



IRD MT Public Ruling

MT PR 2019/1 - Miscellaneous taxes: Offset of tax credits against arrears of taxes

BINDING SECTION:	Paragraph
What this Ruling is about	2
Ruling	4
Date of effect	8
NON BINDING SECTION:	
Appendix 1: Examples	9
Appendix 2: Matrix	10

Protection Label

This Ruling provides you with the following level of protection:

This publication represents the Commissioner's view about the way in which the revenue law applies, or would apply to persons generally or to a class of persons in relation to a particular arrangement or transaction or a class of arrangements or transactions.

You can rely on this publication (excluding appendixes) to provide you with protection from interest and penalties in the way explained below. If a statement turns out to be incorrect and you underpay your tax as a result, you will not have to pay a penalty. Nor will you have to pay interest on the underpayment provided you reasonably relied on the publication in good faith. However, even if you don't have to pay a penalty or interest, you will have to pay the correct amount of tax provided the time limits under the law that allows it.

What this Ruling is about

Class of person/arrangement or transaction

1. This Ruling applies to persons who have a tax credit with Inland Revenue Division (IRD).
2. The Ruling provides guidance on when the Commissioner will allow tax credits to be used by a taxpayer to offset tax arrears:
 - in other periods for the same tax type;
 - in other tax types for the same taxpayer; and
 - of another taxpayer, but only with the approval of the Commissioner.
3. By way of background this guidance is contrary to previously established policy guidance given to IRD staff. It is, however, consistent with policy adopted by other tax administrations and is now possible in the Solomon Islands as a result of enhancements to IRD's accounts management systems and procedures.
4. The new guidance improves both compliance and efficient administration where tax credits can be applied to offset outstanding tax liabilities. The taxpayer is able to comply with his or her payment obligations without incurring additional costs and the administration is saved the cost of pursuing collection or making an unnecessary refund payment.

Legislation

- Section 90(1) of the Income Tax Act Cap 123.

90(1) If it is proved to the satisfaction of the Commissioner that any person has, in respect of any assessment for any year, paid tax, by deduction or otherwise, other than the tax deducted from a dividend paid to a non-resident person, in excess of the amount chargeable under this Act, such person shall be entitled to have the amount so paid in excess refunded:

Provided that where any tax is due and payable by such person in respect of any other assessment, the amount so paid in excess shall be applied towards the satisfaction of the amount so due and payable to the extent of such tax and the amount so applied shall not be refunded:

Provided further that where any liability under section 36 has yet to be determined in respect of the tax deducted from any dividend due or paid to such person, the Commissioner may withhold the repayment of any refund resulting from such dividend until the liability under section 36 is determined and secured to the satisfaction of the Commissioner.

- Section 47(1)(b) of the Goods Tax Act Cap 122.

47. (1) Subject to section 46, where the Commissioner finds in any case that tax has been overpaid by a person, the Commissioner shall-

(a) refund the amount of any tax overpaid; or

(b) apply the amount of any tax overpaid against any liability of the person to the Solomon Islands Government, being liability arising under, or by virtue of, an Act of which the Commissioner has the general administration, and refund any part of the amount that is not so applied.

Ruling

5. Unless the legislation contains an express authority for the Commissioner to apply tax credits in a certain way, a taxpayer is entitled to decide whether their own credits should be refunded to them or applied to offset some other tax arrears that are owed.
6. In most cases the Commissioner will not offset tax credits whilst there is an unresolved objection or dispute before the Courts.
7. The types of offset permitted by the tax legislation are:

(a) *Offset of credits when a taxpayer owes arrears in other periods for the same tax type*

Income Tax

8. Subsection 90(1) of the Income Tax Act Cap. 123 (the Act) provides for any amount of tax for a tax year that is more than the tax required to be paid for that year, is to be refunded to the taxpayer.
9. The first proviso to that subsection requires such a refund is to be not refunded to the taxpayer, but rather to be applied against **any** tax that is due and payable by the taxpayer. Tax is defined in section 2 to mean the income tax imposed by the Act.
10. Subsection 90(1) therefore, gives clear authority for income tax credits due to a taxpayer to be offset against income tax arrears owed from another tax period.
11. The second proviso allows the Commissioner to withhold the payment of any refund in respect of a dividend where any liability under section 36 of the Act has yet to be determined and paid to the Commissioner until such time as the liability under section 36 has been determined.

