

INTEREST AND PENALTY

TECHNICAL ADVISORY

TAXPAYER AUDIT AND ASSESSMENT DEPARTMENT

INTERPRETATIONS, RULINGS AND OPINIONS COMMITTEE (IROC)

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This advisory explains how to calculate interest and increase of tax (penalty) on outstanding taxes withheld at source under the Income Tax Act.

Legislation

All references are to the Income Tax Act.

Interest

Under the Income Tax Act, Section 79(1)(b), interest is charged from the day after the date of collection, as defined in Section 78(4), until the date of payment on all outstanding amount under this act.

The Commissioner (TAAD) is empowered to remit interest in whole or in part, if the Commissioner is satisfied and accept the supported reasonable explanation by the taxpayer.

Interest is forty percent (40%) per annum.

$$\text{Formula} \rightarrow \frac{\text{Tax outstanding}}{1} \times \frac{40}{100} \times \frac{\text{days outstanding}}{365} = \text{Interest}$$

N.B. Note that interest is also calculated on increase of tax (penalty) as the increase of tax is to be added and become part of the assessment.

Penalty

Section 41(1) stipulates that any person required by this Act to deduct tax on the payment by him of any sum and pay or account for the same to the Commissioner of Inland Revenue or any other person shall make the said payment of tax, or render the said account, or do both, as his duty may require, within fourteen (14) days after the end of the calendar month in which the first mentioned payment was made, *whether or not tax* was in fact deducted from that payment.

- ☐ Section 41(2)(a) states that where a person fails to pay over *tax deducted at source* (e.g. PAYE deductions) these deductions shall be increased at the rate of fifty-percent (50%) per annum from the day after the date on which payment should have been made.

Thus, where an employer does not submit PAYE deductions to the Collector of Taxes by the due date, the late payments attract increase of tax (penalty) of fifty percent per annum. This increase of tax (penalty) may only be remitted in whole or part by the Minister of Finance.

Formula →
$$\frac{\text{Tax outstanding}}{1} \times \frac{50}{100} \times \frac{\text{days outstanding}}{365} = \text{Increase of Tax (penalty)}$$

- ☐ Where the tax *was not deducted* by the employer, he shall be treated as if the tax was increased at such rate, not exceeding fifty percent (50%) as the Commissioner may direct [Section 41(2)(b)], i.e. the Commissioner (TAAD) may determine a rate between (0 – 50%).

Where the tax was not deducted, the increase of tax (penalty) may be computed at the rate (0 – 50%) as the Commissioner directs from the day after the date on which the deductions (if they were made) should have been paid.