

Payment of Accounts

This Circular specifies the Government's payment of accounts policy, including new requirements, effective from 14 July 2011, for agencies to pay small business suppliers within 30 days for goods and services (unless an alternative time period is provided) or else automatically pay interest on the amount outstanding.

Summary:

This Circular specifies the Government's payment of accounts policy, including new requirements, effective from 14 July 2011, for agencies to pay small business suppliers for goods and services within 30 days unless an alternative period is provided. The main changes compared to the previous payment of accounts policy are:

- To enhance the payment of accounts requirements with respect to small businesses.
- To move the detailed requirements for payment of accounts from the *Public Finance and Audit Regulation 2010* to this Treasury Circular (which is issued as a Treasurer's Direction).
- To specify new payment of accounts requirements for payments to small business suppliers:
 - Payments must be made within 30 days of receipt of a correctly rendered invoice, unless an existing contract or standing offer (i.e. pre 14 July 2011) provides for an alternative time period.
 - If payment is not made within the specified time period, simple interest must be paid automatically where required by this policy with implementation of this requirement from a date to be determined.
- To largely carry forward previous requirements relating to payments to suppliers that are not small businesses, except the requirements are, for the most part, moved from the Regulation to this Circular. These agencies are also encouraged to pay other suppliers within 30 days of the date of receipt of a correctly rendered invoice.
- To introduce additional requirements for agencies to provide quarterly reports about their payment performance to the Department of Finance and Services (DFS), to be posted on its website (previously quarterly reporting was only required to be provided to the Chief Executive Officer).

To implement the new policy, the DFS standard procurement contracts will be updated. In the limited circumstances where standard DFS contracts are not available or appropriate, agencies must ensure that any new or amended contracts include payment term clauses, consistent with the new policy.

This Circular is issued as a Treasurer's Direction under section 9 of the *Public Finance and Audit Act 1983* and as required under subclauses 13(4) and (5) of the *Public Finance and Audit Regulation 2010*. The Circular withdraws and supersedes Treasurer's Direction TD 219.01.

The policy applies to an 'authority' subject to the Regulation (which includes departments and statutory authorities, other than statutory State Owned Corporations) and all accounting officers and officers of an authority. Notwithstanding this, statutory State Owned Corporations are encouraged to apply this policy.

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Payment of Accounts Policy

1. Background

The NSW Government's 100 Day Action Plan committed to requiring NSW public sector agencies to pay small business suppliers within 30 days. To give effect to this new policy, clause 13 of the *Public Finance and Audit Regulation 2010* has been amended. At the same time, the detail of the payment of accounts policy has been moved from the Regulation to this Circular, which is issued as a Treasurer's Direction. The requirements for suppliers, other than small businesses, have also been reviewed for consistency.

The Auditor-General will be requested to undertake a compliance audit on the new policy, to ensure agencies meet the on-time payment policy.

2. Application

The new payment of accounts policy applies to accounts, statements or invoices received on or after 14 July 2011 for goods and services. However, the requirement to pay interest on late payments to small business suppliers, in certain circumstances, is to be applicable from a date to be determined.

This Circular is issued as a Treasurer's Direction under section 9 of the *Public Finance and Audit Act 1983* and as required under subclauses 13(4) and (5) of the *Public Finance and Audit Regulation 2010*. The Circular withdraws and supersedes Treasurer's Direction TD 219.01. The policy applies to an 'authority' subject to the Regulation (which includes departments and statutory authorities, other than statutory State Owned Corporations) and all accounting officers and officers of an authority. Notwithstanding this, statutory State Owned Corporations are encouraged to apply this policy.

To assist agencies apply and implement this new policy, Appendix A provides answers to a number of frequently asked questions. The template for quarterly reporting to the Department of Finance and Services is attached at Appendix B.

3. Payments to small business suppliers

In accordance with the Treasurer's Direction referred to in subclauses 13(4) and (5) of the *Public Finance and Audit Regulation 2010*, the following is required:

Requirement to pay within 30 days

- Public sector agencies must pay small business suppliers for the provision of goods and services, not later than 30 days from the date of receipt of a correctly rendered invoice or statement, unless an existing contract or standing offer (i.e. pre 14 July 2011) provides for an alternative time period.
- Shorter or longer payment terms are permitted for new or amended contracts entered into on or after 14 July 2011. However, payment terms longer than 30 days are permitted only where the nature of the goods and services or the structure of the purchase make it impractical to require payment within 30 days.

