

# **Taxation (Interest on Overpayments) Bill**

## **EXPLANATORY MEMORANDUM**

*Clauses 1 and 2.* These clauses contain provisions relating to the purpose of the legislation and the date of commencement.

*Clauses 3 and 4.* These clauses contain definitions of words and phrases used in the Bill.

*Clause 5.* This clause provides that information obtained in connection with the administration of this Act is governed by the secrecy provisions set out in the respective taxing Acts.

*Clause 6.* This clause sets out the circumstances under which a person is entitled to receive interest on an amount which is overpaid.

*Sub-clause (1)* will operate, subject to clause 8, (see later for an explanation of this clause), where a person has paid to a relevant Commissioner an amount of relevant tax and the amount paid is, after resolution of an objection or appeal concerning the person's liability to pay that amount, found to be in excess of the amount that is correctly payable.

In these circumstances there will be an entitlement to interest in respect of the overpaid amount of tax that, by reason of the adjustment necessary to give effect to the decision on the objection or appeal, is either refunded to the person or applied against another taxation liability of the person.

*Sub-clause (2)* deals with the case where an amount of relevant tax has been paid to a relevant Commissioner in instalments. For the purpose of clause 7 (1) (the provision under which the amount of interest is calculated) each instalment is to be treated as a separate payment of relevant tax.

*Sub-clause (3)* will mean that, where only a part of relevant tax is to be refunded to a person or applied against another taxation liability of a person and the relevant tax has been paid to the relevant Commissioner in instalments, the amount refunded or applied is to be attributed to the most recently paid instalments, i.e., the last in, first out principle is applied. The sub-clause thus ensures that interest accrues only in respect of instalments that result in an overpayment of relevant tax.

*Sub-clause (4)* operates where a relevant Commissioner has applied an amount paid to him by one person against the liability of another person to pay an amount of relevant tax; for example, where one person is jointly and severally liable for the payment of another person's liability. The sub-clause deems the person on whose account the tax is paid to have paid that amount to the relevant Commissioner on the day on which the amount was applied by the relevant Commissioner against that person's liability, typically, the day on which the assessment of tax concerned was made.

*Clause 7* sets out the manner in which the amount of interest on overpaid tax is to be calculated.

*Sub-clause (1) (a)* specifies that the period for which interest is to be paid is to commence on the latest of:

the day of issue of the assessment, determination or decision objected against;

the day on which the tax was paid to a relevant Commissioner; or

the date of commencement of this clause;

and is to end on the day that the amount of overpaid tax is refunded to the person or applied against any other taxation liability of the person.

*Sub-clause (1) (b)* requires that, subject to clause 7 (3), interest payable is to be calculated at such rates as are set from time to time by order of the Governor in Council published in the *Government Gazette*.

By sub-clause (2), where the rate of interest payable is varied by Order in Council, the varied rate will be applicable for such period as is specified in the Order in Council. This means that the rate of interest payable on a particular amount refunded, or applied against another taxation liability, can fluctuate during the accrual period, to reflect changes in benchmark interest rates.

*Sub-clause (3)* will set the rate of 13.796% per annum as the rate to be initially used for the calculation of interest. This rate will continue until such time as a different rate is set by Order in Council. The rate of 13.796% per annum is the rate determined as the weighted average yield of the longest term Treasury Bonds contracted for in the most recent bond tender, the results of which were announced on 26 February 1986.

*Sub-clause (4)* is a drafting measure to require that, where a fraction of a cent results from an interest calculation, the fraction will be rounded up or down, as the case requires, to the nearest whole cent.

*Clause 8. Sub-clause (1)* provides that interest payable in accordance with the provisions of clauses 6 and 7 is not to be paid until a final decision is reached on the objection.

*Sub-clause (2)* provides that interest is not payable where a decision in favour of a taxpayer is later reversed on appeal and the final decision is in favour of the relevant Commissioner.

*Clause 9.* This clause provides that interest is only payable where the amount is 50 cents or more.

*Clause 10.* This clause provides that where a person has any other liability to the State the relevant Commissioner may apply an amount of interest payable to discharge that liability in part or in full.

*Clause 11.* This clause provides for payments of interest to be made out of the Consolidated Fund.