# CG-GEN-004

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| Version | Issued | Dates of Effect |
| From: | To: |
| 1 | 15 December 2006 | 15 December 2006 | 31 December 2007 |
| 2 | 2 January 2008 | 1 January 2008 | 30 June 2011 |
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| 4 | 7 December 2012 | 4 December 2012 | Current |

# Purpose

1. This Guideline sets out the circumstances and conditions under which the Territory Revenue Office (TRO) may approve an instalment arrangement[[1]](#footnote-1) under the *Taxation Administration Act* (the TAA) as an alternative to commencing recovery action for a stamp duty or payroll tax debt.
2. Government to deliver services and provide infrastructure for the benefit of the community. TRO expects taxpayers to meet their responsibilities and pay tax by the due date.
3. However, it is recognised that at times a person may be unable to pay all of a tax liability and TRO is generally prepared to work collaboratively with taxpayers to develop an appropriate plan that supports taxpayers in meeting their obligations.
4. Where a taxpayer is unable to pay the whole of a tax liability when due, the taxpayer may contact TRO to request the outstanding amount be paid by instalments. The following provides guidance as to the circumstances and conditions under which TRO may approve an instalment arrangement and related matters.
5. Of note, an application for instalment arrangement will not be approved where TRO considers that the taxpayer has not made a full and true disclosure as to their current financial circumstances, or the taxpayer does not provide information requested by TRO to assist in determining the application.

## Demonstrated financial incapacity

1. Where a taxpayer proposes an instalment arrangement that will repay the debt within 12 months or less, the taxpayer must demonstrate financial incapacity by providing evidence that they do not have sufficient funds, including savings or unused credit or loan facilities, available to repay all or part of the debt.
2. Where a taxpayer proposes an instalment arrangement that will take longer than 12 months to repay the debt, in addition to the above, they must also demonstrate that they have applied for and been refused loans, advances or other credit for all or part of the amount of the debt through normal lending facilities. For instance, the taxpayer must also demonstrate that they have applied for and been refused a personal loan, an overdraft facility or an increased or second mortgage over any property owned by the taxpayer.
3. Special arrangements apply where TRO is of the opinion that the taxpayer intentionally disregarded a tax liability, obtained the benefit of a concession or exemption that they knew or should have known they were ineligible for or disregarded a condition or an obligation attached to a concession or exemption. In these circumstances, regardless of the repayment period under the proposed instalment plan, the taxpayer must provide evidence that they have applied for and been refused finance or credit to repay the debt.

## Partners, group members and spouses to be included in instalment proposal

1. The TAA provides that:
	1. partners in a partnership are jointly and severally liable for tax liabilities incurred by or on behalf of a partnership[[2]](#footnote-2)
	2. members of a group formed under a taxation law (such as a payroll tax group) are jointly and severally liable for the tax liabilities of each other member of the group incurred under that taxation law during the period that they are a member of the same group. [[3]](#footnote-3)
2. Any instalment proposal:
	1. by or on behalf of a partnership must be based on the financial circumstances and capacity of all members of the partnership to repay the debt
	2. by a member of a group must be based on the financial circumstances and capacity of the group as a whole to repay the debt
	3. by a natural person must also include the capacity of the spouse (including a de facto partner) of the taxpayer to repay the debt.

## Length of instalment arrangements

1. Instalment arrangements will generally only be approved for the shortest period of time that is within the taxpayer’s financial capacity to pay the debt (and, where relevant, the financial capacity of their partners, group members or spouses).

## Periodic review

1. TRO will periodically review the taxpayer’s circumstances and will adjust the amount and/or timing of instalment payments where the taxpayer's financial situation changes.

## Commitment of additional funds

1. A condition of all instalment arrangements is that any unexpected funds, windfalls or additional disposable income that becomes available to the taxpayer will be used to reduce the amount of the debt. Where such amounts are available, the taxpayer must advise TRO and apply it to reduce the amount of the debt.

## Security for payment of debt

1. Depending on the term of the instalment arrangement and the financial circumstances of the taxpayer, TRO may require an acceptable form of security for the debt.
2. Where the debt relates to a stamp duty liability arising from a transaction whereby land is acquired, or where a relevant acquisition in a land holding corporation or unit trust scheme occurs,[[4]](#footnote-4) the debt becomes an overriding statutory charge on that land (or the land that the corporation or unit trust scheme is entitled to).[[5]](#footnote-5)
3. TRO will register the overriding statutory charge against the land where an instalment arrangement is entered into in relation to that stamp duty liability. The charge will not be removed until the debt is paid.
4. Where the taxpayer has sold the land before the charge is registered, TRO may require security over another property owned by the taxpayer, particularly where the instalment arrangement exceeds six months.

## Penalty tax and interest

## Penalty tax and interest will apply where a taxpayer fails to pay a tax liability by the due date. Commissioner’s Guideline: CG-GEN-002: *Interest and penalty tax* explains how TRO applies the penalty tax and interest provisions of the TAA, including the role of interest and penalty tax in taxation administration.

