PS LA 2011/21 - Offsetting of refunds and credits against taxation and other debts

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PS LA 2011/21
Offsetting of refunds and credits against taxation and other debts

This Law Administration Practice Statement provides guidance on the offsetting of refunds and credits, including the exercise of the discretion not to offset.

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.

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1. What is this practice statement about?

This practice statement outlines the circumstances in which credits and refunds will be offset against tax debts. It outlines the discretion available to the Commissioner not to offset and the factors that influence that decision.

Where an amount has been offset contrary to the principles outlined in this practice statement, and if the taxpayer requests us to do so, a refund will be provided to the taxpayer.

2. What is offsetting?

Offsetting is a term used when an amount owed to a taxpayer is applied or allocated in accordance with Division 3 of Part IIB of the *Taxation Administration Act 1953* (TAA) to reduce, in whole or in part, the taxpayers tax debt.

Offsetting can occur within an account, or between the accounts of a taxpayer. Division 3 of Part IIB of the TAA sets out how we must treat credits and running balance account (RBA) surpluses, being:

- Method 1 – allocate the credit to an RBA, or
- Method 2 – allocate the credit against a non-RBA debt.

3. Offsetting – general principles

As a general principle, we will offset credits against a tax debt. Some credits are subject to specific rules with regard to the manner in which they are offset, and these are outlined at Attachment A.

However, we have the discretion to refund rather than offset (see section 4 of this practice statement).

The *Public Governance, Performance and Accountability Rule 2014* (PGPA Rule) requires the Commissioner to pursue all debts unless it is uneconomical to do so, or the debt is irrecoverable at law. It may be considered 'uneconomical to pursue' a debt where the costs associated with offsetting amounts are excessive.

However, we will generally offset amounts against debts when:

- we have commenced legal recovery action
- the debt relates to the superannuation guarantee charge
- the credit entitlement and tax debt are located within the same account, for example, credit entitlements and debts notified on an activity statement will be offset against each other
- the credit entitlement and debt relate to the same tax type, even where these amounts are recorded on different accounts for the same taxpayer, for example, an income tax credit will be offset against an income tax debt, or
- other Commonwealth agencies (for example, the Department of Human Services) require the Commissioner to pay any residual refund towards non-tax debts. If we didn't, the entire refund would be paid to the relevant commonwealth agency, which is against the policy intent of the law.

4. The discretion to refund rather than offset

Subsection 8AAZL(3) of the TAA allows us the discretion not to offset and instead refund the amount to a taxpayer. This is limited to the following circumstances.

Where the amount owing is due but not yet payable

A credit will normally be offset against a debt that is due, but not yet payable where the credit and the debt due relate to the same tax type, are administered in the same account, or the debt is a BAS amount.

A credit will normally not be offset If the credit is of a different tax type to the debt due, unless the debt relates to BAS amounts or the taxpayer has a poor compliance record.

The credit would also be offset in cases where any residual refund is to be paid to the Child Support Registrar.

Where there is an arrangement to pay the debt by instalments and the taxpayer is complying with that arrangement

A credit will normally be offset against a tax debt that is subject to a payment arrangement, unless we did not tell the taxpayer that this would occur when we agreed to the arrangement. The effect of the offsets on the cash flow of the taxpayer should always be considered when arrangements are negotiated.

If an offset during the course of a payment arrangement does cause the taxpayer unexpected cash flow problems, they can apply to a temporary variation to that arrangement (see Law Administration Practice Statement PS LA 2011/20 *Payment and credit allocation*).

However, the credit would always be offset in cases where the debt relates to the superannuation guarantee charge or where any residual refund is to be paid to the Child Support Registrar.

Where we have agreed to defer recovery proceedings

We will generally not offset credits against a tax debt that is subject to a deferral of recovery action. A decision to defer recovery is a deliberate decision, and taxpayers will be advised if deferral has been granted.

However, if there is new evidence since the deferral was granted that there is an unreasonable risk to revenue, the credit will be offset.

