PS LA 2011/20 - Payment and credit allocation

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PS LA 2011/20
Payment and credit allocation

This Law Administration Practice Statement outlines the payment and credit allocation policy to be applied to taxpayer accounts.

This practice statement is an internal ATO document, and is an instruction to ATO staff.

Taxpayers can rely on this practice statement to provide them with protection from interest and penalties in the following way. If a statement turns out to be incorrect and taxpayers underpay their tax as a result, they will not have to pay a penalty. Nor will they have to pay interest on the underpayment provided they reasonably relied on this practice statement in good faith. However, even if they don't have to pay a penalty or interest, taxpayers will have to pay the correct amount of tax provided the time limits under the law allow it.

1. What is this practice statement about?

This practice statement outlines the way you should allocate payments and available credits to debts owed by taxpayers. It outlines the discretion available to the Commissioner to disregard taxpayers instructions regarding their preferred allocation of amounts to specific debts, and how this is applied in:

- our general policy for payment and credit allocation, and
- the specific rules for some types of payments, credits and situations.

2. General rules about the allocation decision

When you make a decision about allocation of payments and credits, you must apply the policy in this practice statement, but you must also consider the particular facts of the case at hand. You must decide each case on its merits, and exercise your judgment to make a decision that is made in good faith and without bias. You should not consider irrelevant considerations.

Your decision must be consistent with the commitments made by the ATO in the Taxpayer's Charter, and you should also be aware of and follow Chief Executive Instruction CEI 2014/06/04 *Respecting Clients' Rights of Review Policy*.

3. What does the law say?

The common law provides that a person who owes two debts to the same person is entitled to nominate that a payment applies to one debt rather than another.

In some instances, even if they have not nominated, it will be clear from the amount of the payment that it is to be allocated to a specific debt.

If the debtor does not indicate the specific debt at the time of payment, the creditor is entitled to make that decision. We **do not have to** follow any instruction given by the taxpayer when allocating payments (see further discussion below at 5).

Common law principles have been modified by legislation in some instances, as will be discussed.

4. The rules about payment of tax debts

The following outline some basic rules about the payment of tax debts;

- For the purposes of the tax laws, a payment in respect of a tax debt is taken not to have been made until it is received by the ATO.[1]
- The law[2] specifies that a taxpayer must pay the amount of the debt in one payment unless we agree to allow the taxpayer to make more than one payment to satisfy the debt. However, in practice, payments (whether partial or full) are allocated to the appropriate accounts based on the information available when the payment is received.
- Sometimes, a taxpayer's payment may be accompanied by correspondence which indicates that acceptance of the money implies acceptance of certain conditions. Taking the money does not bind the ATO to the terms stipulated by the taxpayer. If this happens though, you should issue advice to the taxpayer as soon as possible to indicate that the amount is being retained unconditionally as payment towards their debt. In some instances, the stipulated conditions may instead be treated as a proposal to the ATO, and the taxpayer should also be advised whether this proposal is acceptable or not.

[1] Section 8AAZM of the *Taxation Administration Act 1953* (TAA).
[2] Subregulation 18(3) of the *Taxation Administration Regulations 1976.*

- You cannot accept payment of a tax debt in foreign currency.[3]
- Sometimes, the administrator of an insolvent company, that has no realisable assets but the possibility of trading out of its difficulties, may offer equity in the company to creditors. This situation is discussed in Law Administration Practice Statement PS LA 2011/16 *Insolvency – collection, recovery and enforcement issues for entities under external administration*.

5. Our general policy

Payments

Payments representing the full amount of a taxpayer's obligations are usually applied to the taxpayer's accounts in accordance with the taxpayer's directions (for example by using a payment reference number).

However, in appropriate circumstances you can choose to set aside a taxpayer's directions and allocate the payment differently, using the discretion in section 8AAZLE of the TAA. Common examples of when we would do this are:

- Where a payment does not finalise the outstanding tax debts or is less than the full amount of an obligation
- Where legislation requires that we allocate certain payments with specific components of a debt (for example superannuation guarantee charge (SGC))
- Where an account reconciliation is required to isolate certain component debts (for example, in the case of director penalty liabilities,

Unless there is a valid reason not to do so (see above for examples), our policy for allocating a payment for which no direction is received, is:

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

Listed payments have specific rules in relation to their allocation. These are outlined in Attachment A.

