A special report by the Policy Advice Division of Inland Revenue

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Transfers of excess tax

The Taxation (Relief, Refunds and Miscellaneous Provisions) Bill, which was reported back to the House yesterday inserts into the Tax Administration Act 1994 a new Part XB. This sets out comprehensive new rules governing the transfer of overpaid tax to another tax type or period of the same taxpayer, or to another taxpayer.

Transfers under the new rules apply only to tax that is refundable and that has not been offset by the Commissioner against tax arrears (for example, under section MD 1(3) of the Income Tax Act 1994). However, when the Commissioner does apply excess tax against arrears, the taxpayer may choose that the excess is applied at a date that the taxpayer could elect under the new transfer provisions (proposed section 173T).

A full explanation of the new provisions will be set out in a *Tax Information Bulletin* following enactment of the bill in the usual manner but, in the meantime, an explanation of, and examples illustrating, the formulae in proposed sections 173P, 173Q and 173R will be helpful to tax agents and taxpayers. The formulae apply to taxpayers who pay provisional tax, and calculate at what date tax is overpaid for the purpose of transfers **within the same taxpayer's account and to listed associates who may transfer as at the date tax is overpaid.** Such associates are listed in section 173M(2)(a) – (e) and 173M(3).

Sections 173P and 173Q apply before tax is assessed. Section 173P applies when taxpayers pay more than their provisional tax liability and want to transfer the excess. Section 173Q applies in only two circumstances –

- when taxpayers who estimate provisional tax revise down their estimate and, as a result, have paid more provisional tax than their revised estimated residual income tax; or

- when taxpayers initially pay provisional tax on the uplift basis then estimate down at a subsequent instalment so that they have paid more provisional tax than their estimated residual income tax.

Section 173R applies after assessment when a taxpayer has paid more provisional tax than their residual income tax liability.

Section 173P – Transfer of excess provisional tax if provisional tax paid is more than taxpayer's provisional tax liability, determined before assessment

(1) This section applies in respect of excess provisional tax if-

  (a) a taxpayer or their agent requests a transfer allowed by **section 173L, section 173M(2)(a)** to **173M(2)(e),** or **section 173M(3);** and

  (b) on the date that the Commissioner actions the request, the taxpayer has paid more provisional tax for an income year than the provisional tax payable by that date; and

  (c) the request is actioned before an assessment is made under Part VI.

(2) The excess provisional tax that may be transferred on a particular date (**date A**) is calculated according to the formula:

provisional tax paid - refunds - provisional tax liability

where -

provisional tax paid	is the provisional tax paid for an income year on or before date A, including: (a) voluntary payments made under section MB 6 of the Income Tax Act 1994; and (b) tax transferred to the taxpayer:
refunds	are the refunds of the provisional tax that are paid to the taxpayer on or before date A, including transfers by the taxpayer or offsets by the Commissioner against unpaid tax:
provisional tax liability	is the provisional tax payable by date A:

(3) The Commissioner must not transfer an amount on date A if, as a result, the taxpayer would not satisfy their provisional tax liability in respect of the income year on a date (date B) that falls after date A, unless the taxpayer requests a transfer back to their account to satisfy their provisional tax liability on date B.

Section 173P is the general rule that applies before tax is assessed for the year and when the taxpayer has paid more provisional tax than their provisional tax liability (whether that is calculated on the estimation or uplift basis). This amount is refundable under section MD 1(1) of the Income Tax Act 1994 (subject to its limitations).

Whether there is an excess is determined at the time the transfer request is actioned. The formula calculates an amount that is available for transfer at any particular date (date A) that the taxpayer wishes. The formula can be applied a number of times to calculate the excess tax available for transfer at specific dates as requested by the taxpayer, for example, at P1, P2, or P3. When the formula is applied at P1, date A is P1. When it is applied at P2, date A becomes P2, and so on. If the amount is first available at date A and is not transferred at that date, it will be included in the amount available for transfer at a subsequent date A.

The Commissioner must not transfer an amount on date A if, as a result of the transfer, the taxpayer would not satisfy their provisional tax liability on a subsequent date before the transfer is actioned. This can apply in two situations. First, when a taxpayer prepays provisional tax by date A and therefore pays less than they otherwise would have at subsequent instalment dates (see example 4 below). Second, when a taxpayer has received a refund of overpaid provisional tax after date A and before the transfer is actioned (see example 5 below).

If the Commissioner cannot transfer an amount because it would result in a provisional tax underpayment after date A, a temporary transfer is allowed - the amount must be transferred back to the taxpayer's account in time to meet the provisional tax liability on that date. The following examples illustrate the application of section 173P. The examples relate to standard balance dates unless otherwise stated.

