

No. 1 of 1997

Bankruptcy (Estate Charges) Act 1997 and the Bankruptcy Amendment Act 1997

The [Bankruptcy \(Estate Charges\) Act 1997](#) and the [Bankruptcy Amendment Act 1997](#) were passed, without amendment. Their effective date of commencement is 14 April 1997.

The associated **Regulations that** prescribe the mode of payment and the relevant information needed when paying the **realisations charge** and the **interest charge**, will also become effective on 14 April 1997. Enclosed is a copy of the Regulations (Part 15A of the Regulations) relevant to the Estate Charges Act.

As explained previously in leaflets of 17 October 1996 and 16 December 1996, the first 'charge period' is the period from 1 November 1996 to 30 April 1997. Please note that the charges will only become payable within 21 days after the end of the charge period.

If the realisation or interest charge payable is less than \$50 in any charge period, the legislation provides the trustee with an option of deferring payment by notifying the Inspector-General. As the Bankruptcy Regulation Units will be responsible, on behalf of the Inspector-General, for ensuring that appropriate amounts are paid by trustees at the prescribed times as required by law, it is sufficient for trustees wishing to defer payment to notify their local Bankruptcy Regulation Unit in writing of that fact before the expiration of 21 days after the relevant charge period.

Regulations 15A.04 and 15A.05 provide to the effect that the interest charge and the realisations charge payments must be accompanied by appropriately completed approved forms. Master copies of the forms are enclosed to enable you to make your own copies. Notes to assist you in completing them are also enclosed.

OFFICE OF THE INSPECTOR-GENERAL IN BANKRUPTCY
CANBERRA

11 April 1997

Notes on completing the approved forms (Regs 15A.04 & 15A.05)

- When completing these forms care must be taken to ensure accuracy. If you have any queries please contact your local Bankruptcy Regulation Unit (BRU). You are reminded of the need to keep full records relating to all transactions in respect of estates.
- The realisations charge is not payable in respect of section 73 compositions or arrangements.
- The realisations charge is not payable in respect of interest derived on trust accounts as this interest is payable to the Commonwealth in full (less bank charges) as a separate charge.
- The realisations charge payable within 21 days of the end of the first charge period will not always be 8% as you may have previously paid amounts under former Rule 179 or Regulation 16.14. In respect of these estates you only have to pay the difference between the amount already paid (3% etc) and the realisations charge (8%). You may, if you wish, make a notation against the relevant estate on the form when such a reduced amount is paid.
- The interest charge is payable in full in respect of all interest credited (interest earned net of bank charges) in the charge period. In the 16 December 1996 leaflet "*IMPORTANT NOTICE TO ALL TRUSTEES*", it was noted that "interest earned on the account is exempt from income tax ... and no tax file number is required for the account not to be subject to withholding tax." Following additional information from the Australian Taxation Office (ATO), the Inspector-General's office has been advised that an amendment to the tax legislation would be required to allow trustees not to provide a tax file number. If you have had withholding tax deducted from interest earned on or before 1 November 1996, you should write to your local BRU, prior to the expiration of 21 days after the relevant charge period, notifying your intention to defer payment of interest deducted as withholding tax. Until an agreement with the ATO can be reached on crediting withholding tax deducted, extensions will be granted in relation to the payment of that component of interest deducted as withholding tax. Any inconvenience caused by this is regretted.
- If you were required to file accounts in accordance with regulation 8.14A prior to 14 April 1997, you are still required to lodge a 'Form 2' with any payments payable under old Rule 179 or Regulation 16.14. For full details, refer to the information leaflet of 16 December 1996. As from 14 April 1997, in lieu of having to file accounts, you are only required to

forward the realisations and interest charge payments with the appropriately completed forms (attached) within 21 days of the end of each charge period.

- Cheques should be made payable to the Commonwealth of Australia and lodged with the ITSA office in your State or Territory.

“Part 15A – Provisions relating to the Bankruptcy Charges Acts

Interpretation

“15A.01. (1) In this Part:

‘charge’ means an interest charge, a realisations charge or a registration charge;

‘charge period’ has the same meaning as in the Estate Charges Act;

‘penalty’ means a late payment penalty.

“(2) An expression defined for Part XV of the Act has the same meaning in this Part.

Mode of payment

“15A.02. An amount of charge or penalty may be paid to the Inspector-General:

- (a) in cash; or
- (b) by cheque; or
- (c) by any other means (for example, by direct debit or electronic transfer) that the Inspector-General approves in writing.

Overpayments to be refunded or offset

“15A.03. The amount of an overpayment by a trustee of a charge or penalty may be:

- (a) refunded to the trustee; or
- (b) unless the trustee, by notice in writing to the Inspector-General, directs otherwise – offset against an amount of charge or penalty payable by the trustee.

Information to accompany payment of interest charge

“15A.04. (1) A payment of interest charge by a trustee must have with it, in the approved form, any information required by the approved form.

“(2) Where a payment of interest charge is made by or on behalf of a trustee by non-physical means (for example, by direct debit or electronic transfer), the trustee must without delay give the Inspector-General that information.

“(3) This regulation does not apply to the Official Trustee.

Information to accompany payment of realisations charge

“15A.05. (1) A payment of realisations charge by a trustee must have with it, in the approved form, any information required by the approved form.

“(2) Where a payment of realisations charge is made by or on behalf of a trustee by non-physical means (for example, by direct debit or electronic transfer), the trustee must without delay give the Inspector-General that information.

“(3) This regulation does not apply to the Official Trustee.

Information to accompany payment under regulation 16.14

“15A.06. A trustee, other than the Official Trustee, who makes a payment under regulation 16.14, must lodge with the payment a statement in the approved form.

Lodgment of request for remission

“15A.07. A request by a trustee for remission of a charge or penalty must be in writing and lodged with the Official Receiver for the District in which the trustee carries on business.”