The order of allocation for the accounts themselves (where the payment is not a listed payment) is outlined separately at Attachment C.

If payments are allocated differently to a taxpayer's direction, you should advise the taxpayer as soon as possible.

Where there are no unpaid tax debts to apply a payment against, before any amount is refunded to a taxpayer it will be allocated:

- firstly to any family tax benefit debts, provided the refund relates to income tax

then to:

- any child support debts as notified by the Child Support Agency

then to:

- debts in relation to Social Security, Family Assistance or Student Assistance where a garnishee has been received from Centrelink.

Credits

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 or income tax return and credit assessments via amendments.

Generally our policy for allocating 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 (outlined separately at Attachment C).

except where the credit is a 'Listed Credit'.

Listed credits have specific rules with regard to their allocation. These are outlined at Attachment B.

6. More information

For more information, see:

- Director penalty liabilities – see the material on our website.
- Disputed debts and how we apply payments to those – see Law Administration Practice Statement PS LA 2011/4 *Collection and recovery of disputed debts*
- Indirect Tax Sharing Agreements – see the material on our external website.
- Tax Sharing Agreements for consolidated groups – see the material on our external website.

[3] Subregulation 18(1) of the *Taxation Administration Regulations 1976*.

Attachment A

Listed Payments

The following payments have specific rules which apply to their allocation.

Full payments of tax obligations

A full (not part) payment of a tax obligation notified on a form (for example a notice of assessment or statement of account) is usually applied to that obligation. These payments will usually be received accompanied by a payment slip or payment reference number.

Arrangements to pay tax-related liabilities by instalments

Where a taxpayer has been granted permission to pay tax-related liabilities by instalments, the payment received in accordance with such an arrangement will be allocated in the order advised by the ATO, and usually personalised payment slips will be provided to the taxpayer.

Generally, the order will be in accordance with the 'order of allocation' as outlined at Attachment C. However, it may be appropriate sometimes 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.

Administrative overpayments

Administrative overpayments are payments made to a person by the ATO by mistake. The person is not entitled to the amount, and must return the payment. When it is returned, that payment will be allocated to the overpaid amount.

Payment agreements made under former section 222ALA

A payment made pursuant to a written agreement with the taxpayer in accordance with former section 222ALA of the *Income Tax Assessment Act 1936* must be allocated in the order detailed in that agreement. These agreements will have been made before 1 July 2010, but some are still in effect.

Payment of company liabilities under a remittance provision

Where it can be readily identified that a payment has been received in respect of a particular liability of a company arising under a remittance provision (for example a pay as you go (PAYG) withholding obligation) you should generally allocate the payment to that liability.

Director penalty liabilities

Where a payment is received (in full or in part) in relation to a director penalty liability,[4] you must allocate the payment to reduce the penalty on the director's account, and the corresponding parallel liability on the company's account. If the payment is for less than the full amount, it will reduce the penalty on the director's account, and will be allocated against the company's earliest parallel liability. In accordance with the order of allocation (see Attachment C), parallel SGC liabilities will be cleared first and then PAYG withholding.

Disputed tax debts

Where the taxpayer has entered into a 50/50 arrangement with the ATO in relation to a disputed debt, you should allocate payments on a pro rata basis up to the value of 50% of the disputed debt until the period of deferral has expired.

Current legal proceedings

Payments made in respect of current legal proceedings will be allocated to those debts that contribute to the claim. Part payments will be allocated to those debts with the earliest due date.

Judgment debts and associated costs

Generally, when applying payments to a case where judgment has been entered against a taxpayer, payments will be allocated firstly against the judgment debt and then to the costs involved in obtaining the judgment.

However, for judgments entered into in NSW State Courts, you must follow the *Civil Procedure Act 2005* (NSW)[5] which requires that any payment made on account of a judgment debt is to be allocated firstly towards any post-judgment (or later date as the Court orders) interest, and then towards the balance of the judgment.