Example 1 – overpayment of provisional tax at each instalment date

A estimates provisional tax at $150,000 ($50,000 at each provisional tax payment date) but pays $75,000 at each provisional tax instalment date. On 31 March, A requests a transfer of the excess provisional tax paid as at the earliest dates. The total amount available for transfer is $75,000. The relevant dates A are P1, P2 and P3. These are considered in date order because transfers at earlier dates (for example P1) are reflected in "refunds" at subsequent dates (P2 and P3).

	P1	P2	P3
Amount paid	$75k	$75k	$75k
PT liability	$50k	$50k	$50k
PT paid =	$75k	$150k	$225k
Refunds =	$0	$25k	$50k
PT liability =	$50k	$100k	$150k
PT overpaid	$25k	$25k	$25k

$25,000 is transferable at P1, and if $25,000 is transferred at P1 or up to P2 (as it is in this example), only $25,000 is transferable at P2. (If nothing were transferred before P2, $50,000 would be transferable at P2 and so on).

Subsection (3) does not apply to restrict the amount transferred in this example – if $25,000 is transferred at P1, A still satisfies his provisional tax liability at subsequent dates; the same applies to the transfers at P2 and P3.

Example 2 – voluntary payment

A pays provisional tax on the uplift basis, but is subject to use-of-money interest. A's provisional tax liability based on last year's residual income tax plus 5% is $90,000 and A pays the required amounts at P1, P2 and P3. However, A is concerned that this is not sufficient and, in order to minimise a UOMI liability on underpayments, makes a voluntary payment on March 20. On 31 March, A requests a transfer of the excess provisional tax which is $20,000. She wants to transfer the maximum available at the earliest dates. The relevant dates A are the provisional tax dates and 20 March, which are considered in date order.

	P1	P2	P3	20/3
Amount paid	$30k	$30k	$30k	$20k
PT liability	$30k	$30k	$30k	$0
PT paid =	$30k	$60k	$90k	$110k
Refunds =	$0	$0	$0	$0
PT liability =	$30k	$60k	$90k	$90k
PT overpaid	$0	$0	$0	$20k

The excess of $20,000 is available for transfer on 20 March.

Subsection (3) does not apply in this example – if the $20,000 is transferred on 20 March A will still have met her provisional tax obligations in relation to the year.

Example 3 – taxpayer misses P1

A pays provisional tax on the uplift basis and is required to pay $50,000 at each instalment. She misses instalment 1, but pays $100,000 at instalment. After P2, she requests a transfer of tax she considers overpaid at P2.

	P1	P2
Amount paid	$0	$100k
PT liability	$50k	$ 50k

Section 173P does not apply, because at the date on which the Commissioner actions the request (say 1 December) the taxpayer has not paid more than the provisional tax payable by that date.

Example 4 – taxpayer pays excess provisional tax at P1

A pays provisional tax on the uplift basis and is required to pay $50,000 at each instalment. She pays $150,000 at P1.

Transfer request actioned before P2

Before P2, A calls Inland Revenue to request a transfer as at P1 of the excess tax paid on that date.

	P1
Amount paid	$150k
PT liability	$50k
PT paid =	$150k
Refunds =	$0
PT liability =	$50k
PT overpaid	$100k

The amount available for transfer as at P1 is $100,000. Subsection (3) does not apply because a transfer of $100,000 at P1 will mean that A has still satisfied her provisional tax obligations up to the date the transfer is actioned. P2 has not yet passed and it is assumed that further instalments would be paid at P2 and P3.

Transfer request actioned after P2 and before P3

Assume that A has made no request for a transfer before P2. A pays no provisional tax on the second instalment date (because she knows that she paid sufficient to cover this at P1.)

After P2 and before P3, A calls Inland Revenue to request a transfer - she wants to transfer the maximum available at P1.

	P1	P2
Amount paid	$150k	$0
PT liability	$50k	$50k
PT paid =	$150k	$150k
Refunds =	$0	$50k
PT liability =	$50k	$100k
PT overpaid	$100k	$0

The formula calculates the amount overpaid at P1 at $100,000 but subsection (3) applies to restrict this. If the Commissioner transfers the $100,000 there will be a provisional tax underpayment at P2. Therefore the Commissioner will transfer only $50,000 at P1. (The Commissioner will transfer the additional $50,000 only if it is transferred back at P2).

Transfer request actioned after P3

Assume A pays no provisional tax at P3 and waits until after P3 to request the transfer.

	P1	P2	P3
Amount paid	$150k	$0	$0
PT liability	$50k	$50k	$50k

Section 173P does not apply – the taxpayer has not paid more provisional tax than the provisional tax payable by the date the transfer is actioned.

Example 5 – refund of provisional tax paid at P1

A's provisional tax liability is $150,000 for the year. He pays $150,000 (an additional $100,000) at P1 (7 July) and then obtains a refund of $75,000 on 1 August. Shortly before P2 he seeks to transfer any excess tax overpaid at P1 (which is date A).

