



Australian Government

Insolvency and Trustee Service Australia

OFFICIAL RECEIVER'S PRACTICE STATEMENT

**PART A:
COLLECTION OF REALISATIONS CHARGE AND INTEREST CHARGE**

**PART B:
RECONCILIATION OF THE REALISATIONS CHARGE**

**PART C:
CALCULATING THE REALISATIONS CHARGE**

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PART A: COLLECTING THE REALISATIONS AND INTEREST CHARGES

1. What is the Realisations Charge?

The Realisations Charge is a levy that is imposed by the government to fund the cost of certain activities undertaken by ITSA that benefit the entire personal insolvency system. These activities include Bankruptcy Regulation, Bankruptcy Fraud Investigation and enquiries in to estates being administered by the Official Trustee where there appear to be potential assets or offences involved.

2. What is the Interest Charge?

The Interest Charge is the interest earned by trustees and administrators on the funds that they hold on trust. This interest income is payable to the government. It is used by the government to offset the cost of those activities that benefit the entire personal insolvency system. These activities include Bankruptcy Regulation, Bankruptcy Fraud Investigation and enquiries into estates being administered by the Official Trustee where there appear to be potential assets or offences involved.

3. How is the Realisations Charge calculated?

The Realisations Charge is payable on realisations in bankruptcies, post-bankruptcy compositions (s73), Controlling Trustee Authority administrations (s188), Insolvent Deceased Estate administrations, Personal Insolvency Agreements, and Debt Agreements.

There are specific rules which govern how the charge is calculated and these are contained in the *Bankruptcy (Estate Charges) Act 1997*. There are certain deductions that are allowed (eg payments to secured creditors) while certain types of receipts within these administrations (eg creditor indemnities) may not attract the levy at all. The total amount upon which the levy is calculated is also limited to the amount that is required to pay out all the costs and debts of the administration. [Part C](#) of this Practice Statement provides examples which illustrate how the Realisations Charges is calculated.

The rate of the Realisations Charge is periodically reviewed (usually every 2 years). The current rate can be found in [ITSA's Fees and Charges publication](#). The rate is set by the Bankruptcy (Estate Charges) (Amount of Charge Payable) Determination 2007. Trustees and administrators are advised of any rate change prior to the date the changes take effect.

Note: A Debt Agreement which is self administered, i.e., administered by the debtor himself/herself, does not attract the realisations charge.

4. How is the Interest Charge calculated?

The Interest Charge is the total interest earned by trustees and administrators on trust funds held in bankruptcies, in-bankruptcy compositions (s73), Controlling Trustee Authority administrations (s188), Insolvent Deceased Estate administrations, Personal Insolvency Agreements, and Debt Agreements.

Where the trustee or administrator charged an amount by the bank in respect of the maintenance of the account, the amount paid is an allowable deduction for the purposes of the Interest Charge calculation.

Where a trustee or administrator operates a single bank account for all their administrations/estates, the Interest Charge is not required to be calculated for each administration/estate separately.

5. Who pays the Interest & Realisations Charges?

The liability to pay the Realisations & Interest Charges is that of the trustee or administrator (subsections 5(3) and 6(2) of the *Bankruptcy (Estate Charges) Act 1997*). The amount of charge paid is ultimately borne by the estate or administration.

6. When is the Interest & Realisations Charge payable?

The Interest and Realisations Charge is payable at the end of each financial year. The due date for payment is 35 days after the end of the financial year, ie, **4 August each year**.

Trustees or administrators can chose to make payments before the due date. Payments during the year (prior to the due date) are usually made if the estate or administration is being finalised.

Where the Interest & Realisations Charges calculated for an estate is less than \$10, this amount is not payable (subsections 5(1A) and 6(1A) of the *Bankruptcy (Estate Charges) Act 1997*).

Where either the Interest or Realisations Charges calculated for an estate is less than \$50, the trustee or administrator can elect to defer that payment until the amount due is more than \$50 or until the relevant estate is finalised, which ever comes earlier. Written notification of this election needs to be made to the Inspector General (Section 280 of the *Bankruptcy Act*).

