



## REVENUE RULING

**FHOG 1.0**

### FIRST HOME OWNER GRANT - REPAYMENT ARRANGEMENTS

#### RULING HISTORY

Revenue Ruling	Issued	Effective Dates	
		From	To
FHOG 1.0	January 2007	January 2007	11 February 2018

#### INTRODUCTION

1. This ruling deals with the exercise of the Commissioner of State Revenue's discretion under section 52 of the *First Home Owner Grant Act 2000* ("the Act") to approve arrangements for extensions of time to repay grants and arrangements for the payment of outstanding grant monies by instalments (collectively referred to as "repayment arrangements").
2. The Commissioner may require a first home owner grant applicant to repay a grant if the amount was paid in error, the Commissioner reverses the decision under which the amount was paid (other than where it was paid in error), or the Commissioner imposed a condition on the payment of the amount and the applicant failed to comply with the condition [section 51(1)]. An applicant may also be required to repay a first home owner grant if the residence requirements under section 13 are not met [section 21(1) and (2)].
3. The Commissioner may impose a penalty of not more than 100% of the amount the applicant is required to repay if the grant was paid in error because the Commissioner considers information given by the applicant in or in relation to the application was false or misleading [section 51(2)].
4. Where a repayment or penalty amount is payable under section 51, the due date for payment is 28 days after the date on which notice of the requirement is given to the applicant. Where a repayment is payable under section 21, the applicant must repay the amount of the grant or apply for an arrangement for the repayment of the amount within 30 days after the relevant day [section 21(2)]. The relevant day is specified in section 21(3).

5. If the amount required to be repaid under section 51 is not paid within the 28 day period or any longer period allowed under section 52, the Commissioner may impose a penalty of not more than 100% of the amount the applicant is required to repay [section 51(3)].
6. If the amount required to be repaid under section 21 is not paid within the 30 day period or any longer period allowed under section 52, the Commissioner may impose a penalty of not more than 100% of the amount the applicant is required to repay [section 21(5) and (5a)]. Subject to section 52, this penalty amount must be paid by the applicant within 28 days after the date on which notice of the penalty is given to the applicant [section 21(6)].
7. Where a grant is required to be repaid under section 21 or 51, a stamp duty liability will also arise under section 75AG of the *Stamp Act 1921* where the duty on the purchase of the property was originally assessed under that section.
8. The Commissioner may lodge a memorial where an applicant for a first home owner grant is liable to pay an amount to which section 53 of the Act applies and the applicant holds a relevant interest in relation to the home for which the grant was sought [section 55].
9. The Commissioner may commence legal proceedings (in any court of competent jurisdiction) to recover any amount required to be repaid, any penalty imposed, any amount due and payable (including interest) under a repayment arrangement and any fee payable under section 60 as a debt due to the Crown [section 53].
10. Where a memorial is lodged under section 55 the Commissioner will require an applicant to pay the amount of any fees paid by the Commissioner for the registration, or the cancellation of the registration, of the memorial [section 60].
11. If an applicant requests more time to repay the grant or a penalty imposed under section 21 or 51, the applicant may apply to the Commissioner for approval of an arrangement to extend the time for payment or approval of an arrangement to pay the amount outstanding by instalments. An application may be made at any time.
12. If a repayment arrangement is approved, the Commissioner will normally refrain from commencing or continuing legal proceedings to recover the outstanding amount, provided that the applicant makes payments in accordance with the arrangement and complies with all other conditions of the arrangement.
13. Repayment arrangements may include:
  - (a) conditions agreed with the applicant 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 applicant; and

- (b) any other conditions the Commissioner considers appropriate [section 52(3)].
- 14. The prescribed rate of interest referred to in paragraph 13(a) is set out in regulation 8 of the *First Home Owner Grant Regulations 2000*.
- 15. This revenue ruling specifies the guidelines that the Commissioner will follow when considering whether to approve a repayment arrangement and also when considering the conditions to be included in a repayment arrangement. However, these guidelines are not intended to restrict the exercise of the Commissioner's discretion under section 52 and each application for approval will be considered on the merits of the particular case.

