

ATO RECEIVABLES POLICY

PART B The Collection of Taxation Debts

Chapter 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.

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Key legislation: Various

PURPOSE

1. This chapter:
 - sets out the broad principles underlying the Tax Office's approach to the collection of taxation debts, and
 - outlines the due and payable dates for the more common types of taxation debts.

INTRODUCTION

2. 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. If a debt is not paid when it falls due for payment, it is the responsibility of the Tax Office to recover the debt.
3. 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. The Tax Office 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. Where the Tax Office decides that recovery action is warranted, that may take the form of legal action through the Courts, or the use of the Commissioner's statutory garnishee power. The Commissioner's policy on the use of that statutory garnishee power can be found in Chapter 12 'Garnishee'..

POLICY

5. 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.
6. 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), 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)
 - ability to convert fixed assets to cash (sale of home, land, motor vehicle, boats, plant and equipment), and
 - ability to obtain loans/funds – from financial institutions, from family/friends or related entities.
7. In addition, the factors or circumstances which led to the inability to pay will also need to be considered, for example the disposition of funds to a family member at a time when tax obligations arose.
8. 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, refer to Chapter 10 'Payment arrangements'.
 - (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.
9. 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; refer to Chapter 28 'Recovering disputed debt'.
10. 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 are covered in Chapter 8 'The collection process'.
11. If payment of an income tax or fringe benefits tax debt will cause serious hardship, an individual debtor can apply for a release from that debt; refer to Chapter 24 'Release from payment of some taxation liabilities'.

Due dates

12. Once a tax, duty or charge becomes due and payable, provisions in the relevant Act deem the debt to be a debt due to the Commonwealth and payable to the Commissioner. If a debtor does not pay by the due date and does not contact the Commissioner, it is reasonable for the Commissioner to assume the debtor is not going to pay and to take whatever action is necessary to recover the debt
13. Where the Tax Office makes an assessment, a notice of assessment which specifies the amount payable and the due date for payment is forwarded to the debtor. Where the tax or charge is assessed by the debtor, the due date for payment of the debt is usually the due date for lodgment of the return.
14. Where the Commissioner has given notice to a debtor in respect of an administrative overpayment, specifying a due date for payment that is at least 30 days after the notice is given, the debtor is liable to pay the general interest charge (GIC) on the unpaid amount from that date.
15. From 1 April 2001, the due date for lodgment of notifications and payment of tax debts is extended to the next business day if the prescribed due date falls on a weekend or a public holiday. (Section [8AAZMB](#) of the *Tax Administration Act 1953* (TAA) and section [388-52](#) in Schedule 1 to the TAA).
16. For the purposes of these provisions, a public holiday includes any day that is a public holiday throughout a state or territory. In these circumstances, all taxpayers receive the benefit of the extension, even if they are not located in the relevant state or territory.
17. The Commissioner can bring forward the payment time for a tax related liability in certain cases (section [255-20](#) in Schedule 1 to the TAA).
18. The Commissioner can also defer the payment time ([section 255-10](#) in Schedule 1 to the TAA). This provision is discussed in detail in Chapter 9 'Deferring the time for payment'.

Income Tax

Individuals/Trustees (from 1 July 2000)

19. If the return is lodged on time, any tax payable is due on the later of:
- 21 days after the due date for lodgment of that return specified in the *Gazette*, or
 - 21 days after receipt of the notice of assessment.
20. If the return is lodged late or not at all, any tax payable is due 21 days after the due date for lodgment.

Income Tax – Companies/Superannuation funds/Approved Deposit Funds/Pooled Superannuation Trusts (from 1 July 2000)

21. The due date for payment of any assessed tax - the 'statutory due date' - is the first day of the sixth month following the end of the year of income or such later date as the Commissioner allows by notice published in the *Gazette*.

Amended Assessments

22. 1999–2000 and earlier income years:
- the due date of any income tax payable under an amended assessment is as specified in the notice of amended assessment, a minimum of 30 days after service of the notice.
23. 2000–01 to 2003–04 years:
- the due date of any income tax payable under an amended assessment (the shortfall amount) is the same as the due date of the original assessment.
24. 2004–05 and later income years:
- the due date for payment of the tax shortfall and any related shortfall interest charge is 21 days after the amounts are notified to the taxpayer.

Pay as you go (PAYG) instalments

Annual

25. Some individuals, companies and superannuation funds can choose to pay an annual instalment. From the 2002–03 income year onward, the annual PAYG instalment is due on 21 October following the end of the income year.