The credit would also be offset in cases where any residual refund is to be paid to the Child Support Registrar.

5. Factors relevant to the discretion not to offset

The overriding principle in the application of the discretion is to adopt a fair and reasonable approach, balancing the collection of tax properly payable with the issues faced by taxpayers if an offsetting occurs.

You should also consider the impact on the wider community, including those taxpayers who have paid all their debts on time.

Your decision needs to be consistent with the commitments made in the Taxpayers' Charter.

Normal risk assessment processes apply, including review of the taxpayer's compliance history.

Accordingly, you should not exercise the discretion where you determine that:

- there is an unreasonable risk to revenue, for example, evidence that the taxpayer is dissipating assets
- the taxpayer is a promoter of schemes, or
- the taxpayer has a poor compliance history in meeting their tax obligations.

Particular circumstances are also discussed below.

Serious financial hardship

A taxpayer is in serious financial hardship when they cannot meet the basic necessities of life.

If the circumstances in which the discretion is available exist, and the taxpayer has shown that the offset will cause serious financial hardship, you should refund the credit subject to normal risk assessment processes, including a review of the taxpayer's compliance history.

Disputed tax debts

If the circumstances in which the discretion is available exist, you should not offset against disputed debts until the earlier of when the objection relating to that debt has been determined, or the taxpayer withdraws their objection.

If the debt is subject to an appeal and the taxpayer has entered into a 50/50 arrangement, you should also not offset any refund or credit against the remaining balance of the disputed tax, until the period of deferral under the arrangement has expired.

However, if the taxpayer has not entered a 50/50 arrangement in relation to a tax debt subject to an appeal, you should offset the refund or credit.

6. Where the taxpayer requests an offset of their credit against the taxation debt of another taxpayer

Sometimes, where they have no outstanding tax debts or other Commonwealth liabilities to offset, a taxpayer may wish to have their refund or credit offset against the tax debt of another taxpayer.

We are not required by law to do this. However, you should agree to their request if:

- there is little risk in doing so
- paying the refund in this manner is an efficient, effective, economical and ethical use of public resources for which the Commissioner is responsible[1]
- the offset satisfies the Commissioner's obligation to pay the refund the taxpayer is entitled to under Division 3A of Part IIB to the TAA.

The request must:

- be made by the taxpayer or an authorised representative of the entitled taxpayer
- provide a statement by the taxpayer or an authorised representative of the entitled taxpayer that they understand the refundable amount will be offset against a different taxpayer's tax debt
- state how much of the refundable amount is to be offset against the other taxpayer's debt, and
- provide sufficient details to enable identification of the taxpayer and the debt against which the entitled taxpayer wants to have the refundable amount offset.

Any offset we agree to will only be to the extent of the tax liability of the other taxpayer. Any remaining amount must be refunded to the taxpayer entitled at law to the refund.

Example

ABC Pty Ltd is a wholly owned subsidiary of XYZ Pty Ltd. The two companies are not grouped for any reporting purpose. ABC Pty Ltd lodges its quarter 3 activity statement which results in a $10,000 credit. ABC Pty Ltd also has an outstanding fringe benefits tax (FBT) debt of $1,500 that is due and payable. XYZ Pty Ltd has an outstanding income tax debt of $8,000.

Through a letter of informed consent, ABC Pty Ltd requests the Commissioner to offset its refund against XYZ Pty Ltd's income tax debt. Provided that the letter of informed consent contains all relevant information, the Commissioner may exercise his discretion to offset ABC Pty Ltd's BAS credit against XYZ Pty Ltd's income tax debt.

The Commissioner must first offset $1,500 of the credit to ABC Pty Ltd's FBT debt, leaving a balance of $8,500. If the discretion to offset $8,000 to XYZ Pty Ltd's income tax debt is exercised, the remaining credit of $500 must be refunded to ABC Pty Ltd.

[1] Section 15 of the *Public Governance, Performance and Accountability Act 2013* (PGPA Act).

