

This Determination, to the extent that it is capable of being a 'public ruling' in terms of Part IVA 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.

[Note: This is a consolidated version of this document. Refer to the Tax Office Legal Database (<http://law.ato.gov.au>) to check its currency and to view the details of all changes.]

## Taxation Determination

**Income Tax: can an amount of interest payable to a taxpayer under the *Taxation (Interest on Overpayments and Early Payments) 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 Ruling has been reviewed as part of a project to review public rulings. The ATO view expressed in this Ruling is current as of 8 January 2018.

1. Yes. Under Division 3 of Part IIB of the *Taxation Administration Act 1953* (TAA), 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 Division 3 of Part IIB of the TAA 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 the Taxation (Interest on Overpayments and Early Payments) Act 1983. 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

FOI INDEX DETAIL: Reference No. I 1213202

Subject Ref: interest on overpayments; application of interest on overpayments against tax liability

Legislative Ref: TIOEP Act 1983; TAA 1953 Pt IIB Div 3

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

ATO Ref: 92/1332-5

ISSN 1038 - 3158