7. Are there any penalties for late payment?

A penalty of 20% p.a. is payable on the amount of Interest & Realisations Charge outstanding for the period during the amount remains unpaid. The penalty is payable by the trustee or administrator personally, ie, the trustee or administrator cannot recover the penalty from the estate. (Section 281 of the *Bankruptcy Act 1966*)

It is generally ITSA's practice not to enforce the penalty unless the charge is overdue by more than 5 days and the penalty amount is more than \$10. However, where there are systemic breaches by a trustee/administrator, the penalty will be enforced and Bankruptcy Regulation alerted of these types of breaches.

8. Can trustees and administrators pay before the due date?

Trustees and administrators may choose to make Realisations Charge and Interest Charge payments at any time before the due date. However the assessment of the total liability is done after the 4th of August each year and coincides with the lodgement of an Annual Estate Return by the trustee or administrator.

Generally trustees and administrators will choose to make periodical or ad hoc payments based on various factors such as:

- The volume of estates that they handle (eg. high volumes may encourage regular periodic payments)
- Their banking arrangements (eg. a separate bank account for each estate may encourage early payment if the estate is being finalised so that the bank account may be closed, however this may not be an issue if a single bank account is maintained for all estates)
- Their internal administrative arrangements (eg. a trustee or administrator may have their systems set up to automatically separate the Realisations Charge in to a separate nominal account upon receipt of chargeable funds in an estate. That nominal account may be 'cleared' periodically by making a payment to ITSA.
- Their dividend payments process (eg. a trustee or administrator may set up their systems to make payment of the Realisations/Interest Charges at the time of the dividend payment process.)

9. How is the charge paid?

Trustees and administrators must complete a [Form 15](#) for Interest Charge payments and [Form 16](#) for Realisations Charge payments. Each payment must be accompanied by the relevant form. Payment may be made by cash, cheque or electronic funds transfer.

Where a trustee chooses to make an EFT payment, the relevant Form 15/16 must be mailed/faxed/mailed to the ITSA office in the state in which they are registered. Where a Debt Agreement Administrator chooses to make an EFT payment, the relevant Form 15/16 must be mailed/faxed/mailed to the [ITSA Perth office](#).

Where a trustee is also administering Debt Agreements, the trustee should complete a separate Form 16 for Debt Agreement receipts. Trustees and administrators are encouraged to make the payment to the ITSA office in the state/territory in which they are registered.

10. Can the time for the payment of the Interest & Realisations Charge be extended?

The Inspector General may extend the time for payment of the charge in certain circumstances. The trustee or administrator is required to make the application before the due date for payment setting out the reasons based on which an extension is sought. The Inspector General's decision on the application is a decision that is reviewable by the [Administrative Appeals Tribunal](#). (section 282 of the *Bankruptcy Act 1966*).

11. Is there any provision for remission of the Interest Charge & Realisations Charge or late penalty payment?

The Inspector General may remit the charge or penalty due if the payment may cause the trustee or administrator undue hardship and it is appropriate to remit that amount. An application can only be made by a trustee or administrator and needs to be in writing setting out the reasons based on which the remission is sought. The Inspector General's decision on the application is a decision which is reviewable by the [Administrative Appeals Tribunal](#). (section 283 of the *Bankruptcy Act 1966*).

Note: Where an administration is ‘set aside’ by the court (as opposed to annulled under Sec 153B) then the administration never existed and hence any realisations that a trustee or administrator may have had in that estate will not be subject to the Realisations or Interest Charge. In these instances a formal remission application is not required and a letter with a copy of the order will suffice. The setting aside of an administration by the court is rare.

12. How does ITSA check that the correct amount of Interest & Realisations Charge is being paid?

At the end of each financial year trustees and administrators are required to lodge an Annual Estate Return (AER) with ITSA. Trustees and administrators are required to provide summary details of all the financial transactions in each of their estates in the AER. ITSA calculates the trustee’s Realisations Charge liability based on the information provided in the AER. That information is then matched with the Realisations Charge payments that have been made by the trustee in respect of that financial year. The reconciliation process is outlined in Part B of this Practice Statement.