	P1	1/8
Amount paid	$150k	-$75k
PT liability	$50k	

PT paid =	$150k
Refunds =	$0
PT liability =	$50k

PT overpaid $100k

The formula calculates the amount overpaid at P1 at $100,000 but subsection (3) applies to restrict this because A has had a refund on 1 August (which is date B). Transfer of the $100,000 would give rise to an underpayment of provisional tax as at 1 August. The Commissioner can therefore transfer only $25,000 as at P1. (However, A can temporarily transfer the remaining $75,000 until 1 August).

Section 173Q – Transfer of excess provisional tax if taxpayer estimates or revises estimate of residual income tax, determined before assessment

(1) This section applies in respect of excess provisional tax if-

- (a) a taxpayer or their agent requests a transfer allowed by **section 173L, section 173M(2)(a)** to **173M(2)(e),** or **section 173M(3)**; and
- (b) on the date that the Commissioner actions the request, the taxpayer-
  - (i) has paid provisional tax for an income year based on an estimate of their residual income tax and, as a result of a revised estimate for the year, the taxpayer has paid more provisional tax than the revised estimate for the year; or
  - (ii) pays provisional tax for an income year in accordance with section MB 2(1)(a) or section MB 2(1)(b) of the Income Tax Act 1994 and, as a result of estimating their residual income tax for the year, the taxpayer has paid more provisional tax than the estimated residual income tax for the year; and
- (c) the request is actioned before an assessment is made under Part VI.

(2) The excess provisional tax that may be transferred on a particular date (**date A**) is calculated according to the formula:

provisional tax paid - refunds - estimated RIT

where

provisional tax	is the provisional tax paid for an income year on or before date A, including: (a) voluntary payments made under section MB 6 of the Income Tax Act 1994; and (b) tax transferred to the taxpayer:
refunds	are the refunds of the provisional tax that are paid to the taxpayer on or before date A, including transfers by the taxpayer or offsets by the Commissioner against unpaid tax:
estimated RIT	is the taxpayer’s estimated residual income tax or revised estimated residual income tax that would be due by date A for the purpose of calculating interest under Part VII, calculated as if the estimated residual income tax or revised estimated residual income tax were residual income tax and section 120K(4) did not apply.

(3) The Commissioner must not transfer an amount on date A if, as a result,

(a) a taxpayer to whom subsection (1)(b)(i) applies would not have paid, on a date (date B) that falls after date A, the amount of their revised estimated residual income tax that would have been due on date B under Part VII calculated as if the revised estimated residual income tax were residual income tax and section 120K(4) did not apply, unless the taxpayer requests a transfer back to their account on or before date B; or

(b) a taxpayer to whom subsection (1)(b)(ii) applies would not have paid, on a date (date B) that falls after date A, the amount of their estimated residual income tax that would have been due on date B under Part VII calculated as if the estimated residual income tax were residual income tax and section 120K(4) did not apply, unless the taxpayer requests a transfer back to their account on or before date B.

(4) The amount that may be transferred under subsection (2) may not be more than-

“(a) if **subsection (1)(b)(i)** applies, the net provisional tax paid less the revised estimated residual income tax for the income year:

“(b) if **subsection (1)(b)(ii)** applies, the net provisional tax paid less the estimated residual income tax for the income year.

Section 173Q applies in limited situations to transfers actioned before tax is assessed for the year. It applies in only two circumstances in which provisional tax would be refundable under section MB 8 of the Income Tax Act 1994. First, it applies to taxpayers who pay provisional tax on the estimation basis and revise their estimate on or before P3, so that, at the time of the transfer request, they have paid more provisional tax than their revised estimate for the year.

Secondly, it applies to taxpayers who pay the first one or two instalments on the uplift basis and estimate at P2 or P3 with the result that they have paid more provisional tax (at the date the transfer is actioned) than their estimated residual income tax for the year.

The section does not apply when a taxpayer pays all provisional tax instalments on the uplift basis. (Taxpayers in this situation will nevertheless be able to transfer, at provisional tax dates, the difference between provisional tax paid and residual income tax (RIT) after assessment).

In short, section 173Q provides for the transfer of the difference between provisional tax paid and the revised estimated (or estimated) RIT for the year. Unlike section 173P, it can apply when a taxpayer has paid only its provisional tax liability on provisional tax instalment dates.

The formula is subject to a cap in subsection (4) – the maximum amount that can be transferred under the formula is the net provisional tax paid (that is, the tax paid less refunds of that tax) less the revised estimated RIT, or estimated RIT.

