



## REVENUE RULING

## TAA 1.2

### ADMINISTRATION - TAX PAYMENT ARRANGEMENTS

#### INTRODUCTION

1. This revenue ruling deals with the exercise of the Commissioner of State Revenue's discretion under section 47 of the *Taxation Administration Act 2003* ("TAA") to approve arrangements for extensions of time to pay tax and arrangements for the payment of outstanding tax by installments (collectively referred to as "tax payment arrangements").
2. Tax is due for payment on the date fixed by or worked out in accordance with the relevant taxation Act and, if the relevant taxation Act does not make provision for the date of payment, the tax is due for payment on the date specified in the assessment notice (TAA, section 45). Where tax is payable as a result of a reassessment, the due date for payment must be at least 28 days after the date specified in the assessment notice (TAA, section 24(5a)).
3. If tax is not paid by the due date, the taxpayer is liable to pay penalty tax equal to 20% of the amount outstanding on the due date (TAA, section 27), although these amounts may be remitted in circumstances set out in Commissioner's Practice TAA 20.
4. The Commissioner may commence legal proceedings in any court of competent jurisdiction) to recover tax that is not paid by the due date (TAA, section 60).
5. The fact that the taxpayer may dispute the assessment does not suspend or defer their obligation to pay the disputed tax by the due date (TAA, section 33), and the Commissioner is entitled to pursue legal proceedings to recover the outstanding tax notwithstanding that the taxpayer has lodged an objection to the assessment or has applied to the State Administrative Tribunal for a review.
6. If a taxpayer requests more time to pay the tax whether the assessment is disputed or not), the taxpayer must apply to the Commissioner for approval of an arrangement to extend the time for payment or approval of an arrangement for payment of the outstanding tax by instalments. An application may be made at any time, either prior to the due date for payment of the tax or after the due date has passed.
7. If a tax payment arrangement is approved, the Commissioner will normally refrain from commencing or continuing legal proceedings to recover the outstanding tax provided that the taxpayer makes payments in accordance with the arrangement and complies with all other conditions of the arrangement.

8. Tax payment arrangements may include:
  - a. conditions agreed with the taxpayer providing for the payment and allowing for the remission) of interest at the prescribed rate or some other rate fixed by or under the arrangement with the agreement of the taxpayer; and
  - b. any other conditions the Commissioner considers appropriate.
9. The Commissioner's decision in connection with extending the time for payment of tax or approving the payment of tax in instalments is a directly reviewable decision (TAA, section 47(8)).
10. This revenue ruling specifies the guidelines that the Commissioner will follow when considering whether to approve a tax payment arrangement and the conditions to be included in a tax payment arrangement. However, these guidelines are not intended to restrict the exercise of the Commissioner's discretion under section 47 of the TAA and, with each application for approval, the merits of the particular case will be considered by the Commissioner.

## **RULING**

### **General matters**

11. All applications for approval of a tax payment arrangement should be made in writing this (includes applications by email), with the exception of matters specified in paragraph 30.
12. Where an application for approval of a tax payment arrangement is made after the due date for payment of the tax has passed, the taxpayer is liable for penalty tax under section 27 of the TAA. Any application seeking approval of the tax payment arrangement should be made on the basis that this penalty amount is payable.
13. An application seeking approval of a tax payment arrangement must set out the reasons that the taxpayer requires more time to pay the outstanding tax (TAA, section 47(2)).
14. Generally, tax payment arrangements are approved where:
  - a. the applicant demonstrates an inability to raise sufficient funds to pay the outstanding amount by the due date;
  - b. the applicant demonstrates that payment of the outstanding amount by the due date would cause financial hardship;
  - c. the applicant advances other convincing reasons for requiring a tax payment arrangement; or
  - d. in the case of a *Stamp Act 1921* ("Stamp Act") or *Duties Act 2008* ("Duties Act") matter,
    - (d)(i) the transaction has been assessed with duty as an acquisition of new dutiable property being the grant of a lease for which consideration (a premium) is paid and would have been classified as a conditional agreement that is either a farming land conditional agreement, off-the-plan conditional agreement, mining tenement conditional agreement or subdivision conditional agreement, if the

transaction had been an agreement for the transfer of dutiable property as required by Chapter 2 of the Duties Act; or

- (d)(ii) the instrument or transaction has been assessed with duty to provide the Department for Racing Gaming and Liquor with evidence that the purchaser intends to purchase the property, prior to considering an application to transfer a liquor licence in respect of the property to the purchaser, despite the contract or agreement being conditional at the time it is lodged or assessed; or
- (d)(iii) the instrument or transaction has been assessed with duty to provide the purchaser of the property with the evidence to allow them to register a caveat, claiming an interest in the property, against the land title for the property at Landgate, despite the contract or agreement being conditional at the time it is lodged or assessed; or
- (d)(iv) where, as the result of a notification of a new transaction under section 25(3) of the Duties Act, the Commissioner issues an amended duty assessment for an off-the-plan or subdivision conditional agreement that is payable within one month of the date on the assessment notice and, before the due date for payment, the new transaction is cancelled because it has not been, and will not be, carried into effect and the original off-the-plan or subdivision agreement is still conditional.