ITSA’s Bankruptcy Regulation branch checks the accuracy of the information disclosed on the AER during their trustee and administrator inspection programs. Interest income is also checked during these inspections.

PART B: RECONCILIATION OF REALISATIONS CHARGES

At the end of each charge period (1 July to 30 June) ITSA reconciles the Realisations Charges (RC) due as per the Annual Estate Return (AER) lodged by a trustee/administrator with the RC collected and recorded on our system in respect of that charge period.

When is the reconciliation performed?

This reconciliation is performed after the last date for payment of the RC and the last date for lodgement of AER. Typically this performed around the second week of August as the RC payments become due and payable on 4th August each year.

What happens during the reconciliation process?

Performing the reconciliation

The reconciliation is performed by comparing the Realisations Charges actually collected in relation to the charge period to the Realisations Charges due as per the trustee's/administrator's Annual Estate Return.

The reconciliation process can show over or under payments of Realisations Charges. There could be various reasons for an under/over payment, and each reason may require a different treatment. Some of the commonly encountered reasons are:

- AER lodged by the trustee/administrator was incorrect (eg receipts were included in wrong columns resulting in wrong RC liability calculation).
 - In these instances, trustees/administrators should be asked to lodge a corrected AER or alternatively provide written authorisation for our staff to correct the affected figures in the AER that was lodged. The old AER needs to be deleted from our system and the corrected AER needs to be uploaded. This ensures that the opening estate balance in the subsequent period's AER is correct.
- RC liability was remitted against an incorrect matter by trustee (eg Form 16 was incorrect and/or trustee did not split a joint asset realisation between two matters)
 - The previous RC payment needs to be corrected on our system. We would usually require trustees to provide us with a written statement (eg. email) to authorise the correction.
- RC liability was remitted in the correct estate by trustee, but was incorrectly recorded by ITSA
 - We need to correct our system to ensure that the payment recorded is as per the Form 16 lodged by the trustee/administrator
- Trustee/Administrator contests that RC is not payable for a particular transaction type.

- These types of issues could involve interpretation of legislation/policy and should be referred to Bankruptcy Regulation in the first instance.

Contacting trustees/administrators regarding over or underpayments

Trustees and administrators are contacted and asked for an explanation for any overpayments or underpayments. Generally a two week time frame is provided for a response.

Unless there is a satisfactory explanation about an underpayment, the trustee or administrator is issued an invoice for the underpaid amount.

A trustee or administrator is entitled to claim a refund of any overpayments by completing the Realisations Charge Refund Claim form.

Dealing with non payments

Corporate Services should be advised to alert BRC where an RC invoice remains outstanding for 28 days or more. In these instances BRC should contact the trustee and provide a final reminder for payment within 7 days before commencing debt recovery action. Bankruptcy Regulation is advised of the non payment and Corporate Services commences formal debt recovery proceedings.

Record Keeping

RC reconciliation reports and all communication with trustees/administrators during the process should be retained in a separate RC Reconciliation file. Copies of any referrals to Bankruptcy Regulation should also be retained in the file.

PART C: CALCULATING THE REALISATIONS CHARGE

How is the Realisations Charge calculated?

The Realisations Charge for all types of administrations under the Bankruptcy Act can be calculated using the following formula as set out in section 8 of the Bankruptcy (Estate Charges) Act 1997:

$$\text{Realisations Charge payable} = (\text{Amount Realised} - \text{Permitted Deductions}) \times \text{RC rate}$$

Note regarding Debt Agreement administrations: Generally deductions are not applicable in a Debt Agreement administration. The exclusions in respect of Amounts Realised also would not be applicable in a typical Debt Agreement. Calculation of the Realisations Charge liability in a Debt Agreement is fairly simple and straight forward and is illustrated in [Example 1](#).

The total amount on which the charge is payable is restricted to the amount which is required to pay out all the debts, costs and expenses of the estate, i.e., the charge is not payable on the estate surplus ([see example 10](#)).