[4] Raised under Division 269 of Schedule 1 to the TAA.
[5] Sections 136 and 101.

Garnishee notices

Where a payment is made pursuant to a garnishee notice, the payment will be allocated to the amounts that constitute the total payable in that notice. Part payments will be allocated to tax debts in accordance with the allocation rules prescribed by the accounting system under which the debt is managed. For example, where a debt is managed under the Receivables Management System, part payment will be first allocated to the liability with the earliest due date that contributes to the balance of the claim. Where the debt is managed in the ICP system (for example, income tax debt) a part payment will be allocated in accordance with the allocation hierarchy rules outlined at the end of this practice statement.

Voluntary payments

Where payments are made voluntarily (in full or in part) of an anticipated tax debt, you should allocate that debt to the anticipated tax debt, provided there are no other tax debts.

Dividends received from insolvency administrations

Payment of dividends of less than 100 cents in the dollar are allocated on a pro-rata basis. They are apportioned to each tax related liability and other debts (such as judgment interest) that formed the ATO's claim in the administration.[6]

Where the debt, or part of the debt, is an RBA deficit debt, then the dividend allocated to the RBA deficit debt is to be apportioned on a pro-rata basis amongst the component tax debts (and the general interest charge on those debts) that make up the RBA deficit debt. 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.

Where parallel liabilities to director penalties are involved, you should apply the instruction above in relation to director penalties to identify the balance subject to director penalties.

Where the dividend received is in relation to Super Guarantee Charge (SGC) liabilities, special rules apply. Non-priority dividends (that is, amounts not related to SGC or director penalties) that have not followed the receipt of a priority dividend should be allocated as outlined above in satisfaction of the ATO proof of debt that gave rise to the dividend.

Otherwise, dividends in relation to SGC liabilities should be allocated as follows.

[6] 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.

For company insolvencies under the Corporations Act 2001

Priority dividends

For pre 1 July 2003 debts the order of allocation for payments of SGC priority dividends, subject to capping,[7] 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.

Debts from 1 July 2003 the order of allocation for payments of SGC priority dividends, subject to capping,[8] 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[9], 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 late payment penalty (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)

[7] 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) of the Corporations Act 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.

[8] Ibid.

[9] Ibid.

- 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 which follow priority dividends is as follows:

- if priority dividends paid previously were subject to capping,[10] 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.

For individual insolvencies 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,[11] 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,[12] 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.

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.

[10] Ibid.

[11] 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. As the administration component is not paid to the employee, it should not be included in the capped amount.

[12] Ibid, note 5.

Head company group liabilities and Tax Sharing Agreement contribution amounts

Payments made in relation to a head company group liability or a tax sharing agreement contribution amount will be allocated as advised by the taxpayer.

GST joint venture or group liabilities and Indirect Tax Sharing Agreement contribution amount

Payments made in relation to a GST joint venture, GST group liabilities or an Indirect Tax Sharing Agreement (ITXSA) will be allocated as advised by the taxpayer.[13]

The payment might be received from either the operator of a joint venture, or the representative member of a joint group, or any of the participants or members.

- Where a valid ITXSA exists:
  - A payment from a participant or member will be offset against the participant or member's liability and also reduce the related operator or representative member's liability.
  - A payment from the operator or representative will be offset against their liability and may also reduce each participant or member's liability, depending on the terms of the ITXSA.
- Where a valid ITXSA does not exist
  - A payment from a participant or member will be offset against their personal joint and several liability. It will also reduce the liability of all participant or group members as well as the related operator or representative member's liability.
  - A payment from the related operator or representative member will be offset against their liability and will also reduce the participant or member's joint and several liabilities equally.

Shortfall interest charge

SIC is posted to the relevant account for the underlying liability on which it is charged (for example, income tax). Any payment will be subject to standard allocation rules within the relevant account.

Late payment GIC

Payments of GIC will be subject to normal allocation rules. Ordinarily the underlying liability (on which GIC is charged) is cleared before the GIC has payments allocated.

SGC payments

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.

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. 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.

Payments in respect of an estimate of SGC (made in full or in part) may be allocated to their corresponding quarterly liability, where that liability is specified by the employed at the time of making the payment.