Attachment A: Specific credits

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

PAYG credits

Where an entitlement to a credit arises in relation to PAYG instalments or PAYG withheld, that credit will be applied initially to:

- Compulsory repayment amounts arising under the *Higher Education Support Act 2003* (HESA), and
- Student financial supplement assessment debts.

Note: prior to 3 June 2010, priority was also given to higher education contribution assessment debts.

HESA payments

Where a taxpayer pays an amount to the Commonwealth under Division 151 of the HESA and the amount exceeds the total debts owed, the excess may be applied against the taxpayer's primary tax debts prior to being refunded.

FBT credits

An entitlement to a tax credit for FBT instalments payable, that arises when an assessment of the FBT is made, will be initially applied to the assessed tax for that FBT year.

Fuel tax credits

Business taxpayers

If an entitlement to a credit arises on an activity statement lodged by a business taxpayer (that is, the assessed net fuel amount is less than zero), this credit will initially be applied to any other liabilities notified in the same activity statement before being applied against other tax debts.

Non-business taxpayers

If an entitlement to a credit arises on a fuel tax return lodged by a non-business taxpayer on a fuel tax return (that is, the assessed net fuel amount is less than zero), this credit will be applied against other outstanding tax debts.

Grants and benefits administered under the *Product Grants and Benefits Administration Act 2000* (PGBAA)

Entitlements to product grants and benefits are not subject to the offsetting provisions contained within Division 3 of Part IIB of the TAA.

A product grant or benefit entitlement can be offset against a debt relating to an overpayment of a PGBAA entitlement[2] or a penalty imposed.[3]

We generally cannot offset PGBAA entitlements against other tax debts without the recipient's consent.

However, you may contact grant and benefit recipients to discuss offsetting these credits against their tax debts. If the recipient agrees to the offset, the credit will be applied against their tax debt. This agreement does not constitute a payment arrangement to pay the tax debt by instalments, it relates solely to an agreement to retain the credit.

Where the recipient enters into a suitable payment arrangement to pay off their outstanding tax debt, you should seek to include the entitlement offset as part of that arrangement, unless it is not practical to do so.

If a suitable payment arrangement cannot be reached because of prior arrangements that have been put in place in relation to the credits, for example, between the recipient of a grant and their supplier, the recipient may be given up to three months to make alternative arrangements so that a suitable payment arrangement can be reached which would include these credits.

Excise claims

Where a taxpayer is entitled to a credit or refund of an amount paid under the *Excise Act 1901,* that amount can be offset if the taxpayer has an outstanding tax liability at the time the credit amount is determined.[4]

The authority to offset these amounts exists because the Commissioner has general administration of the *Excise Act 1901* and any credits arising under that Act are treated in accordance with the Commissioner's general offsetting and refunding rules outlined in Part IIB of the TAA.

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[2] Section 24 of the PGBAA.
[3] Part 8 of the PGBAA.
[4] The authority to offset these amounts exists because the Commissioner has general administration of the *Excise Act 1901* and any credits arising under that Act are treated in accordance with the Commissioner's general offsetting and refunding rules outlined in Part IIB of the TAA.

Tax offsets

The table under subsection 63-10(1) of the *Income Tax Assessment Act 1997* (ITAA 1997) provides the order in which tax offsets are to be applied to an income tax liability for the relevant year. To the extent that an amount of a tax offset remains, the table also states what is to happen to it.

Unless specifically provided for in the table, the excess tax offset cannot be refunded, transferred to another entity or carried forward.

Excess franking credits

Certain taxpayers will be entitled to a refund of excess franking credits in relation to dividends paid on or after 1 July 2000. These credits can be offset against any tax debts owed.

However, we have the authority not to offset if the cost to do so would be prohibitive.[5] Sometimes it will be uneconomical to offset the credits against old tax debts owed by taxpayers who have not been required to be in the taxation system for some time, for example, certain retirees.