15. The Commissioner will also take into account the following matters when considering whether or not to approve a tax payment arrangement:
  - a. the past payment history of the taxpayer, including any history associated with the payment of taxes under any taxation Act;
  - b. whether or not the prospects of recovery of the full amount of the tax debt in the longer term will be diminished;
  - c. whether or not the amount of the taxpayer's total tax debt is likely to increase in the future; and
  - d. any other matter the Commissioner considers relevant in the circumstances of the particular case.
16. Tax payment arrangements will not usually be approved where the taxpayer has an unsatisfactory history of compliance in relation to the payment of tax and/or the lodgment of instruments or returns under a taxation Act. However, each case will be considered on its merits.
17. The application should include information concerning the availability of funds to pay the outstanding tax and any other information or documents the taxpayer considers relevant. Where the Commissioner considers that further investigation into the financial status of the taxpayer is necessary, detailed financial statements will usually be required from the applicant.
18. In each case, the applicant must demonstrate a capacity to pay the

outstanding amount in accordance with the proposed tax payment arrangement.

19. A tax payment arrangement will generally only be approved where the taxpayer agrees to the payment of interest on the outstanding tax at the prescribed rate under the *Taxation Administration Regulations 2003*.
20. Where the tax payment arrangement covers penalty tax, interest will generally apply to both the primary tax payable and the penalty tax payable.
21. A tax payment arrangement may include other conditions the Commissioner considers appropriate. For example, the taxpayer may be required to provide the Commissioner with an acceptable form of security for the outstanding tax, or the taxpayer may be required to provide the Commissioner with financial or other relevant information at regular intervals.
22. A tax payment arrangement may also include a condition that the Commissioner is able to amend the tax payment arrangement at any time by notice to the taxpayer (TAA, section 47(4)). For example, the Commissioner may wish to be able to adjust the amount or timing of instalment payments in circumstances where the taxpayer's financial situation improves or deteriorates.
23. Tax payment arrangements will generally be confined to the shortest period that is consistent with the ability of the taxpayer to meet the repayment obligations.
24. In general, tax payment arrangements will be approved for a fixed period of time rather than for an indeterminate period.
25. Where the term of the proposed tax payment arrangement is longer than six months, detailed financial statements in support of the application for approval will usually be required.
26. In the circumstances specified in paragraph 14(d), tax payment arrangements seeking an extension of time to pay will generally be approved for a period up to 12 months from the date liability to duty on the transaction arises.
27. Where the taxpayer does not provide sufficient information to enable the Commissioner to make an informed decision on the application, and the taxpayer has failed to provide additional information on request by the Commissioner within a reasonable period, the application will be denied.

### **Pay-roll tax and insurance duty**

28. Tax payment arrangements for pay-roll tax and insurance duty will usually only be approved in respect of the payment of Commissioner's assessments that relate to past years and/or periods.

### **Land tax**

29. The *Land Tax Assessment Regulations 2003* ("Land Tax Assessment Regulations") set out arrangements for the payment of land tax in one discounted payment (regulation 6); in two instalments (regulation 7); and in three instalments (regulation 8). In addition, regulation 9 sets out other arrangements for paying the assessed amount of land tax. Nothing in the regulations affects the payment of land tax under a tax payment

arrangement (regulation 4).

