

# CG-HI-002: Home owner assistance schemes – interest and penalties

## Commissioner's Guideline

Version	Issued	Dates of effect	
		From	To
1	5 May 2005	5 May 2005	30 June 2006
2	29 June 2006	1 July 2006	30 June 2007
3	23 July 2007	1 July 2007	31 December 2007
4	20 February 2008	1 January 2008	30 June 2008
5	1 July 2008	1 July 2008	3 May 2010
6	5 May 2010	4 May 2010	30 June 2011
7	1 July 2011	1 July 2011	3 December 2012
8	7 December 2012	4 December 2012	27 April 2015
9	28 April 2015	28 April 2015	23 May 2016
10	24 May 2016	24 May 2016	6 May 2019
11	7 May 2019	7 May 2019	30 June 2022
12	1 July 2022	1 July 2022	Current

## Purpose

1. This guideline explains:
  - a. how the Territory Revenue Office (TRO) will generally assess penalty and interest under the *First Home Owner Grant Act 2000*
  - b. the operation of the interest and penalty tax provisions of the *Taxation Administration Act 2007* in relation to the stamp duty House and land package exemption (HLPE), Territory home owner discount (THOD) and senior, pensioner and carer concession (SPCC).
2. This guideline is to be read in conjunction with Commissioner's Guideline CG-GEN-002: *Interest and penalty tax*.

## Role of interest and penalties under the First Home Owner Grant Act 0777

3. Penalties and interest play an integral role in the administration of the first home owner grant (FHOG) by:
  - a. deterring people from attempting to access the grant when they are not eligible
  - b. encouraging people to repay the grant within the appropriate 30-day period (see [Requirement to repay the first home owner grant](#)) or to make a full and immediate disclosure if they realise that they are ineligible after the 30-day period

- c. compensating the Territory Government for the period that it was deprived of the use of the funds while the grant remained outstanding
- d. deterring ineligible applicants from retaining or delaying the repayment of the grant.

## Requirement to repay the first home owner grant

- 4. FHOG recipients must notify TRO and repay the amount of the grant within timeframes specific to these five individual circumstances:<sup>1</sup>
  - a. if the applicant(s) is ineligible to apply for the FHOG, the grant is to be repaid within 30 days after payment

### Example

An applicant or an applicant's spouse or de facto partner having prior ownership of residential property, or where no applicant is an Australian citizen or permanent resident.

- b. where otherwise eligible applicant(s) of the FHOG are overpaid, the overpayment is to be repaid within 30 days after the overpayment

### Example

Where a person has been paid \$15,000, but is only eligible for a grant of \$10,000, the \$5,000 overpaid must be repaid within 30 days of the person receiving payment of the FHOG.

- c. where the applicant(s) fail to live in the home as their principal place of residence for a continuous period of at least six months commencing within the 12 month requisite period, the FHOG is to be repaid within 30 days after the earlier of the date:
  - i. by which the applicant(s) were to have occupied the home
  - ii. on which it first became apparent that the residence requirements would not be fulfilled during the 12-month period allowed for compliance

Note: From 28 April 2015, only one applicant must occupy the home as their principal place of residence, exempting other applicants from this requirement.

- d. where there is a breach of a special condition, the FHOG is to be repaid within 30 days of the breach

### Example

Where the FHOG is paid in anticipation of completion of a transaction and the transaction is not completed.

- e. where the FHOG is paid in anticipation of completion of the transaction and the transaction does not complete, the overpayment is to be repaid within 30 days of the applicant(s) becoming aware it would not complete.

---

<sup>1</sup> Section 41(2), 41(2) and 41(2A) of the *First Home Owner Grant Act 2000* (FHOGA).

## Repayment notice

5. If FHOG recipients do not repay or make arrangements with TRO to repay the grant or overpayment within the relevant 30-day period set out at [Requirement to repay the first home owner grant](#) (the repayment period), TRO will issue a written notice (a repayment notice). This notice will require the recipient to pay the amount of the unpaid portion of the FHOG and a penalty of up to the same amount within 30 days after the date of issue of the notice. The notice will also explain why payment is required.<sup>2</sup>
6. The penalty actually imposed will generally be reduced to an amount representing the culpability of the FHOG recipient as set out in this guideline.

