PS LA 2011/23 - Credit interest

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Practice Statement Law Administration

PS LA 2011/23

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Taxpayers can rely on this practice statement to provide them with protection from interest and penalties in the way explained below. 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 law administration 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.

SUBJECT: **Credit interest**

PURPOSE: **This practice statement discusses the credit interest regime administered by the Commissioner and details when interest is payable.**

TABLE OF CONTENTS **Paragraph**

BACKGROUND **1**

TERMS USED **6**

STATEMENT **7**

Basic concepts 7

EXPLANATION **11**

Interest on early payments 11

Interest on overpayments 20

Part IIB of the T(IOEP)A – interest on overpayments resulting from income tax assessments 21

Ordinary taxpayers 22

Full self-assessment taxpayers 29

Parts IIC, IID, IIE, IIF and IIG of the T(IOEP)A – interest on overpayments resulting from certain amendments 42

Application of Part III of the T(IOEP)A – interest on overpayments resulting from decision to which the T(IOEP)A applies 47

Application of Part IIIA of the T(IOEP)A – interest on overpayments resulting from certain remissions, refunds and credits 55

Delayed refund interest 59

Application of Part IIIAA of the T(IOEP)A – delayed refund interest on RBA surpluses 59

Entitlement to delayed refund interest after notification of BAS amount – section 12AA of the T(IOEP)A 60
When is the RBA interest day? 61
Entitlement to delayed refund interest for RBA surpluses after request for remission – section 12AB of the T(IOEP)A 66
Entitlement to delayed refund interest for RBA surpluses after request for refund – section 12AC of the T(IOEP)A 69
Tax treatment of interest payable under the T(IOEP)A 72
Entitlement to interest under Parts 2 and 5 of the Co-contributions Act 75
Tax treatment of interest payable under the Co-contributions Act 79
Entitlement to interest for excess concessional contributions 80
Refunded excess concessional contributions – section 292-425 of the ITAA 1997 80
Excess concessional contributions – section 96-55 of Schedule 1 to the TAA 84
Tax treatment of interest for refunded excess concessional contributions and excess concessional contributions 87
Entitlement to interest under sections 44 and 48 of the FHSA Act 89
Tax treatment of interest payable under the FHSA Act 95

BACKGROUND

1. This practice statement deals with the circumstances in which the Commissioner will be liable to pay an amount of interest to a taxpayer. In the majority of cases such interest is payable under the *Taxation (Interest on Overpayments and Early Payments) Act 1983* (T(IOEP)A).
2. Circumstances where interest is payable by the Commissioner include:
   - early payments of certain tax liabilities (interest on early payment)
   - particular overpayments of taxes (interest on overpayments)
   - delayed refunds of activity statement amount credits that have been allocated to a running balance account (RBA) (delayed refund interest)
   - certain amounts of tax on no-tax file number (no-TFN) contributions income of superannuation providers.
3. The entitlement to interest on early payments, overpayments, delayed refund interest and certain amounts of no-TFN contributions tax, is set out in the T(IOEP)A.
4. Interest payable by the Commissioner under the T(IOEP)A is:
   - assessable income when it is received (applied, credited or refunded)
   - payable at the base interest rate (within the meaning of section 8AAD of the *Taxation Administration Act 1953* (TAA))
   - calculated as simple interest, not compound interest[1]
   - calculated to the nearest cent (0.5 cent increased to nearest cent) and amounts less than 50 cents are not payable.[2]

[1] Refer to the decision in *Consolidated Fertilizers Ltd v. DCT* 92 ATC 4260; (1992) 23 ATR 305.
[2] Part IIIB of the T(IOEP)A.

5. Apart from interest that is payable under the T(IOEP)A, interest is also payable under the following Acts:

- Parts 2 and 5 of the *Superannuation (Government Co-contribution for Low Income Earners) Act 2003* (Co-contributions Act)
- section 292-425 of the *Income Tax Assessment Act 1997* (ITAA 1997) which relates to refunded excess concessional contributions for the financial years commencing 1 July 2011 and 1 July 2012.
- section 96-55 of Schedule 1 to the TAA which relates to excess concessional contributions for financial years commencing 1 July 2013 and later financial years
- sections 44 and 48 of the *First Home Savers Accounts Act 2008* (FHSA Act), and
- subsections 17(2AB), 17(2AC), 20H(2B), 20H(2AA), 24G(3A) and 24G(3B) of the *Superannuation (Unclaimed Money and Lost Members) Act 1999*.[3]

TERMS USED

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

BAS – is a business activity statement.

BAS amounts – are any debts or credits that arise directly under the BAS provisions

Credit – includes an amount that the Commissioner must pay to a taxpayer under a taxation law, whether or not described as a credit.

Decision to which this Act applies – is defined in subsection 3(1) of the T(IOEP)A. Decisions that fall within this definition include:[4]

- a decision of the Commissioner on an objection
- a decision of the Administrative Appeals Tribunal (AAT) on an objection
- a decision of the court in relation to an objection, or a decision of the AAT in relation to an objection
- a decision of the Commissioner to amend an income tax assessment reducing the tax liability, including where the taxpayer has requested the amendment
- a decision of the Commissioner to amend an assessment reducing the liability to amounts that were treated under Subdivision 154-D of the *Higher Education Support Act 2003* (HESA) as if they were income tax (this includes where the taxpayer has requested the amendment)
- a decision of the Commissioner to amend an assessment reducing the liability to amounts that were treated under section 12ZN of the *Student Assistance Act 1973* (SAA) as if they were income tax (this includes where the taxpayer has requested the amendment)
- a decision of the Commissioner to amend a fringe benefits tax assessment reducing the liability to tax (but not where a request has been made by or on behalf of the taxpayer)

[3] The provisions are not discussed further in this practice statement.
[4] In relation to assessments for the 1993–94 and later income years in respect to decisions made after 1 July 1994.