Amounts realised includes all amounts received by a trustee or administrator of an estate but excludes the following types of receipts:

- Creditor indemnities received in respect of costs of administering an estate or any funding received from the Commonwealth under Section 305 of the Bankruptcy Act ([see examples 5 & 6](#))
- Any amount received from the Commonwealth (DEWR) under the *General Employee Entitlements and Redundancy Scheme* (GEERS) for distribution to affected employees of the debtor/bankrupt ([see example 4](#)).
- The remuneration a trustee may receive from a bankrupt under Section 161B of the Bankruptcy Act ([see example 9](#))
- The Goods & Service Tax (GST) collected from the sale of any goods and/or services in the estate ([see example 7, 8 & 9](#))
- The component of any realisation that relates to non divisible property ([see example 11](#))

The only **permitted deductions** are:

- An amount paid to a secured creditor ([see example 2](#))
- The net loss (if any) incurred in continuing to trade the bankrupt's or debtor's business ([see example 8](#))

EXAMPLES ON RC LIABILITY CALCULATION

The examples below have been used to illustrate the principles underlying the calculation of the Realisations Charge in commonly encountered transaction types. However certain transactions/administrations may have unique features and the treatment of the Realisations Charges illustrated in the examples below, may or may not apply in those circumstances.

Trustees and administrators are encouraged to contact Bankruptcy Regulation if they are uncertain of the treatment of the Realisations Charges for a particular set of transactions in any administration.

1. RC calculation on a typical Debt Agreement

Under the terms of the Debt Agreement, an administrator received payments of \$500 per month from the debtor for 10 months during the relevant charge period. The administrator has distributed \$4000 to creditors and taken \$1000 towards his fees. The realisations charge payable by the DAA is calculated as follows:

Amount Realised = $\$500 \times 10 = \5000

Permitted Deductions = 0

Amount on which RC is payable = $\$5000 - 0 = \5000

RC Payable = $\$5000 \times$ applicable RC rate

2. RC calculation involving payments to secured creditors and net receipts

Debtor X is bankrupt. The trustee has sold the bankrupt's house property for \$500,000 and paid \$400,000 to the mortgagee. The trustee has received a cheque of \$75,000 from his settlement agent being the net proceeds from the sale of the house. The settlement statement shows that an amount of \$20,000 was paid to the selling agent, \$4000 was paid towards the outstanding council rates and \$1000 was charged by the settlement agent for his fees (including disbursements).

Amount Realised = \$500,000

Permitted Deductions = $\$400,000$ (mortgage) + $\$4000$ (outstanding council rates) = $\$404,000$

Amount on which RC is payable = $\$500,000 - \$404,000 = \$96,000$

RC payable = $\$96,000 \times$ applicable RC rate

Note: A deduction for payment to a secured creditor is available if the debt exists at the time of payment and the debt is secured by the property of the debtor. For instance a deduction would not be available if a trustee makes an advance payment for council rates as a debt to the council did not exist at the time of payment. A deduction would also not be available if a trustee makes a payment against a debt for which the debtor may be liable, but which is secured by property belonging to a third party.

3. RC calculation in a typical Controlling Trustee administration.

Debtor X has given a Controlling Trustee an amount of \$100,000 (the amount he proposes to offer under a PIA) to be held in trust pending the outcome of the creditor's meeting. He has authorised the Controlling Trustee to deduct \$5000 towards agreed costs and fees should the proposal be accepted/rejected by creditors. Creditors reject X's proposal and the Controlling Trustee returns \$95,000 to X. The RC payable in this situation is calculated as follows:

Amount realised = \$5000 (being the amount CT received for his costs and fees)

Permitted deductions = 0

Amount on which RC payable = \$5000 – 0 = \$5000

RC Payable = \$5000 x applicable RC rate

Note 1: In the above example if the CT costs and fees was paid by the debtor separately or by a third party, the RC would have been calculated on the amount the CT received irrespective of the source of the funds.

Note 2: In the above example if creditors had accepted the proposal and appointed the same CT or another person as the PIA trustee, then ordinarily the RC would be paid by the PIA trustee on \$100,000. The CT will not have to pay RC on any amount that he receives from the PIA administration for Controlling Trustee costs and remuneration, i.e., the RC is not levied on the same money twice.

