

# ATO RECEIVABLES POLICY

## PART A Introduction

# Chapter 1 PRINCIPLES UNDERLYING THE ATO RECEIVABLES POLICY

*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:** 24 July 2008 (This version replaces the 2006 version.)

## PURPOSE

1. The ATO Receivables Policy (the Policy) contains the policies of the Tax Office concerning:
  - taxpayers' obligations in relation to the payment of tax-related liabilities, and the lodgment of returns and similar documents
  - the obligations and entitlements of taxpayers in relation to the registration of entities
  - the imposition and remission of penalties and interest charges arising from a breach of those obligations, and
  - the payment of refunds and interest by the Tax Office.

This chapter sets out the principles underlying those Tax Office policies.

2. The policies are intended for the use of Tax Office staff, to ensure that they have a common understanding of the Tax Office approach to debt collection, registration and lodgment matters. Law Administration Practice Statement PS LA 2008/13 requires all Tax Office staff to follow the Policy.
3. The Policy is not a ruling or advice for the purposes of section 105-60 of Schedule 1 to the *Taxation Administration Act 1953*. Taxpayers can rely on the Policy to provide them with protection from interest and penalties in the way explained below in paragraph 5.

## Application

4. In providing the guidelines set out in this and the following 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 deal with each case on its own merits and retain the flexibility necessary to do so. In relation to every discretion that is discussed, the guidance contained within the Policy does not fetter the exercise of the discretion when it is applied to the circumstances of a particular case; it merely provides guidance as to the manner in which the relevant discretions might generally be exercised, and thus enhances consistency in the Tax Office treatment of taxpayers with similar circumstances.

## **Taxpayer protection**

5. If a statement in the Policy turns out to be incorrect and an under-payment occurs as a result, a shortfall penalty will not apply. In addition, a taxpayer will not have to pay interest on the under-payment provided they reasonably relied on the statement in good faith. However they will have to pay the correct amount of tax provided the time limits under the law allow it.

## **Currency**

6. The Policy will be updated on a regular basis. The Tax Office will consult with taxpayers, their advisers and representative bodies and adopt a collaborative approach in developing significant new aspects of the Policy or significantly modifying the current Policy. The policies will be developed to comply with the law and its intent, meet the individual circumstances of taxpayers and their advisers, and be fair to those taxpayers who do comply with the law.

## **INTRODUCTION**

7. Fully complying with taxation obligations is an important community responsibility. Non-compliance with these obligations imposes a greater 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 register as and when required, lodge correct returns and statements by the due date, and to pay their taxation debts as and when they fall due for payment.
8. When deciding the most appropriate manner in which to deal with outstanding taxation obligations, the Tax Office will give considerable weight to the taxpayer's individual circumstances and their compliance history, for example their history in lodging correct returns and documents and paying obligations on time.

## **PRINCIPLES**

9. The Tax Office will adopt or adapt the best practices of both public and private organisations to ensure professional, efficient and effective administration of the taxation laws.
10. In dealing with taxpayers and their representatives, Tax Office staff will:
  - advise taxpayers of their rights and will respect those rights (see Chapter 2 'Accountability and review of decisions'), be professional, honest and courteous
  - be open and transparent in all dealings and be accountable for all actions and decisions, and
  - meet the requirements and adopt the intent of the taxpayers' charter.
11. In dealing with any non-compliance by taxpayers, Tax Office staff will:
  - be fair but firm where necessary, that is, adopt approaches whereby the Tax Office is able to differentiate in its 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, that is, 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:
    - (i) telephone contact and/or correspondence requiring compliance with taxation obligations before the institution of legal action
    - (ii) the issue of appropriate estimates or default assessments
    - (iii) legal action up to and including prosecution and/or bankruptcy/liquidation and the use of appropriate writs or injunctions.
12. 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. They should give the same priority to taxation obligations as their other responsibilities. If taxpayers cannot (or anticipate they will not be in a position to) meet their taxation obligations they should contact the Tax Office at the earliest opportunity to discuss the matter and make appropriate alternative arrangements. Such contact should be made before the due date for lodgment or payment.

### **Alternative arrangements**

13. In limited, genuine circumstances, the Tax Office 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). However, a fundamental principle in taxation administration is that any alternative arrangements provided to a particular taxpayer should also be equitable to and capable of being perceived as equitable by those taxpayers who do comply with their obligations.
14. 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.
15. If the Tax Office agrees to an arrangement to vary the taxation obligations the taxpayer will remain liable for any interest and penalties imposed by various statutory provisions (other than for a deferment of time to lodge or pay). As a general rule, it will be a condition of any concessional arrangements that future obligations will need to be met as and when they fall due. Any default on the arrangement may lead to the concessional arrangements being terminated and firmer enforcement action being taken.

### **Recovery procedures**

16. Generally the Tax Office will not instigate legal action, issue a default assessment or take "garnishee" action without the taxpayer being advised beforehand. However, action will be taken without further notice where a taxpayer fails to respond to approaches or fails to enter into genuine negotiations.
17. The Tax Office will adopt a fair and empathetic approach to payment arrangements to ensure that taxpayers who are attempting to meet their obligations are given

every reasonable opportunity to do so. However, the Tax Office will need to have regard to the overall circumstances of the taxpayer, for example, the position of other creditors where the taxpayer has a debt to the Tax Office. Sometimes individuals and businesses are simply unable to meet their liabilities and it would be unfair to other creditors or potential creditors to allow the overall level of indebtedness to escalate. Also, some taxpayers are merely reluctant to pay their tax obligations as they fall due. In these cases the Tax Office is obliged to take firmer action to safeguard the revenue. (See Chapter 10 'Payment arrangements'.)

18. The Tax Office will conduct recovery litigation in accordance with the directions issued by the Attorney-General under the *Judiciary Act 1903*, including the Model Litigant guidelines.

#### **Chapter 1 - Archived version**

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