- a decision about foreign revenue claims made under Subdivision 263-A of Schedule 1 to the TAA
- a decision of the Commissioner to give a notice under subsection 282-18(4) of the *Private Health Insurance Act 2007*
- a decision of the Commissioner under section 18-130 of Schedule 1 to the TAA to reduce pay as you go (PAYG) withholding non-compliance tax in certain circumstances
- a decision of the Commissioner to amend a petroleum rent resource tax assessment reducing the liability to tax (but not where a request has been made by or on behalf of the taxpayer), and
- a decision of the Commissioner to amend a mineral rent resource tax assessment reducing the liability to tax (but not where a request has been made by or on behalf of the taxpayer).

Full self-assessment taxpayer – is defined in subsection 6(1) of the *Income Tax Assessment Act 1936* (ITAA 1936). It includes companies and trustees of superannuation funds, approved deposit funds and pooled superannuation trusts.

Income tax crediting amount – is defined in subsection 3(1) of the T(IOEPA)A. It includes PAYG credits and refundable tax offsets.

Ordinary taxpayers – means taxpayers who are not full self-assessment taxpayers and are not taxed as companies or superannuation funds.

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, general interest charge (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 – is defined in section 8AAZA of the TAA and means a balance on an RBA in favour of the taxpayer, where the primary tax debts allocated to the RBA are less than the payments and credits allocated to that RBA.

Relevant tax – The term 'relevant tax' is defined in section 3C of the T(IOEP)A. It includes:

- income tax (and other tax as defined in subsection 6(1) of the ITAA 1936)
- amounts payable to the Commissioner under Subdivision 16-A of Schedule 1 to the TAA (PAYG withholding amounts)
- interest under former section 170AA of the ITAA 1936 (in relation to the 1999–2000 and earlier income years)
- the GIC under section 16-80 and Subdivision 105-D of Schedule 1 to the TAA
- the shortfall interest charge under Division 280 of Schedule 1 to the TAA[5]
- PAYG withholding non-compliance tax (tax payable by directors of non-compliant companies in accordance with section 18-125 of Schedule 1 to the TAA)

[5] In relation to the 2004-05 and later income years.

- amounts that are treated under Subdivision 154-D of the HESA as if they were income tax
- amounts that are treated under section 12ZN of the SAA as if they were income tax
- amounts paid under section 282-18 of the *Private Health Insurance Act 2007*
- an amount payable to the Commissioner under Subdivision 263-A of Schedule 1 to the TAA (about foreign revenue claims)
- goods and services tax (GST)
- wine equalisation tax
- luxury car tax
- fringe benefits tax
- petroleum resource rent tax, and
- mineral rent resource tax.

Relevant tax does not include the following amounts:

- the GIC under section 5-15 of the ITAA 1997 (or former subsection 204(3) of the ITAA 1936)
- PAYG instalments, or
- penalties under Part 4-25 of Schedule 1 to the TAA, for example, shortfall penalties and penalties for failing to lodge on time in relation to the 2000-2001 and later income years.

STATEMENT

Basic concepts

7. Paragraph 8A(1)(a) of the T(IOEP)A provides that interest on early payments is payable only where a taxpayer makes a payment that is received by the Commissioner more than 14 days before the due date for payment of certain liabilities.[6]

8. Parts IIB, IIC to IIG, III and IIIA of the T(IOEP)A provide when interest on overpayment is generally payable and this includes when an overpayment has arisen from:

   - an income tax assessment
   - certain amended assessments of surcharge or an advanced instalment and interest on certain offsets relating to no-TFN contributions income of superannuation funds and retirement savings account (RSA) providers
   - decisions to which the T(IOEP)A applies
   - certain remissions, refunds and credits of particular taxes that occurred as a result of a request by a taxpayer.

9. Part IIIAA of the T(IOEP)A provides that delayed refund interest is generally payable in relation to an RBA established to account for BAS amounts if a refund that the Commissioner is required to give is not paid by the RBA interest day.[7]

[6] In relation to a liability pertaining to the 1993-94 and later income years where the payment occurs after 1 July 1994.
[7] In relation to RBA established from 1 July 2000.

10. Further detail of the circumstances when an amount of interest is payable by the Commissioner under the T(IOEP)A and other Acts is provided in the following paragraphs of this practice statement.

EXPLANATION

Interest on early payments

11. Interest on early payments is payable in relation to:

- income tax (including the Medicare levy and Medicare levy surcharge)
- shortfall interest charge under Division 280 of Schedule 1 to the TAA
- higher education contribution (HECS) assessment debt
- compulsory repayment amount
- student financial supplementary scheme (SFSS) assessment debt
- interest under section 102AAM of the ITAA 1936
- late lodgment penalty under section 163A of the ITAA 1936
- GIC for late lodgment under sections 163B of the ITAA 1936, and
- GIC applied in relation to debit amended assessments under former section 170AA of the ITAA 1936.

12. Early payment interest is limited to the early payment of the amount due and only for the relevant period provided for in the T(IOEP)A.

13. If the person is not a full self-assessment taxpayer, the calculation of interest begins from the later of the following:

(a) the day on which the payment is made, and/or

(b) the day on which the notice notifying the tax, debt, interest or instalment concerned is issued.

14. If the person is a full self-assessment taxpayer, the calculation of interest begins from the beginning of the day on which the payment is made.

15. For all taxpayers, the interest period will end on the earlier of the due date for payment or, in circumstances where the early payment is refunded before the due date, when the refund takes place.

16. Claims for interest on early payments should be made by the taxpayer or their agent either by a written request to the Commissioner or alternatively calculated and claimed via their next income tax return.

17. Interest on early payments can only be paid after the due date for payment of the tax paid early has lapsed and only after that tax amount has been established. If the payment is to any extent refunded before the due date, interest is not payable on the payment to that extent, in respect to the period after the day on which the refund takes place.

18. The Commissioner will provide written details to a taxpayer of the amount of early payment interest when the interest is paid. If the interest has been offset against any outstanding taxation debts, the taxpayer will also be advised in writing as to the nature and date of the offset.

19. There is no interest payable for early payments in circumstances where interest is also payable under Part IIIA of the T(IOEP)A in relation to a whole or part payment in respect of the whole or part period.