4. RC calculation in administrations involving GEERS payments

A bankrupt was operating a restaurant with 5 employees. After assessing the profitability of the business the trustee decided to immediately shut it down and advised the employees about the GEERS scheme. As a result of employees lodging claims under GEERS, the bankruptcy trustee received an amount of \$30,000. The trustee has also received \$1500 from DEWR as reimbursement for his costs of verifying employee entitlements under the scheme. No other realisations were made in the estate.

In the above example, the amount of \$30,000 received by the trustee for distribution to affected employees is excluded when calculating the RC liability. The \$1500 the trustee received from DEWR is also not a realisation in the estate as this money was received by the trustee in his capacity as an agent of DEWR for work done on their behalf, not in his capacity as trustee of the bankrupt estate.

5. RC calculation in estates involving creditor funding or s305 funding

The ATO, a major creditor, has agreed to provide a bankruptcy trustee with an indemnity of up to \$25,000 for investigations in to the debtor's affairs. As at the end of the charge period the trustee had called up \$15,000 against the ATO indemnity to pay for legal costs of \$10,000 and his own costs of \$5000. The trustee has also been successful in realising a \$100,000 preferential payment in the estate as a result of those investigations and has returned the \$15,000 paid by ATO. The RC payable is calculated as follows:

Amount realised = \$100,000 (being recovery of preference payment)

Permitted deductions = 0

Amount on which charge is payable = \$100,000 – 0 = \$100,000

RC payable = \$100,000 x applicable RC rate

6. RC calculation in estates involving commercial litigation funding

Litigation Funders Ltd has agreed to provide a trustee funding to recover an undervalued transfer of property for a 30% funding fee + reimbursement of costs upon success. The trustee ultimately settles with the transferee for \$100,000. The trustee's solicitor sends him a cheque of \$55,000 after directly paying Litigation Funders Ltd an amount of \$45,000 (being \$30,000 funding fee and \$15,000 reimbursement of the legal costs previously paid by Litigation Funders direct to the solicitor).

The net amount received would have to be grossed up for the litigation funder's fees and costs and the RC must be paid on the gross value of the realisation.

The RC payable is calculated as follows:

Amount realised = \$100,000 (\$55,000 + \$30,000 + \$15,000)

Permitted deductions = 0

Amount on which charge is payable = \$100,000 – 0 = \$100,000

RC payable = \$100,000 x applicable RC rate

7. RC calculation in an administration involving sale of business assets

Under the terms of the PIA the trustee has closed the debtor's landscaping business (GST registered) and sold the unencumbered plant & equipment of the business at auction for \$110,000. There were no other issues to be dealt with under the PIA and creditors had agreed to fix the trustee's remuneration at \$22,000. After deducting commission of \$11,000 the auctioneer sends the trustee a cheque for \$99,000. The trustee lodges a Business Activity Statement with the ATO and remits the estate's GST liability of \$7000 (being GST collected \$10,000 less ITC for agent's commission \$1000 less ITC for trustee fees \$2000). The RC liability in this estate is calculated as follows:

Amount realised = \$100,000 (being the GST exclusive sale value of the plant & equipment)

Permitted Deductions = 0

Amount on which the RC is payable = \$100,000

RC payable = \$100,000 x applicable RC rate

Note: Often trustees may receive a GST refund cheque from the ATO where the refund relates to the period of business operations prior to the appointment of the trustee. In these instances the GST refund is simply an asset of the estate and the RC is payable on the refund amount. The treatment of GST or Income Tax refunds in these situations is just like the recovery of a book debt.

