



Penalty Policy

This Circular explains how Territory Revenue Management (TRM) will apply the penalty provisions of the Taxation (Administration) Act (TAA) and the Pay-roll Tax Act (PTA).

Role of penalties

Penalty tax plays an integral role in tax administration by:

- (a) deterring non-compliance by making it unprofitable to taxpayers;
- (b) promoting equity among taxpayers by ensuring that those who meet their obligations are not disadvantaged in comparison with those who do not;
- (c) compensating the Government for delays in the use of revenue that it is entitled to; and
- (d) encouraging taxpayers to make a prompt voluntary disclosure of any tax default that is identified.

Penalty policy

TRM officers will assess penalty tax according to the policy set out in this Circular. However, situations may arise where the strict application of this policy would produce outcomes that are unreasonable or inconsistent with the policy objectives. In these cases it will be necessary to vary the practices stated in this policy and where this occurs, clear reasons for such a decision will be provided to the taxpayer.

Stamp duty default assessments and payroll tax assessments

Where a stamp duty default assessment or payroll tax assessment is issued, the TAA and PTA impose penalty tax of double the amount of the duty or tax assessed¹. The Commissioner of Taxes has the discretion to remit that penalty tax in whole or in part.

The penalty tax will be reduced from double the amount of tax or duty assessed to an amount that is the sum of an **interest component** and a **culpability component** (see below as to the manner in which these components are calculated).

Interest component

The interest component is a simple annual interest rate consisting of the sum of two rates:

- (a) a **market rate** to reimburse the Government for the financing cost incurred through the late payment of tax. The market rate is set on 1 July for each financial year and is calculated as the daily average of the 90-day bank accepted bill rate for May of the preceding financial year; and
- (b) a **premium rate** to deter late payment of revenue, encourage equity and ensure the Government is not used as an unsecured lender by default. The premium rate is currently seven per cent per annum.

The past and current interest rates up to 30 June 2005 are as shown in the table below. Please refer to TRM's web site at www.revenue.nt.gov.au for the current interest rate.

Period where tax was unpaid	Market rate (pa)	Total rate (pa)
1 July 2004 to 30 June 2005	5.51 %	12.51 %
1 July 2003 to 30 June 2004	4.77 %	11.77 %
1 July 2002 to 30 June 2003	4.84 %	11.84 %
Prior to 1 July 2002	4.28 %	11.28 %

¹ TAA section 96 and PTA section 19.

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Interest component - cont'd

Calculating the interest component on payroll tax assessments or stamp duty default assessments of returns-based duties (such as stamp duty on insurance or hiring arrangements)

For each separate year's liability, the interest component is calculated from the mid-point of that financial year or part thereof until the date of the assessment.

These taxes and duties are payable on a monthly basis, so the interest component for an underpayment should technically accrue on a monthly basis. However, calculating interest on a monthly basis for past year assessments is cumbersome and impractical.

Using the mid-point between the date when the liability first occurred and the end of the financial year in which it arose provides a practical approximation of the monthly interest component that would accrue on an underpayment.

That is, the interest component is calculated using the number of days in the period commencing from the mid-point between the date the liability first arises and the end of that financial year. The interest component in subsequent financial years is based on a full year until the financial year in which the assessment is raised, in which case it is calculated on the number of days from the start of the financial year to the date the assessment is issued.

See below, for an example of how interest is calculated using the mid-point method.

Example 1 - Calculation of the interest component

An employer is audited by TRM during October 2004. The audit discovered that for the 2001-02 financial year, the employer underpaid payroll tax by \$2 000. An assessment is issued on 30 October 2004.

Accordingly, the interest component is calculated from the mid-point of the financial year in which the liability was incurred (ie 1 January 2002) as shown below:

2001-02 (1 January to 30 June 2002)	184 days	$\$2\,000 \times 11.28\% \times 184/365 = \113.73
2002-03	365 days	$\$2\,000 \times 11.84\% \times 365/365 = \236.80
2003-04	366 days	$\$2\,000 \times 11.77\% \times 366/366 = \235.40
2004-05 (1 July to 30 October 2004)	123 days	$\$2\,000 \times 12.51\% \times 123/365 = \84.31
Total interest component		\$670.24

A similar calculation is performed for each of the years in which the employer underpays payroll tax. However, where the employer overpays in some years, the interest component is only calculated on the 'net' underpayment outstanding for that year.