Regardless of the formula, the Commissioner cannot transfer an amount at date A that would result in the taxpayer underpaying the revised estimated RIT, or estimated RIT, that would be due under the use-of-money interest provisions on a subsequent date B if the revised estimated RIT, or estimated RIT, were actual residual income tax and the safe harbour provisions in section 120K(4) did not apply. However, temporary transfers are permitted where the amount is transferred back in time to ensure the taxpayer pays its estimated, or revised estimated, RIT at date B.

The formula in section 173Q is essentially the same as that in section 173R, which applies after assessment. The difference is that section 173Q refers to “estimated RIT” or “revised estimated RIT” rather than the actual RIT.

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Taxpayers should note that if they ask for a transfer at a provisional tax date under this section, and their revised estimated, or estimated, RIT is lower than their actual RIT, they could expose themselves to late payment penalties and use of money interest in relation to underpaid provisional tax at that date.

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The following examples illustrate the application of proposed section 173Q.

Example 6 – revised estimated RIT filed at P3

A estimates RIT at $300,000 and pays P1 and P2 on this basis. By P3, it is clear that A's RIT is more likely to be $150,000. A files this revised estimate at P3, and does not pay any further provisional tax.

Section MB 8 allows the Commissioner to refund provisional tax in these circumstances. A requests the Commissioner to transfer the excess provisional tax at the earliest date available.

A can transfer a total of $50,000, being the difference between the amount of provisional tax paid in the year ($200,000) and the revised estimated RIT ($150,000).

	P1	P2	P3
Amount paid	$100k	$100k	$0
revised est. RIT	$50k	$50k	$50k
PT paid =	100k	$200k	$200k
Refunds =	$0	$50k	$50k
Est RIT =	$50k	$100k	$150k
Tax overpaid	$50k	$50k	$0

The $50,000 excess is available for transfer at P1. The formula itself would calculate $50,000 as also being available at P2, but the cap in subsection (4) applies to restrict the amount available to the $50,000 transferred at P1.

(Subsection (3) does not apply in this situation. If $50,000 is transferred at P1, the revised estimated RIT that would be due under Part VII on P2 and P3 has still been paid – that is, there is no deficit at P3 because of the excess tax paid relative to the revised estimated RIT due at P2).

Example 7 – revised estimated RIT at P2 then P3

A estimates RIT at $300,000 and pays P1 on this basis. At P2 A revises this estimate to $250,000 and pays $75,000 at P2. At P3, it is clear that A's RIT is more likely to be $150,000. A files this revised estimate at P3 and does not pay any further provisional tax.

A can transfer a total of $25,000, being the difference between the amount of provisional tax paid in the year ($175,000) and the revised estimated RIT ($150,000).

A wants to transfer the excess at the earliest date.

	P1	P2	P3
Amount paid	$100k	$75k	$0
revised est. RIT	$50k	$50k	$50k
PT paid =	100k	$175k	$175k
Refunds =	$0	$25k	$25k
Est RIT =	$50k	$100k	$150k
Tax overpaid	$50k	$50k	$0

The $25,000 excess is transferable at P1. Although the amount calculated under the formula at P1 is $50,000, this is subject to the cap in subsection (4). Only $25,000 is transferable.

Subsection (3) does not apply to restrict the $25,000 that is transferable at P1 – if $25,000 is transferred at P1, A has still paid the right amount of revised estimated RIT at P3 ($0 is paid at P3 because this is, in effect, prepaid at P1 and P2).

Example 8 – provisional tax paid does not exceed revised estimated RIT

A estimates RIT at $90,000 and pays P1 and P2 on this basis. After P2, it is clear that A's RIT is more likely to be $75,000. A files this revised estimate after P2, and seeks to transfer the excess at provisional tax dates.

Section MB 8 allows the Commissioner to refund provisional tax in these circumstances. However, section 173Q does not apply because A has not paid more provisional tax than the revised estimate for the year. A has paid only $60,000 and the revised estimate is $75,000.

	P1	P2
Amount paid	$30k	$30k
revised est. RIT	$25k	$25k

Example 9 – revised estimated RIT at P3

A estimates RIT at $150,000 and pays P1 and P2 on this basis. By P3, it is clear that A's RIT is more likely to be $75,000. A files this revised estimate at P3, and does not pay any further provisional tax.

Section MB 8 allows the Commissioner to refund excess provisional tax in these circumstances. After P3, A requests the Commissioner to transfer the excess provisional tax at the earliest date available.

Section 173Q applies because the provisional tax paid ($100,000) exceeds the revised estimated RIT ($75,000).

A can transfer a total of $25,000, being the difference between the amount of provisional tax paid in the year ($100,000) and the revised estimated RIT ($75,000). A wants to transfer the excess at the earliest date.