Interest on overpayments

20. Generally, the following parts of the T(IOEP)A deal with interest on overpayments:

T(IOEP)A	Type of overpayment
Part IIB	Overpayments resulting from income tax assessments.
Parts IIC, IID, IIE, IIF and IIG	Overpayments relating to certain amended assessments of surcharge or an advanced instalment and interest on certain offsets relating to no-TFN contributions income of superannuation funds and retirement savings account (RSA) providers.
Part III	Overpayments resulting from decisions to which the T(IOEP)A applies (for example objections, Tribunal appeals, court decisions, certain amendments).
Part IIIA	Overpayments resulting from certain remissions, refunds and credits of particular taxes (including income tax, general interest charge and shortfall interest charge).

Part IIB of the T(IOEP)A – interest on overpayments resulting from income tax assessments

21. Interest on overpayments may be payable as a result of the application of certain credits, known as income tax crediting amounts, to a taxpayer's account at the time of processing an original return or at some later time. Interest under this Part only applies in relation to income tax related liabilities.[8]

Ordinary taxpayers

22. For ordinary taxpayers, an entitlement to interest will arise under subsection 8E(1) of the T(IOEP)A where, on assessment:

- the income tax crediting amounts exceed the sum of their income tax and related liabilities (listed under subparagraphs 8E(1)(d)(i) to (v) of the T(IOEP)A) for the year of income, and
- the notice of assessment is issued more than 30 days after the day on which the taxpayer lodged the relevant income tax return.

The interest is calculated on the amount of the excess.

23. The liabilities under subparagraphs 8E(1)(d)(i) to (v) of the T(IOEP)A include:

- income tax payable for the year of income (after allowing any rebate, except a tax offset that is subject to the refundable tax offset rules, or deduction under subsection 100(2) of the ITAA 1936 and before allowing any crediting, applying or other payment) plus Medicare levy and any Medicare levy surcharge assessed on the taxable income (after adjustments)
- a HECS assessment debt or a compulsory repayment amount arising under the HESA, notified on the assessment
- a SFSS assessment debt arising under the *Social Security Act 1991* notified in the notice of assessment

[8] In relation to assessments for the 1993-1994 and later income years where the crediting takes place on or after 1 July 1994.

- a liability under section 282-18 of the *Private Health Insurance Act 2007*, payable to the person immediately before the post-notice crediting, and
- interest for the year of income payable under section 102AAM of the ITAA 1936 (distributions from certain non-resident trust estates).

24. Interest may also be payable to ordinary taxpayers under subsection 8E(2) of the T(IOEP)A, where an income tax crediting amount is not credited, applied or refunded until after the income tax notice of assessment is issued (this is called a 'post-notice crediting'). Where there is a post-notice crediting, the income tax crediting amounts must exceed the sum of the amounts listed in subparagraphs 8E(2)(d)(i) to (v) of the T(IOEP)A for there to be an entitlement to interest. The amounts that are listed in subparagraphs 8E(2)(d)(i) to (v) are:

- income tax payable for the year of income as reduced by any rebate, deduction under subsection 100(2) of the ITAA 1936, crediting, applying or other payment made before the post-notice crediting
- a HECS assessment debt or a compulsory repayment amount arising under the HESA, notified on the assessment, that is payable immediately before the post-notice crediting
- an SFSS assessment debt arising under the *Social Security Act 1991,* notified on the assessment that is payable immediately before the post-notice crediting
- a liability under section 282-18 of the *Private Health Insurance Act 2007*, payable to the person immediately before the post-notice crediting, and
- interest for the year of income payable under section 102AAM of the ITAA 1936 (distributions from certain non-resident trust estates) immediately before the post-notice crediting.

The interest is calculated on the amount of the excess.

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

Time of credit	**Start date for interest calculation**	**End date for interest calculation**
On original assessment (notice crediting) Subsection 8F(1) of the T(IOEP)A	Beginning of the 30th day after the day on which the taxpayer furnishes the return	End of the day on which the notice of assessment is issued
After original assessment has issued (post-notice crediting) Subsection 8F(2) of the T(IOEP)A	Beginning of the day on which the assessment is issued	End of the day on which the post-notice crediting occurs

26. Where the taxpayer has made a payment in anticipation of an income tax or related liability after the notice of assessment has issued and before a post-notice crediting, interest is payable on the amount of the excess income tax crediting amounts that are attributable to the payment from the beginning of the day the payment was made until the end of the day on which the post-notice crediting occurs. Interest on the remainder of the excess credits that are attributable to the post-notice crediting is calculated as described in the table above.

27. Where multiple payments have been made after the notice of assessment has issued and before a post-notice crediting, the excess is attributable to a particular payment (to the extent that it would be set off against that payment) by setting off in the reverse order that the payments were made.

28. Interest is not payable on a payment if it attracts interest under Part III of the T(IOEP)A or it has already been taken into account in a previous application of Part IIB.

Full self-assessment taxpayers

29. In relation to full self-assessment taxpayers, subsection 8G(1) of the T(IOEP)A provides that interest will be payable where:

- the taxpayer lodges an income tax return
- the income tax crediting amounts exceed the sum of income tax payable (after allowing any rebate, except a tax offset that is subject to the refundable tax offset rules, or deduction under subsection 100(2) of the ITAA 1936 and before allowing any crediting, applying or other payment) and interest payable under section 102AAM of the ITAA 1936 for the year of income, and
- the 'first crediting' takes place after a specified date.

The interest is calculated on the amount of the excess credit that remains after performing the calculation taking into account the amounts referred to in the second bullet point of this paragraph.

30. A full self-assessment taxpayer will be entitled to interest in relation to the circumstances in paragraph 29 of this practice statement if:

- they lodge an income tax return 30 days or more before the due date for payment of its assessed tax, and the first crediting occurs 30 days or more after the day on which the return was lodged, or
- they lodge an income tax return less than 30 days before the due date for payment of their assessed tax (including after the due date), and the first crediting occurs after the due date for payment of the assessed tax.

31. Subsection 8G(2) of the T(IOEP)A provides that interest will be payable in relation to full self-assessment taxpayers, where:

- after the 'first crediting' there is a 'later crediting' of an income tax crediting amount against the full self-assessment taxpayer's income tax liabilities for the year, and
- the sum of the later income tax crediting amounts exceeds the sum of the following amounts:
  - income tax payable for the year of income as reduced by any rebate, deduction under subsection 100(2) of the ITAA 1936, crediting, applying or other payment made before the later crediting, and
  - interest for the year of income payable under section 102AAM of the ITAA 1936 immediately before the later crediting.

