# CG-HI-002

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# Purpose

1. This Guideline explains:
   1. how the Territory Revenue Office (TRO) will generally assess penalty and interest under the First Home Owner Grant Act 2000 (the FHOGA); and
   2. the operation of the interest and penalty tax provisions of the Taxation Administration Act 2007 (TAA) in relation to the stamp duty 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 2000

1. Penalties and interest play an integral role in the administration of the first home owner grant (FHOG) by:
   1. deterring people from attempting to access the FHOG when they are not eligible;
   2. encouraging people to repay the FHOG within the appropriate 30-day period (see below) or to make a full and immediate disclosure if they realise that they are ineligible after the 30-day period;
   3. compensating the Government for the period that it was deprived of the use of the funds while the FHOG remained outstanding; and
   4. deterring ineligible applicants from retaining or delaying the repayment of the FHOG.

# Requirement to repay the FHOG

1. FHOG recipients must notify TRO and repay the amount of the FHOG within the time frames identified in each of the following circumstances.[[1]](#footnote-1)
   1. Where the applicant(s) were ineligible to apply for the FHOG – the FHOG is to be repaid within 30 days after payment.

Examples include 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.

* 1. Where otherwise eligible applicant(s) of the FHOG are overpaid – the overpayment is to be repaid within 30 days after the overpayment.

For 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.

* 1. 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:
     1. the date by which the applicant(s) were to have occupied the home; or
     2. the date on which it first became apparent that the residence requirements would not be complied with during the 12-month period allowed for compliance.

Note: From 28 April 2015, as long as one applicant occupies the home as their principal place of residence the other applicants are exempt from this requirement.

* 1. Where there is a breach of a special condition – the FHOG is to be repaid within 30 days of that breach.

For example, where the FHOG is paid in anticipation of completion of a transaction and the transaction is not completed.

* 1. 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.

## Repayment notice

1. If FHOG recipients do not repay or make arrangements with TRO to repay the FHOG or overpayment within the relevant 30-day period set out above (the ‘repayment period’), TRO will issue a written notice (a ‘repayment notice’) requiring the FHOG recipient to pay, within 30 days after the date of issue of the notice, the amount of the unpaid portion of the FHOG together with a penalty of up to the same amount; and setting out the reasons why payment is required.[[2]](#footnote-2)
2. 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

1. Where a FHOG applicant fails to repay the FHOG or an overpayment in full by the date required, interest is payable on the amount of the FHOG. 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 above) until the date the FHOG is repaid.[[3]](#footnote-3)
2. Where TRO issues a repayment notice and the FHOG or overpayment together with any penalty are not paid in full within the 30-day period specified in the notice, interest will also be payable on the unpaid penalty in addition to the interest payable on the FHOG or overpayment.[[4]](#footnote-4) 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.
3. Interest is applied in accordance with the **statutory interest rate** in force during the relevant financial year.[[5]](#footnote-5) The statutory interest rate is the sum of:
   1. 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;[[6]](#footnote-6) and
   2. the **premium interest rate**, which is 8 per cent per annum.[[7]](#footnote-7)
4. The interest rate for current and past years is available from [www.revenue.nt.gov.au](http://www.revenue.nt.gov.au).
5. From 1 January 2020 to 31 December 2020, a concessional interest rate may apply in limited circumstances to certain eligible tax defaults. Commissioner’s Guideline CG-GEN-006: *Concessional interest rate* explains how TRO applies this rate and the conditions of eligibility.

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

1. No interest is payable where the FHOG recipient complies with the requirement to notify TRO of their ineligibility, overpayment or non-compliance with the residence requirements and the FHOG is repaid within the repayment period.
2. However, interest may be payable where the FHOG recipient enters into an instalment arrangement to repay the FHOG 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

1. TRO may remit all or part of the interest payable where satisfied that it is appropriate to do so.[[8]](#footnote-8) However, generally the Commissioner will 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

