



***TD 92/150 - Income Tax: can an amount of interest payable to a taxpayer under the Taxation (Interest on Overpayments) Act 1983 be applied by the Commissioner against an amount of tax which is assessed but not yet due and payable by the taxpayer?***

 This cover sheet is provided for information only. It does not form part of *TD 92/150 - Income Tax: can an amount of interest payable to a taxpayer under the Taxation (Interest on Overpayments) Act 1983 be applied by the Commissioner against an amount of tax which is assessed but not yet due and payable by the taxpayer?*

 This document has changed over time. This is a consolidated version of the ruling which was published on *27 August 1992*

This Determination, to the extent that it is capable of being a 'public ruling' in terms of Part 4VAAA of the *Taxation Administration Act 1953*, is a public ruling for the purposes of that Part. Taxation Ruling TR 92/1 explains when a Determination is a public ruling and how it is binding on the Commissioner. Unless otherwise stated, the Determination applies to transactions entered into both before and after its date of issue.

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## Taxation Determination

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**Income Tax: can an amount of interest payable to a taxpayer under the Taxation (Interest on Overpayments) Act 1983 be applied by the Commissioner against an amount of tax which is assessed but not yet due and payable by the taxpayer?**

1. Yes. Under section 13 of the *Taxation (Interest on Overpayments) Act 1983* (TIOPA), the Commissioner may apply an amount of interest payable under that Act to a person in total or partial discharge of a Commonwealth tax liability of the person. The decisions in *Re Mendonca; ex parte FC of T* (1969) 15 FLR 256; at 259; and in *Clyne v. DC of T* (1981) 150 CLR 1 at 9; 81 ATC 4429 at 4432; (1981) 12 ATR 173 at 177, make it clear that a 'liability' to tax exists once an assessment has been served, notwithstanding that the tax is not yet due and payable.

2. Accordingly, the Commissioner has authority under section 13 of the TIOPA to apply an amount of interest payable to a taxpayer under that Act against an amount of Commonwealth tax which has been assessed to the taxpayer, but which is not yet due and payable.

*Example:*

*A has been issued with an income tax assessment on 7 May 1992. The tax assessed of \$10,000 is due and payable on 5 June 1992. On 14 May 1992, A becomes entitled to interest of \$5,000 under section 9 of the TIOPA. On 15 May 1992, the Commissioner applies the amount of \$5,000 due to A against A's tax liability of \$10,000. As from that date, A only has a tax liability of \$5,000.*

**Commissioner of Taxation**

27/08/92

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Legislative Ref: TIOPA 9; TIOPA 13

Case Ref: *Re Mendonca; ex parte FC of T* (1969) 15 FLR 256; *Clyne v. DC of T* (1981) 150 CLR 1; 81 ATC 4429; (1981) 12 ATR 173

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