

COMMISSIONER'S GUIDELINE

CG-GEN-004:

Instalment arrangements

Guideline History

Version	Issued	Dates of effect	
		From:	To:
1	15 December 2006	15 December 2006	31 December 2007
2	2 January 2008	1 January 2008	Current

Purpose

This Guideline sets out the circumstances and conditions under which the Territory Revenue Office (TRO) will approve an instalment arrangement¹ under the *Taxation Administration Act* (the TAA) as an alternative to commencing recovery action for a stamp duty or payroll tax debt.

Terms and conditions of instalment arrangements

The following details the circumstances and conditions under which TRO may approve an instalment arrangement and related matters.

Demonstrated financial incapacity

Where a taxpayer proposes an instalment arrangement that will repay the debt within 12 months or less, the taxpayer must provide evidence that they do not have funds including savings or unused credit or loan facilities available to repay all or part of the debt.

Where a taxpayer proposes an instalment arrangement that will take longer than 12 months to repay the debt, in addition to the above, they must also demonstrate that they have applied for and have been refused loans, advances or other credit for all or part of the amount of the debt. For instance, the taxpayer must also demonstrate that they have applied for and been refused a personal loan, an overdraft facility or an increased or second mortgage over any property owned by the taxpayer.

Special arrangements apply where TRO is of the opinion that the taxpayer intentionally disregarded a taxation liability, knowingly obtained the benefit of a concession or exemption that they were ineligible for or disregarded a condition or an obligation attached to the concession or exemption. In these circumstances, regardless of the repayment period under the proposed instalment plan, the taxpayer must provide evidence that they have applied for and have been refused finance or credit to repay the debt.

¹ Section 56 of the TAA.
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Partners, group members and spouses to be included in instalment proposal

The TAA provides that:

- 1) partners in a partnership are jointly and severally liable for tax liabilities incurred by or on behalf of a partnership;² and
- 2) members of a group formed under a taxation law (such as a payroll tax group) are jointly and severally liable for the tax liabilities of each other member of the group incurred under that taxation law during the period that they are a member of the same group.³

Any instalment proposal:

- 1) by or on behalf of a partnership must be based on the financial circumstances and capacity of all members of the partnership to repay the debt;
- 2) by a member of a group must be based on the financial circumstances and capacity of the group as a whole to repay the debt; or
- 3) by a natural person must also include the capacity of the spouse (including a de facto partner) of the taxpayer to repay the debt.

Length of instalment arrangements

Instalment arrangements will generally only be approved for the shortest period of time that is within the taxpayer's financial capacity to pay the debt (and, where relevant, the financial capacity of their partners, group members or spouses).

Periodic review

TRO will periodically review the taxpayer's circumstances and will adjust the amount or timing of instalment payments where the taxpayer's financial situation improves.

Commitment of additional funds

A condition of all instalment arrangements is that any unexpected funds, windfalls or additional disposable income that becomes available to the taxpayer will be used to reduce the amount of the debt.

Security for payment of the debt

Depending on the term of the instalment arrangement and the financial circumstances of the taxpayer, TRO may require an acceptable form of security for the debt.

² Section 59(1) of the TAA.

³ Section 59(2) of the TAA.

Where the debt relates to a stamp duty liability arising from a transaction whereby land is acquired, or where a relevant acquisition in a land holding corporation or unit trust scheme is acquired,⁴ the debt becomes an overriding statutory charge on that land (or the land that the corporation or unit trust scheme is entitled to).⁵ TRO may seek to have the charge registered over the land to which it relates.⁶

TRO will register the overriding statutory charge against the land where an instalment arrangement is entered into in relation to that stamp duty liability. The charge will not be removed until the debt is paid.

Where the taxpayer has sold the land before the charge is registered, TRO may require security over another property owned by the taxpayer, particularly where the instalment arrangement exceeds six months.

Penalty tax and interest

Penalty tax and interest will apply where a taxpayer fails to pay a tax liability by the due date. Commissioner's Guideline: CG-GEN-002: *Penalty tax and interest* explains how TRO applies the penalty tax and interest provisions of the TAA, including the role of interest and penalty tax in taxation administration.

The TAA requires that where TRO approves a tax liability to be paid by way of an instalment arrangement, interest at the statutory rate will apply from the due date for payment until the debt is paid.⁷

This interest is calculated on that part of the debt that comprises the primary tax and penalty tax payable, but not to any interest accrued to that date.