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' payments, these are to be applied on a proportional basis to the employees' entitlements.

Note: payments for SGC are also dealt with under Director Penalty Liabilities and Insolvency Administrations

Superannuation excess contributions tax payment

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.

Payments received from a superannuation provider in accordance with a release authority must be allocated to the corresponding superannuation excess contributions tax assessment.

[13] In order for an indirect tax sharing agreement (ITXSA) to apply to a GST group's indirect tax law liabilities for a particular tax period, the contribution amounts for each contributing member must represent a 'reasonable allocation', among the representative member and the contributing members, of the group's total indirect tax law liability for that period: paragraph 444-90(1A)(c) of Schedule 1 to the *Taxation Administration Act 1953* (TAA).

Attachment B

Listed Credits

The following credit types have specific rules in regard to their allocation.

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

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 PAYG credit arises 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.

Credits for instalments

An entitlement to a 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.

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

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)

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.

A component liability may have previously been paid and then may later be subject to an account adjustment. In these situations the credit arises is allocated in reduction of the oldest unpaid component debts due and payable on the relevant account and then any excess can be used to pay other debts as per the order of allocation.

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 a credit arises from a GIC remission that credit should be applied to the earliest GIC debts on the account.

Credits relating to pre-insolvency periods

Credits relating to pre-insolvency periods will first be allocated against pre-insolvency debts. 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. 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.

For further information on credits in insolvency administrations refer to PS LA 2011/16 and PS LA 2011/21 *Offsetting of refunds and credits against taxation and other debts*.

Credits relating to post-insolvency periods

Credits relating to post-insolvency periods will be allocated first to post-insolvency debts. 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. Any remaining post-insolvency credit will then 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.

Credits under the excise fuel payment schemes do not come within the operation of the Division 3 of Part IIB of the TAA so 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.

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

Allocation of payment received by the Commissioner for a consolidated group

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.

The ATO may receive payments from the head company (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. This reduction in the HC liability may, in turn, also reduce the balance of the contribution amounts payable by the other members, depending on the manner in which the group liability is allocated under the TSA. (See the third dot point below.)
- 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).
- 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

When an income tax assessment is made in relation to the HC, the ATO will initially apply any credit entitlements 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:

- To any other unpaid assessed tax or associated administrative penalty of the HC, commencing with the liability that has the earliest due date.
- To any other liability of the HC as listed in the order of allocation.

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

Attachment C

Order of allocation of amounts

(i) To any annual superannuation guarantee charge debts 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:

(ii) payments received for quarterly SGC liabilities (relating to periods after 1 July 2003) are to be credited towards the debt with the earliest due date in the following 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.

Where there has been a late payment offset and a further payment is made to be applied for the benefit of multiple employees, the proportional entitlement for each employee must first be calculated then applied to pay nominal interest first.

Payments received in respect of a director penalty relating to a quarterly SGC liability are to be credited towards the earliest SGC director penalty debt in the following order:

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

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

Payments received in respect of an estimate of SGC under Division 268 of Schedule 1 to the TAA are to be credited first towards the estimate relating to the earliest period.

(iii) to any RBA deficit debt which represents pay as you earn (PAYE) debts

(iv) to any RBA deficit debt which represents prescribed payment system debts

(v) to any RBA deficit debt which represents reportable payment system debts

(vi) to any RBA deficit debt which represents sales tax debts

(vii) 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:

- the assessed net amount for the GST (which includes wine equalisation tax and luxury car tax) and other amounts of GST
- assessed 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.

(viii) to any debt which represents dividend, interest and royalty withholding tax debts including any associated charges and penalties.