12. It is not necessary to obtain any agreement (consent) from the taxpayer to offset income tax credits from one period against income tax arrears owed in another period.
13. A claim for repayment under section 90 of the Act must be made within seven years after the expiry of the year to which the claim relates (subsection 90(2) of the Act).

Goods Tax

14. Subsection 47(1)(b) of the Goods Tax Act gives the Commissioner the power to:

“(b) apply the amount of any tax overpaid against any liability of the person to the Solomon Islands Government, being liability arising under, or by virtue of, an Act of which the Commissioner has the general administration, and refund any part of the amount that is not so applied.”

15. Subsection 47(1)(b) therefore, gives clear authority for goods tax credits due to a taxpayer to be offset against goods tax arrears owed in another tax period.
16. Subsection 47(2) provides that subsection (1) does not apply in relation to an tax paid by a person unless the Commissioner be satisfied that:
 - the tax has not been passed on by the person to another person or
 - if passed on to another person has been refunded to the other person
17. It is not necessary to obtain the consent from the taxpayer to offset goods tax credits from one period against goods tax arrears owed in another period.

Sales Tax

18. There is no express authority in the Sales Tax Act for the Commissioner to apply a credit of tax through the payment in excess of an amount due, to arrears of unpaid tax in respect of another transaction or for another monthly period.
19. Consequently, a vendor who wishes to have a credit of sales tax used to offset arrears of sales tax in another month or in respect of another transaction, must apply **in writing** to

the Commissioner.

(b) Offset of credits where arrears are owed in another tax type by the same taxpayer

Income Tax

20. There is no authority in the Income Tax Act for credits of income tax to be applied to offset arrears owed in another tax type.
21. A taxpayer who is entitled to a refund of Income Tax in accordance with subsection 90(1) of the Income Tax Act, may apply **in writing** to the Commissioner for the amount in credit to be applied to offset arrears owed by that taxpayer for another tax type (goods tax or sales tax).

Goods Tax

22. Subsection 47(1)(b) of the Goods Tax Act gives clear authority for Goods Tax credits due to a taxpayer to be offset against a tax liability arising under any of the Acts administered by the Commissioner.
23. It is not necessary to obtain the consent from the taxpayer to offset Goods Tax credits against either income tax or sales tax arrears.

Sales Tax

24. There is no authority in the Sales Tax Act for the Commissioner to apply a credit of Sales Tax through payment in excess of an amount due, to arrears of unpaid tax in respect of other tax types.
25. Therefore, a vendor who wishes to have a credit of sales tax used to offset arrears of any other tax, must apply **in writing** to the Commissioner.

(c) Offset of credits due to one taxpayer against arrears of tax owed by another taxpayer

24. None of the Tax Acts contain any authority for the Commissioner to transfer tax credits owed to one taxpayer to satisfy a tax liability of another taxpayer.
25. However, as stated above, a taxpayer is entitled to decide what to do with their own money. Therefore, a taxpayer may apply **in writing** to the Commissioner for a tax refund to be applied as a credit in offset of a tax liability of another taxpayer.
26. An application to transfer tax credits between taxpayers may be approved only by the Commissioner.

The Commissioners view for the various situation is provided below:

Offset of credits against arrears for a taxpayer within a tax type

27. For **income tax** and **goods tax**, the Commissioner may offset credits in one period for a taxpayer against arrears owed by the same taxpayer in another period. No consent is needed from the taxpayer.
28. For **sales tax**, the Commissioner may offset credits against arrears owed only if a written application has been received from the taxpayer.

Offset of credits in one tax type against arrears in another tax type for the same taxpayer

29. The Commissioner may offset **goods tax** credits for a taxpayer against arrears owed by the same taxpayer in another tax type. No consent is needed from the taxpayer.
30. The Commissioner may offset credits of **income tax** or **sales tax** against arrears owed in another tax type only if a written application has been received from the taxpayer.