For current interest rates, please refer to TRO's website.

Continuing liabilities

Where a taxpayer has a continuing liability to pay tax, such as a requirement to return payroll tax, the instalment arrangement shall also be conditional on the taxpayer meeting its continuing tax requirements.

Other conditions

TRO will impose any other conditions that are considered appropriate in the circumstances of a particular case.⁸

⁴ Part 3, Division 8A of the *Stamp Duty Act*.

⁵ Section 63 of the TAA.

⁶ Section 64(1) of the Act

⁷ Section 56(4) of the TAA.

⁸ Section 56(2) of the TAA.

Applications and supporting information

All applications for an instalment arrangement must be in writing, setting out fully and in detail the taxpayer's circumstances and reasons why the taxpayer requires additional time to pay the debt. The application must include:

- 1) a proposed instalment arrangement, setting out the amount and frequency of payments;
- 2) details of savings and unused credit or loan facilities available to the taxpayer (and where relevant, partners, group members or the spouse of the taxpayer) to pay the whole or part of the debt;
- 3) details of the monthly income and expenditure of the taxpayer and their partners, group members or spouse. Where these persons operate a business or businesses, the most recent financial statements of the businesses together with projected cash flows over the period of the instalment arrangement must be provided;
- 4) for proposed instalment arrangements greater than 12 months, where the taxpayer knowingly obtained the benefit of a concession or exemption that they were ineligible for or disregarded a condition or an obligation attached to the concession or exemption, evidence of the taxpayer applying and being rejected for finance for all or part of the amount of the debt; and
- 5) any other information relevant to assisting TRO to decide the application.

An application for an instalment arrangement can be made at any time but any delay in lodging an application after the due date for payment of a debt may influence TRO's assessment of the taxpayer's commitment to the arrangement.

The application will be rejected where the taxpayer does not provide sufficient information to enable TRO to make an informed decision on whether to approve the application or fails to provide additional information within a reasonable period when requested to by TRO.

Approval of an instalment plan

In considering whether to approve an instalment arrangement, TRO will take into account the following factors.

- 1) In cases where the taxpayer intentionally disregarded a taxation liability or knowingly obtained the benefit of a concession or exemption that they were ineligible for or disregarded a condition or an obligation attached to the concession or exemption, the degree of the taxpayer's culpability will be the dominant consideration in determining whether an instalment arrangement, rather than legal recovery action, is appropriate.
- 2) Any past payment history of the taxpayer under an Act administered by TRO.
- 3) Whether or not the prospects of recovery of the full amount of the debt in the longer term will be diminished.

- 4) Whether or not the amount of the taxpayer's total tax debt is likely to increase in the future.
- 5) Whether it be would reasonable in the circumstances for the taxpayer to access funds through a commercial lending provider.
- 6) Any other matter TRO considers relevant in the circumstances of the particular case.

Order of repayments

Instalments will be applied to reduce the debt in the following order.

- 1) Interest.
- 2) Penalty tax.
- 3) The amount of the outstanding primary tax.

Review of instalment arrangements

If the financial circumstances of a taxpayer deteriorate such that they cannot comply with an approved instalment arrangement, the taxpayer must notify TRO immediately and request to renegotiate a suitable instalment arrangement based on their current financial circumstances.

Breach of instalment arrangements

If a taxpayer defaults on an instalment or does not otherwise comply with a condition of an instalment arrangement, TRO will notify the taxpayer in writing that if the breach is not remedied within a period specified in the notice, the instalment arrangement will be terminated and immediate legal action will be taken to recover the debt.

First Home Owner Concession and the First Home Owner Grant

An obligation to repay the stamp duty first home owner concession often results in an obligation to repay the first home owner grant as both schemes have similar eligibility criteria and conditions. Where the taxpayer is required to repay the concession as well as the grant, TRO will consider a single proposal to repay the combined debts on the terms consistent with this Guideline and Guideline CG-HI-07: First home owner grant instalment repayment policy.

Commissioner's Guideline CG-GEN-001, which sets out information on the revenue publication system, is incorporated into and is to be read as one with this Guideline. All Circulars and Guidelines are available from TRO's website.

Date of effect

This version of the Guideline has effect from 1 January 2008.



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COMMISSIONER OF TERRITORY REVENUE

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