The interest is calculated on the amount of the excess.

32. The period for which interest is applied to a full self-assessment taxpayer on the excess amount under Part IIB of the T(IOEP)A, in relation to 'first crediting' is from the earlier of:

- the 30th day after the day on which the full self-assessment taxpayer furnishes the return of income for the year of income, or
- the due date for payment of the assessed tax,

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

33. The period for which interest is applied to a full self-assessment taxpayer on the excess amount under Part IIB of the T(IOEP)A in relation to a 'later crediting', is from the beginning of the due date for payment of assessed tax until the end of the day on which the 'later crediting' occurs.

34. Where the full self-assessment taxpayer has made a payment towards an income tax or related liability after the 'first crediting' and before the 'later crediting', interest is payable on the amount of the excess income tax crediting amounts that are attributable to the payment from the beginning of the day the payment was made until the end of the day on which the 'later crediting' occurs.

35. Where multiple payments have been made after the 'first crediting' and before a 'later crediting', the excess is attributable to a particular payment (to the extent that it would be set off against that payment) by setting off in the reverse order that the payments were made.

36. The term 'first crediting' is to be interpreted as meaning the date that the Commissioner first applies or refunds the excess income tax crediting amounts in relation to the income tax payable for the year of income (being a date after the full self-assessment taxpayer furnishes the income tax return).

37. The term 'later crediting' is to be interpreted as meaning the date (after the 'first crediting') that the Commissioner next applies or refunds excess income tax crediting amounts in relation to the income tax payable for the year of income.

38. The term 'applies' as it relates to the date of 'first crediting' (subject to paragraph 40 of this practice statement) or 'later crediting' means the effective date of the transaction representing the partial or full offset of the excess income tax crediting amounts against an outstanding tax debt of the full self-assessment taxpayer.

39. The term 'refunds' as it relates to the date of 'first crediting' (subject to paragraph 40 of this practice statement) or 'later crediting' means the effective date that the refund of the excess income tax crediting amounts is actually issued to the full self-assessment taxpayer (for example, the date that the refund is paid by electronic funds transfer into the full self-assessment taxpayer's bank account or the date that the cheque is sent by post to the full self-assessment taxpayer).

40. Notwithstanding the information provided in paragraphs 38 and 39 of this practice statement, under no circumstances should the effective date of the offset or the refund in relation to 'first crediting' be earlier than the effective date of the underlying credit entitlement. That credit entitlement is the deemed issue date of the notice of assessment, being the lodgment date of the income tax return.

41. In circumstances where there is both a partial offset and a residual refund in either 'first crediting' or 'later crediting' situations there will be two interest calculations (unless the partial offset and residual refund occur at the same time). One calculation will be based on the offset amount with the end date being the effective date of the offset transaction and the other calculation will be based on the residual refund amount with the effective date being the date the residual refund is actually issued to the full self-assessment taxpayer.

Parts IIC, IID, IIE, IIF and IIG of the T(IOEP)A – interest on overpayments resulting from certain amendments

42. Interest on overpayments is payable under Parts IIC, IID, IIE and IIF of the T(IOEP)A where an amount of surcharge or an advance instalment is overpaid following certain amendments to assessments under the:

- *Superannuation Contributions Tax (Assessment and Collection) Act 1997*
- *Termination Payments Tax (Assessment and Collection) Act 1997*
- *Superannuation Contributions Tax (Members of Constitutionally Protected Superannuation Funds) Assessment and Collection Act 1997*.

43. Interest is payable under Parts IIC, IID, IIE, IIF and IIG of the T(IOEP)A on the overpaid amount starting from the later of:

- the day on which the amount of the surcharge or advance instalment was paid, or
- the day by which the amount of the surcharge or advance instalment was required to be paid,

and ending on the day on which the assessment was amended.

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

45. Interest will be payable where:

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

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

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

47. Interest on overpayments is payable under Part III of the T(IOEP)A where an amount of 'relevant tax' is found to have been overpaid as a result of a 'decision to which this Act applies'.[9] The taxpayer is entitled to interest only on the overpaid amount.[10] Generally, overpayments that arise from an amended assessment that reduces the taxpayer's liability to tax following a decision of the Commissioner, AAT or a court decision in relation to an objection under Part IVC of the TAA, will give rise to an entitlement to interest on overpayment.

48. Interest entitlements pursuant to Part III of the T(IOEP)A are payable on the overpaid amount for the period starting from the later of:

- the day on which the notice of assessment (or deemed notice of assessment), determination or decision in relation to which the 'decision to which this Act applies' was issued, and
- the day on which the amount of relevant tax was paid,

and ending on the day on which the amount of overpaid relevant tax is refunded or applied.

49. Where an amount of relevant tax has been paid in instalments and as a result of a decision to which this Act applies, only part of the relevant tax is overpaid, the amount so refunded or applied is to be attributed to the instalments in the reverse order to which the instalments were paid

50. The term 'applied' (subject to paragraph 52 of this practice statement) means the effective date of the transaction representing the partial or full offset of the overpaid relevant tax against an outstanding tax debt of the taxpayer.

51. The term 'refunded' (subject to paragraph 52 of this practice statement) means the effective date that the refund of the overpaid relevant tax is actually issued to the taxpayer (for example, the date that the refund is paid by electronic funds transfer into the taxpayer's bank account or the date that the cheque is sent by post to the taxpayer).

52. Notwithstanding the information provided in paragraphs 50 and 51 of this practice statement, where the overpaid relevant tax is the result of an amended assessment, under no circumstances should the effective date of the offset or the refund be earlier than the date that the notice of amended assessment is issued.

53. In circumstances where there is both a partial offset and an income tax crediting residual refund there will be two interest calculations (unless the partial offset and residual refund occur at the same time). One calculation will be based on the offset amount with the end date being the effective date of the offset transaction and the other calculation will be based on the residual refund amount with the effective date being the date the residual refund is actually issued to the taxpayer.