Therefore, taxpayers who have had no obligation (other than the outstanding debt) to be in the taxation system for over two years, will not have these credits offset unless the amount of both the credit and the debt are substantial.

This exception does not apply to superannuation guarantee charge debts, or child support debts. In the case of child support debts, the credit will be offset against any tax debt, regardless of size, before it is paid to the Child Support Registrar.

Where a refund of excess franking credit is offset contrary to this practice statement, we will refund the amount upon receipt of a request to do so from the taxpayer.

Baby bonus credits

Any credit attributable to the baby bonus can be offset against any tax debts owed.

However, sometimes it will be uneconomical to offset the credits against old tax debts owed by claimants who have not been required to be in the taxation system for some time.

Therefore, eligible claimants for the baby bonus who have had no obligation (other than the outstanding debt) to be in the taxation system for over two years, will not have the baby bonus credits offset unless the amount of both the baby bonus credit and the tax debt are substantial.

This exception does not apply to superannuation guarantee charge debts, or child support debts. In the case of child support debts, the credit will be offset against any tax debt, regardless of size, before it is paid to the Child Support Registrar.

Where a baby bonus credit is offset contrary to this practice statement, we will refund the amount upon receipt of a request from the taxpayer to do so.

Credits in relation to refunds of excess concessional superannuation contributions

For the 2011-12 and 2012-13 income years only, taxpayers whose superannuation contributions exceed their concessional cap by $10,000 or less are able to make a once only request to have the excess concessional (before-tax) contributions refunded and assessed at their marginal tax rate, rather than pay excess contributions tax.

In this circumstance, the taxpayer must authorise a voluntary release authority to enable their superannuation fund to remove the funds from their superannuation account and pay to the Commissioner the requested amount (which can be up to 85% of the excess amount originally contributed). This amount is then included by the Commissioner in the taxpayer's assessable income (usually by way of an amended assessment for the relevant year) and taxed at the taxpayer's relevant marginal tax rate.

When assessed on the returned amount the taxpayer is entitled to credits as follows:

- a credit for the contributions returned by the superannuation fund to the ATO, and
- a tax offset credit equivalent to the contributions tax paid (usually 15%) by the superannuation fund on the returned contribution.

These credits will first be applied to the assessed income tax (for the assessment that includes the relevant returned amount as income) and then, to the extent that the credits exceed the income tax and other amounts payable in that assessment, may be offset to other tax debts, then to other Commonwealth debts. The balance may then be refunded.

[5] Section 15 of the PGPA Act and section 11 of the PGPA Rule.

Other refundable tax offsets

Where a taxpayer is entitled to another type of 'refundable tax offset'[6] in a particular income year, any excess amount after the refundable tax offset will be applied to a taxpayer's income tax liability for that year, and any other tax liabilities outstanding at that time.

Transferable tax offsets

The excess of some tax offsets, for example the senior Australian tax offset and the child care tax offset, can be transferred by the taxpayer entitled to them to another taxpayer.[7]

Carry forward tax offsets

The excess of some tax offsets, for example a tax offset arising from a franking deficit tax liability, may also be carried forward to future income years.[8]

Family tax benefit

Provided there are no other tax debts to apply a credit against, an income tax refund can be applied, if the Secretary of the Department of Human Services requests, to any Family Assistance Office (FAO) debts.[9] A taxpayer can also give consent to apply their refund to reduce another person's, for example their spouse's, FAO debt.[10] Application to these debts will take priority over application to child support debts.

Equally, we may apply a family tax benefit credit (other than child care benefits) to any primary tax debts.[11]

Input tax credits

Input tax credits are set off against GST attributable to the same period. Where there is an excess (that is, the assessed net amount on the activity statement is less than zero), the credit will be applied to any other liabilities notified in the same activity statement before being applied against other tax debts.