## **RULING**

### **General matters**

- 16. All applications for approval of a repayment arrangement should be made in writing (which may include application by email).
- 17. Where an application seeking a repayment arrangement is made after the due date for payment of the amount outstanding, the applicant is liable for a penalty under section 51(3). Any application seeking approval of the repayment arrangement should be made on the basis that the penalty amount is payable.
- 18. In accordance with section 52(2), an application seeking approval of a repayment arrangement must set out fully and in detail the reasons the applicant requires more time to pay the outstanding amount.
- 19. Generally, repayment arrangements will be approved where the applicant:
  - (a) demonstrates an inability to raise sufficient funds to pay the outstanding amount by the due date;
  - (b) demonstrates that payment of the outstanding amount by the due date would cause financial hardship; or
  - (c) advances other convincing reasons for requiring a repayment arrangement.
- 20. The Commissioner will also take into account the following matters when considering whether or not to approve a repayment arrangement:
  - (a) any past payment history of the applicant;
  - (b) whether or not the prospects of recovery of the full amount of the debt in the longer term will be diminished; and
  - (c) any other matter the Commissioner considers relevant in the circumstances of the particular case.

21. The application should include information concerning the availability of funds to pay the outstanding amount and any other information or documents the applicant considers relevant. Where the Commissioner considers that further investigation into the financial status of the applicant is necessary, detailed financial documentation will usually be required from the applicant.
22. In each case, the applicant must demonstrate a capacity to pay the outstanding amount in accordance with the proposed repayment arrangement.
23. A repayment arrangement will generally only be approved where the applicant agrees to the payment of interest on the outstanding amount at the prescribed rate under the *First Home Owner Grant Regulations 2000*.
24. Where the repayment arrangement includes a penalty amount, interest will generally apply to both the repayment of the grant and the penalty.
25. A repayment arrangement may include other conditions the Commissioner considers appropriate such as:
  - (a) the applicant may be required to provide the Commissioner with an acceptable form of security for the outstanding amount, or the applicant may be required to provide the Commissioner with financial or other relevant information at regular intervals;
  - (b) the Commissioner is able to amend the repayment arrangement at any time by notice to the applicant, either by agreement with the applicant or as provided in the conditions of the arrangement [section 52(4)(a) and (b)]. For example, the Commissioner may wish to adjust the amount or timing of instalment payments in circumstances where the taxpayer's financial situation improves or deteriorates;
  - (c) the Commissioner may require the applicant to agree to the conditions of the repayment arrangement by requesting the applicant's written agreement to the conditions. Alternatively, the applicant may be invited to agree to the conditions of the repayment arrangement by the making of the first payment by the due date specified under the repayment arrangement.
26. Repayment arrangements will generally be confined to the shortest period that is consistent with the ability of the applicant to meet their repayment obligations.
27. Where the term of the proposed repayment arrangement is longer than six months, detailed financial statements in support of the application for approval will usually be required.
28. Where the applicant does not provide sufficient information to enable the Commissioner to make an informed decision on the application for approval, and the applicant has failed to provide additional information on request by the Commissioner within a reasonable period, the application will be denied.

### **Remission of interest**

29. In addition to the circumstances specified elsewhere in this ruling, the Commissioner may remit some or all of the interest payable under a repayment arrangement if evidence of exceptional circumstances is provided. Each case will be considered on its merits. Situations such as the death of the applicant (or an immediate family member) or hospitalisation of the applicant due to a medical emergency may be considered as exceptional circumstances.
30. If the total amount of interest payable under a repayment arrangement is \$20 or less, it will be remitted in full.