Requirement to pay interest

- Where payment is not made within the specified time period, simple interest must be paid automatically unless an existing contract (i.e. pre 14 July 2011) specifies otherwise, with implementation of this requirement commencing from a date to be determined (see below).
- Simple interest on the unpaid amount must be calculated from the day after payment was due up to and including the day that payment is made, where interest exceeds A\$20.
- The interest rate is determined under section 22 of the *Taxation Administration Act 1996*, unless a higher interest rate is payable under the contract in respect of the default in payment. The appropriate interest rate is available from the NSW Office of State Revenue website at <http://www.osr.nsw.gov.au/taxes/other/taa/rates/>.

Agencies must provide potential suppliers with the opportunity to identify themselves as a small business on invoicing (i.e. suppliers will be able to self-assess themselves as a 'small business', in accordance with this policy, at the date of invoicing).

It is planned that the requirement to pay interest to small business suppliers will be effective from 1 January 2012; i.e. where the account which is overdue was received on or after 1 January 2012. This date, however, is subject to confirmation pending a review of implementation planning by the responsible Ministers.

4. Payments to other suppliers (i.e. other than small businesses)

In accordance with the Treasurer's Direction referred to in subclauses 13(4) and (5) of the *Public Finance and Audit Regulation 2010*, the following is required:

Requirement to pay on time

- Public sector agencies must pay suppliers, other than small business suppliers, for the provision of goods and services, as follows:
 - if a contract provides for the time of a payment and a correctly rendered invoice or statement is received — payment is made by that time, or
 - if a contract does not provide for the time of a payment and a correctly rendered invoice or statement is received — payment is made by the end of the month following the month in which a correctly rendered invoice or statement from the supplier is received.

Discretion to pay interest

- Where payment is not made within the time determined in accordance with the above, the Head of an authority (or a person appointed by the Head of an authority), may automatically pay the supplier simple interest.
- Simple interest on the unpaid amount, where directed to be paid by the Head of an authority, must be calculated from the day after payment was due up to and including the day that payment is made, where interest exceeds \$A20.
- The interest rate is determined under section 22 of the *Taxation Administration Act 1996*, unless a higher interest rate is payable under the contract in respect of the default in payment. The appropriate interest rate is available from the NSW Office of State Revenue website at <http://www.osr.nsw.gov.au/taxes/other/taa/rates/>.

Notwithstanding the above, agencies are encouraged to make payments to other suppliers (i.e. not with small businesses) within 30 days of receipt of a correctly rendered invoice.

5. Definitions

For the purposes of this policy:

Correctly rendered invoice or statement is an invoice or statement which:

- is rendered in accordance with all of the requirements of the approved purchase order and, where applicable, the written contract
- is for amounts correctly calculated
- is for work properly performed (i.e. goods received in good order and condition and / or service satisfactorily carried out)

Day that payment is made is the day that funds are transferred into the banking system for payment to the supplier or a cheque is sent.

Goods and services are as defined in the *Public Sector Employment and Management (Goods and Services) Regulation 2010*. In general terms, goods and services exclude construction contracts and property and accommodation contracts.

Head of an authority is defined in section 4 of the *Public Finance and Audit Act 1983*.

Small businesses are Australian or New Zealand-based firms that have an annual turnover of under \$2 million in the latest financial year.

Standing offer is an agreement for the provision or disposal of goods or services over a certain period on the order of any customer for whom the agreement has been arranged.

6. Reporting

Quarterly reporting to Chief Executive Officer (CEO) and Department of Finance and Services (DFS)

All agencies subject to the Treasury Circular are required to provide quarterly reports specifically with respect to small business suppliers about their payment performance to their CEO and to DFS. Reports on payment performance will be published on the DFS website. The agency reporting template format to be used is attached at Appendix B.

The first quarterly report to be published on the DFS website will be for January to March 2012. Agencies, however, should start internally monitoring and reporting to their CEO on the basis of the attached format from 14 July 2011. Further information about submission requirements will be provided separately to affected agencies before the January-March 2012 quarterly report is required.

Annual report requirements

Separately, annual reporting requirements are specified in the *Annual Reports (Departments) Regulation 2010* and the *Annual Reports (Statutory Bodies) Regulation 2010*. These requirements are discussed in NSWTC 06/26 *Annual Reports Legislation – Reporting on Payment of Accounts* (or any superseding Circular). The annual reporting disclosure requirements will be unchanged for 2010-11 annual reports. However, the Circular will be updated for the new payment of accounts policy for 2011-12 annual reports.