See the section on 'Crediting refunds before calculating interest' section of this Circular for examples.

Note: This example does not include a culpability component that would also be assessed in respect of the underpaid payroll tax.

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Interest component - cont'd

Crediting refunds before calculating interest

In some circumstances, investigation into a taxpayer's liability for payroll tax or a returns-based duty may reveal that a liability arises in some financial years due to underpayment and a refund is due in another financial year or years due to overpayment.

In these circumstances, the interest component payable in respect of each financial year is calculated on the outstanding 'net' underpaid tax (calculated by 'crediting' the overpayment against the underpaid tax of previous years).

Where the overpayment of tax in a particular financial year is larger than any prior year's underpayment of tax, no interest component is calculated in respect of the year in which the overpayment occurred.

Any 'surplus' overpayment is 'credited' against any underpayments identified in subsequent years when calculating the interest component payable on such underpayments.

See below for examples of the crediting of refunds when calculating the interest component.

In each of these examples, the interest component is calculated in the manner described in the table set out in the example provided in the 'Interest component' section of this Circular.

Example 2 – No overpayments

An employer is audited by TRM and it is discovered that:

- for the 2000-01 financial year, the employer **underpaid** payroll tax by \$1 000;
- for the 2001-02 financial year, the employer **underpaid** payroll tax by \$2 000;
- for the 2002-03 financial year, the employer **underpaid** payroll tax by \$3 000; and
- for the 2003-04 financial year, the employer **underpaid** payroll tax by \$4 000.

In this situation, interest for each financial year would be calculated on the 'net' outstanding liability as follows.

Year	Underpayment or (overpayment) of tax for current year	'Net' outstanding liability on which interest is calculated for each financial year	
2000-01	\$1 000	\$1 000	
2001-02	\$2 000	\$3 000	= \$1 000 + \$2 000
2002-03	\$3 000	\$6 000	= \$3 000 + \$3 000
2003-04	\$4 000	\$10 000	= \$6 000 + \$4 000

The employer would have a tax liability of \$10 000 (the net underpayment) plus the interest charged on the outstanding liabilities in 2000-01, 2001-02, 2002-03 and 2003-04.

Penalty Policy - cont'd

Interest component - cont'd

Example 3 – Refunds reducing outstanding liability

An employer is audited by TRM and it is discovered that:

- for the 2000-01 financial year, the employer **underpaid** payroll tax by \$2 000;
- for the 2001-02 financial year, the employer **overpaid** payroll tax by \$1 000;
- for the 2002-03 financial year, the employer **overpaid** payroll tax by \$1 000; and
- for the 2003-04 financial year, the employer **underpaid** payroll tax by \$1 000.

In this situation, interest for each financial year would be calculated on the 'net' outstanding liability as follows.

Year	Underpayment or (overpayment) for current year	'Net' outstanding liability on which interest is calculated for each financial year	
2000-01	\$2 000	\$2 000	
2001-02	(\$1 000)	\$1 000	= \$2 000 - \$1 000
2002-03	(\$1 000)	\$0 (no interest)	= \$1 000 - \$1 000
2003-04	\$1 000	\$1 000	= \$0 + \$1 000

The employer would have a tax liability of \$1 000 (the net underpayment) plus the interest charged on the outstanding liabilities in 2000-01, 2001-02 and 2003-04, and no interest would be charged for the 2002-03 year.

Example 4 – Refunds reducing outstanding liability and carried over to subsequent liability

An employer is audited by TRM and it is discovered that:

- for the 2000-01 financial year, the employer **underpaid** payroll tax by \$2 000;
- for the 2001-02 financial year, the employer **overpaid** payroll tax by \$2 500;
- for the 2002-03 financial year, the employer **underpaid** payroll tax by \$2 000; and
- for the 2003-04 financial year, the employer **underpaid** payroll tax by \$1 000.