	P1	P2	P3
Amount paid	$50k	$50k	$0
revised est. RIT	$25k	$25k	$25k
PT paid =	$50k	$100k	$100k
Refunds =	$0	$25k	$25k
Est RIT =	$25k	$50k	$75k
Tax overpaid	$25k	$25k	$0

A can transfer the $25,000 excess at P1. The formula by itself would calculate $50,000 as also being available at P2, but the cap in subsection (4) applies to restrict the amount available to what has been transferred at P1.

Subsection (3) does not apply in this example to reduce the $25,000 that can be transferred at P1. If $25,000 is transferred at P1, the taxpayer has still paid on all subsequent dates the revised estimated RIT due on those dates (the amount that would be due at P3 is prepaid at P2).

Example 10 – application of subsection 173Q(3)

A estimates RIT at $60,000 and pays P1 on this basis. After P1, A is certain he will be in loss for the year. He files a revised estimated RIT of $0 and seeks a refund of the $20,000. At P2, the business situation has improved dramatically for A and he files a further revised estimated RIT of $60,000. He pays $40,000 at P2. By P3 he considers his estimated RIT will be $30,000. He files a further revised estimate and pays nothing at P3.

Section MB 8 allows the Commissioner to refund provisional tax in these circumstances. A requests the Commissioner to transfer the excess provisional tax at the earliest date available.

A can transfer a total of $10,000, being the difference between the net provisional tax paid in the year ($40,000) and the revised estimated RIT ($30,000).

	P1	31/8	P2	P3
Amount paid	$20k	-$20k	$40k	$0
revised est. RIT	$10k		$10k	$10k
PT paid =	$20k	$20k	$60k	$60k
Refunds =	$0	$20k	$20k	$30k
Est RIT =	$10k	$10k	$20k	$30k
Tax overpaid	$10k		$20k	$0

The formula itself would calculate $10,000 as available for transfer at P1. However, the transfer of this amount is restricted because subsection (3) applies. If the $10,000 were transferred at P1, on 31 August A would not have paid the estimated RIT that would be due on that date ($10,000). Therefore nothing can be transferred permanently at P1 (this is reflected in “refunds” at P2, which comprises only the $20,000 refunded on 31 August). A could however temporarily transfer the $10,000 if it is transferred back by 31 August.

$10,000 is available for transfer at P2 (the formula calculates $20,000 overpaid at P2 but the cap in subsection (4) applies to restrict this to $10,000). Subsection (3) does not apply to restrict the transfer of the $10,000 at P2 because nothing is due on P3. (The $40,000 payment at P2 covers the $10,000 that would be due at each of P1, P2 and P3 plus the $10,000 transferred.)

Section 173R – Transfer of excess tax if provisional tax is more than taxpayer's residual income tax, determined after assessment

(1) This section applies in respect of excess tax if-

(a) a taxpayer or their agent requests a transfer allowed by **section 173L, section 173M(2)(a)** to **173M(2)(e)**, or **section 173M(3)**; and

(b) on the date that the Commissioner actions the request, the taxpayer has paid more provisional tax than the taxpayer's residual income tax for an income year.

(2) The excess provisional tax that may be transferred on a particular date **(date A)** is calculated according to the formula:

provisional tax paid - refunds - residual income tax

where-

provisional tax paid	is the provisional tax paid for the income year on or before date A, including: (a) voluntary payments made under section MB 6 of the Income Tax Act 1994; and (b) tax transferred to the taxpayer:
refunds	are the refunds of the provisional tax that are paid to the taxpayer on or before date A, including transfers by the taxpayer or offsets by the Commissioner against unpaid tax:
residual income tax	is the taxpayer's residual income tax that would be due by date A for the purpose of calculating interest under Part VII, calculated as if section 120K(4) did not apply:

(3) The Commissioner must not transfer an amount on date A if, as a result, the taxpayer would be liable to pay interest on unpaid tax under Part VII or would have a late payment penalty imposed under Part IX in respect of their provisional tax payments for the income year on a date (date B) that falls after date A, unless the taxpayer requests a transfer back to their account so as to prevent interest or a late payment penalty being imposed on date B in respect of their provisional tax payments.

(4) The amount that may be transferred under subsection (2) may not be more than the net provisional tax paid for an income year less the residual income tax for the year.

Section 173R applies once tax has been assessed, if the provisional tax paid exceeds the residual income tax for the year.

The formula in subsection (2) calculates the amount that is available for transfer on a particular date (date A) which can be any date the taxpayer chooses. The total excess that may be transferred under the formula is capped at the net provisional tax paid for the year less the residual income tax for the year.

Under subsection (3), the Commissioner cannot transfer an amount at date A when that would result in the taxpayer incurring use-of-money interest on unpaid tax, or a late payment penalty, at a subsequent date (date B). This will apply to restrict a transfer where, for example, subsequent to date A there was a refund or transfer of provisional tax, or if provisional tax for the year was prepaid by date A. The examples set out below illustrate the application of proposed section 173R.

