

COMMISSIONER'S GUIDELINE

CG-HI-002:

Home incentive schemes – interest and penalty

Guideline History

Version	Issued	Dates of effect	
		From:	To:
1	5 May 2005	5 May 2005	30 June 2006
2	29 June 2006	1 July 2006	30 June 2007
3	23 July 2007	1 July 2007	31 December 2007
4	20 February 2008	1 January 2008	30 June 2008
5	1 July 2008	1 July 2008	Current

Purpose

This Guideline explains:

- 1) how the Territory Revenue Office (TRO) will generally assess penalty and interest under the *First Home Owner Grant Act* (the FHOGA); and
- 2) the operation of the interest and penalty tax provisions of the *Taxation Administration Act 2007* (TAA) in relation to the stamp duty first home owner concession and principal place of residence rebate.

This Guideline is to be read in conjunction with Commissioner's Guideline CG-GEN-002: *Interest and penalty tax*.

Role of interest and penalties under the FHOGA

Penalties and interest play an integral role in the administration of the first home owner grant (the grant) by:

- 1) deterring people from attempting to access the grant when they are not eligible;
- 2) encouraging people to repay the grant within the appropriate 30-day period (see below) or to make a full and immediate disclosure if they realise that they are ineligible after the 30-day period;
- 3) compensating the Government for the period that it was deprived of the use of the funds while the grant remained outstanding; and
- 4) deterring ineligible applicants from retaining or delaying the repayment of the grant.

Requirement to repay the grant

Grant recipients must notify the TRO and repay the amount of the grant within the time frames identified in each of the following circumstances.¹

- 1) Where the applicant(s) were ineligible to apply for the grant – the grant is to be repaid within 30 days after payment.

Examples include an applicant or an applicant's spouse or de facto partner having prior ownership of residential property or where no applicant is an Australian citizen or permanent resident.

- 2) Where otherwise eligible applicant(s) of the grant are overpaid – the overpayment is to be repaid within 30 days after the overpayment.

For example, where a person has been paid \$7000, but is only eligible for a grant of \$5000, the \$2000 overpaid must be repaid within 30 days of the person receiving payment of the grant.

- 3) Where the applicant(s) fail to live in the home as their principal place of residence for a continuous period of at least six months – the grant is to be repaid within 30 days after the earlier of:

- a. the date by which the applicant(s) were to have occupied the home; or
- b. the date on which it first became apparent that the residence requirements would not be complied with during the 12-month period allowed for compliance.

- 4) Where there is a breach of a special condition – the grant is to be repaid within 30 days after that breach.

For example, where the grant is paid in anticipation of completion of a transaction and the transaction is not completed.

Repayment notice

If grant recipients do not repay or make arrangements with TRO to repay the grant or overpayment within the relevant 30-day period set out above (the 'repayment period'), TRO will issue a written notice (a 'repayment notice') requiring the grant recipient to pay, within 30 days after the date of issue of the notice, the amount of the unpaid portion of the grant together with a penalty of up to the same amount; and setting out the reasons why payment is required.²

The penalty actually imposed will generally be reduced to an amount representing the culpability of the grant recipient as set out in this Guideline.

¹ Section 41(2) of the FHOGA.

² Section 41(3)(b) of the FHOGA.

Interest

Where a grant applicant fails to repay the grant or an overpayment in full by the date required, interest is payable on the amount of the grant. The interest on the repayment of the grant is calculated for the period from the required repayment date (the end of the repayment period set out above) until the date the grant is repaid.³

Where TRO issues a repayment notice and the grant or overpayment together with any penalty are not paid in full within the 30-day period specified in the notice, interest will also be payable on the unpaid penalty in addition to the interest payable on the grant or overpayment.⁴ The interest on the penalty is calculated for the period from 30 days after the date the notice is issued by TRO until the date the penalty is paid.

Interest is applied in accordance with the **statutory interest rate** in force during the relevant financial year.⁵ The statutory interest rate is the sum of:

- 1) the **market interest rate**, which is the rate prescribed by regulation for the relevant financial year or if no rate is prescribed by regulation, the average yield (expressed as an annual rate) of the 90-day bank accepted bill published by the Reserve Bank of Australia for the month of May in the financial year immediately preceding the relevant year;⁶ and
- 2) the **premium interest rate**, which is 8 per cent per annum from 1 July 2008.⁷

The interest rate for current and past years is available from TRO's web site, www.revenue.nt.gov.au.