[6] For example the 'no-TFN contribution income' tax offset, which applies when a superannuation fund member is taxed at 46.5% rather than 15% because they have not quoted their TFN, but subsequently do so within four years.
[7] Subsection 63-10(1) of the ITAA 1997.
[8] Subsection 63-10 of the ITAA 1997.
[9] Section 87 of *A New Tax System (Family Assistance) (Administration) Act 1999.*
[10] Section 93 of *A New Tax System (Family Assistance) (Administration) Act 1999.*
[11] Section 226 of *A New Tax System (Family Assistance) (Administration) Act 1999.*

GST groups

Where there is a GST group,[12] although the representative member is liable for all GST and fuel tax debts, all members of the group are jointly and severally liable to pay the group's GST and fuel tax debts. A GST group is included in the definition of an RBA group, and thus any credit amounts of a member will initially be applied against their own tax liabilities.[13] Any excess would then be allocated across the group, commencing with the member that has the oldest period tax debt for each tax type.

Joint and several liability does not apply to a member of a GST group if an Australian law has the effect of prohibiting that member from entering into any arrangement under which they become liable for another entity's debts – for example, some financial institutions. However, that member does remain liable for any amount payable under an indirect tax law (including a GST or fuel tax debt) by the representative member of the group, to the extent that the liability arises from its own acts or omission.

GST joint ventures

Where taxpayers have entered into a GST joint venture,[14] although the joint venture operator is liable for all GST and fuel tax debts, each GST joint venture participant is jointly and severally liable for the GST liabilities and fuel tax debts incurred by the joint venture. Any tax credit entitlements they have may be offset against any GST or fuel tax related debt incurred by the GST joint venture.

GST and PAYG withholding branches

Where taxpayers have elected to branch their business operations,[15] an available credit entitlement will usually not be offset between branches and the parent entity.

However, there is the option to do so if there are certain tax debts due (even where they are not yet payable) by any of the branches or the parent entity. Generally, credit entitlements of a branch will be applied initially against their own tax liabilities.

Consolidated income tax groups

The consolidated group regime does not enable the offsetting of one entity's credits against the debts of another entity except where both entities are members of a GST group for the purposes of Division 48 of the GST Act.

[12] Under Division 48 of the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act).
[13] Subsections 8AAZLA(1) and 8AAZLB(1) of the TAA.
[14] Under Division 51 of the GST Act.
[15] In accordance with the rules of Division 54 of the GST Act.

However, the law in relation to offsetting should be distinguished from the legislation that makes entities jointly and severally liable for a liability.

Liability to pay the income tax attributable to the activities of a consolidated group activities rests with the head company. If not paid by the due date, 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 may be avoided by the contributing members if, just before the due date, the particular group liability was covered by a valid tax sharing agreement (TSA). A member's joint and several liability or liability equal to the contribution amount under a TSA does not become due and payable until 14 days after the Commissioner gives the entity written notice.

Where members of a consolidated group are also members of a GST group and may therefore be subject to the RBA group offsetting provisions (see the previous discussion on GST groups). However, the legislative intent behind the introduction of the TSA regime is to be respected.

Therefore:

- if the head company is a member of a GST group, any refund or credit belonging to any other member of the GST group (who is not a subsidiary member of the consolidated group) may be offset against any of the head company's debts
- if the head company is a member of a GST group, any refund or credit belonging to any other member of the consolidated group that is not a member of the GST group will not be offset against any of the head company's debts
- if the head company is not a member of the GST group, offsetting other GST group members' refunds or credits against any of the head company's debts cannot occur
- if the head company is a member of a GST group, its refunds or credits may be offset against any liability of the other members of the GST group even if those companies are not members of the consolidated group, or
- if the head company and one or more subsidiary members of a consolidated group are also members of a GST group, a refund or credit of a subsidiary member will not be applied to any head company 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.

Where a head company's or subsidiary member's refund or credit amounts can be offset against another member's liability, generally these amounts will be applied initially against their own tax liabilities. If that member has no tax liabilities, the amount would then be allocated across the group commencing with the head company or subsidiary member that has the debts with the earliest due date for each tax type.