### **Where objection lodged**

31. Where an application for approval of a repayment arrangement is made by an applicant who lodges an objection, the guidelines referred to in relevant paragraphs above will apply as well as the following paragraphs.
32. Where an applicant lodges an objection within the 60 days or further period approved by the Commissioner under section 28 of the Act and applies for approval of a repayment 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 repayment arrangement extending the time for payment of the outstanding amount until the objection is determined;
  - (b) approval of the repayment arrangement will be subject to the applicant agreeing to pay interest under the arrangement at the prescribed rate;
  - (c) the payment date for the repayment arrangement will be 14 days from the date of the notice determining the objection;
  - (d) where the objection is subsequently disallowed, any penalty payable for late payment under section 21 or 51 of the Act will usually be remitted in full provided that the outstanding amount is paid by the date specified in the repayment arrangement (or each of the dates specified in cases where an instalment arrangement is involved).
33. Where a repayment 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 repayment arrangement.

### **State Administrative Tribunal reviews**

34. Where an application for approval of a repayment arrangement is made by an applicant who applies to the State Administrative Tribunal for review of the Commissioner's decision on their objection, the guidelines referred to

in the relevant paragraphs above will apply as well as the following paragraphs:

- (a) the Commissioner may approve a repayment arrangement extending the time for payment where the applicant demonstrates that they will suffer financial hardship if required to pay the outstanding amount prior to the determination of the review;
- (b) the Commissioner will generally not approve a proposed repayment arrangement that extends the time for payment until the time when the review is determined. The Commissioner will usually only approve a repayment arrangement that:
  - i. extends the time for payment for a fixed period or the determination of the review (whichever occurs first);
  - ii. includes a condition requiring the applicant to provide the Commissioner with financial or other relevant information at regular intervals;
  - iii. includes a condition requiring the applicant to take all reasonable steps to have the review/appeal heard as soon as possible.

35. Where a repayment arrangement has been approved and the application for review is subsequently dismissed, any interest that is required to be paid under the repayment arrangement will not be remitted.

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

36. Where an applicant appeals the State Administrative Tribunal decision and the applicant applies for approval of a repayment arrangement to extend the time for payment while their appeal is pending, the guidelines referred to in relevant paragraphs above will apply as well as the following paragraphs:
- (a) the Commissioner will generally only approve a repayment arrangement extending the time for payment in exceptional circumstances;
  - (b) where this occurs, the Commissioner will generally not approve a proposed repayment arrangement that extends the time for payment until the time when the appeal is determined. The Commissioner will usually only approve a repayment arrangement that:
    - i. extends the time for payment for a fixed period or the determination of the appeal (whichever occurs first);
    - ii. includes a condition requiring the applicant to provide the Commissioner with financial or other relevant information at regular intervals;
    - iii. includes a condition requiring the applicant to take all reasonable steps to have the appeal heard as soon as possible.

37. Where a repayment arrangement has been approved and the appeal is subsequently dismissed, any interest required to be paid under the repayment arrangement will not be remitted.

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

38. The Commissioner is able to lodge a memorial in relation to the applicant's land in the cases referred to in paragraph 8, notwithstanding that the applicant may have applied for approval of a repayment arrangement. Also, the Commissioner may lodge a memorial (in the cases referred to in paragraph 8) at any time after a repayment arrangement has been approved.

#### **Cancellation of a repayment arrangement**

39. Where an applicant fails to make a payment in accordance with an approved repayment arrangement, or where an applicant fails to comply with any other condition of an approved repayment arrangement, the Commissioner may cancel the arrangement by notice to the applicant [section 52(5)].
40. If a repayment arrangement is cancelled, the whole of the amount 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 the amount to which the arrangement relates (whichever is the later) [section 52(6)].
41. Interest will continue to accrue after cancellation of a repayment arrangement until the outstanding amount to which the arrangement formerly applied is paid [section 52(7)].
42. If the whole of the outstanding amount (together with interest) is not paid in full within 14 days of the notice of cancellation of the repayment 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.