54. Where the decision to which this Act applies is a decision by the Commissioner, AAT or court in regard to indirect tax or assessed GST[11] an entitlement to interest may arise under either Part III (interest on overpayments) or Part IIIAA of the T(IOEP)A (delayed refund interest) but not both. That is, there is no double entitlement to interest. However, in accordance with the underlying intent of the T(IOEP)A, the taxpayer should receive whichever amount provides the greatest benefit.

[9] Refer to paragraph 6 of this practice statement for an explanation of the terms used in this section.
[10] Refer to *Charara v. Federal Commissioner of Taxation* [2009] NSWSC 730; (2009) 74 ATR 1.
[11] Items 145 and 155 of the table of relevant taxes in section 3C of the T(IOEP)A.

Application of Part IIIA of the T(IOEP)A – interest on overpayments resulting from certain remissions, refunds and credits

55. Part IIIA of the T(IOEP)A provides for an entitlement to interest on overpayments where the Commissioner, as a result of a request by a taxpayer:

- remits under section 8AAG of the TAA, certain amounts of the GIC that have been paid (for example, the GIC under former subsection 204(3) incurred in relation to unpaid assessed income tax liabilities)[12]
- remits, under section 280-160 of Schedule 1 to the TAA, the whole or part of an amount that has been paid to the Commissioner in respect of shortfall interest charge payable under Division 280 in that Schedule
- refunds the whole or part of a payment made by a taxpayer on account of assessed income tax and certain related liabilities (for example, a compulsory repayment amount payable under section 154-1 of the HESA), and

the refund, crediting or remission takes place more than 30 days after the day on which the request is made.

56. Where an amount of the GIC that has been paid is remitted, an entitlement to interest may arise under either Part IIIA (interest on overpayments) or Part IIIAA of the T(IOEP)A (delayed refund interest) but not both. That is, there is no double entitlement to interest in relation to the remission of an amount of the general interest charge.

57. Interest on overpayments under Part IIIA of the T(IOEP)A is calculated on the amount remitted, refunded or credited from the beginning of the 30th day after the day on which the request was made and up until the end of the effective day on which the remission, refund or crediting takes place.

58. If a taxpayer makes a payment of income tax before the day they lodge their income tax return, the return will be considered a request for refund of the overpaid amount, made on the day of lodgement. There will be an entitlement to interest if the refund takes place more than 30 days after the request, regardless of whether the payment and lodgement occurred before, on, or after the payment and lodgement due dates. The amount refunded may include other amounts which are not overpaid income tax – these are not eligible for payment of interest. Interest is limited to the amount overpaid as determined by the income tax assessment.

[12] A full list is provided under subparagraph 12A(1)(a)(i) of the T(IOEP)A.

Delayed refund interest

Application of Part IIIAA of the T(IOEP)A – delayed refund interest on RBA surpluses

59. Delayed refund interest is generally payable in relation to a running balance account (RBA) established to account for BAS amounts if a refund that the Commissioner is required to give is not paid by the RBA interest day.[13] However, delayed refund interest is not payable where a notification that is required for the refund has not been given or is inaccurate,[14] or there is a need to obtain further information. For example, a notification under any of the BAS provisions or a further/fuller GST return[15] that the taxpayer is required to give to the Commissioner.

Entitlement to delayed refund interest after notification of BAS amount – section 12AA of the T(IOEP)A

60. Delayed refund interest payable under section 12AA of the T(IOEP)A where:

    (a) the Commissioner has allocated a BAS amount to an RBA of the taxpayer and an RBA surplus arises, and

    (b) under subsection 8AAZLF(1) of the TAA the Commissioner is required to refund the whole or part of that surplus, and

    (c) the refund takes place after the RBA interest day.

When is the RBA interest day?

61. The RBA interest day as it relates to section 12AA of the T(IOEP)A means the 14th day after the latest of the following days:

    (a) the day on which the surplus arises

    (b) the day on which the taxpayer has given a notification to the Commissioner that is required for the refund under 8AAZLG[16] of the TAA and that is accurate so far as it relates to the refund

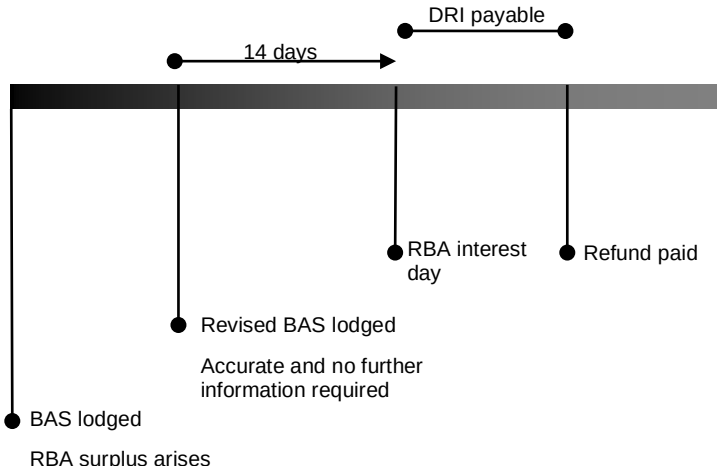
    (c) if subsection 8AAZLH(3)[17] of the TAA does not apply, the day on which the taxpayer nominates a financial institution account.

62. The RBA surplus will generally arise on the day that the taxpayer gives the Commissioner notification in the approved form of their credit entitlement for a particular tax period.[18] This would generally be when the taxpayer lodges their activity statement or fuel tax return. In such cases, the RBA interest day would be 14 days after the lodgment received date.

[13] In relation to RBA established from 1 July 2000.
[14] An inaccurate notification would be one where the taxpayers credit entitlement claimed in the BAS lodgment does not substantially match their actual entitlement that is ultimately refunded.
[15] Further or fuller GST return is described in section 31-20 of *A New Tax System (Goods and Services Tax) Act 1999* (GST Act). The approved form for a further or fuller GST return may require information to be provided relating to the tax period to which the return relates, one or more preceding tax periods or both.
[16] This is a notification that affects or may affect the amount of the refund and that is required to be given under any of the BAS provisions as defined in section 995-1 of the ITAA 1997.
[17] This subsection gives the Commissioner discretion to direct that certain refunds be paid in a different way.
[18] Subsequent to 1 July 2012 this is a deemed assessment and deemed notice of assessment. See sections 155-15 and 155-40 of Schedule 1 to the TAA.