Bankruptcy

When debtors are discharged from bankruptcy, they are released from the debts that were provable in the bankruptcy. Therefore:

- until a bankrupt is discharged, any excess credits can be applied to reduce any liability (both pre and post-sequestration or bankruptcy).[16] The credit should firstly be applied to any post-sequestration debt, then to pre-sequestration debts.
- once a bankrupt has been discharged, the pre-sequestration debt is considered to be irrecoverable at law and is written off. Any excess credits arising after the bankrupt's discharge will be refunded, assuming there are no other debts.

The only exception to this is where the credit arises from an assessment for a pre-sequestration period (for example, an income year or tax period). This credit would be offset against the bankrupt's debt regardless of whether or not the bankrupt has been discharged.[17]

Personal insolvency agreements (Part X of the *Bankruptcy Act 1966*)

The execution of a personal insolvency agreement (PIA) may provide for the taxpayer to be released from certain debts,[18] but release will only occur when the terms of the PIA have been complied with. Therefore:

- if tax debts have been released by the PIA, any excess credits arising after that time will be refunded.
- if there is any tax debt which was due and payable at the date of execution of the PIA, and which has not been released, credits arising may be applied in reduction of the debt. Credits arising from a post-PIA period will be applied firstly to any post-PIA liabilities, then to pre-PIA debts (assuming that the PIA has not already operated to release the taxpayer from those debts).
- credits in relation to periods prior to the agreement will be offset even if the relevant assessment is made after the agreement.

[16] *Taylor v. Deputy Federal Commissioner of Taxation* (1987) 16 FCR 212; 87 ATC 4441 (1987) 18 ATR 715.
[17] Section 86 of the *Bankruptcy Act 1966*.
[18] Section 230 of the *Bankruptcy Act 1966.*

Debt agreements (Part IX of the *Bankruptcy Act 1966*)

Where a debt agreement exists:

- until the terms of an agreement have been completed, credits will be applied in reduction of the debts subject to that agreement.
- once the terms of the agreement have been fulfilled, credits can no longer be offset against the debts subject to that agreement.
- credits in relation to periods or years of income prior to the agreement can be offset even if the credit arises after the debtor has been released from the debts.

Composition or arrangement with creditors (Division 6 of Part IV of the *Bankruptcy Act 1966*)

A composition or arrangement with creditors is similar to a Personal Insolvency Arrangement, except that the taxpayer is released from their provable debts, and the bankruptcy annulled when a special resolution accepting the taxpayer's proposal is passed. Therefore, refunds cannot be offset against a tax debt subject to the composition or arrangement, unless the composition or arrangement itself is annulled.

Deed of company arrangement (Part 5.3A of the *Corporations Act 2001*)

The following applies when a deed of company arrangement is in place

- until the company is released from its provable debts, any excess credits can be applied to reduce any liability (both pre and post administration). The credit should firstly be applied to any post-administration debt, then to pre-administration debts.
- once the company is released from its debts, any excess credits arising after the bankrupt's discharge will be refunded, assuming there are no other post-administration debts.

The only exception to this is where the credit relates to a pre-administration period. This credit would be offset against pre-administration debts regardless of whether or not the company has been released from those debts.

Companies in liquidation

Credits due to a company in liquidation must first be applied against any debts of the company before a refund can be made.

Credits in respect of post-liquidation periods should first be applied against post-liquidation debts and then any other debts of the company.

Representatives of incapacitated entities

A GST or fuel tax credit due to a person in their capacity as a representative of an incapacitated entity cannot be offset against liabilities of the incapacitated entity.[19] Nor, if there is more than one representative acting in different capacities, can the credits of one be offset against the debts of another.

Where the GST or fuel tax credit due to an incapacitated entity arises:

- after the appointment of a representative – it will initially be offset against any post-appointment tax debts of the entity. Any remaining credit will then be offset against any pre-appointment tax debts (provided the entity has not been released from those debts).
- before the appointment of a representative – it will initially be offset against any pre-appointment tax debts of the entity. Any remaining credit will then be offset against any post-appointment tax debts.