In this situation, interest for each financial year would be calculated on the 'net' outstanding liability as follows:

Year	Underpayment or (overpayment) for current year	'Net' outstanding liability on which interest is calculated for each financial year	
2000-01	\$2 000	\$2 000	
2001-02	(\$2 500)	\$0 (no interest)	= \$2 000 - \$2 500 (\$500 credited to subsequent underpayments)
2002-03	\$2 000	\$1 500	= (\$500) + \$2 000
2003-04	\$1 000	\$2 500	= \$1 500 + \$1 000

The employer would have a tax liability of \$2 500 (the net underpayment) plus the interest charged on the outstanding liabilities in 2000-01, 2002-03 and 2003-04, and no interest would be charged for the 2001-02 year.

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Penalty Policy - cont'd

Interest component - cont'd

Example 5 – Net overpayment

An employer is audited by TRM and it is discovered that:

- for the 2000-01 financial year, the employer **underpaid** payroll tax by \$2 000;
- for the 2001-02 financial year, the employer **overpaid** payroll tax by \$2 500;
- for the 2002-03 financial year, the employer **underpaid** payroll tax by \$2 000; and
- for the 2003-04 financial year, the employer **overpaid** payroll tax by \$3 000.

In this situation, interest for each financial year would be calculated on the 'net' outstanding liability as follows:

Year	Underpayment or (overpayment) for current year	'Net' outstanding liability on which interest is calculated for each financial year	
2000-01	\$2 000	\$2 000	
2001-02	(\$2 500)	\$0 (no interest)	= \$2 000 - \$2 500 (\$500 credited to subsequent underpayment)
2002-03	\$2 000	\$1 500	= (\$500) + \$2 000
2003-04	(\$3 000)	\$0 (no interest)	= \$1 500 - \$3 000 (net overpayment of \$1 500)

The employer would have a refund of \$1 500 (the net overpayment) less the interest charged on the outstanding liabilities in 2000-01 and 2002-03, and no interest would be charged for the 2001-02 year and 2003-04 years.

Interest component on stamp duty default assessment of instruments

In a stamp duty default assessment, the interest component is calculated from and including the last due day for payment, in the same manner that interest is applied to a late payment of duty (see below).

Remission of the interest component

The entire **interest component** will be reduced to **nil** only in **exceptional circumstances**, having regard to the role that interest plays in deterrence, equity and compensation (as set out above). An example of a situation where interest may be reduced to nil is where:

- the taxpayer can demonstrate that tax has been paid in error (not deliberately) to the revenue office of another State or Territory; and
- that State or Territory revenue office received full payment of the tax on or before its due date.

Penalty Policy - cont'd

Interest component - cont'd

The **premium rate** will be reduced to **nil** (that is, an interest component of only the market rate will be payable) where TRM is satisfied that any of the following situations apply:

- (a) the taxpayer took reasonable care to comply with the taxation laws (see below for what constitutes reasonable care);
- (b) the tax default is due to unforeseen circumstances beyond the control of the taxpayer or person acting on behalf of the taxpayer and the taxpayer took all reasonable steps to avoid or mitigate the tax default (see below for some examples);
- (c) in the case of a payroll tax assessment or a default assessment in respect of a returns-based stamp duty, the taxpayer or person acting on behalf of the taxpayer makes a voluntary disclosure before the taxpayer (or in the case of payroll tax, a member of the taxpayer's group) is contacted by TRM by any means in relation to an inquiry, investigation, review or assessment of payroll tax or stamp duty (see below as to voluntary disclosures); or
- (d) TRM substantially contributed to the tax default.

Furthermore, where there is an unreasonably lengthy delay in TRM making an assessment after the taxpayer has provided all information required to issue the assessment in a timely manner, the amount of the interest component will be reduced to reflect the delay by TRM.

The interest component will not be imposed if it amounts to less than \$20.

Culpability component

Where the Commissioner issues a stamp duty default assessment or a payroll tax assessment, the base culpability component imposed will be:

- (a) **nil in exceptional circumstances**, such as where the Commissioner is satisfied that:
 - (i) the tax default is due to unforeseen circumstances beyond the control of the taxpayer or the person acting on behalf of the taxpayer and the taxpayer took all reasonable steps to avoid or mitigate the tax default; or
 - (ii) the taxpayer can demonstrate that:
 - (1) tax has been paid in error to the revenue office of another State or Territory **and** the revenue office received full payment of the tax on or before its due date; or
 - (2) the taxpayer is acting on written advice of the Commissioner that is incorrect;
- (b) **10 per cent** of the amount of the tax or duty where the Commissioner is satisfied that the taxpayer took reasonable care to comply with the taxation laws;
- (c) **25 per cent** of the amount of the tax or duty where the actions of the taxpayer or person acting on behalf of the taxpayer do not constitute reasonable care to comply with the taxation laws, but there is not an intentional disregard for the taxation laws (see below as to the meaning of intentional disregard for the taxation laws); or
- (d) **75 per cent** of the amount of the tax or duty where the taxpayer has demonstrated an intentional disregard for the taxation laws.