Example 11 – equal provisional tax instalments: RIT = $0

A Co pays $20,000 provisional tax at each of P1, P2, P3 on the uplift or estimation basis. A Co is assessed as having a loss for the year.

The total credit available for transfer is $60,000, being the difference between the provisional tax paid ($60,000) and the residual income tax ($0).

A asks for this amount to be transferred at the earliest dates. The amount that may be transferred at the first, second and third provisional tax dates is calculated as follows:

	P1	P2	P3
Amount paid	$20k	$20k	$20k
RIT due	$0	$0	$0
PT paid =	20k	$40k	$60k
Refunds =	$0	$20k	$40k
RIT =	$0	$0	$0
Tax overpaid	$20k	$20k	$20k

A may transfer $20,000 at each of P1, P2 and P3 (this is reflected in "refunds" at P2 and P3). Subsection (3) does not apply to restrict the amount transferred at any of those dates because transfer of those amounts would not result in late payment penalties or interest arising in relation to the provisional tax payments.

If, instead of transferring at the provisional tax payment dates above, A wanted to transfer the excess to her first provisional tax date (7 July) for the following year, she would calculate the amount available at that date, which is $60,000.

Example 12 – equal provisional tax payments with RIT

A Co estimates its provisional tax and pays $120,000 at P1, P2 and P3. RIT is $300,000.

The total excess available for transfer is $60,000 being the difference between provisional tax paid ($360,000) and RIT ($300,000). A Co wants to transfer the excess at the earliest dates.

	P1	P2	P3
Amount paid	$120k	$120k	$120k
RIT/3	$100k	$100k	$100k
PT paid =	$120k	$240k	$360k
Refunds =	$0	$20k	$40k
RIT =	$100k	$200k	$300k
Tax overpaid	$20k	$20k	$20k

A Co has overpaid $20,000 at each instalment and can transfer at those dates.

Example 13 – no provisional tax payment at P3

A estimates its RIT at $300,000 and pays instalments due on P1 and P2 on this basis. By P3, it is clear that A's RIT is more likely to be $150,000. A files this revised estimate at P3, and doesn't pay any further provisional tax. A's return is assessed and his RIT is $150,000.

A can transfer a total of $50,000 (being provisional tax paid of $200,000 less the RIT of $150,000). A wants to transfer this at the earliest date.

	P1	P2	P3
Amount paid	$100k	$100k	$0
RIT/3	$50k	$50k	$50k
PT paid =	100k	$200k	$200k
Refunds =	$0	$50k	$50k
RIT =	$50k	$100k	$150k
Tax overpaid	$50k	$50k	$0

A can transfer the $50,000 on P1. The formula would calculate $50,000 as overpaid at P2, but A has already transferred the maximum at P1, so the cap in subsection (4) would apply to prevent this. (If A had transferred nothing at P1, the formula would calculate $100,000 available at P2 – again the cap in subsection (4) would apply).

Subsection (3) does not apply to restrict the transfer at P1 as the transfer would not result in late payment penalties or interest arising at a subsequent date.

Example 14 – no provisional tax payment at P3

A pays provisional tax on the uplift basis. It paid its liability of $20,000 on P1 and P2 but misses P3. The residual income tax is $15,000.

The total excess that may be transferred is $25,000 being provisional tax paid ($40,000) less RIT ($15,000). A wishes to transfer the excess at the earliest date.

	P1	P2	P3
Amount paid	$20k	$20k	$0
RIT/3	$5k	$5k	$5k
PT paid =	$20k	$40k	$40k
Refunds =	$0	$15k	$25k
RIT =	$5k	$10k	$15k
Tax overpaid	$15k	$15k	$0

A can, and does, transfer $15k at P1 (see "refunds" at P2) and $10,000 on P2. (The formula itself calculates $15,000 available at P2 but the amount transferable is restricted to $10,000 by the cap in subsection (4).) Subsection (3) does not apply to restrict either transfer. (If $15,000 is transferred at P1, the RIT due subsequently is paid by the due date under Part VII. The same applies to the $10,000 transferred on P2.)

Example 15 – taxpayer misses P2 – application of subsection (3)

A pays provisional tax on the uplift basis, but he is subject to use-of-money interest. He paid his liability of $20,000 on P1, missed the payment due on P2, and paid $20,000 on P3. His RIT is $15,000.

The total excess that may be transferred is $25,000 (being tax paid of $40,000 less the RIT of $15,000). A wants to transfer the maximum available at the earliest dates.

