



COMMISSIONER’S PRACTICE FHOG 3.0

FIRST HOME OWNER GRANT - IMPOSITION OF PENALTIES

Commissioner’s Practice History

Commissioner’s Practice	Issued	Dates of effect	
		From	To
FHOG 3.0	18 September 2012	18 September 2012	21 April 2013

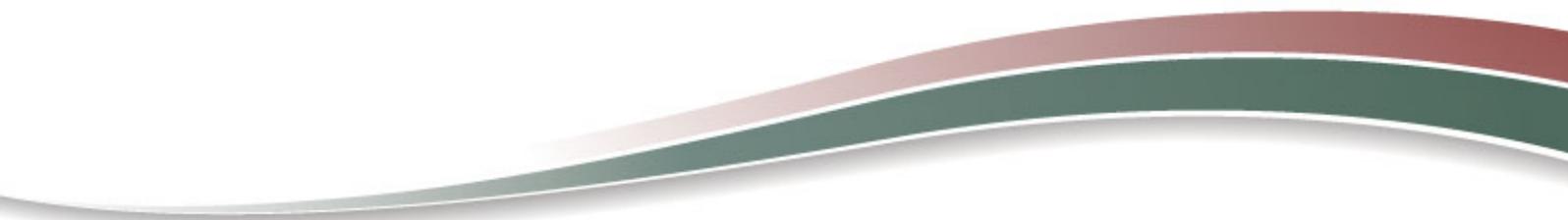
This Commissioner’s Practice outlines the circumstances in which a penalty of less than 100 per cent will be imposed where the first home owner grant (“FHOG”) was paid in error to an ineligible applicant because the applicant provided false or misleading information or where the FHOG was paid in anticipation of the applicant complying with the residence requirement but that condition was not met.

In some circumstances, the purchase of the property for which the FHOG was paid may have been assessed at the first home owner concessional rate of transfer duty. If the FHOG is required to be repaid, the Commissioner will also reassess the transaction to remove the benefit of the first home owner concessional rate and apply penalty tax under the *Taxation Administration Act 2003* (“TAA”).

The imposition of a penalty under the *First Home Owner Grant Act 2000* (“the Act”) and remission of penalty tax under the TAA are to occur so that the penalty amounts are payable at a consistent percentage. This Commissioner’s Practice sets out the manner in which the FHOG penalty is imposed. It should be read in conjunction with Commissioner’s Practice TAA 19 – Remission of Penalty Tax – Reassessments, which sets out the manner in which penalty tax under the TAA is to be remitted.

Background

The Act provides that the Commissioner may require repayment of a grant under certain circumstances, including where the grant was paid in error.



Superseded

Section 51(1) of the Act provides that the Commissioner may, by written notice, require an applicant for a first home owner grant to repay an amount paid on the application if:

- (a) the amount was paid in error;
- (b) the Commissioner reverses the decision under which the amount was paid for a reason other than that the amount was paid in error; or
- (c) the Commissioner imposed a condition on the payment of the amount with which the applicant (or any joint applicant) has failed to comply within the period stated in the condition.

Section 51(2) of the Act provides that if an amount paid on an application for a FHOG was paid in error because of information that the Commissioner considers to be false or misleading given by the applicant in or in relation to the application, the Commissioner may, by written notice, impose a penalty of not more than the amount the applicant is required to pay.

Section 13(1) of the Act requires the applicant to occupy the home as their principal place of residence for the required residence period.

Section 13(2) of the Act requires a residence period of at least six continuous months, or a shorter period if approved by the Commissioner.

Section 13(4) of the Act requires the applicant to begin residence within the take-up period, which section 15(5) of the Act states is 12 months after the completion of the eligible transaction, or a longer period if approved by the Commissioner.

Section 21(1) of the Act provides that the Commissioner may authorise payment of a first home owner grant:

- (a) in anticipation of compliance with the residence requirements; or
- (b) if the requirement under section 13(4) has been complied with, in anticipation of compliance with the requirement under section 13(1); and

if the Commissioner is satisfied that each applicant intends to comply with those requirements, or that requirement, to the extent that the applicant is required to do so.

Section 21(2) of the Act provides that a payment authorised under subsection (1) is made on condition that, if an applicant:

- (a) does not comply with the requirement under section 13(4);
- (b) becomes aware that the requirement under section 13(4) will not be complied with; or

Superseded

- (c) having complied with the requirement under section 13(4):
 - (i) does not comply with the requirement under section 13(1); or
 - (ii) becomes aware that the requirement under section 13(1) will not be complied with,

the applicant must within 30 days after the relevant day:
- (d) give written notice of that fact to the Commissioner; and
- (e) either repay the amount of the grant, or make an application under section 52(2) for the Commissioner to approve an arrangement for the repayment of the amount of the grant.