(ix) to any debt which represents only assessed FBT debts including any associated charges and penalties[14]

(x) to any debt which represents superannuation surcharge debts including any associated charges and penalties

(xi) to any debt which represents mineral resource rent tax (MRRT) including any associated charges or penalties

(xii) to any debt which represents a tax sharing amount for MRRT including any associated charges or penalties

(xiii) to any debt which represents petroleum resource rent tax (PRRT) including any associated charges or penalties

(xiv) to any debt which represents a tax sharing amount for PRRT including any associated charges or penalties

(xv) to any debt which represents excise debts (except diesel fuel rebate scheme debts) including any associated charges and penalties

(xvi) 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

(xvii) to any debt which represents diesel and alternative fuels grants scheme debts including any associated charges and penalties

(xviii) to any debt which represents diesel fuel rebate scheme debts including any associated charges and penalties

(xix) to any debt which represents an assessed net fuel amount greater than zero (where the taxpayer is not registered or required to be registered for GST)

(xx) to any debt which represents franking deficit tax, over-franking tax or venture capital deficit tax including any associated charges and penalties

(xxi) to any debt which represents the superannuation self-managed superannuation fund supervisory levy including any associated charges or penalties

(xxii) to any debt which represents only assessed income tax debts including any associated charges and penalties[15]

(xxiii) to any debt which represents only tax sharing amounts for assessed income tax debts including any associated charges and penalties[16]

(xxiv) to any debt which represents assessed superannuation excess contributions tax including any associated charges and penalties

(xxv) to any secondary tax debts (for example, the costs involved in obtaining a judgment against a taxpayer)

(xxvi) to any director penalty amount in respect of PAYG withholding (or an estimate of PAYG withholding) pursuant to Division 269 of Schedule 1 to the TAA, commencing with the oldest period director penalty amount until all penalty amounts are finalised

(xxvii) to any debt which represents PAYG withholding non-compliance tax (NCT) commencing with the oldest period NCT amount

(xxviii) to any further tax debts which are due and payable, not including debts subject to dispute

(xxix) to any debt which represents tax debts that are subject to objection, review or appeal including any associated charges and penalties, and

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

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Contact officer Jason Williams
Service Delivery (Support)
Operational Policy Assurance and Law
(03) 6221 0275

[14] Note the Integrated Core Processing (ICP) role allocation hierarchy rules.

[15] Note the ICP role allocation hierarchy rules.

[16] Note the ICP role allocation hierarchy rules.

Amendment history

Date of amendment	Part	Comment
8 October 2015	All	Updated to new LAPS format and style.
	Page 4	Clarified the treatment of dividends received from an insolvency administration.
5 September 2013	Various	Update content to include application of new law including Mining Resource Rent Tax, changes to Petroleum Resource Rent Tax, Director Penalties for unpaid Superannuation Guarantee, Refunds of Excess superannuation contributions and GST default assessment regime.
	Various	Changes made in order to reduce duplication, incorporate policy from internal practice note regarding payment application in the ICP system and heading/style/ordering changes made to improve readability.

References

Subject references	Credit Allocation Listed Credits Listed Payments Order of Allocation Payment Allocation
Legislative references	Bankruptcy Act 1966 109 Bankruptcy Act 1966 109(1)(e) Bankruptcy Act 1966 Pt X Bankruptcy Act 1966 188 Civil Procedure Act 2005 (NSW) 101 Civil Procedure Act 2005 (NSW) 136 Corporations Act 2001 556(1A) Corporations Act 2001 556(1)(e) ITAA 1936 222ALA Product Grants and Benefits Administration Act 2000 SGAA 1992 Pt 7 TAA 1953 Pt IIB Div 3 TAA 1953 8AAZLD TAA 1953 8AAZLE TAA 1953 8AAZM TAA 1953 Div 268 TAA 1953 Div 269 TAA 1953 Sch 1 444-90(1A)(c) Taxation (Interest on Overpayments and Early Payments) Act 1983 Bankruptcy Regulations 1996 6.02 TAR 1976 18(1) TAR 1976 18(3)
Case references	Turner Manufacturing Co. Pty. Ltd. v. Senes [1964] NSWR 692 Thompson v. Hudson (1871) 6 Ch App 320
File references	1-4JI4FZX

Related practice statements	PS LA 2011/4 PS LA 2011/16 PS LA 2011/21
Other references	CEI 2014/06/04 Respecting Clients Rights of Review (internal link only)
ATOlaw topic	Administration ~~ Other
Contact email	OperationalPolicyAssuranceandLawWorkManagement@ato.gov.au
Section	Operational Policy, Assurance and Law