30. As noted in paragraph 11, applications for approval of a tax payment arrangement should be made in writing (including by email). However, where an extension of one month or less to pay land tax is proposed, applications do not need to be made in writing, but the taxpayer must provide sufficient information to allow the Commissioner to determine whether paragraphs 14 and 15 of this ruling would apply to the request.
31. Where an application made before the due date for an extension of time of one month or less is approved, the approval will be noted on the OSR computer system, but written notice will not be given to the taxpayer unless it is requested.
32. Where an approval is granted under paragraph 31, the penalty tax applicable under section 27(1) of the TAA will generally be remitted entirely, if the full amount of outstanding tax is paid on or before the extended due date.
33. Where an application made after the due date for an extension of time of one month or less is approved, the amount will include applicable penalty tax. The approval will be noted on the OSR computer system, but written notice will not be given to the taxpayer unless it is requested.
34. In addition, where approval is granted under paragraphs 31 or 33, the Commissioner will generally agree to fix the interest rate at 0%.
35. Where an approval is granted under paragraphs 31 or 33, but the full amount outstanding is not paid on or before the extended due date, the tax payment arrangement will be cancelled and the full amount of primary tax and penalty tax will become immediately due and payable.
36. A tax payment arrangement may also be approved for the payment of land tax where:
  - a. the taxpayer receives a land tax assessment notice within nine months from the date of issue of the previous year's assessment notice;
  - b. the taxpayer has not contributed to the delay in making either assessment; and
  - c. the taxpayer applies for approval of a tax payment arrangement indicating difficulty in meeting the payment obligations in these circumstances.
37. If a tax payment arrangement is approved under paragraph 36, the date for payment of the amount due, or where applicable, the last payment date of an instalment arrangement will generally be calculated in accordance with the following table:

| <b>NUMBER OF MONTHS BETWEEN ASSESSMENT NOTICES</b> | <b>TAX PAYMENT ARRANGEMENT DUE DATE FOR PAYMENT OF THE LAST AMOUNT DUE OR LAST INSTALMENT</b> |
|--|---|
| Greater than 0, but less than or equal to 1        | 11 months from issue date of assessment notice  |
| Greater than 1, but less than or equal to 2        | 10 months from issue date of assessment notice  |
| Greater than 2, but less than or equal to 3        | 9 months from issue date of assessment notice   |
| Greater than 3, but less than or equal to 4        | 8 months from issue date of assessment notice   |
| Greater than 4, but less than or equal to 5        | 7 months from issue date of assessment notice   |
| Greater than 5, but less than or equal to 6        | 6 months from issue date of assessment notice   |
| Greater than 6, but less than or equal to 7        | 5 months from issue date of assessment notice   |
| Greater than 7, but less than or equal to 8        | 4 months from issue date of assessment notice   |
| Greater than 8, but less than or equal to 9        | 3 months from issue date of assessment notice   |

38. The Commissioner will usually only approve a tax payment arrangement under paragraph 36 on the condition that the taxpayer agrees to pay interest at the prescribed rate. However, if payment is made by the due date (or each of the due dates in the case of an instalment arrangement) as set out in the tax payment arrangement, the interest will usually be remitted in full.
39. Where the Commissioner approves a tax payment arrangement, the discounted payment under regulation 6 of the Land Tax Assessment Regulations is no longer available, as regulation 6 only applies in the circumstances where the taxpayer makes full payment on or before the original due date.

### **Remission of interest**

40. In addition to the circumstances specified elsewhere in this ruling, the Commissioner may remit some or all of the interest payable under a tax payment arrangement, if evidence of exceptional circumstances is provided. Each case will be considered on its merits, however, situations such as the death of the taxpayer (or an immediate family member) or hospitalisation of the taxpayer due to a medical emergency may be considered as exceptional circumstances.
41. In respect of tax payment arrangements referred to in paragraph 14(d), a tax payment arrangement will usually only be approved on the condition

that the taxpayer agrees to pay interest at the prescribed rate. However, the interest will generally be remitted in full if the entire amount of the tax owing is paid on or before the due date specified in the tax payment arrangement.

42. If the total amount of interest payable under a tax payment arrangement is \$20 or less, it will usually be remitted in full.