Interest on the repayment of grants paid on transactions that commenced prior to 1 July 2008

Where the requirement to repay the grant or overpayment relates to a transaction that had a commencement date prior to 1 July 2008, the interest rate up to 30 June 2008 will be an annual interest rate calculated by adding seven per cent to the average yield (expressed as an annual rate) of the 90-day bank accepted bill published by the Reserve Bank of Australia for the month of May in the financial year immediately preceding the financial year in which the liability to repay the grant arose.

Interest on the liability from 1 July 2008 will be calculated in accordance with the **statutory interest rate** in force during the relevant financial year as indicated above.

³ Section 41(3)(a) of the FHOGA.

⁴ Section 41(3)(c) of the FHOGA.

⁵ Section 41(12) of the FHOGA and definition of 'statutory interest rate' in section 3 of the FHOGA.

⁶ Section 35 of the TAA.

⁷ Section 35 of the TAA..

Interest on the repayment of grants paid on transactions that commenced prior to 1 July 2004

The statutory requirement of an ineligible or overpaid grant recipient to pay interest on the repayment of a grant and penalty does not apply in respect of transactions that had a commencement date prior to 1 July 2004 (except where interest is payable on an instalment arrangement).⁸

Accordingly, to provide equity between all ineligible or overpaid grant recipients, the penalty set out in a repayment notice issued in respect of a transaction that had a commencement date prior to 1 July 2004 will be reduced:

- 1) to the penalty as determined by the matrix below; and
- 2) an 'interest component' calculated at the statutory interest rate for the period of time that the grant has not been repaid as determined in the section of this Guideline dealing with interest.

No interest where recipient complies with notice and repayment requirements

No interest is payable where the grant recipient complies with the requirement to notify TRO of their ineligibility, overpayment or non-compliance with the residence requirements and the grant is repaid within the repayment period.

However, interest is payable where the grant recipient enters into an instalment arrangement to repay the grant and any penalty. For further information on instalment arrangements, refer to Commissioner's Guideline CG-HI-007: *First home owner grant instalment repayment policy*.

Amount of penalty imposed

No penalty is imposed where the grant recipient complies with the requirement to notify TRO of their ineligibility, overpayment or non-compliance with the residence requirements and repays (or makes arrangements to repay) the grant within the repayment period.

Where the Commissioner issues a repayment notice, a **base penalty** equal to **25 per cent** of the amount of the grant or overpayment will be imposed. This penalty reflects the grant recipient's culpability arising from:

- 1) the grant recipient not meeting their statutory obligation to inform the Commissioner of their ineligibility or overpayment and to repay the grant or amount of overpayment within the repayment period; and

⁸ See section 13 of the FHOGA for the commencement date of eligible transactions.
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- 2) the grant recipient's ineligibility or overpayment not arising from deliberate or reckless acts of the grant recipient (such as where the grant recipient intended to satisfy the residence requirements, but failed to do so because of particular circumstances).

However, in the following circumstances, the base penalty will be changed from the default amount of 25 per cent of the amount of the grant or overpayment to:

- 1) **75 per cent** of that amount, where TRO is satisfied that:
 - a. the grant recipient intentionally disregarded the grant requirements because the applicant –
 - (i) knowingly or recklessly made a false declaration on the application form (for example the grant recipient knows that they, their spouse or de facto have had a prior relevant interest in residential property that makes the recipient ineligible for the grant); or
 - (ii) did not satisfy, and had no intention of satisfying the residence requirements (for example, where the grant is in respect of a home used as a rental or investment property or where an investment loan was obtained for such a property); or
 - b. the grant recipient deliberately concealed or suppressed information from TRO relevant to determining the applicant's eligibility for the grant or compliance with the residence requirements or hindered TRO's investigation of the recipient's eligibility for the grant or compliance with the residence requirements; and
- 2) **95 per cent** of that amount, where the Commissioner is satisfied that there was both an intentional disregard of grant requirements and concealment, suppression or hindrance in the circumstances set out above.

The base penalty will be reduced:

- 1) by up to **20 per cent**, if TRO conducts an investigation of the grant recipient's eligibility for the grant or compliance with the residence requirements and the recipient cooperates fully with the investigation.
- 2) by up to **80 per cent**, if TRO has not commenced an investigation of the grant recipient's eligibility for the grant or compliance with the residence requirements and the grant recipient's full and immediate disclosure of their ineligibility or overpayment avoids the need for an investigation.

Stamp duty first home owner concession (FHOC) / principal place of residence rebate (PPRR)

As the FHOC and the grant have very similar eligibility requirements,⁹ it is usual that a person who is required to repay the grant will also be required to pay the amount of the FHOC under a stamp duty reassessment. To encourage disclosure and repayment of both the grant and FHOC, TRO will generally exercise the discretions under sections 38 and 44 of the TAA to achieve the same interest and penalty outcome between the grant, the FHOC and the PPRR.