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Culpability component - cont'd

As a general rule, the **onus is on the taxpayer** to satisfy the Commissioner that they have taken reasonable care to comply with the taxation laws or that there are exceptional circumstances that justify a culpability component of less than 25 per cent.

The base culpability component will be **increased** by a **further 20 per cent of the unpaid tax or duty** if the taxpayer conceals information or hinders an investigation (see below for examples of what constitutes concealing information or hindering an investigation).

Where a taxpayer makes a voluntary disclosure of their tax default, the base culpability component will be **reduced** depending upon when the taxpayer makes the voluntary disclosure (see below as to what constitutes a voluntary disclosure).

The base culpability component will be:

- (a) **reduced by 80 per cent** (or to **nil** where the taxpayer also demonstrates that they took reasonable care to comply with the taxation laws) where the taxpayer makes a voluntary disclosure **before** the taxpayer or a member of the taxpayer's group is contacted by TRM by any means in relation to an inquiry, investigation, review or assessment of payroll tax or stamp duty; or
- (b) **reduced by 20 per cent** (or to **5 per cent** of the unpaid tax or duty where the taxpayer also demonstrates that they took reasonable care to comply with the taxation laws) where the taxpayer makes a voluntary disclosure **after** the taxpayer or a member of the taxpayer's group is contacted by TRM by any means in relation to an inquiry, investigation, review or assessment of payroll tax or stamp duty (subject to what is written below).

The purpose of reducing the culpability component where the taxpayer makes a voluntary disclosure is:

- (a) to encourage taxpayers who discover their tax default independently of contact by TRM to come forward and disclose their liability; and
- (b) in the case of taxpayers who have been contacted by TRM, to encourage those taxpayers to examine their records, determine that they have a liability and disclose that liability to TRM, resulting in substantial savings in time and resources by TRM as a result of the taxpayer's behaviour.

There will be **no reduction** of the culpability component where a taxpayer purports to make a voluntary disclosure in a situation that does not result in a saving of time and resources by TRM. For example, where TRM has substantially completed an audit of a taxpayer's records, a taxpayer will not be considered to have made a voluntary disclosure where they then provide information to allow TRM to make an assessment.

Similarly, there will be **no reduction** in the culpability component where a purported voluntary disclosure merely provides TRM with information that TRM has already obtained.

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Culpability component - cont'd

There will be situations where TRM issues an assessment based on limited information about a taxpayer's liability (for example, because the taxpayer has failed to lodge a return or has not provided information when requested). In such a case, where TRM amends the assessment because further information is voluntarily provided by the taxpayer:

- (a) in the case where the taxpayer's liability is reduced, the provision of information is **not** a voluntary disclosure and there will be **no reduction** in the culpability component; and
- (b) in the case where the taxpayer's liability is increased, the provision of information is a voluntary disclosure in respect of the additional liability and **only** the culpability component **relating to the additional liability** will be **reduced by 20 per cent**.

The matrix below sets out the penalties that will apply in a given situation.

Penalty Category	Base culpability component	Voluntary Disclosure		Concealment or hindering investigation
		Before contact by TRM	After contact by TRM	
Exceptional circumstances (such as beyond the control of the taxpayer where the taxpayer has taken reasonable steps to mitigate the tax default).	0%	0%	0%	20%
Reasonable care taken to comply with the taxation laws.	10%	0%	5%	30%
Tax default where there is not intentional disregard for a taxation law.	25%	5%	20%	45%
Intentional disregard for a taxation law.	75%	15%	60%	95%

The culpability component will not be imposed if it amounts to less than \$20.

Late payment

Where a taxpayer fails to pay tax or duty when it is due for payment, interest by way of penalty tax is payable on the amount of unpaid tax or duty at a rate of 18 per cent per annum². However, where the late payment does not result from a deliberate attempt to avoid or delay payment, this rate will generally be reduced to the current market rate plus the premium rate.