#### **Where an objection is lodged**

43. Where an application for approval of a tax payment arrangement is made by a taxpayer who lodges an objection, the guidelines referred to in the relevant paragraphs above will apply as well as the following paragraphs.
44. With the exception of the matters set out in paragraph 46, where a taxpayer lodges an objection against an assessment within the 60 days or further period approved by the Commissioner under section 36 of the TAA, and applies for approval of a tax payment arrangement to extend the time for payment until their objection is determined by the Commissioner, the following will usually apply:
- a. approval will be given to a tax payment arrangement extending the time for payment of the tax until the objection is determined, unless the Commissioner considers that the objection is not genuine and was only lodged in order to defer the time for payment;
  - b. approval of the tax payment arrangement will be subject to the taxpayer agreeing to pay interest under the arrangement at the prescribed rate;
  - c. the payment date for the tax payment arrangement will be 14 days from the date of the notice determining the objection;
  - d. where the objection is subsequently disallowed, any penalty tax payable for late payment under section 27 of the TAA will usually be remitted in full provided that the tax is paid by the date specified in the tax payment arrangement (or each of the dates specified in cases where an instalment arrangement is involved).
45. Where a tax payment arrangement has been approved and the objection is subsequently disallowed, there will generally be no remission of any interest required to be paid under the tax payment arrangement.
46. Return based taxes (such as pay-roll tax and insurance duty) usually involve an ongoing requirement to lodge returns and pay tax on a regular basis. When a dispute arises, granting extensions of time in relation to the taxpayer's current liabilities (including those that relate to past periods) and/or ongoing tax liabilities puts the revenue at risk in relation to the tax that is in dispute. Accordingly, where a taxpayer lodges an objection to a pay-roll tax assessment or an insurance duty assessment, a tax payment arrangement to extend the time for payment until the objection is determined will usually only be approved in exceptional circumstances. However, a tax payment arrangement to pay the amount of tax by instalment arrangements will be considered.

### **State Administrative Tribunal reviews and certain land tax appeals**

47. Where an application for approval of a tax payment arrangement is made by a taxpayer who applies to the State Administrative Tribunal for review of the Commissioner's decision on their objection, or where an appeal is lodged with the Minister in accordance with section 20 of the *Land Tax Assessment Act 2002*, the guidelines referred to in the relevant paragraphs above will apply as well as the following paragraphs:
- a. the Commissioner may approve a tax payment arrangement extending the time for payment where the taxpayer demonstrates that they will suffer financial hardship if required to pay the tax in dispute prior to the determination of the review or appeal;
  - b. the Commissioner will generally not approve a proposed tax payment arrangement that extends the time for payment until the time when the review or appeal is determined. The Commissioner will usually only approve a tax payment arrangement that:
    - (b)(i) extends the time for payment for a fixed period or the determination of the review/appeal (whichever occurs first);
    - (b)(ii) includes a condition requiring the taxpayer to provide the Commissioner with financial or other relevant information at regular intervals;
    - (b)(iii) includes a condition requiring the taxpayer to take all reasonable steps to have the review/appeal heard as soon as possible.
48. Where a tax payment arrangement has been approved and the application for review or appeal to the Minister (as the case may be) is subsequently dismissed, there will generally be no remission of any interest required to be paid under the tax payment arrangement.

### **Appeal of State Administrative Tribunal decision**

49. Where a taxpayer appeals the State Administrative Tribunal decision and the taxpayer applies for approval of a tax payment arrangement to extend the time for payment while their appeal is pending, the guidelines referred to in the relevant paragraphs above will apply as well as the following paragraphs:
- a. the Commissioner will generally only approve a tax payment arrangement extending the time for payment in exceptional circumstances;
  - b. where this occurs, the Commissioner will generally not approve a proposed tax payment arrangement that extends the time for payment until the time when the review or appeal is determined. The Commissioner will usually only approve a tax payment arrangement that:
    - (b)(i) extends the time for payment for a fixed period or the determination of the review/appeal (whichever occurs first);
    - (b)(ii) includes a condition requiring the taxpayer to provide the Commissioner with financial or other



relevant information at regular intervals;

- (b)(iii) includes a condition requiring the taxpayer to take all reasonable steps to have the review/appeal heard as soon as possible.

50. Where a tax payment arrangement has been approved and the appeal is subsequently dismissed, there will generally be no remission of any interest required to be paid under the tax payment arrangement.

### **Case stated**

51. Where an application for approval of a tax payment arrangement is made by a taxpayer in circumstances where the Commissioner has stated a case to the Supreme Court, the guidelines referred to in the relevant paragraphs above will apply as well as the following paragraphs.

52. Where the Commissioner states a case on a question of law to the Supreme Court and the taxpayer applies for approval of a tax payment arrangement to extend the time for payment while the case stated is pending:

- a. the Commissioner may approve a tax payment arrangement extending the time for payment where the taxpayer demonstrates that they will suffer financial hardship if required to pay the tax in dispute prior to the determination of the case stated;

- b. in other cases, a tax payment arrangement will only be approved in exceptional circumstances;

- c. the Commissioner will generally approve a proposed tax payment arrangement that extends the time for payment until the time when the case stated is determined, provided that the tax payment arrangement includes:

- (c)(i) a condition requiring the taxpayer to provide the Commissioner with financial or other relevant information at regular intervals and authorising the Commissioner to amend the tax payment arrangement if he believes the circumstances of the taxpayer have changed; and

- (c)(ii) a condition requiring the taxpayer to cooperate fully to ensure that the case stated is heard as soon as possible.