## Interest and penalty rates

7. Where a FHOG applicant fails to repay the grant or an overpayment in full by the date required, interest is payable on the amount of the grant. The interest on the repayment of the FHOG is calculated for the period from the required repayment date (the end of the repayment period set out at [Requirement to repay the first home owner grant](#)) until the date the grant is repaid.<sup>3</sup>
8. Where TRO issues a repayment notice and the FHOG or overpayment and any penalty are not paid in full within the 30-day period specified in the notice, interest will be payable on the unpaid penalty in addition to the interest payable on the FHOG or overpayment.<sup>4</sup> The interest on the penalty is calculated for the period from 30 days after the date the notice is issued by TRO until the date the penalty is paid.
9. Interest is applied in accordance with the **statutory interest rate** in force during the relevant financial year.<sup>5</sup> The statutory interest rate is the sum of:
  - a. the **market interest rate**, which is the rate prescribed by regulation for the relevant financial year or, if no rate is prescribed by regulation, the average yield (expressed as an annual rate) of the 90-day bank-accepted bill published by the Reserve Bank of Australia for the month of May in the financial year immediately preceding the relevant year<sup>6</sup>
  - b. and the **premium interest rate**, which is 8% per annum.<sup>7</sup>
10. The interest rate for current and past years is available from the TRO website, [www.revenue.nt.gov.au](http://www.revenue.nt.gov.au).
11. A concessional interest rate may apply in limited circumstances to certain eligible tax defaults between 1 January 2020 and 31 December 2020. Commissioner's Guideline CG-GEN-006: *Concessional interest rate* explains how TRO applies this rate and the conditions of eligibility.

---

<sup>2</sup> Section 41(3)(b) of the FHOGA.

<sup>3</sup> Section 41(3)(a) of the FHOGA.

<sup>4</sup> Section 41(3)(c) of the FHOGA.

<sup>5</sup> Section 41(12) of the FHOGA and definition of 'statutory interest rate' in section 3 of the FHOGA.

<sup>6</sup> Section 35 of the *Taxation Administration Act 2007*.

<sup>7</sup> Section 35 of the *Taxation Administration Act 2007*.

## No interest if recipient complies with notice and repayment requirements

12. No interest is payable if the FHOG recipient complies with the requirement to notify TRO of their ineligibility, overpayment or non-compliance with the residence requirements and the grant is repaid within the repayment period.
13. However, interest may be payable where the FHOG recipient enters into an instalment arrangement to repay the grant and any penalty. For further information on instalment arrangements, refer to Commissioner's Guideline CG-HI-007: *First Home Owner Grant instalment arrangement policy*.

## Remission of interest

14. TRO may remit all or part of the interest payable where satisfied that it is appropriate to do so.<sup>8</sup> However, the Commissioner of Territory Revenue (Commissioner) will generally only consider it appropriate to remit interest below the market interest rate in exceptional circumstances, having regard to the role that interest plays in deterrence, equity and compensation.

## Amount of penalty imposed

15. No penalty is imposed where the FHOG recipient complies with the requirement to notify TRO of their ineligibility, overpayment or non-compliance with the residence requirements and repays (or makes arrangements to repay) the grant within the repayment period.
16. Generally, a **base penalty** equal to **25%** of the amount of the FHOG or overpayment will be imposed where the Commissioner issues a repayment notice. This penalty reflects the FHOG recipient's culpability arising from:
  - a. not meeting their statutory obligation to inform the Commissioner of their ineligibility or overpayment and to repay the FHOG or amount of overpayment within the repayment period
  - b. their ineligibility or overpayment not arising from deliberate or reckless acts (such as where the they intended to satisfy the residence requirements, but failed to do so because of particular circumstances).
17. However, in some circumstances the base penalty will be changed from the default 25% of the amount of the FHOG or overpayment to:
  - a. **75%** of that amount if the Commissioner is satisfied the recipient intentionally disregarded the FHOG requirements because they:
    - i. knowingly or recklessly made a false declaration on the application form

### Example

The recipient knows that they, their spouse or de facto have had a prior relevant interest in residential property that makes the recipient ineligible for the FHOG.

---

<sup>8</sup> Section 41(7) of the FHOGA.