Quarterly

26. Under the PAYG instalment system, individuals, companies and superannuation funds who have business and investment income pay their income tax in four quarterly payments.
27. From 1 April 2001, the due dates for certain taxpayers for quarterly notifications and payments under the *Fringe Benefits Tax Assessment Act 1986* (FBTAA), the *Income Tax Assessment Act 1936* (ITAA 1936), the *Income Tax Assessment Act 1997* (ITAA 1997) and the TAA are as follows:

Quarter	Due date to 1 April 2001	Due date from 1 April 2001
1 (Jul - Sep)	21 October	28 October
2 (Oct - Dec)	21 January	28 February
3 (Jan - Mar)	21 April	28 April
4 (Apr - Jun)	21 July	28 July

2 Instalment payers

28. Certain individuals who carry on a primary production business or who are authors, artists or other 'special professionals' whose income can fluctuate significantly from quarter to quarter during the income year can pay only 2 instalments each year.

Instalment payer who pays 2 instalments annually on the basis of GDP-adjusted	Instalment for the third quarter is due	Instalment for the fourth quarter is due

notional tax who is:	on or before:	on or before:
Not a deferred business activity statement (BAS) payer	21 April	21 July
A deferred BAS payer	28 April	28 July

PAYG withholding

29. Small withholders (generally those withholding an annual amount less than \$25,000):
- from 1 July 2000 an amount deducted in a quarter is payable on the twenty first of the month following the end of the quarter, that is, 21 October, 21 January, 21 April and 21 July.
 - from 1 April 2001, the due dates for entities with quarterly obligations (other than those with monthly goods and services tax (GST) obligations) are 28 October, 28 February, 28 April and 28 July.
30. Medium withholders (generally those withholding an annual amount between \$25,000 and \$1m) an amount deducted in any month is payable on the twenty first day of the following month.
31. Large withholders (generally those withholding an annual amount more than \$1m):
- an amount deducted in any period commencing Saturday and ending Tuesday is payable on the following Monday
 - an amount deducted in any period commencing Wednesday and ending Friday is payable on the following Thursday.

An entity defined as a large withholder (or exceeding the GST electronic lodgment threshold) under the PAYG withholding system is required to pay all tax debts electronically.

Goods and services tax

32. For tax periods ending on or after 22 February 2001 (or in the case of GST instalments, tax periods starting on or after 1 July 2000), the due dates for quarterly reporting and payments are as follows:

Quarter	Due date
1 July to 30 September	28 October
1 October to 31 December	28 February
1 January to 31 March	28 April
1 April to 30 June	28 July

33. The due date for an entity that has chosen or is required to pay GST monthly is the twenty first day of the month following the end of the tax period.
34. Those who are required to lodge a GST information report or an annual GST return must lodge it by the time their income tax return is due or, if they are not required to lodge an income tax return, by 28 February in the year following the end of their tax period. (For the 2000–01 income year, GST instalment payers must lodge their annual GST return by whichever is the earlier of the two dates).
35. Clients who lodge their BAS or instalment activity statement (IAS) electronically through:
- a tax agent or the Tax Agent Portal

- the Electronic Commerce Interface (ECI), or
- the Business Portal

will have access to concessional due dates for lodgment and payment. For payment purposes the concession effectively provides a two week extension of time to pay the net amount due on the BAS/IAS. The concession is available as follows:

Standard quarter	Statutory due date	Concessional date for lodgment and payment
3	28 April	12 May
4	28 July	11 August
1	28 October	11 November
2	28 February	No Concession Available

36. Entities on the two GST instalment system are required to pay instalments on 28 April and 28 July.
37. GST is payable on most goods imported into Australia. However in limited circumstances importers will be eligible to defer GST (see Division 33 of Part 2-7 of the A New Tax System (Goods and Services Tax) Regulations 1999). If approval is given, payment of such GST is deferred until the twenty first day of the month following the relevant importation. This liability will be included in the entity's monthly BAS.

Fringe benefits tax (FBT)

38. An employer that is liable to pay FBT must lodge an annual return by 21 May after the end of the FBT year (the FBT year ends on 31 March). The lodgment of a return gives rise to an assessment that is deemed to have been made at the time the return is lodged.
39. If the employer has not previously lodged an FBT return or the previous year liability was less than \$3000, the FBT liability is due and payable by 21 May following the end of the FBT year.
40. If the FBT liability for an employer in the previous year was \$3000 or more the employer is liable to pay quarterly instalments. FBT quarterly instalment dates have been aligned with other remittance dates to ensure a uniform approach to notification and payment obligations:
- due dates for quarterly instalments from 1 April 2000:
 - 21 July, 21 October, 21 January and 21 April
 - due dates for quarterly instalments from 1 April 2001:

Quarter ending	Deferred BAS payers	Other employers
30 June	28 July	21 July
30 September	28 October	21 October
31 December	28 February	21 January
31 March	28 April	21 April

41. Any shortfall is due and payable on 21 May following the end of the FBT year.

Superannuation guarantee charge

42. Until 30 June 2003, an employer with a superannuation guarantee shortfall for a year was required to lodge a superannuation guarantee statement together with payment by 14 August after the end of the financial year to which the shortfall corresponds. The date of the assessment was taken to be either 14 August, (if the statement was lodged on or before that date) or the day on which the statement was lodged.
43. Since 1 July 2003, employers with a superannuation guarantee shortfall in a quarter are required to lodge a superannuation guarantee statement together with payment by the 14th day of the second month following the end of that quarter.