## As a general rule where TRO approves a tax liability to be paid by way of an instalment arrangement, interest at the statutory rate (the current market interest rate plus a premium interest rate of 8 per cent per annum) will apply on the outstanding amount from the due date for payment until the debt is paid.[[6]](#footnote-6)

1. From 1 January 2020 to 31 December 2020, a concessional interest rate may apply in limited circumstances to certain eligible tax defaults the subject of instalment arrangements. Refer to Commissioner’s Guideline CG-GEN-006: *Concessional interest rate* for more information.

## This interest is calculated on that part of the debt that comprises the primary tax and penalty tax payable, but not to any interest accrued to that date. Where satisfied that it is appropriate, the Commissioner may remit (in whole or in part) the interest payable under an instalment arrangement.

## For current interest rates, please refer to TRO’s website: www.revenue.nt.gov.au.

## Continuing liabilities

1. Where a taxpayer has a continuing liability to pay tax, such as ongoing monthly payroll tax obligations, the instalment arrangement shall also be conditional on the taxpayer meeting its continuing tax requirements.

## Other conditions

1. TRO will impose any other conditions that are considered appropriate in the circumstances of a particular case.[[7]](#footnote-7)

# Applications and supporting information

# All applications for an instalment arrangement must be in writing, setting out fully and in detail the taxpayer’s circumstances and reasons why the taxpayer requires additional time to pay the debt. The application must include:

# a proposed instalment arrangement, setting out the amount and frequency of payments (e.g. weekly, fortnightly or monthly)

# details of savings and unused credit or loan facilities available to the taxpayer (and where relevant, partners, group members or the spouse of the taxpayer) to pay the whole or part of the debt

# details of the monthly income and expenditure of the taxpayer and their partners, group members or spouse. Where these persons operate a business or businesses, the most recent financial statements of the businesses together with projected cash flows over the period of the instalment arrangement must be provided

# for proposed instalment arrangements greater than 12 months, where the taxpayer obtained the benefit of a concession or exemption that they knew or should have known they were ineligible for or disregarded a condition or an obligation attached to a concession or exemption, evidence of the taxpayer applying and being rejected for finance for all or part of the amount of the debt

# any other information the taxpayer believes may assist TRO when determining the application, e.g. copies of payslips, Australian Taxation Office tax returns and bank statements.

# Where a taxpayer is unable to pay the whole of a tax liability, the taxpayer should consider applying to pay the outstanding amount by an instalment arrangement as soon as possible. Any delay in lodging an application after the due date for payment of a debt may influence TRO’s assessment of the taxpayer’s commitment to the arrangement.

# The application will be refused where the taxpayer does not provide sufficient information to enable TRO to make an informed decision on whether to approve the application or fails to provide additional information within a reasonable period when requested to by TRO.

# Approval of an instalment plan

# In considering whether to approve an instalment arrangement, TRO will take into account all relevant matters including the following:

# the degree of the taxpayer’s culpability, especially where a taxpayer has intentionally disregarded a taxation law

# any past payment history of the taxpayer under an Act administered by TRO

# whether or not the prospects of recovery of the full amount of the debt in the longer term will be diminished

# whether or not the amount of the taxpayer's total tax debt is likely to increase in the future

# whether it be would reasonable in the circumstances for the taxpayer to access funds through a commercial lending provider.

# Order of repayments

# Instalments will generally be applied to reduce the debt in the following order.

# interest

# penalty tax

# the amount of the outstanding primary tax

# Review of instalment arrangements

# If the financial circumstances of a taxpayer deteriorate such that they cannot comply with an approved instalment arrangement, the taxpayer must notify TRO immediately. Failure to contact TRO suggests that the taxpayer is no longer willing or able to pay its remaining tax liabilities.

# The taxpayer must provide sufficient information about their current financial circumstances to allow TRO to determine whether it is appropriate to renegotiate a more suitable instalment arrangement or pursue other methods to recover the debt.

# Breach of instalment arrangements

1. If a taxpayer defaults on an instalment or does not otherwise comply with a condition of an instalment arrangement, TRO will notify the taxpayer in writing that if the breach is not remedied within a period specified in the notice, the instalment arrangement will be terminated and immediate legal action will be taken to recover the debt.
2. Continued breaches, regardless of whether they are of the same or a similar nature, will result in TRO revoking the instalment arrangement and pursuing other methods of recovering the debt. In addition to legal action this includes, but is not limited to, using the garnishee provisions in the TAA to recover tax through money that is due or accruing to a taxpayer from a third party, bank accounts and/or rental income,

# First Home Owner Grant

1. Where a person has an obligation to repay the first home owner grant but is unable to do, reference should be made to Commissioner’s Guideline CG-HI-007: *First home owner grant* *instalment arrangement policy*.

# 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 4 December 2012.



Mick Butler

COMMISSIONER OF TERRITORY REVENUE

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For further information please contact the Territory Revenue Office:

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1. Section 56 of the TAA. [↑](#footnote-ref-1)
2. Section 59(1) of the TAA. [↑](#footnote-ref-2)
3. Section 59(2) of the TAA. [↑](#footnote-ref-3)
4. Part 3, Division 8A of the *Stamp Duty Act*. [↑](#footnote-ref-4)
5. Section 63 of the TAA. [↑](#footnote-ref-5)
6. Section 56(4) of the TAA. [↑](#footnote-ref-6)
7. Section 56(2) of the TAA. [↑](#footnote-ref-7)