7. Other requirements

The amended *Public Finance and Audit Regulation 2010* refers to Treasurer's Directions regarding payment of accounts, which are the subject of this Treasury Circular. The amended Regulation also includes other requirements, similar to the previous requirements, that:

- The Head of an authority must nominate the holder of a position within the staff establishment of the authority to be the accounts complaints officer for the authority.
- An order form issued by an authority must include:
 - a statement that if payment is not made within the time determined in accordance with this Policy, the supplier should take the matter up with the accounts complaints officer for the authority, and
 - the telephone number of the complaints officer, and
 - a statement that, if payment is not made within the specified time period, the Head of the authority:
 - *must*, if required to do so by the Treasurer's directions, pay the supplier penalty interest of an amount or rate determined by the Treasurer's directions (i.e. for small business suppliers), and
 - *may* award penalty interest of an amount or rate determined by the Treasurer's directions, in other cases (i.e. for suppliers other than small businesses).
- Any penalty interest payment must be met from within the authority's approved budget.

Replaced by TP 25-04

Appendix A

Frequently asked questions on 30 day payment policy for small businesses

Frequently asked questions are provided to assist with the implementation of this new policy.

1. What is covered by the payment of accounts policy for small business? When is the start date?

Agencies are required to pay small businesses within 30 days of receipt of a correctly rendered invoice or statement, for invoices or statements received on or after 14 July 2011 for goods or services.

The above requirements, however, do not apply where there is an existing contract or standing offer (i.e. pre 14 July 2011) which provides for an alternative time period / interest requirements, in which case the terms of the contract apply. Where existing contracts have longer payment terms, agencies are still encouraged to pay small business suppliers within 30 days, where possible.

2. How do you define a small business?

A small business is an Australian or New Zealand-based firm that has an annual turnover of under \$2 million in the latest financial year.

3. How do agencies know that an invoice is from a small business under the policy?

Agencies must provide potential suppliers with the opportunity to identify themselves as a small business on invoicing (i.e. suppliers will be able to self-assess themselves as a 'small business', in accordance with this policy, at the date of invoicing). For example, the purchase order issued by the agency could outline the process / requirements for a small business to identify itself to the agency on invoicing (e.g. by requiring the supplier to clearly identify itself as a small business, in accordance with the policy, on the invoice provided to the agency). It is up to the agency to formulate and advise suppliers of the process to identify a small business supplier.

4. How do agencies verify that a supplier is a small business under the policy?

An agency may ask a supplier to demonstrate that it satisfies the definition of a small business under this policy; e.g. by supplying a business activity statement, the latest year's annual financial statement, letters/certificate from the firm's accountant/auditor or any other acceptable third-party endorsement. However, an agency may decide to limit this verification to only circumstances where interest will be paid (from a date to be determined), and in all other circumstances to accept the supplier's self assessment, and pay within 30 days from receipt of a correctly rendered invoice.

5. How will we know whether a supplier's small business status changes?

A small business will need to self assess itself at the time of invoicing (i.e. to identify itself as a small business), which therefore will occur on a continuous basis, as goods and services are supplied.

6. Can payment terms be less than 30 days?

Yes, an agency can have an internal policy where payment terms are less than 30 days or negotiate payment terms of less than 30 days under a specific contract with a small business.

7. Can payment terms be more than 30 days?

Yes, but only where the nature of the goods and services or the structure of the purchase make it impractical to require payment within 30 days.

8. From what date is late payment interest payable?

The date is to be determined. Following the implementation of this policy, and based on the lessons learnt during the initial period of operation of the policy, the start date for the requirement to pay interest to small business on overdue amounts will be determined. Subject to confirmation, however, the intention is that the requirement to pay interest to small business suppliers will be effective from 1 January 2012; i.e. where the account which is overdue is received on or after 1 January 2012.

9. Is interest payable on overdue amounts where payment terms other than 30 days have been agreed, in accordance with the policy?

Yes. When effective, penalty interest is required in all circumstances where payment is not made 'within the specified time period', whether that is within 30 days, or the shorter or longer payment terms, as agreed in the contract.

10. Are agencies to pay small businesses within 30 calendar days or 30 business days?

Payments to small businesses are to be made within 30 calendar days.

11. How is interest for late payment initiated?

Interest will be automatically paid by agencies where payment has not been made within 30 days of receipt of a correctly rendered invoice, where the interest chargeable exceeds A\$20. This means that the agency must calculate the interest payable, which must then be certified as correct.