Section 21(5) provides that the Commissioner may, by written notice, impose a penalty on an applicant if the applicant:

- (a) does not comply with subsection (2)(e) within the 30 day period mentioned in subsection (2); or
- (b) does not repay the amount of the grant in accordance with an arrangement approved for the purposes of subsection (2)(e).

Section 21(5a) provides that the amount of penalty imposed under subsection (5) is not to exceed the amount that the applicant is required to repay under subsection (2).

Section 143 of the *Duties Act 2008* provides for a concessional rate of transfer duty to be charged on the dutiable transaction where the transferee is eligible for the FHOG. If a person is required to repay the FHOG, they will also be required to pay transfer duty at the general rate of transfer duty or the residential rate of transfer duty when the residential rate application form is completed.

Commissioner's Practice

1. In relation to an applicant's ineligibility for a FHOG, the only circumstance in which a penalty will generally not be imposed is where:
 - 1.1 the applicant makes an honest and reasonable mistake of fact when applying for the grant; and
 - 1.2 the applicant was not misleading or reckless in applying for the grant in the first instance; and
 - 1.3 there has not been any intention by the applicant to hide or falsify information when applying for the grant.

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2. In relation to an applicant's failure to meet the necessary residency requirements for a FHOG, the only circumstance in which a penalty will generally not be imposed is where:
 - 2.1 the circumstances change so that the applicant is no longer eligible for the grant (i.e. cannot meet the six month continuous residence requirement); and
 - 2.2 the Commissioner is advised of the above before an investigation begins; and
 - 2.3 arrangements have been made to repay the grant; or
 - 2.4 there are exceptional circumstances beyond the applicant's control that prevent the applicant from meeting the residency requirements.
3. Where a penalty is to be imposed, the amount of penalty will be calculated as a percentage of the FHOG paid, in accordance with the FHOG penalty tables below.
4. The amount of the penalty is not to exceed the amount of the grant.
5. As a general rule, a reduction of the penalty imposed will not be allowed as all factors presented by the FHOG applicant have been taken into account at the time of the investigation and the penalty imposed in accordance with the FHOG penalty tables. However, an application for a reduction of the penalty imposed may be considered where exceptional circumstances apply, and then only with the joint approval of the Director Group 1 and the Director Compliance.

Date of Effect

This Commissioner's Practice takes effect from 18 September 2012.

Bill Sullivan
COMMISSIONER OF STATE REVENUE

18 September 2012

Superseded

Penalty for Not Complying with One or More of the Eligibility Criteria

PENALTIES – ELIGIBILITY CRITERIA		
Penalty	Type of Penalty	Reason for Percentage Penalty Imposed
Nil	Innocent	<p>After receiving the grant, the applicant voluntarily notifies the Commissioner of State Revenue that they were ineligible to receive the grant at the time of commencing the eligible transaction (unless the applicant's actions were fraudulent); or</p> <p>the applicant acted on advice from a third party such as a real estate or settlement agent and the third party confirms this in writing to the Office of State Revenue; or</p> <p>the applicant was paid the grant in error due to an error made by the Commissioner of State Revenue; and</p> <p>the applicant has made arrangements to repay the grant.</p>
20 per cent	Negligent	The applicant becomes aware that they are ineligible to receive the grant and does not notify the Commissioner and voluntarily repays the grant.
50 per cent	Reckless	<p>The applicant denies that they were ineligible for the grant, or hinders an investigation and only admits their ineligibility once evidence is presented.</p> <p>The applicant was reckless in applying for the grant and was ineligible to receive the grant.</p>
100 per cent	Fraudulent (may also include prosecution)	<p>The applicant fraudulently obtains the grant, or the applicant persists with denying that they were ineligible for the grant, or hinders an investigation and does not admit their ineligibility once evidence is presented.</p> <p>The applicant acted on advice from an advisor, however, they were deliberately misleading in seeking that advice and applying for the grant.</p>

Superseded

Penalty for Not Meeting One or More of the Residency Requirements

PENALTIES – RESIDENCY REQUIREMENTS		
Penalty	Type of Penalty	Reason for Percentage Penalty Imposed
Nil	Innocent	The applicant voluntarily advises the Commissioner of State Revenue, before an investigation commenced, that a residency requirement has not been met and arranges to repay the grant.
20 per cent	Negligent	During an investigation or when otherwise contacted by the Commissioner of State Revenue, the applicant admits that they failed to meet a residency requirement.
50 per cent	Reckless	The applicant provides false information or hinders an investigation and only admits that they failed to satisfy the residency requirement when evidence is presented.
100 per cent	Fraudulent (may also include prosecution)	The applicant sets up processes and false information to show that they have met the residency requirements when they have not, and persists with the assertion that they have met the residency requirements; or, the applicant persistently provides false information and gets others to do the same on their behalf.