8. RC calculation in estates involving 'trade on' situations

Debtor X has entered in to a Personal Insolvency Agreement (PIA). Under the terms of the PIA the trustee continued to operate the debtor's newsagency for 2 months until a buyer could be found. At the end of the 2 months the trustee sold the business as a going concern for \$550,000. After drawing up the accounts for the period in which the trustee was in control of the business the trustee finds that sales revenue was \$110,000 (incl. of GST) and expenses were \$132,000 (incl. of GST)). These transactions occurred in the same charge period. Upon lodging a Business Activity Statement (BAS) for the two month period in which he was operating the business, the trustee received a GST refund of \$2000 from the ATO. The realisations charge payable is calculated as follows:

Amount realised = \$550,000 (being the GST exempt sale price of the going concern) + \$100,000 (being the operating revenue net of GST) + \$2000 (being the GST refund received from ATO) = \$652,000

Permitted deductions = \$120,000 (being costs of operating the business net of GST)

Amount on which RC is payable = \$652,000 - \$120,000 = \$532,000

RC Payable = \$532,000 x applicable RC rate

9. RC calculation in estates involving business and non business asset sales

During a charge period, trustee has sold a bankrupt's business assets for \$11,000 (incl. of GST). He has also realised the bankrupt's interest in a deceased estate and received an amount of \$300,000 in the estate. Creditors have approved a total amount of \$25,000 (incl. of GST) as the trustee's fees for administering the estate. The trustee has incurred selling agent's costs of \$5,500 (incl. of GST) for the sale of the business assets and legal costs of \$15,000 (incl. of GST) in realising the interest in the deceased estate. The trustee's time records show that the fees relating to the recovery of business assets are \$16,500 and the balance was in relation to the recovery of the interest in the deceased estate.

The trustee has lodged a BAS and received a GST refund of \$1000. BAS calculations were:

GST collected from sale of business assets:	\$1,000
Less: ITC on selling costs:	-\$500
Less: ITC on trustee fees for business asset	<u>-\$1500</u>
GST refund due:	\$1000

The realisations charge payable is calculated as follows:

Amount realised = \$10,000 (business assets net of GST) + \$300,000 (interest in deceased estate) = \$310,000

Permitted deductions = 0

Amount on which RC is payable = \$310,000

RC Payable = \$310,000 x applicable RC rate

Note: In the above example the GST refund is not subject to the Realisations Charge as the refund is arising out of monies on which the RC has effectively been paid. The principle to be applied is that monies that have already been subject to the RC should not be subject to the RC again.

10. RC calculation where bankrupt contributes towards trustee fees u/s 161B

A trustee has concluded his enquiries in to a bankrupt's estate and the only realisable asset which he has recovered is a book debt of \$500. There were no disbursements from the estate. The trustee now wishes to recover the fee permissible u/s 161B from the bankrupt. The fee recoverable from the bankrupt is \$961, being \$1461, the maximum allowed (indexed as at September 2007) less \$500 being the amount available towards his fees from the estate.

The amount of \$961 recovered is not included in calculating the RC liability; however the recovery of the book debt of \$500 will still attract the RC liability.

11. RC calculation in an estate with a surplus.

The trustee of a Part XI Administration has sold the deceased's house property for \$850,000. A 100 cents in the dollar dividend was paid to all proved creditors totalling \$500,000 after paying the costs and fees of the administration totalling \$50,000. The trustee has also called for interest claims from creditors and paid \$30,000 towards the interest accrued on interest bearing debts from the date of the administration order to the date of final distribution from the estate. The surplus in the estate is \$270,000 less the RC liability.

The RC liability (assuming an RC rate of 3.5%) is calculated as follows:

$$\frac{(\text{Dividends paid} + \text{Fees \& Costs} + \text{Interest Claims paid}) \times \text{RC rate}}{(100 - \text{RC rate})}$$
$$= \frac{(\$500,000 + \$50,000 + \$30,000) \times 3.5}{96.5} = \$21,036.26$$

12. RC calculation in an estate involving realisation of non divisible property

A trustee has sold the bankrupt's unencumbered motor vehicle for \$20,000. After payment of the selling agent's costs and commission the trustee has received a net amount of \$18,000 in the estate. The allowable value of a primary means of transport which a bankrupt can retain is say \$6500 (*see ITSA website for current indexed amount*). The RC payable is calculated as follows:

Amount realised = \$20,000 (being gross sale value) - \$6500 (being non divisible amount) = \$13,500

Permitted deductions = 0

Amount on which charge is payable = \$13,500 - 0 = \$13,500

RC payable = \$13,500 x applicable RC rate