

Part B The Collection of Taxation Debts**4 INTRODUCTION TO PART B – THE COLLECTION OF TAXATION DEBTS**

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.)*

4.1 PURPOSE

- 4.1.1 This chapter sets out the broad principles underlying the Tax Office's approach to the collection of debts and applies only to taxation debts.

4.2 INTRODUCTION

- 4.2.1 Payment of taxes properly payable is an important community responsibility. Debtors are expected to pay their taxation debts as and when they fall due for payment.
- 4.2.2 Where debtors face genuine difficulty but have the capacity to pay the debt, the Tax Office is prepared to allow them to pay their tax debts and any additional charges for late payment, including the general interest charge (GIC), over a reasonable period of time by instalments.
- 4.2.3 The Commissioner will take into account the compliance history of a debtor, including both payment and lodgment records, when deciding the most appropriate action to deal with outstanding debts.

4.3 PRINCIPLES

- 4.3.1 Taxation debtors are expected to pay their taxation debts as and when they fall due for payment:
- (i) the Tax Office is not a lending institution or a credit provider;
 - (ii) debtors are expected to organise their affairs to ensure they pay their tax debts on time; and
 - (iii) debtors are expected to treat their tax debts with the same priority as they treat their other debts.
- 4.3.2 In various places throughout this policy, a debtor's capacity to pay their taxation debts will need to be assessed. The capacity to pay is determined by considering a number of factors including, but not limited to:
- gross income and expenditure - including consideration of past, current and future transactions, taxable income, exempt income, wealth through inheritances, gifts, and windfalls, exclusion of book entries (depreciation, investment allowances, journal entries etc), nature of business deductions and the curtailing of excessive personal expenditure, and income alienation;

- access to liquid assets or assets easily convertible to cash (shares, debentures, bonds, personal assets such as jewellery, art, etc);
- ability to convert fixed assets to cash (sale of home, land, motor vehicle, boats, plant & equipment); and
- ability to obtain loans/funds – from financial institutions, from family/friends or related entities.

4.3.3 In addition, the factors or circumstances which led to the inability to pay will also need to be considered, eg the disposition of funds to a family member at a time when tax obligations arose.

4.3.4 If debtors cannot pay a taxation liability in full by the due date (or anticipate they will not be in a position to pay by that date), it is in the interests of all parties if those debtors contact the Tax Office at the earliest opportunity to discuss payment of the debt at a later date or by instalments. It should also be noted:

- (i) Company directors may be personally liable to a penalty equal to the amount of particular debts of their company which are not paid by the due date;
- (ii) Approval to permit payment at a later date or by instalments will not be given as a matter of course. A decision to enter into an arrangement to permit payment at a later date or by instalments will take account of the particular circumstances of the debtor including:
 - the steps taken to obtain funds to pay the debt;
 - the financial position of the debtor and the ability to fully pay the debt at a later date or by instalments (including any additional charges for late payment/GIC) within a reasonable timeframe;
 - the steps taken to ensure future payment and lodgment obligations are met on time; and
 - the debtor's compliance history.
- (iii) The fact that negotiations over payment of a debt are taking place does not preclude the Tax Office from taking prosecution action for breaches of taxation laws nor does it prevent it from seeking to secure the debt by whatever means are available (for example, judgment, security over property, injunctions, issue of 'garnishee' notices) where there is genuine concern about the risk to the revenue.

4.3.5 If the Tax Office agrees to accept payment of a debt by instalments:

- (i) an initial payment will be expected when an application to pay by instalments is made as evidence of a genuine commitment to pay. Payment of the balance of the debt will be expected to be made in the shortest practical timeframe having regard to the particular circumstances of the debtor and in line with commercial practices as far as they can be applied to taxation debts. It cannot be expected that the Commissioner will agree to any proposal simply because the person making the proposal considers it to be 'commercial';
- (ii) additional charges for late payment/GIC automatically imposed by statute will not ordinarily be remitted;

- (iii) future liabilities will be expected to be paid as and when they fall due for payment; and
 - (iv) a default by a debtor is likely to lead to legal recovery action.
- 4.3.6 Liability to pay an amount of outstanding tax is not deferred because of any action to dispute that amount. The Tax Office will seek appropriate arrangements to secure any debt in dispute, which may include full or partial payment. If the dispute is resolved in the debtor's favour, the Tax Office will refund any amounts overpaid plus interest.
- 4.3.7 Through its risk management strategies the Tax Office continues to adopt best practices to ensure effective and professional collection of debts:
 - (i) the Tax Office advises debtors of their rights and respects those rights;
 - (ii) where a debtor fails to respond to approaches or fails to enter into genuine negotiations, the Tax Office proceeds with appropriate collection action without further notice;
 - (iii) the Tax Office adopts a full range of appropriate collection options, which may include:
 - telephone contact or correspondence requesting payment in full prior to the institution of legal recovery action;
 - the issue of 'garnishee' notices;
 - the issue of orders preventing debtors leaving the country;
 - legal action up to and including the liquidation of companies or the sequestration of an individual's estate in bankruptcy. Legal action may also involve the Commissioner seeking injunctions preventing debtors dealing with their assets; or
 - initiation of action against individual directors of companies in appropriate circumstances under the law.
 - (iv) legal recovery action or 'garnishee' action would not ordinarily be taken without the debtor having previously been advised of the possibility of such action.
- 4.3.8 If payment of an income tax or fringe benefits tax debt will cause serious hardship, a debtor can apply for a release from that debt.