63. In certain limited circumstances, the day on which the RBA surplus arises may be a day prior to when a notification required for the refund is given to the Commissioner. For example, if a taxpayer lodges a revised activity statement/fuel tax return that results in a credit for a particular tax period, the RBA surplus would retrospectively arise on the original lodgement date as the taxpayer was in effect entitled to the credit on that date. In such cases, the RBA interest day would be 14 days after the day that the revised activity statement/fuel tax return is given (in the approved form).[19]

This day is later than the day on which the surplus arises and will therefore be the RBA interest day. This can be illustrated as follows:



64. The Commissioner will not pay delayed refund interest where a notification that affects or may affect the amount that is refunded has not been given, is inaccurate[20] or there is a need to obtain further information, for example where:

- a taxpayer has not given the Commissioner a notification that the taxpayer is required to give the Commissioner under any of the BAS provisions (for example, where the taxpayer has outstanding activity statements or where the Commissioner has requested further or fuller GST returns)
- an activity statement is lodged and does not disclose an amount against all labels on the statement where a taxpayer has an expected liability for that period
- a taxpayer makes an error on the activity statement (for example, arithmetic error) and it is necessary to contact the taxpayer to obtain other information to process the activity statement, or
- a taxpayer has not nominated an account at a financial institution into which the refund should be paid (unless the Commissioner has exercised the discretion provided in subsection 8AAZLH(3) of the TAA).

65. In the situations outlined above, the RBA interest day will be 14 days after the day the taxpayer provides the relevant information or notification/return to the Commissioner. In addition, the notification that is provided must be in the approved form and must be accurate so far as it relates to the actual amount to be refunded.

[19] Section 388-50 of Schedule 1 to the TAA.
[20] An inaccurate notification would be one where the taxpayers credit entitlement claimed in the BAS lodgment does not substantially match their actual entitlement that is ultimately refunded.

Entitlement to delayed refund interest for RBA surpluses after request for remission – section 12AB of the T(IOEP)A

66. Delayed refund interest is also payable in accordance with section 12AB of the T(IOEP)A where:

    (a) the Commissioner has allocated a BAS amount to an RBA of a taxpayer

    (b) the taxpayer requests a remission of a penalty that has been notified by the Commissioner, and

    (c) as a result of the remission of penalty, an RBA surplus arises that the Commissioner is required to refund under subsection 8AAZLF(1) of the TAA, and the surplus is not refunded by the RBA interest day.

67. The RBA interest day as it relates to section 12AB of the T(IOEP)A, means the 14th day after the latest of the following days:

    (a) the day on which the request for remission is received

    (b) the day on which the taxpayer has given a notification to the Commissioner that is required for the refund under section 8AAZLG of the TAA and that is accurate as far as it relates to the refund

    (c) if subsection 8AAZLH(3) of the TAA does not apply, the day on which the taxpayer nominates a financial institution account.

68. Interest will be payable in these circumstances for the interest period on the basis detailed in paragraph 70 of this practice statement.

Entitlement to delayed refund interest for RBA surpluses after request for refund – section 12AC of the T(IOEP)A

69. Delayed refund interest is also payable in accordance with section 12AC of the T(IOEP)A where:

    (a) the Commissioner has allocated a payment to an RBA of a taxpayer

    (b) the Commissioner has allocated or intends to allocate a BAS amount to that RBA, and

    (c) the taxpayer requests a refund of an RBA surplus that has arisen as a result of a voluntary payment and that the Commissioner is required to refund under subsection 8AAZLF(2) of the TAA, and the surplus is not refunded by the RBA interest day.

70. The RBA interest day as it relates to section 12AC of the T(IOEP)A means the 14th day after the latest of the following days:

    (a) the day on which the request for refund of the RBA surplus resulting from the voluntary payment is received

    (b) the day on which the taxpayer has given a notification to the Commissioner that is required for the refund under 8AAZLG of the TAA and that is accurate as far as it relates to the refund

    (c) if subsection 8AAZLH(3) of the TAA does not apply, the day on which the taxpayer nominates a financial institution account.

71. Interest is payable on the amount of the RBA surplus which is required to be refunded under section 8AAZLF of the TAA for the period from the end of the RBA interest day (that is, the beginning of the next day) until the end of the effective day on which the refund is actually issued to the taxpayer.

Tax treatment of interest payable under the T(IOEP)A

72. Interest payable by the Commissioner under the T(IOEP)A is assessable income when it is received (applied, credited or refunded).[21]

73. Generally, if an amount of interest is to be paid to a taxpayer that has an overseas address according to ATO records, or if the Commissioner is authorised to pay the interest at a place outside of Australia, 10% of the interest is withheld under section 12-245 of Schedule 1 to the TAA.

74. Interest payable under the T(IOEP)A is also a 'credit' for the purposes of Part IIB of the TAA. Accordingly, the Commissioner is required under Division 3 of Part IIB to the TAA to apply an amount of interest payable to a taxpayer against any amount due to the Commonwealth directly arising under a taxation law, including any such amount that is due but not yet payable.

Entitlement to interest under Parts 2 and 5 of the Co-contributions Act

75. A person will be entitled to a payment of interest by the Commissioner, under section 12 of the Co-contributions Act, where the Commissioner:

- does not make a payment of a person's co-contribution entitlement before the relevant payment date,[22] or
- makes a payment which is less than the person's co-contribution entitlement **and** does not pay this amount by the relevant payment date.[23]

76. Additionally, if by an administrative error the Commissioner has underpaid the amount of co-contribution, the person will be entitled to interest on the underpaid amount.[24]

77. Interest is payable:

- on the unpaid amount of the Government co-contribution (or payment shortfall) that remains unpaid after the payment date
- for the period from the payment date for the Government co-contribution until the day on which the Commissioner first pays an amount in satisfaction of that co-contribution.