Product grants and benefits and arrangements under the Bankruptcy and Corporations Acts

Grants and benefits payable under the PGBAA for post-insolvency periods cannot be applied against pre-insolvency debts.[20]

Grants and benefits payable under the PGBAA for pre-insolvency periods will be applied against pre-insolvency debts.[21]

In receiverships, however, grants and benefits payable under the PGBAA should be applied against any liabilities the entity has regardless of which period the grant or benefit and the liabilities relate. This is because the appointment of a receiver would not normally impact on the rights of unsecured creditors of the company, including a right of legal offset.

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

Interest payable, arising under the *Taxation (Interest on Overpayments and Early Payments) Act 1983*, will be initially allocated to the account to which it pertains, and then to any other tax debt.

[19] For the purposes of Division 58 of the GST Act, they are different entities.
[20] Because these grants and benefits do not fall within the definition of credit in section 8AAZA of the TAA.
[21] Using the set-off provisions in section 86 of the *Bankruptcy Act 1966* or section 553C of the *Corporations Act 2001*.

Credits arising from account adjustments

Where a credit arises from an account adjustment, it is to be applied against the account posting to which it pertains and then to reduce any amounts due and payable on the account to which it is posted.

Remainder credits

Where any credit remains after the initial offset of the specific credits outlined above, it is to be allocated to any other liability the taxpayer has to the Commonwealth that arises under an Act of which the Commissioner has the general administration.

Superannuation credits

Superannuation guarantee charge credits

Where SGC credits arise, they should be offset against any other liabilities of the employer to the Commonwealth before being refunded.

Because there is no specific provision allowing excess SGC credits to be refunded, they will be refunded in accordance with section 77 of the PGPA Act.

Superannuation contributions surcharge credits

Superannuation contributions surcharge credits may be offset against other surcharge liabilities of the provider or member before being refunded. Because there is no specific provision allowing excess SCS credits to be refunded, they will be refunded in accordance with section 77 of the PGPA Act.

As a matter of policy SCS credits may be offset against other surcharge liabilities of the provider or member before refunding any balance as required.

Superannuation holding accounts special account (SHASA), government co-contributions and unclaimed money credits

A credit relating to SHASA, government co-contribution or unclaimed money, cannot be offset against the person's tax debts.[22] Further, as these amounts are not subject to the offsetting provisions contained in the TAA, these amounts cannot be paid to the Child Support Registrar.

However, you may contact the relevant person and ask if the credit may be offset against the person's tax debts. This option may be provided for the convenience of the person entitled and would be solely at their discretion. If they agree, the credits can then be offset against the person's tax debts.

Where a superannuation provider has made a payment in accordance with the *Superannuation (Unclaimed Money and Lost Members) Act 1999* and the amount exceeded the amount payable, the excess may be refunded to the superannuation provider for the fund or to another fund that provides rights relating to the person equivalent to those provided by the fund who made the original payment where that fund no longer exists. These amounts cannot be offset against the superannuation provider's or person's tax debts.[23]

Offsetting future or later superannuation credits against existing superannuation debts

A person may have an existing superannuation debt and may be entitled to a later credit for the same superannuation product. For example, an employee may have an existing SGC debt due to a prior overpayment. Their employer then makes a later payment of SGC in relation to this employee. This later payment would then be available to allocate to the employee's superannuation fund or as a direct payment (as appropriate).

Where a later SGC, SHASA or unclaimed money credit becomes available, this cannot be offset against any existing debt that relates to that credit.

The only circumstance where the Commissioner may offset future entitlements against existing debts is in relation to the superannuation co-contribution.[24]

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[22] Because they do not fall within the definition of 'credit' as defined in section 8AAZA of the TAA.

[23] Sections 18A, 20K and 24J of the *Superannuation (Unclaimed Money and Lost Members) Act 1999*.

[24] Section 24 of the *Superannuation (Government Co-contribution for Low Income Earners) Act 2003.*