Late payment penalty interest will not be imposed if it amounts to less than \$20.

The lodging of an objection or appeal against a decision or assessment does not waive the requirement to pay outstanding tax or duty. Where the assessment is reduced as a result of an objection or appeal, overpaid tax or duty is refunded to the taxpayer with interest³.

² TAA section 107 and PTA section 23.

³ TAA section 105A and PTA section 34(4A).

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Late payment - cont'd

Instalment plan

Where a taxpayer enters into an instalment plan for the payment of tax or duty, interest will continue to accrue (at the market rate plus the premium rate). However, the interest will only be calculated on the unpaid tax or duty and the culpability component of the penalty tax, not on the interest component of the penalty tax.

Payments under an instalment plan will be applied first to the interest component and any further interest before being applied to the amount of tax and culpability penalty outstanding.

See below for examples of the calculation of interest for late payment.

Example 1 - Calculation of interest for late payment of a stamp duty assessment

A contract for the transfer of land is executed on 5 July 2004 and lodged with TRM on 4 August 2004. Duty is assessed at \$2 000. Payment of the assessed duty is due on 3 September 2004, 60 days after the contract was executed⁴. The assessment is paid on 3 October 2004, which is 30 days after payment is due.

Interest is calculated as follows:

$$\$2\,000 \times 12.51\% \times 30/365 = \$20.56$$

At 3 October 2004, the total amount payable is: $\$2\,000 + \$20.56 = \$2\,020.56$

Example 2 - Calculation of interest for late payment of a payroll tax assessment

TRM issues a payroll tax assessment to an employer for \$1 375 on 30 September 2004 that is due for payment on 30 October 2004. The assessment is paid on 16 December 2004.

The assessment is for \$1 000 unpaid tax and \$375 additional tax (consisting of a \$125 interest component and a \$250 culpability component).

The interest is calculated on \$1 250 only (being the unpaid tax and culpability component) as late payment interest is not calculated on the interest component.

Interest is calculated as follows:

$$\$1\,250 \times 12.51\% \times 47/365 = \$20.14$$

At 16 December 2004, the total amount payable is: $\$1\,375 + \$20.14 = \$1\,395.14$

Terms explained

Penalty tax

The term 'penalty tax' is used in this Circular to include 'penalty' under the TAA and 'additional tax' under the PTA.

Tax default

In this Circular, a reference to a 'tax default' means a failure to pay, in accordance with a taxation law, the whole or part of tax or duty the taxpayer is liable to pay and includes circumstances where tax or duty is not paid on time.

⁴TAA section 9.

Penalty Policy - cont'd

Terms explained - cont'd

Taxation laws

For the purposes of this Circular, the taxation laws are the TAA, PTA and the *Stamp Duty Act*.

Voluntary disclosure

A voluntary disclosure is a voluntary **written** disclosure of the existence of a tax default that provides TRM with sufficient information to determine the nature and extent of the tax default and to issue an assessment.

At a minimum, a voluntary disclosure will state the identity of the taxpayer or group of taxpayers, the nature and period of the tax default and an explanation of how the tax default occurred.

Reasonable care to comply with the taxation laws

The reasonable care standard is essentially the ordinary requirements of good commercial governance. A taxpayer is required to:

- (a) keep complete and accurate records;
- (b) make diligent efforts to understand and comply with the law;
- (c) seek expert advice on uncertain or complex matters; and
- (d) be honest and cooperative in their dealings with TRM.

In determining whether or not a taxpayer has taken reasonable care to comply with the taxation laws, TRM will consider the taxpayer's knowledge of tax legislation, commercial experience, access to expert advice and familiarity with the English language.