- ii. did not satisfy, and had no intention of satisfying, the residence requirements

### Example

Where the FHOG is in respect of a home used as a rental or investment property or where an investment loan was obtained for such a property.

- iii. deliberately concealed or suppressed information from TRO relevant to determining their eligibility for the FHOG or compliance with the residence requirements, or hindered TRO's investigation of their eligibility or residence
  - b. **95%** of that amount, where the Commissioner is satisfied that there was both an intentional disregard of FHOG requirements and concealment, suppression or hindrance in the circumstances set out above.
18. The base penalty will be reduced by up to:
- a. **20%**, if TRO conducts an investigation of the FHOG recipient's eligibility or residence and the recipient cooperates fully with the investigation
  - b. **80%**, if TRO has not commenced an investigation of the FHOG recipient's eligibility or residence and the recipient's full and immediate disclosure of their ineligibility or overpayment avoids the need for an investigation.
19. In addition, where satisfied that it is appropriate to do so, the Commissioner has the ability to remit the penalty (wholly or in part).<sup>9</sup>

## House and land package exemption, Territory home owner discount and senior, pensioner and carer concession

20. Where an applicant has received the benefit of a stamp duty exemption, discount or concession under the HLPE, THOD or SPCC and is later found to be ineligible, or fails to comply with the occupancy requirements, stamp duty will be reassessed as if they were not eligible for the exemption, discount or concession. Interest and penalty tax may be included in the reassessment if the parties did not notify TRO within the required period or if their non-compliance is identified through the TRO compliance program.
21. TRO will generally exercise the discretions under sections 38 and 44 of the *Taxation Administration Act 2007* to achieve similar interest and penalty outcomes between the FHOG, HLPE, THOD and SPCC.

## Terms explained

22. Refer to Commissioner's Guideline CG-GEN-002: *Interest and penalty tax* for an explanation of the following concepts used in this guideline:
- a. reasonable care to comply with the grant requirements and taxation law
  - b. intentional disregard of the *First Home Owner Grant Act 2000* or taxation law
  - c. deliberately concealing or suppressing relevant information or hindering the assessment of tax

---

<sup>9</sup> Section 41(7) of the FHOGA.

- d. deliberately hindering an investigation
  - e. full and immediate disclosure
  - f. full cooperation with an investigation.
23. In addition, deliberately concealing or suppressing relevant information includes a FHOG, HLPE, THOD or SPCC recipient taking steps to make it appear as though the residence requirements have been met when they have not.

## Residence requirements

24. Refer to Commissioner’s Guideline CG-HI-003: *Commissioner’s discretion to exempt or vary compliance with the eligibility criteria* for details regarding the residence requirements for the FHOG, HLPE, THOD and SPCC and the exemptions that may be available.

## Matrix of penalties and penalty tax

25. This table sets out the base penalty and penalty tax that will apply in a given situation.

Penalty category	Base penalty	Full and immediate disclosure before investigation	Full cooperation with investigation
Complying with requirement to notify and repay within the relevant 30-day repayment period	0%	n/a	n/a
Failing to notify and repay within the repayment period where ineligible for the FHOG, HLPE, THOD or SPCC	25%	5%	20%
Intentionally disregarding the FHOG, HLPE, THOD or SPCC requirements	75%	15%	60%
Concealing or hindering an investigation or assessment	75%	n/a	n/a
Intentionally disregarding the FHOG, HLPE, THOD or SPCC requirements and concealing or hindering an investigation or assessment	95%	n/a	n/a

n/a: not applicable

## Commissioner’s Guidelines

26. Commissioner’s Guideline CG-GEN-001: *Revenue Circulars, Commissioner’s Guidelines and Payroll Tax Rulings: explanation and status*, which sets out information on the revenue publication system, is incorporated into and to be read as one with this guideline. All circulars and guidelines are available on the TRO website.

## Date of effect

27. This version of the guideline takes effect from 1 July 2022.



Sarah Rummery

**COMMISSIONER OF TERRITORY REVENUE**

Date of issue: 1 July 2022

---

For further information, contact the Territory Revenue Office

---

GPO Box 1974

Phone: 1300 305 353

Darwin NT 0801

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

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

---