

Part A Introduction**1 PRINCIPLES UNDERLYING THE RECEIVABLES POLICY OF THE ATO**

The policy in this chapter is to be followed by Tax Office staff. We have made every effort to ensure it is technically accurate, but in the interests of clarity it has been written in 'plain English' and should not be read or interpreted like legislation. If you feel that something in the chapter is wrong or misleading please advise the Tax Office.

Date of Effect: 4 July 2006 (this replaces the 2003 version)

1.1 PURPOSE

1.1.1 This chapter and the following chapters contain the policy of the Australian Taxation Office in relation to the obligations outlined below.

1.1.2 This chapter sets out the principles underlying the Tax Office's policies relating to :

- the payment of liabilities by taxpayers;
- the lodgment of returns and documents by taxpayers;
- the imposition and remission of penalties arising from a breach of those obligations; and
- the payment of refunds and interest by the Commissioner.

1.1.3 The policies contained in these chapters is intended for the use of taxpayers, their advisers and Tax Office staff, to ensure that they have a common understanding of the Tax Office's approach to debt collection and lodgment matters. All Tax Office staff are expected to follow the policy.

1.1.4 The policy relates to legislation enacted prior to 1 July 2005 plus the legislation enacted as a result of the "Review of Aspects of Income Tax Self Assessment".

1.1.5 This policy will be updated on a regular basis. The Tax Office will consult with taxpayers, their advisors or representative bodies and adopt a collaborative approach in developing significant new policies or significantly modifying current policies. The policies will be developed to :

- meet the individual circumstances of taxpayers and their advisors,
- be fair to those taxpayers who do comply with the law; and
- comply with the law and its intent.

Taxpayer protection provided by this document

1.1.6 Each decision taken by the Commissioner is made on the merits of the individual case, having regard to the legislation, this policy document and other relevant documents and information.

1.1.7 If a statement in this publication turns out to be incorrect and you under-pay your tax as a result, you will not have to pay a shortfall penalty. In addition, you will not have to pay interest on the under-payment provided

you reasonably relied on the statement in good faith. However you will have to pay the correct amount of tax

- 1.1.8 This document is copyright to the Commonwealth of Australia.

Application of the Policy

- 1.1.9 In providing the guidelines set out in this and the following policy chapters, it is not intended to restrict the Commissioner or authorised officers in the exercise of the various discretions under the relevant taxation laws – it is essential that they retain the flexibility necessary to deal with each case on its own merits. The following policy chapters provide guidance as to the manner in which the discretion might generally be exercised, and thus enhance consistency in the Tax Office’s treatment of taxpayers with similar circumstances.

1.2 INTRODUCTION

- 1.2.1 Fully complying with taxation obligations is an important community responsibility. Non-compliance with these obligations imposes a further share of the taxation requirements on those taxpayers that do comply, as well as an additional burden in terms of administrative costs. Taxpayers are expected to lodge correct returns and statements by the due date, and to pay their taxation debts as and when they fall due for payment.
- 1.2.2 When deciding the most appropriate manner in which to deal with outstanding taxation obligations, the Commissioner will give considerable weight to the taxpayer’s individual circumstances and their compliance history e.g. their history in lodging correct returns and documents and paying obligations on time.

1.3 PRINCIPLES

- 1.3.1 The Commissioner will adopt or adapt the best practices of both public and private organisations to ensure professional, efficient and effective administration of the taxation laws.
- 1.3.2 In dealing with taxpayers and their representatives, the Commissioner and Tax Office staff will:
- advise taxpayers of their rights and will respect those rights (Refer to the chapter in this policy titled: “Accountability and Review of Decisions”);
 - be professional, honest and courteous;
 - be open and transparent in our dealings and be accountable for our actions and decisions; and
 - meet the requirements and adopt the intent of the Taxpayers’ Charter.
- 1.3.3 In dealing with any non-compliance by taxpayers, the Commissioner and Tax office staff will :
- be fair, but firm where necessary i.e. adopt approaches whereby we are able to differentiate in our treatment based on the taxpayer’s facts and circumstances, and then take a firm hand if, after having given the taxpayer a reasonable opportunity to rectify their tax affairs, the taxpayer remains non-compliant;

- adopt the most appropriate remedy, i.e. the most appropriate remedy that, based on the taxpayer's individual circumstances and history, will most likely result in both current and future compliance; and
 - adopt a full range of appropriate options, which may include:
 - telephone contact and/or correspondence requiring compliance with taxation obligations prior to the institution of legal action;
 - the issue of appropriate estimates or default assessments;
 - legal action up to and including prosecution and/or bankruptcy/liquidation and the use of appropriate writs or injunctions.
- 1.3.4 Taxpayers are expected to take responsibility for their taxation obligations, and to organise their affairs in such a way as to be able to discharge those responsibilities when required. The Commissioner expects that taxpayers will give the same priority to taxation obligations as their other responsibilities.
- 1.3.5 If taxpayers cannot (or anticipate they will not be in a position to) meet their taxation obligations it is in the interests of all parties if those taxpayers contact the Commissioner at the earliest opportunity to discuss the matter and make appropriate alternative arrangements. Preferably, such contact should be made prior to the due date for lodgment or payment.
- 1.3.6 In limited, genuine circumstances, the Commissioner is prepared to defer the time to lodge and/or pay (without the taxpayer incurring failure to lodge penalties or the General Interest Charge (GIC), or to permit payment by instalments (which normally attracts the GIC).
- 1.3.7 However, a fundamental principle in taxation administration is that any alternative arrangements provided to a particular taxpayer should also be perceived as equitable by those taxpayers who *do* comply with their obligations. A decision to enter into an alternative arrangement will take into account the particular circumstances of the taxpayer, including:
- the taxpayer's compliance history;
 - whether the reasons for the potential non-compliance were beyond the taxpayer's control, and the steps taken to mitigate the effects of those circumstances;
 - the ability of the taxpayer to meet the obligation within a reasonable timeframe; and
 - the steps taken to ensure future taxation obligations are met on time.
- 1.3.8 If the Commissioner agrees to an arrangement to vary the taxation obligations:
- interest and penalties are imposed by various statutory provisions (other than for deferrals of time to lodge or pay), and will not ordinarily be remitted;
 - it is expected that future obligations will be met as and when they fall due; and

- any default on the arrangement may lead to legal action or similar sanctions.
- 1.3.9 Usually, the Commissioner will not instigate legal action, issue a default assessment or take “garnishee” action without the taxpayer being advised previously of the possibility of such action. However, the Commissioner will proceed with appropriate action without further notice where a taxpayer fails to respond to approaches or fails to enter into genuine negotiations.
- 1.3.10 The Commissioner will adopt an empathetic approach to payment arrangements to ensure that the debt with the Tax Office was not, of itself, the reason for a *viable* business to founder. However, the Commissioner will need to have regard to the overall circumstances of the taxpayer e.g. the position of other creditors where the taxpayer has a debt to the Tax Office.
- 1.3.11 In particular, as legal action to recover debts is usually instituted by other creditors, the Commissioner has no choice in those circumstances but to respond appropriately in order to safeguard the revenue. (See chapter ‘Arrangements to pay tax-related liabilities by instalments’).