

ATO RECEIVABLES POLICY

PART B The collection of taxation debts

Chapter 6 ESTIMATING A LIABILITY

The policy in this chapter is to be followed by ATO 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 ATO.

Date of effect: 4 February 2011

Key legislation: Division 268 in Schedule 1 to the *Taxation Administration Act 1953* (TAA)

PURPOSE

1. This chapter deals with the Commissioner's ability to estimate liabilities arising under pay as you go (PAYG) withholding provisions and then to recover the amount of that estimate.

INTRODUCTION

2. Section 268-10 in Schedule 1 to the TAA allows the Commissioner to take prompt and effective action to recover unremitted amounts by estimating those amounts.
3. The ability to estimate a withholding liability provides a method to deal with cases quickly, particularly where debtors fail to notify amounts and there is a subsequent lack of cooperation in responding to requests for information, or where there are other problems in establishing debts. However, it is still desirable to establish correct amounts outstanding whenever that can be done expeditiously.

POLICY

4. The Commissioner will use the power to estimate withholding liabilities and take proceedings to recover the estimated amounts whenever it is considered that the procedure will assist in the efficient collection of unpaid debts. The making of an estimate is not a measure of last resort; it's a measure which is used routinely whenever it is perceived that it may enhance the speed or efficiency of collection activity.
5. The Commissioner will make an estimate and issue a notice in circumstances where there is reason to suspect that there is a liability to withhold and remit and where:
 - (i) there is difficulty in establishing that liability expeditiously
 - (ii) there is reason to suspect that the debtor has reported less than the total amount of withholdings in a period

- (iii) there is a history of a failure to notify liabilities as required by the law or a history of late payment and there is no reason or evidence to believe that a liability has not been incurred
 - (iv) attempts to establish debts are met with a lack of cooperation – for example, phone calls are not returned, or there is a refusal to provide details of amounts withheld when requested, or there are continuing delays or excuses for not making details available
 - (v) the debtor refuses access to, or cooperation with, field officers
 - (vi) the debtor continually breaks appointments or refuses to meet with tax officers
 - (vii) the debtor claims that no amounts have been withheld but there is evidence that amounts have, in fact, been withheld
 - (viii) there is a need to issue a statutory demand, writ or summons as quickly as possible to recover the whole of a debt, though only a part of the debt has been established
 - (ix) there is a need to 'prove' for a total debt in an insolvency administration, though only part of the debt has been established, or
 - (x) there is a desire, for the sake of completeness, to incorporate a total liability in a penalty notice to directors.
6. The Commissioner will have regard to anything thought to be relevant for the purposes of making an estimate and will be influenced by the pattern of remittances in the past and the particular circumstances in each case.
 7. If a person responds to receipt of an estimate by providing a statutory declaration within the following seven days, the estimate is automatically reduced or revoked to reflect the details provided in that statutory declaration. Where the Commissioner has reason to believe that the information contained in the statutory declaration is false or misleading, a potential prosecution action against the person who made the declaration will be considered. The Commissioner may also decide of his own volition to reduce or revoke an estimate. This could be based on a statutory declaration received out of time or any other credible information that comes to the Commissioner's attention.
 8. The Commissioner only seeks to recover an amount equivalent to the underlying liability (along with the additional charges for late payment or general interest charge that may have accrued on the estimated liability). Accordingly, in the interests of ascertaining the correct amount of the liability, the Commissioner will consider a request to extend the time for lodgment of the statutory declaration where the debtor can satisfy the Commissioner that it cannot be completed or lodged within the required time.
 9. Payment of an estimated amount does not relieve a debtor of the obligation to pay amounts that were actually withheld in excess of the estimate. Where a debtor pays an estimated liability without disclosing the amount withheld, the Commissioner will, by audit activity or other means, establish the debtor's actual liability and, where necessary, pursue recovery of any amounts still owing.
 10. The Commissioner will not continue to send estimate notices to the same debtor on an ongoing basis without follow-up action. In addition to recovery action which may lead to bankruptcy or liquidation, the Commissioner will also consider prosecution action in respect of the debtor's failure to comply with their obligations under the law.

TERMS USED

Remittance provisions – refers to various legislative provisions requiring an entity to remit:

- (i) prior to 1 July 2000,
 - deductions made from reportable payments
 - tax instalment deductions made from payments of salary and wages
 - deductions from prescribed payments
 - deductions made from natural resource payments or unattributed payments, and
 - dividend, interest and royalty withholding taxes.
- (ii) on or after 1 July 2000,
 - amounts withheld under the PAYG withholding system, as detailed at Subdivision 16-B of the *Taxation Administration Act 1953*.

Underlying liability – refers to the unpaid amount of a company's remittance provision liability.

Chapter 6 - Archived versions

Version 4 – July 2006 (will link to chapter 6 pdf)

Version 5 – August 2008 (will link to chapter 6 pdf)
