

# ATO Receivables Policy Updates

## Updates

The following revisions have been made to the *ATO Receivables Policy* from January 2009 onwards.

### January 2009

#### [Chapter 28](#) Recovering disputed debts

- Application of credits to disputed debts - paragraphs 77-79.
- Exclusion of super guarantee charge debts from 50/50 arrangements - paragraphs 23-25.
- Increase in GIC concession available from 50% to 75% for funded test cases - paragraphs 16-19 and 22.
- Recent High Court decision in 'Howard' ([DCT v. Broadbeach Properties P/L \("Howard Group"\) \[2008\] HCA 41](#)) which confirmed that courts will generally not exercise their discretion to set aside a statutory demand simply because the assessment on which it was based is the subject of a dispute - paragraphs 7 and 43.

### October 2009

#### [Chapter 12](#) Garnishee

- In accordance with the recent High Court decision in ([Bruton Holdings Pty Ltd \(in liq\) v. FC of T & Anor \[2009\] HCA 32](#)) a garnishee will not be issued in respect of a debt owed to a company after an order has been made, or a resolution passed, for the winding up of the company – paragraph 31.
- Re-insertion of instructional material for staff.
- Inclusion of new information on *First Home Saver Accounts Act 2008* accounts – paragraph 28.

### October 2010

#### [Chapter 51](#) Introduction to Part C - Lodgment of documents

- Incorporated the content of Chapters 52 and 56 into Chapter 51.

#### Chapter 53 The role of intermediaries

- Archived – redundant with the introduction of the *Tax Agent Services Act 2009*. (The PDF version of the archived chapter can be accessed here: [Chapter 53](#) 2008.)

#### [Chapter 55](#) Deferral of due date for lodgment or suspension of lodgment enforcement action

- Clarified the information on deferral decisions being made on a fair and reasonable basis – paragraphs 12-13
- Confirmed BAS service providers are entitled to certain concessions under the Lodgment Program but cannot self assess lodgment deferrals – paragraph 32.
- Clarified the power to suspend lodgment enforcement action - paragraphs 44-48.
- Removed references to deferral of notification of choice to consolidate in order to reflect *MW McIntosh Pty Ltd v. FC of T* decision.

#### Chapter 57 Raising liabilities where documents are not lodged

- Archived – [PS LA 2007/7](#) and [PS LA 2007/24](#) cover the chapter content.

#### [Chapter 98](#) Penalties for failing to lodge documents on time

- Clarified the assessment of penalties – paragraphs 14 & 15.
- FTL safe harbour provisions – paragraphs 17-21.

## November 2010

### [Chapter 29](#) Securities

- Clarified Commissioner's expectations when the ATO is offered security - paragraph 14
- Revised policy regarding the ATO's preferred securities – paragraph 18
- New information and policy in relation to the new bond provisions contained in Subdivision 255-D in Schedule 1 to the *Taxation Administration Act 1953* (TAA). The law has been expanded to cover all taxes administered by the Commissioner, both existing and future tax liabilities – paragraphs 8-13; 21-48

### [Chapter 38](#) Cross border recovery of taxation debts

- Changes to reflect amendments to sections 263-35 and section 263-40 in Schedule 1 to the TAA.

## December 2010

### [Chapter 9](#) Deferring the time for payment

- Removed the information on deferring payments of excess contributions tax as the general practice is now to consider GIC remission to deal with the timing issues.
- New provisions allowing the Commissioner to grant blanket deferrals to a class of taxpayers – paragraph 8.
- Clarified the policy where there has been misappropriation of taxpayer's funds intended for payment to the ATO – paragraph 10.
- Clarified the ATO position on commencing legal proceedings where there is a deferral of a payment due date – paragraph 12
- Minor style changes.

### [Chapter 13](#) Departure prohibition orders

- Debtor may apply to the Commissioner for the issue of a Departure Authorisation Certificate (DAC) to permit him or her to depart Australia temporarily – paragraph 5.
- Factors considered by the Commissioner in granting a DAC – paragraphs 6-10.

### [Chapter 20](#) Voluntary administration

- Resolutions to exclude priority for eligible employee creditors – paragraph 7
- New information on creditors trusts – paragraphs 10-14
- Clarified the provision of information to administrators – paragraphs 15 & 16
- Aligned information on garnishees to that contained in Chapter 12 – paragraphs 17 & 18
- Minor style changes

### [Chapter 22](#) Voidable transactions

- Clarified the meaning of 'insolvent transaction' – paragraph 7
- Revised view on the Commissioner's position regarding:
  - settling a voidable transaction claim without litigation – paragraph 12
  - preferential ranking of SGC – paragraph 13
- Clarified director's liability to indemnify the Commissioner – paragraphs 14 & 16
- Revised legislative references.