1. 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 FHOG within the repayment period.
2. Where the Commissioner issues a repayment notice, generally a **base penalty** equal to **25 per cent** of the amount of the FHOG or overpayment will be imposed. This penalty reflects the FHOG recipient’s culpability arising from:
   1. the FHOG recipient 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; and
   2. the FHOG recipient’s ineligibility or overpayment not arising from deliberate or reckless acts of the FHOG recipient (such as where the FHOG recipient intended to satisfy the residence requirements, but failed to do so because of particular circumstances).
3. However, in the following circumstances, the base penalty will be changed from the default amount of 25 per cent of the amount of the FHOG or overpayment to:
   1. **75 per cent** of that amount, where TRO is satisfied that the FHOG recipient intentionally disregarded the FHOG requirements because the recipient –
      1. knowingly or recklessly made a false declaration on the application form (for example the FHOG 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); or
      2. did not satisfy, and had no intention of satisfying, the residence requirements (for 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); or
      3. the FHOG recipient deliberately concealed or suppressed information from TRO relevant to determining the recipient’s eligibility for the FHOG or compliance with the residence requirements or hindered TRO’s investigation of the recipient’s eligibility or residence; and
   2. **95 per cent** 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.
4. The base penalty will be reduced by up to:
   1. **20 per cent**, if TRO conducts an investigation of the FHOG recipient’s eligibility or residence and the recipient cooperates fully with the investigation.
   2. **80 per cent**, if TRO has not commenced an investigation of the FHOG recipient’s eligibility or residence and the FHOG recipient’s full and immediate disclosure of their ineligibility or overpayment avoids the need for an investigation.
5. In addition, where satisfied that it is appropriate to do so, the Commissioner’s has the ability to remit the penalty (wholly or in part).[[9]](#footnote-9)

# THOD and SPCC

1. TRO will generally exercise the discretions under sections 38 and 44 of the TAA to achieve similar interest and penalty outcomes between the FHOG, THOD and SPCC.

# Terms explained

1. Refer to Commissioner’s Guideline CG-GEN-002: *Interest and penalty tax* for an explanation of the following concepts used in this Guideline.
   1. Reasonable care to comply with the grant requirements / taxation law.
   2. Intentional disregard of the FHOGA / taxation law.
   3. Deliberately concealing or suppressing relevant information or hindering the assessment of tax.
   4. Deliberately hindering an investigation.
   5. Full and immediate disclosure.
   6. Full cooperation with an investigation.
2. In addition, deliberately concealing or suppressing relevant information includes a FHOG, THOD or SPCC recipient taking steps to make it appear as though the residence requirements have been met when they have not.

# Residence requirements

1. For details regarding the residence requirements for the FHOG, THOD and SPCC and the exemptions that may be available, please refer to the respective guide to the application and Commissioner’s Guideline CG-HI-003: *Commissioner's discretion to exempt or vary compliance with the eligibility criteria*.

# Matrix of penalties and penalty tax

1. The table below sets out the base penalty and penalty tax that will apply in a given situation:

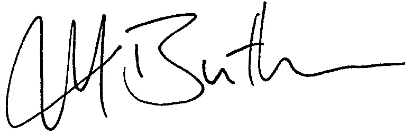
| Penalty category | Base penalty | Full and immediate disclosure before investigation | Full cooperation with investigation |
| --- | --- | --- | --- |
| Comply with requirement to notify and repay within the relevant 30-day repayment period | 0% | N/a | N/a |
| Failure to notify and repay within the repayment period where ineligible for FHOG, THOD or SPCC | 25% | 5% | 20% |
| Intentional disregard of the FHOG, THOD or SPCC requirements | 75% | 15% | 60% |
| Concealment or hindering an investigation or assessment | 75% | N/a | N/a |
| Intentional disregard of the FHOG, THOD or SPCC requirements and  concealment or hindering an investigation or assessment | 95% | N/a | N/a |

# Commissioner’s Guidelines

1. Commissioner’s Guideline CG-GEN-001, which sets out information on the revenue publication system, is incorporated into and is to be read as one with this Guideline. All Circulars and Guidelines are available from the TRO website.

# Date of effect

This version of the Guideline takes effect from 7 May 2019.



Mick Butler

COMMISSIONER OF TERRITORY REVENUE

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1. Section 41(2), 41(2) and 41(2A) of the FHOGA. [↑](#footnote-ref-1)
2. Section 41(3)(b) of the FHOGA. [↑](#footnote-ref-2)
3. Section 41(3)(a) of the FHOGA. [↑](#footnote-ref-3)
4. Section 41(3)(c) of the FHOGA. [↑](#footnote-ref-4)
5. Section 41(12) of the FHOGA and definition of ‘statutory interest rate’ in section 3 of the FHOGA. [↑](#footnote-ref-5)
6. Section 35 of the TAA. [↑](#footnote-ref-6)
7. Section 35 of the TAA. [↑](#footnote-ref-7)
8. Section 41(7) of the FHOGA. [↑](#footnote-ref-8)
9. Section 41(7) of the FHOGA. [↑](#footnote-ref-9)