

TD 92/150 - 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?

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! 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.

! This document has changed over time. This is a consolidated version of the ruling which was published on *29 November 2006*

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.

[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

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