12. How is interest for late payments calculated?

The interest rate is determined under section 22 of the Taxation Administration Act 1996. This is available from the NSW Office of State Revenue website at:
<http://www.osr.nsw.gov.au/taxes/other/taa/rates/>.

Example penalty interest calculation:

Assume the following:

- Penalty interest rate is 13%
- Value of correctly rendered invoice is \$200,000
- Payment is due on 30 June and payment occurs on 15 July (ie 15 calendar days after the conclusion of the 30 day period)

Interest to be paid to a small business supplier = \$200,000 x 13% x 15/365 = \$1,068 (rounded to the nearest dollar).

13. What is a correctly rendered invoice?

A correctly rendered invoice is an invoice which:

- is rendered in accordance with all of the requirements of the approved purchase order and, where applicable, the written contract
- is for amounts correctly calculated
- is for work properly performed (i.e. goods received in good order and condition and / or service satisfactorily carried out)

The above is consistent with the *Public Finance and Audit Regulation 2010* and Treasurer's Directions (TD 180). Among other things, the Regulation and TDs require an authorised purchase order, and a certification of the performance of services and rates of charge.

The relevant date from which to determine the date of payment is the date of receipt of the correctly rendered invoice, not the date the agency certifies that it is correctly rendered.

14. What happens if the supplier issues an invoice but the goods or services have not been delivered or do not meet the requirements of the written contract?

In these circumstances, the invoice will not meet the definition of a 'correctly rendered invoice or statement'. The requirement to pay invoices within 30 days and to pay interest on overdue amounts arises only when a 'correctly rendered invoice or statement' has been received.

15. Does the payment of accounts policy apply to invoices issued under an existing (pre 14 July 2011) contract which specifies different payment terms and interest requirements?

No. The requirement to pay small business suppliers within 30 days of receipt of a correctly rendered invoice (from 14 July 2011) and pay interest on overdue amounts (from a date to be determined) applies, unless an existing contract or standing offer provides otherwise. However, where existing contracts have longer payment terms, agencies are still encouraged to pay small business suppliers within 30 days, where possible.

16. Is there any dispute resolution process?

Yes. Any disputes or complaints should first be raised with the agency's accounts complaints officer. If the issue cannot be resolved by the accounts complaints officer, the small business supplier should be given the opportunity to refer the issue to the Small Business Commissioner. Inquiries regarding the Small Business Commissioner should be addressed in the first instance to the Department of Trade and Investment, Regional Infrastructure and Services on 9338 6900.

17. How will this new policy be communicated to small business suppliers?

The new policy will be promoted across Government by a number of key agencies. However, in addition, information should be provided on purchase orders issued by agencies (e.g. initially by putting a sticker on the purchase order) and in any regular supplier briefings held by agencies.

18. Are there any transitional provisions available in applying the new policy on payment of accounts to small businesses?

Yes, the new policy does not apply to existing contracts or standing offers (i.e. pre 14 July 2011), where they specify an alternative time period / interest requirements. In these circumstances, the terms of the existing contract apply rather than this policy.

In addition, to allow time for system changes, interest is only payable on overdue amounts, where the account which was paid late was received on or after a date to be determined by the responsible Ministers, but no earlier than 1 January 2012. This allows at least a 6 month transitional period in relation to interest payments. However, during this interim period agencies should still ensure that small business suppliers are paid within 30 days of receipt of a correctly rendered invoice, unless an existing contract specifies otherwise.

Further, agencies are reminded that this policy also encourages payments to other suppliers (i.e. other than small businesses) to be paid within 30 days of receipt of a correctly rendered invoice.

Replaced by TPG2504

Appendix B

**Quarterly payment performance reporting to
Department of Finance and Services**

Agency reporting template

Name of agency: _____

Accounts paid on time during quarter ending _____ 20xx

| Measure | Sep 20xx | Dec 20xx | Mar 20xx | Jun 20xx |
|---|-----------------|-----------------|-----------------|-----------------|
| Invoices due for payment (#) | | | | |
| Invoices paid on time (#) | | | | |
| Invoices due for payment received from small businesses (#) | | | | |
| Invoices from small businesses paid on time (#) | | | | |
| Amount due for payment (\$) | | | | |
| Amount paid on time (\$) | | | | |
| Amount due for payment to small businesses (\$) | | | | |
| Amount due to small businesses paid on time (\$) | | | | |
| Number of payments for interest on overdue accounts (#) | | | | |
| Interest paid on late accounts (\$) | | | | |
| Number of payments to small business for interest on overdue accounts (#) | | | | |
| Interest paid to small businesses on late accounts (\$) | | | | |