

# 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 |

### Purpose

This Guideline sets out the circumstances and conditions under which the Territory Revenue Office (TRO) will approve an instalment arrangement<sup>1</sup> under the *Taxation (Administration) Act* (TAA) and *Pay-roll Tax Act* (PTA) 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 the 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 twelve (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 twelve (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 the 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.

#### Associates to be included in proposal

The PTA provides that members of a payroll tax group are jointly and severally liable for the taxation debts of each other member of the group incurred during the period that they are a member of the same group.<sup>2</sup>

Accordingly, any instalment proposal from a member of a group must be based on the financial circumstances and capacity of the group as a whole to repay the debt.

<sup>1</sup> Section 9(3) of the TAA and section 22(b) of the PTA.

<sup>2</sup> Section 24(3) of the PTA.

Instalment proposals covering a tax or duty debt of a natural person must also include the capacity of the spouse or 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 and their associate's financial capacity to pay the debt.

#### Periodic review

The 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, the TRO may require an acceptable form of security for the debt.

Where the debt relates to a stamp duty liability arising from a relevant acquisition in a land holding corporation or unit trust scheme<sup>3</sup>, the TRO may secure the debt against the land the corporation or unit trust scheme is entitled to<sup>4</sup>.

#### Penalty and interest

Penalties and interest will apply where a taxpayer fails to pay a stamp duty or payroll tax liability by the due date. Commissioner's Guideline: CG-GEN-002 - *Penalty Policy* explains how the TRO applies the penalty provisions of the TAA and the PTA, including the role of penalties and interest in tax administration. This guideline can be accessed from the TRO website ([www.revenue.nt.gov.au](http://www.revenue.nt.gov.au)) or by contacting the TRO as per the contact details provided on the last page of this guideline.

Interest at the full rate will apply from the due date for payment to a debt that the TRO approves to be repaid by way of an instalment arrangement. This will include the part of the debt that comprises the tax or duty payable and the amount of any culpability penalty imposed under Commissioner's Guideline CG-GEN-002, but not to any interest component referred to in that Guideline. The interest rate at the date of issue of this Guideline is 12.87 per cent per annum. For current interest rates, please refer to the TRO's website ([www.revenue.nt.gov.au](http://www.revenue.nt.gov.au)) or contact the TRO as per the contact details on the last page of this guideline.

#### 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

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

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<sup>3</sup> Part III, Division 8A of the TAA

<sup>4</sup> Section 56F 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:

- a proposed instalment arrangement, setting out the amount and frequency of payments;
- details of savings and unused credit or loan facilities available to the taxpayer (and where relevant, associates or the spouse or de facto partner of the taxpayer) to pay the whole or part of the debt;
- details of the monthly income and expenditure of the taxpayer and their associates. Where the taxpayer and their associates operate a business, the most recent financial statements of the business together with projected cash flows over the period of the instalment arrangement must be provided;
- for proposed instalment arrangements greater than twelve (12) months and 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
- any other information relevant to assisting the 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 the 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 the 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 the TRO.

## **Approval of an instalment plan**

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

- 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.
- Any past payment history of the taxpayer under an Act administered by the TRO, particularly that relating to taxation.
- Whether or not the prospects of recovery of the full amount of the debt in the longer term will be diminished.
- Whether or not the amount of the taxpayer's total tax debt is likely to increase in the future.
- Whether it would be reasonable in the circumstances for the taxpayer to access funds through a commercial lending provider.
- Any other matter the 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 of preference.

1. The interest and interest component of the penalty.
2. The culpability component of the penalty.
3. The amount of the outstanding 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 the 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, the 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.

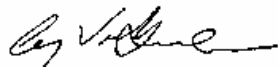
## First Home Owner Concession and the First Home Owner Grant

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, the 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*, which can be accessed from the TRO's website ([www.revenue.nt.gov.au](http://www.revenue.nt.gov.au)) or contact the TRO as per the contact details provided below.

**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.**

## Date of effect

This Guideline takes effect from the date of issue.



Craig Vukman  
COMMISSIONER OF TAXES

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For further information, contact the Territory Revenue Office

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GPO BOX 154

Phone: 1300 305 353

Darwin NT 0801

Fax: 08 8999 6395

Email: [ntrevenue.ntt@nt.gov.au](mailto:ntrevenue.ntt@nt.gov.au)

Website: [www.revenue.nt.gov.au](http://www.revenue.nt.gov.au)

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