	P1	P2	P3
Amount paid	$20k	$0	$20k
RIT/3	$5k	$5k	$5k
PT paid =	$20k	$20k	$40k
Refunds =	$0	$10k	$10k
RIT =	$5k	$10k	$15k
Tax overpaid	$15k	$0	$15k

P1 is considered first. The formula calculates $15,000 available at P1. However subsection (3) applies to limit this. If the $15,000 were transferred the taxpayer would be liable for late payment penalties and interest at P2. Therefore only $10,000 is transferable at P1 (though the additional $5,000 may be transferred out and back by P2).

$10,000 is transferred at P1 (reflected in “refunds” at P2 and P3), the remaining $15,000 is transferred at P3.

Example 16 – taxpayer misses P2 – application of subsection (3)

A pays its provisional tax liability of $20,000 on P1, but misses P2 and pays $20,000 on P3. RIT is $30,000. The total excess transferable is $10,000, being the difference between provisional tax paid ($40,000) and the RIT ($30,000). The formula below calculates when the excess may be transferred. A wants to transfer the excess at the earliest dates.

	P1	P2	P3
Amount paid	$20k	$0	$20k
RIT/3	$10k	$10k	$10k
PT paid =	$20k	$20k	$40k
Refunds =	$0	$0	$0
RIT =	$10k	$20k	$30k
Tax overpaid	$10k	$0	$10k

The formula calculates $10,000 available for transfer at P1 but subsection (3) applies to restrict that amount to zero (reflected in “refunds” at P2) because that would result in late payment penalties, and perhaps use-of-money interest, at P2. However, A can temporarily transfer the $10,000 at P1 provided it is back in by P2.

The $10,000 is available for permanent transfer only at P3.

Example 17 – taxpayer increasing estimate at P2

A Co estimates its provisional tax at $300,000. It pays $100,000 on P1 then reestimates to $450,000 at P2 and pays $200,000 at P2 and $150,000 at P3. The RIT is $300,000. The excess that may be transferred is $150,000 ($450,000 - $300,000). A Co wants to transfer at the earliest date in each of the variations below.

	P1	P2	P3
Amount paid	$100k	$200k	$150k
RIT/3	$100k	$100k	$100k
PT paid =	$100k	$300k	$450k
Refunds =	$0	$0	$100k
RIT =	$100k	$200k	$300k
Tax overpaid	$0	$100k	$50k

A Co. can transfer $100,000 at P2 and, if it does so, $50,000 at P3. If it does not transfer anything before P3, $150,000 would be transferable on P3.

Example 18 – taxpayer decreasing estimate at P2

A Co estimates its provisional tax at $300,000. It pays P1 of $100,000 then reestimates to $200,000 at P2 and pays $33,333 at P2 and $66,667 at P3. The residual income tax is $150,000.

The total excess transferable is $50,000 (provisional tax paid of $200,000 less residual income tax of $150,000). A Co wants to transfer the excess at the earliest dates.

	P1	P2	P3
Amount paid	$100k	$33,333	$66,667
RIT/3	$50k	$50k	$50k
PT paid =	$100k	$133,333	$200k
Refunds =	$0	$ 33,333	$33,333
RIT =	$50k	$100,000	$150k
Tax overpaid	$50k	$0	$16,667

A Co can transfer only $33,333 on P1. (The formula calculates $50,000 available at P1 but subsection (3) applies to reduce the amount transferable at P1 to $33,333 because transfer of the $50,000 will result in late payment penalties or interest at P2. However, A can temporarily transfer the remaining $16,667 until P2.)

The balance of the total excess, $16,667, can be permanently transferred on P3.

Example 19 – taxpayer pays terminal tax then reassessment

A paid $600,000 provisional tax and $100,000 terminal tax for the 2002-2003 year. The original RIT was $700,000. A is reassessed for that year - RIT after reassessment is $450,000.

The total excess provisional tax transferable is $150,000 ($600,000 provisional tax paid less $450,000 RIT). Excess terminal tax is $100,000.

	P1	P2	P3	TT
Amount paid	$200k	$200k	$200k	$100k
RIT/3	$150k	$150k	$150k	
PT paid =	$200k	$400k	$600k	
Refunds =	$0	$50k	$100k	
RIT =	$150k	$300k	$450k	
Tax overpaid	$50k	$50k	$50k	$100k

$50,000 is available at each of P1, P2 and P3 (plus $100,000 on the terminal tax date).

Example 20 – taxpayer receives refund of excess provisional tax after P2

A Co estimates its provisional tax at $300,000. It pays P1 of $100,000 then reestimates at P2 to $40,000. It pays nothing at P2 and P3 and seeks a refund after P2 of $60,000. RIT is $30,000.

The total excess available for transfer is $10,000 (the difference between net provisional tax paid of $40,000 ($100,000 - $60,000) and RIT of $30,000) .