78. The payment date is the day 60 days after the Commissioner has received all of the information, required by the Co-Contributions Act or requested by the Commissioner under the Act, necessary to make a determination that a Government co-contribution is payable and to whom the payment is to be directed.[25]

Tax treatment of interest payable under the Co-contributions Act

79. The interest that is payable under section 12 of the Co-contributions Act forms part of the actual government co-contribution. Therefore, it is treated for all purposes (for example, taxation purposes) in the same manner as the government co-contribution. The government co-contribution is not assessable income in the hands of the superannuation entity or the individual (sections 295-170 and 307-135 of the ITAA 1997).

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[21] Section 15-35 of the ITAA 1997.
[22] Section 12 of the Co-Contributions Act.
[23] Section 21 of the Co-Contributions Act.
[24] Section 22 of the Co-Contributions Act.
[25] The method for identifying the payment date is contained in regulation 7 of the *Superannuation (Government Co-Contributions for Low Income Earners) Regulations 2004*.

Entitlement to interest for excess concessional contributions

Refunded excess concessional contributions – section 292-425 of the ITAA 1997

80. The entitlement to interest for refunded excess concessional contributions is set out in section 292-425 of the ITAA 1997 and applies to the financial years beginning on 1 July 2011 and 1 July 2012.

81. A person will be entitled to interest for refunded excess concessional contributions where:

    (a) the Commissioner issues a release authority to a superannuation provider for refunded excess concessional contributions in accordance with section 292-420 of the ITAA 1997

    (b) the superannuation provider pays the amount detailed in the release authority to the Commissioner

    (c) the person is entitled to a credit for that amount as mentioned in subsection 292-420(8) of the ITAA 1997

    (d) all or part of the credit is required to be refunded in accordance with Division 3A of Part IIB of the TAA, and

    (e) the Commissioner does not refund the required amount within 60 days of receiving the amount from the superannuation provider.

82. The interest that is to be calculated is based upon the sum of the following amounts:

    (a) the amount of the credit that is required to be refunded in accordance with paragraph 80 of this practice statement, and

    (b) the amount of any tax offset to which the person is entitled under paragraph 292-467(2)(b) of the ITAA 1997 for the excess concessional contributions to which the release authority relates, that is required to be refunded under Division 3A of Part IIB of the TAA.

83. Interest is calculated on a daily basis utilising the base interest rate[26] that applies for each relevant day, and the interest period is determined as follows:

    (a) beginning 60 days after the day the Commissioner receives the amount detailed in the release authority, and

    (b) ending on the effective day that the Commissioner actually refunds the amount to the relevant person or the effective day that the relevant amount is applied/offset against an outstanding taxation liability of the person.

Excess concessional contributions – section 96-55 of Schedule 1 to the TAA

84. The entitlement to interest for excess concessional contributions is set out in section 96-55 of Schedule 1 to the TAA and applies to the income years beginning on 1 July 2013 and later income tax years.

85. A person will be entitled to interest for excess concessional contributions where:

    (a) the Commissioner issues a release authority to a superannuation provider for excess concessional contributions in accordance with section 96-10 of Schedule 1 to the TAA

    (b) the superannuation provider pays the amount detailed in the release authority to the Commissioner

    (c) the person is entitled to a credit for that amount as mentioned in section 96-50 of Schedule 1 to the TAA

[26] Refer to subsection 8AAD(2) of the TAA.

(d) all or part of the credit is required to be refunded in accordance with Division 3A of Part IIB of the TAA, and

(e) the Commissioner does not refund the required amount within 60 days of receiving the amount from the superannuation provider.

86. Interest is calculated on a daily basis utilising the base interest rate that applies for each relevant day and the interest period is determined as follows:

(a) beginning 60 days after the day the Commissioner receives the amount detailed in the release authority, and

(b) ending on the effective day that the Commissioner actually refunds the amount to the relevant person or the effective day that the relevant amount is applied/offset against an outstanding taxation liability of the person.

Tax treatment of interest for refunded excess concessional contributions and excess concessional contributions

87. interest payable under section 292-425 of the ITAA 1997 and section 96-55 of Schedule 1 to the TAA is assessable income at the time that it is received (applied, credited or refunded).

88. Interest payable is also a 'credit' for the purposes of Part IIB of the TAA. Accordingly, the Commissioner is required under Division 3 of Part IIB of the TAA to apply an amount of interest payable to a taxpayer against any amount due to the Commonwealth directly arising under a taxation law, including any such amount not yet payable.

Entitlement to interest under sections 44 and 48 of the FHSA Act

89. A person is entitled to interest under section 44 of the FHSA Act where the Commissioner pays none of the Government FHSA contribution on or before the last day (payment date) of the period specified in subsection 42(2) of the FHSA Act. The Government FHSA contribution is increased by the amount of interest that is payable to the person.

90. The period specified in subsection 42(2) of the FHSA Act starts on the later of the following days:

(a) the day on which the income tax return is lodged for the person, or the notice is given in accordance with section 37 of the FHSA Act for the person, as the case requires for the income year corresponding to the financial year, or

(b) the day on which the statement (relating to personal FHSA contributions) for the person for the financial year is given to the Commissioner under section 391-5 of Schedule 1 to the TAA,

and ends 60 days later.

91. The interest is calculated on the amount of the Government FHSA contribution on a daily basis at the base interest rate for the period beginning from the payment date and ending on the day on which the Commissioner first pays an amount in satisfaction of the Government FHSA contribution.

92. A person is also entitled to interest under section 48 of the FHSA Act if the Commissioner does not pay any underpaid amount in full, on or before the last day (payment date) of the period for the underpaid amount, as detailed in subsection 46(6) of the FHSA Act. The Government FHSA contribution is increased by the amount of interest that is payable to the person.

93. The period specified in subsection 46(6) of the FHSA Act is identical to the period specified in subsection 42(2) of the FHSA Act, which is outlined in paragraph 89 of this practice statement.

94. The interest is calculated on a daily basis at the base interest rate on the underpaid amount of the Government FHSA contribution that remains unpaid on the payment date, for the period beginning from the payment date and ending on the day on which the underpaid amount is paid in full.

Tax treatment of interest payable under the FHSA Act

95. The interest that is payable under sections 44 and 48 of the FHSA Act forms part of the actual government FHSA contribution and therefore is treated for all purposes in the same manner (for example, for taxation purposes). The government FHSA contribution is not assessable income and is not exempt income as detailed in subsection 345-50(3) of the ITAA 1997.