### [Chapter 36](#) Freezing orders (also known as mareva injunctions or asset preservation orders)

- Equitable remedy of a mareva injunction is now incorporated as part of the rules of civil procedure in Commonwealth and State jurisdictions – paragraphs 2, 3, 7, 16.
- Clarified the requirement to make full disclosure of information to the court – paragraph 12
- Updated case references & minor style changes.

### [Chapter 37](#) Recovery of administrative overpayments

- Clarified the application of administrative overpayments to an RBA and the effect on GIC accrual – paragraph 21
- Overpayments in relation to tax periods commencing, or claims made under the GST, LCT and Fuel Tax Acts, on or after 24 March 2010, are now treated as amounts that became payable, and due for payment, at the time when the overpaid amount was paid or applied – paragraphs 22-26
- Minor style changes.

#### [Chapter 40](#) Waiver of taxation debts in proceeds of crime matters

- New chapter detailing the Commissioner's power to waive the Commonwealth's right to payment of tax debts in order to facilitate proceedings undertaken by the Commonwealth Director of Public Prosecutions under the *Proceeds of Crime Act 2002*.

#### [Chapter 93](#) General interest charge

- GIC concessions for cases in the Test Case Litigation Program – paragraph 50
- Defined 'top-up GIC' – subparagraph 57(iii)
- Clarified the policy on GIC concessions for ECT – paragraphs 70-75
- New policy on GIC concessions for foreign revenue claims – paragraphs 95-102
- Removed the information on the deductibility and assessability of GIC (fact sheet will be published shortly)
- Updated legislative references; outdated examples deleted; minor style changes

### January 2011

#### [Chapter 10](#) Payment arrangements

- Removed the information on 222ALA payment agreements as section 222ALA was repealed as part of the re-write of Part VI of the *Income Tax Assessment Act 1936*.
- Clarified the Commissioner's discretion to offset credits and refunds when a payment arrangement is in force - paragraphs 21-23
- Minor style changes

#### [Chapter 27](#) Compromise of taxation debts

- Restructure of chapter to improve readability; removal of procedural information.
- Section 588FGA indemnity liabilities against company directors can be compromised in certain circumstances – paragraph 57
- Updated legislative references

#### [Chapter 39](#) Settlement of debt recovery litigations

- Updated information to align with guidelines in PS LA 2009/09 which has replaced PS LA 2007/16
- Updated legislative references

### February 2011

#### [Chapter 6](#) Estimating a liability

- Updated legislative references; minor style changes.

#### [Chapter 111](#) Introduction to information gathering

- Clarified when formal requests for information from third parties are used.
- Revised policy to reflect latest counsel view on the use of powers to obtain information when court proceedings are on foot – paragraphs 18-23
- New information included to distinguish between the access and information gathering powers – paragraph 17.
- Removed remaining procedural information; minor style changes; updated references.

## March 2011

### [Chapter 14](#) Personal liabilities of company directors

- Revised the information on 222ALA payment agreements and director penalties to cater for the re-write of Part VI of the *Income Tax Assessment Act 1936*.
- Clarified when disclosure is permitted with reference to the new confidentiality provisions contained in Division 355 of Schedule 1 to the TAA – paragraphs 10-14.
- Revised content to generally tighten up the chapter to make it more precise; updated the key legislative references.

## April 2011

[Alert](#) – All policy chapters with the exception of Chapters 34 and 35 have been archived.

## November 2013

[Alert](#) - Chapters 34 and 35 have been archived effective from 7 November 2013. ATO personnel must refer to the policies contained in the relevant Law Administration Practice Statements.

Work has commenced to archive PS LA 2008/13 which mandated that ATO personnel were to follow the policies contained in the *ATO Receivables Policy*.

## December 2013

PS LA 2008/13 was withdrawn on 5 December 2013 effective as at 7 November 2013. (There are no current policy chapters published under the ATO Receivables Policy.)

Any feedback on policy issues should be directed to the following mailbox:  
**[ATOREceivablesPolicy@ato.gov.au](mailto:ATOREceivablesPolicy@ato.gov.au)**

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