53. Where a tax payment arrangement has been approved and the question of law is subsequently determined in the Commissioner's favour, there will generally be no remission of any interest required to be paid under the tax payment arrangement.

### **Registration of memorial in relation to land**

54. Under sections 76, 77 and 77A of the TAA, the Commissioner is authorised to lodge a memorial with the Registrar of Titles in relation to land in certain cases:

- a. to advise of a charge that is land tax that is unpaid by the due date specified in the assessment notice;

- b. to create a charge over the land for unpaid stamp duty or transfer duty where the cheque given in payment is dishonoured;
  - c. where stamp duty payable as a result of a reassessment under section 75AG of the Stamp Act or section 145 of the Duties Act is not paid by the due date specified in the assessment notice;
  - d. where stamp duty payable under Part IIIBA of the Stamp Act or landholder duty payable under Chapter 3 of the Duties Act is not paid by the due date specified in the assessment notice; or
  - e. where an assessment has been made under section 76AA of the Stamp Act.
- 55. A single tax memorial registered in relation to a taxpayer's land tax liabilities encompasses any subsequent land tax debts that the same taxpayer may incur in respect of the same land.
- 56. The Commissioner is able to lodge a memorial in relation to the taxpayer's land in the cases referred to above, notwithstanding that the taxpayer may have applied for approval of a tax payment arrangement. Also, the Commissioner may lodge a memorial (in the cases referred to above) at any time after a tax payment arrangement has been approved.

#### **Registration of a tax memorial in relation to mining tenements**

- 57. Under sections 75A, 76, 77, 77A and 78 of the TAA, in conjunction with sections 103A, 103C and 103DA of the *Mining Act 1978*, the Commissioner is authorised to lodge a tax memorial to be registered with the Director General of Mines for unpaid tax in relation to mining tenements:
  - a. to create a charge over the mining tenement for unpaid stamp duty or transfer duty;
  - b. where stamp duty payable under Part IIIBA of the Stamp Act or land holder duty under Chapter 3 of the Duties Act is not paid by the due date specified in the assessment notice;
  - c. where an assessment has been made under section 76AA of the Stamp Act.
- 58. A tax memorial registered with the Director General of Mines has effect against a mining tenement if the holder of the tenement applies and is granted a later tenement which changes the application of the tenement itself under sections 49, 56A, 67, 70, 70L, 70B and 85B of the *Mining Act 1978*.

For example, if the mining tenement is a special prospecting licence and the holder of the mining tenement applies and is granted the right to commence gold mining production, the mining tenement then becomes a "later tenement", that is a mining lease for gold. In this instance if a tax memorial is registered by the Commissioner against the original mining tenement the special prospecting licence this memorial applies to the later tenement that is the mining lease for gold.

### **Cancellation of a tax payment arrangement**

59. Where a taxpayer fails to make a payment in accordance with an approved tax payment arrangement, or where a taxpayer fails to comply with any other condition of an approved tax payment arrangement, the Commissioner may cancel the arrangement by notice to the taxpayer (TAA, section 47(5)).
60. If a tax payment arrangement is cancelled, the whole of the tax outstanding under the arrangement (together with interest) becomes due and payable as from the date of cancellation of the arrangement or the original due date for the payment of tax to which the arrangement relates (whichever is the later) (TAA, section 47(6)).
61. Interest will continue to accrue after cancellation of a tax payment arrangement until the outstanding tax to which the arrangement formerly applied is paid (TAA, section 47(7)).
62. If the whole of the outstanding tax together with interest) is not paid in full within 14 days of the notice of cancellation of the tax payment arrangement, the Commissioner will pursue whatever course of action is appropriate in the circumstances of the case (including legal proceedings) to recover the outstanding amount.

### **Review of decision on a tax payment arrangement**

63. If a taxpayer is dissatisfied with the Commissioner's decision on a tax payment arrangement, they may apply directly to the State Administrative Tribunal for a review of the decision within 60 days of being notified of the decision (TAA, section 34(4)).
64. An action cannot be brought in a court to compel the Commissioner to approve a tax payment arrangement (TAA, section 48).

### **RULING HISTORY**

| Revenue Ruling | Issued         | Effective Dates |                  |
|----------------|----------------|-----------------|------------------|
|                |                | From            | To               |
| TAA 1.0        | September 2006 | September 2006  | July 2008        |
| TAA 1.1        | July 2008      | July 2008       | March 2011       |
| TAA 1.2        | March 2011     | March 2011      | 11 February 2018 |