(3)
Related practice statements	PS LA 2011/4 Recovering disputed debts PS LA 2011/14 General debt collection powers and principles PS LA 2011/16 Insolvency – collection, recovery and enforcement issues for entities under external administration PS LA 2011/21 Offsetting of refunds and credits against taxation and other debts
Case references	Turner Manufacturing Co. Pty. Ltd. v. Senes [1964] NSWR 692 Thompson v. Hudson (1871) 6 Ch App 320
Other references	OPS PN 2011/001 (internal link only)
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