As mentioned above, no interest or penalty is imposed on the repayment of the grant in circumstances where the grant recipient complies with the requirement to notify TRO and repay the grant within the 30-day repayment period. In keeping with this treatment, the penalty tax on a stamp duty reassessment will be remitted to nil (rather than imposing penalty at 10 per cent on the basis of taking reasonable care) where a FHOC or PPRR recipient notifies TRO of an unintentional failure to meet the residence requirements within 30 days after the date on which it first became apparent that the failure would occur. Where the amount of the FHOC or PPRR is repaid within the time set out in that notice of reassessment, no interest will be imposed. However, interest will accrue from the date for payment set out in the notice of assessment.

Where the FHOC or PPRR recipient(s) notify TRO of their unintentional failure to meet the residence requirements after the requisite 30-day period, interest will be calculated from the end of the 30-day period and will continue to accrue until full payment has been made. Penalty tax will be imposed at the default rate of 25 per cent of the amount of the tax default on the basis that the recipient has failed to take reasonable care to comply with the taxation law. A reduction may be available for a full and immediate disclosure or for full cooperation with an investigation.

Where the FHOC or PPRR recipient(s) do not notify TRO of their failure to meet the residence requirements, interest will be calculated from the due date for payment (generally 60 days after the execution of the instruments evidencing the conveyance). Further, a penalty of at least 25 per cent of the amount of the tax default will be imposed, with the level depending upon whether there has been a deliberate disregard for the taxation law, concealment or suppression of information or hindrance of an investigation. A reduction may be available for full cooperation with an investigation.

Terms explained

Refer to Commissioner's Guideline CG-GEN-002: *Interest and penalty tax for an explanation of the following concepts used in this Guideline.*

- 1) Reasonable care to comply with the grant requirements / taxation law.
- 2) Intentional disregard of the FHOGA / taxation law.

⁹ See Commissioner's Guideline CG-HI-001: *First Home Owner Concession and Principal Place of Residence Rebate.*

- 3) Deliberately concealing or suppressing relevant information or hindering the assessment of tax.
- 4) Deliberately hindering an investigation.
- 5) Full and immediate disclosure.
- 6) Full cooperation with an investigation.

In addition, deliberately concealing or suppressing relevant information includes a grant, FHOC or PPRR recipient taking steps to make it appear as though the residence requirements have been met when they have not.

Residence requirements – the grant

The residence requirements are the requirement that an applicant for the grant must occupy the home to which the application relates as the applicant's principal place of residence for a continuous period of at least six months, commencing within 12 months after completion of the eligible transaction.¹⁰ If satisfied that there are special reasons to do so, TRO may approve a period of shorter than six months for occupancy, or may approve the occupation period commencing within a longer period than 12 months.

Residence requirements – FHOC and PPRR

The residence requirements are the requirement that the conveyee(s) will occupy a home on the land as their principal place of residence for a continuous period of six months (or a shorter continuous period approved by the Commissioner if satisfied that there are special reasons to do so):

- 1) where there is a home built on the land, within 12 months of executing the instruments evidencing the conveyance (or a longer period approved by the Commissioner); or
- 2) where a home is to be built on the land, within three years of executing the instruments evidencing the conveyance or within one year of the home being built, whichever occurs first (or a longer period approved by the Commissioner).

Commissioner's Guideline CG-HI-003: *Commissioner's discretion to exempt or vary compliance with the eligibility criteria* provides more information on the residence requirements for the grant, FHOC and PPRR.

Matrix of grant penalties / stamp duty penalty tax

The table below sets out the grant penalties and stamp duty (FHOC and PPRR) penalty tax that will apply in a given situation:

¹⁰ Section 12(1), (1A) and (1B) of the FHOGA.
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PENALTY CATEGORY	BASE PENALTY	FULL AND IMMEDIATE DISCLOSURE BEFORE INVESTIGATION	FULL COOPERATION WITH INVESTIGATION
Comply with requirement to notify and repay within the relevant 30-day repayment period	0%	n/a	n/a
Failure to notify and repay within the repayment period where ineligible for grant, FHOC or PPRR	25%	5%	20%
Intentional disregard of the grant, FHOC or PPRR requirements	75%	15%	60%
Concealment or hindering an investigation or assessment	75%	n/a	n/a
Intentional disregard of the grant, FHOC or PPRR requirements <u>and</u> concealment or hindering an investigation or assessment	95%	n/a	n/a

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 takes effect from 1 July 2008.



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