TRM will also consider a range of factors including whether or not, in relation to the particular taxation law under which the tax default has occurred, the taxpayer has taken the following actions:

- (a) maintained appropriate and proper recording systems – that is, systems that minimise the risk of tax default, allow reconciliation of the tax paid or payable with returns required to be lodged and fulfil the taxpayer's obligation under the taxation laws to maintain records for the purposes of TRM investigations or audits;
- (b) taken reasonable steps to be aware of and comply with their taxation obligations and to be familiar with the relevant legislative requirements;
- (c) applied in good faith any relevant Circulars issued by the Commissioner;
- (d) sought professional advice in relation to the taxation laws for uncertain or complex matters where no Circular applies or the taxpayer's circumstances differ from those described in a Circular;
- (e) acted in good faith in applying any independent tax advice received;
- (f) observed any corporate reconstruction ruling (see Revenue Circular SD023) received and notifying TRM if there have been any changes in the information on which the ruling was formed;

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Terms explained - cont'd

- (g) acted promptly to seek advice or provide information once made aware, from any source, that the taxpayer might have a tax liability; or
- (h) actively cooperated with TRM, such as responding to inquiries by TRM and providing all information requested in a timely manner and registering as soon as a tax liability has been discovered.

TRM understands that even where a person is taking reasonable care to comply with the taxation laws, simple mistakes can occur (such as transposition errors or calculation errors) that result in a tax default. In such situations, TRM will not consider that the mistake alone demonstrates that the taxpayer has not taken reasonable care, provided that the mistake does not arise from other factors that indicate that the taxpayer has not taken reasonable care.

For example, making a calculation error on a payroll tax annual reconciliation does not of itself mean that the taxpayer was not taking reasonable care. However, other factors may mean that the error actually arises from circumstances of the taxpayer not taking reasonable care, such as:

- the taxpayer not maintaining appropriate and proper recording systems (for example, the taxpayer's wages information does not properly indicate whether total wage figures are inclusive of superannuation or fringe benefits so an error is made in the annual reconciliation); or
- a failure of the taxpayer to be aware of the proper application of the PTA (for example, by not getting an accountant's advice or reading and applying the *Employer's Guide to Pay-roll Tax in the NT* and so failing to 'gross-up' fringe benefits).

Furthermore, a taxpayer will not be regarded to have taken reasonable care where:

- (a) a reasonable person, having regard to the particular circumstances of the taxpayer, would have or ought to have been able to foresee the likelihood of a tax default; or
- (b) the taxpayer was indifferent to the possibility of the tax default occurring or recognised the risk of the tax default occurring and accepted the consequences of that risk.

Intentional disregard for a taxation law

Intentional disregard for a taxation law includes situations where, on an objective view of the facts, a tax default is caused wholly or partly by a deliberate act or omission by the taxpayer or by a person acting on the taxpayer's behalf. Examples of an intentional disregard for a taxation law are:

- (a) the use of contrived or artificial avoidance schemes;
- (b) tax evasion or fraud;
- (c) making false or misleading records or statements
- (d) concealing relevant facts on a tax liability;

Penalty Policy - cont'd

- (e) ignoring a Circular or ruling (such as a corporate reconstruction ruling), particularly on a matter where the law is clearly established;
- (f) failing to pay tax in accordance with well established principles of law;
- (g) failing to meet a tax liability after being advised of its existence by TRM or another person; and
- (h) repeating a tax default on a same matter or closely related matter.

Unforeseen circumstances

Unforeseen circumstances beyond the control of the taxpayer that **may** warrant a reduction of the base culpability component include:

- (a) fires, floods or other natural disasters;
- (b) key personnel not being available because of sudden resignation, ill health or death; and
- (c) computer system breakdowns, including third party systems such as electronic funds transfer systems.

but **only** where the taxpayer makes a reasonable effort to mitigate or avoid the tax default arising from those circumstances.

Concealing or hindering an investigation

A taxpayer has concealed information or hindered an investigation by the Commissioner where the taxpayer takes action (or inaction) such as the following:

- (a) deliberately damages, destroys or otherwise deals with records required to be kept under the taxation law to which the investigation relates; or
- (b) without reasonable excuse, refuses or fails to comply with a requirement made by the Commissioner for the purposes of determining the taxpayer's tax liability (including a request for information); or
- (c) hinders or obstructs an authorised officer performing the function of determining the taxpayer's tax liability.

Revenue Circular RA 001, which sets out information on the revenue circular system, is incorporated into and is to be read as one with this Circular.

Refer to the *Taxation (Administration) Act* and the *Pay-roll Tax Act* for the legislative basis for the application of interest, penalties and additional tax. For general information, please contact Territory Revenue Management on 1300 305 535.



Authorised by
the Commissioner of Taxes
January 2005