	P1	P2		P3
Amount paid	$100k	$0	$-60,000	$0
RIT/3	$10k	$10k		$10k
PT paid =	$100k	$100k		$100k
Refunds =	$0	$10k		$70k
RIT =	$10k	$20k		$30k
Tax overpaid	$90k	$70k		$0

A Co can transfer the $10,000 on P1. (The formula calculates $90,000 available for transfer at P1, and $70,000 at P2, but the cap in subsection (4) applies to restrict this to $10,000.)

Example 21 – taxpayer receives refund of excess provisional tax before P2

A Co estimates its provisional tax at $300,000. It pays P1 of $100,000 then reestimates in September to $40,000 and seeks a refund of $60,000 before P2. It pays nothing at P2 and P3. The RIT is $30,000.

The total excess available for transfer is $10,000 (net provisional tax paid of $40,000 less RIT of $30,000).

	P1		P2	P3
Amount paid	$100k	$-60,000	$0	$0
RIT/3	$10k		$10k	$10k
PT paid =	$100k		$100k	$100k
Refunds =	$0		$70k[1]	$70k
RIT =	$10k		$20k	$30k
Tax overpaid	$90k		$10k	$0

Taxpayer can transfer $10,000 on or after P1. (The formula calculates $90,000 available for transfer at P1, and $10,000 at P2, but the cap in subsection (4) applies to restrict this to $10,000.)

Example 22 – taxpayer receives refund of excess provisional tax after P2 but offsetting excess at P2

A Co estimates its provisional tax at $300,000. It pays $100,000 at P1 and P2 and then reestimates in December to $140,000. It seeks a refund after P2 of $60,000 and pays nothing at P3. RIT is $30,000.

The total excess available for transfer is $110,000 (being the difference between net provisional tax paid of $140,000 and RIT of $30,000).

	P1	P2	20/12	P3
Amount paid	$100k	$100k	$-60,000	$0
RIT/3	$10k	$10k		$10k
PT paid =	$100k	$200k	$200k	$200k
Refunds =	$0	$90k	$170k[2]	$170k
RIT =	$10k	$20k	$20k	$30k
Tax overpaid	$90k	$90k	$10k	$0

Taxpayer can transfer $90,000 on P1 and $20,000 on P2. (The formula calculates $90,000 available for transfer at P2 but the cap in subsection (4) applies to restrict this to $20,000. The cap also applies in relation to the $10,000 the formula calculates as available at 20/12.)

[1] $10k transferred at P1 and $60k refund
[2] $90k transferred at P1 + $20k transferred at P2 + $60k refund

Example 23 – new provisional tax payer

Newly formed A Co starts business on 1 September 2002. It is a new provisional taxpayer and is required to pay two equal instalments of provisional tax (section MB 4(2)(a)). It pays $30,000 on November 7 (P1) and $30,000 on March 7 (P2). It also makes a voluntary payment on 31 March of $10,000. RIT is $50,000.

The total excess available for transfer is $20,000 (being the difference between provisional tax paid of $70,000 and RIT of $50,000).

Under section 120K(3) of the Tax Administration Act, RIT is spread equally over the two instalment dates.

	P1	P2	31/3
Amount paid	$30k	$30k	$10k
RIT/2	$25k	$25k	$0
PT paid =	$30k	$60k	$70k
Refunds =	$0	$5k	$10k
RIT =	$25k	$50k	$50k
Tax overpaid	$5k	$5k	$10k

A can, and does, transfer $5,000 at P1 and P2 and $10,000 at 31 March.

Example 24 – taxpayer with transitional year

A Co is changing balance dates from March 31 to August 31 – it will have a 17 month year. It is required to make 5 instalments of provisional tax - due on 7 July, 7 November, 7 March, 7 July and 7 August. It pays on the estimation basis (MB 5A(6). It estimates RIT for the transitional year at $50,000. The amount payable on the first four instalment dates is (4 x 1) x $50,000/17 = $200,000/17 = $11,760. The amount payable at P5 is $50,000 - $47,040[3] = $2,960. RIT is $40,000. The RIT is spread as below (120K(4A)). (It is not evenly spread across provisional tax instalments which is why the spread needs to match that under 120K.)

The total excess that is transferable is $10,000 being the difference between provisional tax paid of $50,000 and RIT of $40,000.

The excess may be transferred at the following dates. (The example assumes that the excess is transferred as soon as it is available).

	P1	P2	P3	P4	P5
Amount paid	$11.76k	$11.76k	$11.76k	$11.76k	$2.96k
RIT	$9.41k	$9.41k	$9.41k	$9.41k	$2.36k
PT paid =	$11.76k	$23.52k	$35.28k	$47.04k	$50k
Refunds =	$0	$2.35k	$4.70k	$7.05k	$9.40k
RIT =	$9.41k	$18.82k	$28.23k	$37.64k	$40k
Tax overpaid	2.35k	$2.35k	$2.35k	$2.35k	$0.60k

[3] 11.76 x 4