Superannuation surcharge

44. If the superannuation provider is the holder of the contributions (that is, the member has not received a lump sum or is not in receipt of a pension or annuity from the fund) a superannuation surcharge assessment will issue to the provider and advice of that assessment will be sent to the member.

(Note: As a result of the abolition of the superannuation surcharge from 1 July 2005, the superannuation surcharge does not apply to superannuation contributions made after that date. The superannuation surcharge legislation does however operate for the financial years 1996–97 to 2004–05).

A. Accumulation or funded defined benefit provider

45. If the provider is an accumulation or funded defined benefit provider, the assessment is due on the date set out in the notice of assessment (usually one month after the issue date).

B. Unfunded defined benefit provider

46. An assessment issued to an unfunded defined benefit provider does not show a due date for payment because it is not due until a lump sum, pension or annuity becomes payable for the benefit of the member. Unfunded defined benefit providers must maintain a debt account for the member, and pay the amount in that account (including interest) to the Commissioner when the lump sum, pension or annuity becomes payable.
47. If a member is the holder of the contributions (that is, the member has received a lump sum, or is in receipt of a pension or annuity) the member is liable to pay any surcharge assessed by the due date set out in the notice of assessment.
48. If the fund is a constitutionally protected superannuation fund, the Commissioner is required to maintain separate debt accounts for its members and to debit those accounts with surcharge assessed (the assessment is directed to the member but will not show a due date for payment). The member can pay the liability assessed at this time, but is not required to do so. When a lump sum, pension or annuity becomes payable for the benefit of the member, the constitutionally protected superannuation provider notifies the Commissioner, and the Commissioner determines the amount the member is required to pay. The member is notified, and is required to pay the advised amount within three months of the date of the advice.
49. Termination payment tax assessments are due for payment by the person to whom the assessment is directed one month after the issue date of the assessment.

Fuel tax credits

50. Where the claimant is not registered or required to be registered for GST, a fuel tax return must be made, and payment in respect of any net fuel amount received, by the 21st day after the end of the fuel tax return period. The 'fuel tax return period' is the period specified in the return.
51. Any overpayments of fuel tax credits that are not accounted for in the calculation of the claimant's net fuel amount are recoverable as an overpayment debt under subsection 8AAZN(1) of the TAA. If the Commissioner chooses to give a notice under subsection 8AAZN(2) of the TAA, then the due date of the overpayment debt is at least 30 days after that notice is given to the recipient.

Excise duty

52. Excise duty is due and payable when the excise return is lodged. An excise return must be lodged prior to excisable goods being delivered into home consumption. The majority of payers of excise duty operate under a periodic settlement permission. This permission allows the permission holder to pay excise duty on excisable goods on the first business day after the end of the settlement period (usually 7 days) in respect of those goods which were delivered into home consumption during the settlement period.
53. Section 80 of the *Excise Act 1901* states that where an amount has been incorrectly paid to a person as a refund, rebate (other than diesel fuel rebate) or drawback of excise duty, the person shall (on demand in writing by the Tax Office) pay to the Tax Office an amount equal to the amount incorrectly paid. This debt is due on the day that the demand is served.

Consolidated group income-related liabilities

54. Liability to pay the income tax attributable to group activities rests with the 'head company', but if the head company does not pay the group liability by the due date (the head company's 'due time'), all entities that were members of the group for a part of the liability period become jointly and severally liable for that group liability unless the particular group liability was covered by a tax sharing agreement.
55. A member's full joint and several liability or allocated liability under a tax sharing agreement does not become due and payable until 14 days after the Tax Office gives the entity written notice.

TERMS USED

Deferred BAS payer – an entity that has an obligation to notify the Tax Office of a BAS amount other than:

- an entity with monthly GST obligations, or
- an entity whose obligations to notify a BAS amount relates only to an amount withheld by a medium or large withholder or the PAYG instalment of an annual payer.

Chapter 4 - Archived versions

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Chapter 5: Version 4 – July 2006 (will link to chapter 5 pdf)