Offset of credits of one taxpayer against arrears owed by another taxpayer

31. For all tax types these applications must be in writing. The offset can only approved by the Commissioner.

Written applications

32. Written applications for offset of tax credits against tax arrears may be made by email from the taxpayer or the taxpayer's tax agent's email address, in person or by post.

33. All applications must contain the full name of the taxpayer, the taxpayer's TIN, the period and tax type in which the credit arises, and arrears period against which the credit is to be offset.

34. Applications for credits owed to one taxpayer to be used to offset tax arrears owed by another taxpayer must also state the full name of the taxpayer and TIN (if known) who is to receive the benefit of the credit.

Effective date of offset

35. An offset of arrears is effective on the date the payment was made that gave rise to the credit.

Penalties

36. In cases where a request is necessary and it is received after the due date, where funds were available on or before the due date, no penalties would be imposed.

Date of effect

36. This Ruling applies to years of income commencing both before and after its date of issue. This Ruling does not apply to taxpayers to the extent that it conflicts with the terms of settlement of a dispute agreed to before the date of issue of the final Ruling.

Joseph Dokekana

Commissioner of Inland Revenue

Dated 27th August 2019

Appendix 1 - Examples

 ***This Appendix sets out examples. It does not form part of the binding public ruling.***

Example 1

37. A taxpayer has a refund owing to them as a result of filing their 2016 income tax return. They overpaid their provisional tax by \$50,000. Their 4th Quarter provisional tax payment for 2016 was \$65,000.00 and was paid on the due date of 20th December 2016.
38. The taxpayer owes \$25,000 for their 3rd quarter 2017 provisional tax which was due on the 30th September 2017. It is now overdue as it is 30th October 2017.
39. They have requested that the refund from their income tax account be used to pay the 3rd quarter and 4th quarter provisional tax.
40. The offset can occur as requested by the taxpayer. The effective date of the offset is the date of the 4th quarter 2016 payment of 20th December 2016. This means that even though the request was received and actioned after the due date of 30th September 2017, because the funds were available at that date, no penalties will be imposed.

Example 2

41. A taxpayer realises they have overpaid PAYE in the month of June 2017 by \$10,000. The payment was made on the 15th July 2017. They have requested that the overpayment be offset against their next month PAYE that is due on the 15th August.
42. This request is in line with the policy guidance. The taxpayer should still file their Form IR9 for the July period showing how much they owe for that period. The payment is then transferred at the effective date of 15th July 2017.

Appendix 2

MATRIX OF CREDIT TRANSFERS (for the same taxpayer)

43. This matrix helps you understand the rules for each tax type. It sets out what taxpayers (tax agents) can do if taxes listed below have a credit balance, and whether the tax credit can be transferred to other taxes.

To→	Goods Tax	Income Tax	PAYE	Provisional Tax	Sales Tax	Withholding Tax
From↓						
Goods Tax	Yes – Not necessary to provide consent to IRD	Yes – Not necessary to provide consent to IRD	Yes – Not necessary to provide consent to IRD	Yes – Not necessary to consent to IRD	Yes – Not necessary to provide consent to IRD	Yes – Not necessary to provide consent to IRD
Income Tax	Yes – only if consent in writing by taxpayer (tax agents) to IRD	Yes – Not necessary to provide consent to IRD	Yes – Not necessary to provide consent to IRD	Yes – Not necessary to provide consent to IRD	Yes – only if consent in writing to IRD	Yes – Not necessary to provide consent to IRD
PAYE	No	No	Yes – only if consent in writing to IRD	No	No	No
Provisional Tax	Yes – only if consent in writing to IRD	Yes – Not necessary to provide consent to IRD	Yes – Not necessary to provide consent to IRD	Yes – Not necessary to provide consent to IRD	Yes – only if consent in writing to IRD	Yes – Not necessary to provide consent to IRD
Sales Tax	Yes – only if consent in writing to IRD	Yes – only if consent in writing to IRD	Yes – only if consent in writing to IRD	Yes – only if consent in writing to IRD	Yes – only if consent in writing to IRD	Yes – only if consent in writing to IRD
Withholding Tax	No	No	No	No	No	Yes – only if consent in writing to IRD