Amendment history

Date of amendment	Part	Comment
23 January 2015	Various	Revised content and formatting to meet ATO *Style guide* requirements and to improve readability, for example, moved text, added headings.
	Paragraph 62	Diagram included to assist in explaining the RBA interest day in the circumstance where RBA surplus arises prior to when notification is given.
	Paragraphs 80 to 88	New information on the entitlement to interest for: • Excess concessional contributions under section 96-55 of Schedule 1 to the TAA • Refunded excess concessional contributions under section 292-425 of the ITAA 1997
	Paragraphs 89 to 94	New information on the entitlement to interest under the *First Home Savers Accounts Act 2008.*
	References	Revised references to cover changes in content.
15 August 2011	Paragraph 42 (including footnote 15)	Example updated to reflect repealed legislation (Part VII of the ITAA 1936) and refer to section 154-1 of the *Higher Education Support Act 2003*. Footnote 15 omitted.
	References	Inserted reference to *Higher Education Support Act 2003*

Subject references	Delayed refund interest Interest for early payment Interest for overpayment Interest on overpayments Refunds Tax administration Tax assessments
ATOLaw topic	Administration ~~ ATO interest ~~ Interest on early and over payments
Legislative references	T(IOEP)A T(IOEP)A Pt IIB T(IOEP)A Pt IIC T(IOEP)A Pt IID T(IOEP)A Pt IIE T(IOEP)A Pt IIF T(IOEP)A Pt IIG T(IOEP)A Pt III T(IOEP)A Pt IIIA T(IOEP)A Pt IIIAA T(IOEP)A Pt IIIB T(IOEP)A 3(1) T(IOEP)A 3C T(IOEP)A 8A(1)(a) T(IOEP)A 8E(1) T(IOEP)A 8E(1)(d)(i) T(IOEP)A 8E(1)(d)(ii) T(IOEP)A 8E(1)(d)(iii) T(IOEP)A 8E(1)(d)(iv) T(IOEP)A 8E(1)(d)(v) T(IOEP)A 8E(2)(d)(i) T(IOEP)A 8E(2)(d)(ii) T(IOEP)A 8E(2)(d)(iii) T(IOEP)A 8E(2)(d)(iv) T(IOEP)A 8E(2)(d)(v) T(IOEP)A 8F(1) T(IOEP)A 8F(2) T(IOEP)A 8G(1) T(IOEP)A 8G(2) T(IOEP)A 12A(1)(a)(i) T(IOEP)A 12AA T(IOEP)A 12AB T(IOEP)A 12AC FHSA Act 2008 37 FHSA Act 2008 42(2) FHSA Act 2008 44 FHSA Act 2008 46(6) FHSA Act 2008 48 ANTS(GST)A 31-20 ITAA 1936 6(1) ITAA 1936 204(3) ITAA 1936 100(2) ITAA 1936 102AAM

	ITAA 1936 163A ITAA 1936 163B ITAA 1936 170AA ITAA 1936 204(3) ITAA 1997 5-15 ITAA 1997 15-35 ITAA 1997 292-420 ITAA 1997 292-420(8) ITAA 1997 292-425 ITAA 1997 292-467(2)(b) ITAA 1997 Subdiv 295-J ITAA 1997 295-170 ITAA 1997 307-135 ITAA 1997 345-50(3) ITAA 1997 995-1 TAA 8AAD TAA 8AAD(2) TAA 8AAG TAA Pt IIB TAA Pt IIB Div 3 TAA Pt IIB Div 3A TAA 8AAZA TAA 8AAZC TAA 8AAZF TAA 8AAZLF TAA 8AAZLF(1) TAA 8AAZLF(2) TAA 8AAZLG TAA 8AAZLH(3) TAA 12AA TAA Pt IVC TAA Sch 1 12-245 TAA Sch 1 Subdiv 16-A TAA Sch 1 16-80 TAA Sch 1 18-125 TAA Sch 1 18-130 TAA Sch 1 96-10 TAA Sch 1 96-50 TAA Sch 1 96-55 TAA Sch 1 105-D TAA Sch 1 155-15 TAA Sch 1 155-40 TAA Sch 1 263-A TAA Sch 1 Div 280 TAA Sch 1 280-160 TAA Sch 1 Pt 4-25 TAA Sch 1 388-50 TAA Sch 1 391-5 Private Health Insurance Act 2007 282-18 Private Health Insurance Act 2007 282-18(4) HESA HESA 154-D HESA 154-1

	Social Security Act 1991 Student Assistance Act 1973 12ZN Superannuation Contributions Tax (Assessment and Collection) Act 1997 Superannuation Contributions Tax (Members of Constitutionally Protected Superannuation Funds) Assessment and Collection Act 1997 Superannuation (Government Co-contribution for Low Income Earners) Act 2003 Pt 2 Superannuation (Government Co-contribution for Low Income Earners) Act 2003 12 Superannuation (Government Co-contribution for Low Income Earners) Act 2003 Pt 5 Superannuation (Government Co-contribution for Low Income Earners) Act 2003 21 Superannuation (Government Co-contribution for Low Income Earners) Act 2003 22 Superannuation (Government Co-contribution for Low Income Earners) Regulations 2004 7 Superannuation Industry (Supervision) Act 1993 299C Superannuation (Unclaimed Money and Lost Members) Act 1999 17(2AB) Superannuation (Unclaimed Money and Lost Members) Act 1999 17(2AC) Superannuation (Unclaimed Money and Lost Members) Act 1999 20H(2AB) Superannuation (Unclaimed Money and Lost Members) Act 1999 20H(2AA) Superannuation (Unclaimed Money and Lost Members) Act 1999 24G(3A) Superannuation (Unclaimed Money and Lost Members) Act 1999 24(3B) Termination Payments Tax (Assessment and Collection) Act 1997
Case references	Charara v. Federal Commissioner of Taxation [2009] NSWSC 730; (2009) 74 ATR 1 Consolidated Fertilizers Ltd v. DCT 92 ATC 4260; (1992) 23 ATR 305
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