ATO RECEIVABLES POLICY

PART B The Collection of Taxation Debts

Chapter 8
THE COLLECTION PROCESS

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.)

Key legislation: *Taxation Administration Act 1953; Income Tax Assessment Act 1936*

PURPOSE

1. This chapter deals with the various avenues open to the Commissioner to collect outstanding taxation debts.

INTRODUCTION

2. Where tax debts are not paid by the due date, the Commissioner has the responsibility of collecting the outstanding amount, that is, both the tax debt and the additional charges for late payment/general interest charge (GIC) automatically imposed by legislation. The various taxing acts provide that where tax or other amounts are outstanding they become a debt due to the Commonwealth and the Commissioner has the authority to recover those debts in any court of competent jurisdiction.
3. There are a number of options available to the Commissioner to recover outstanding tax debts. The final legislative sanction for debtors that do not pay or enter into an arrangement to pay by instalments is the sequestration of an individual's estate in bankruptcy or the liquidation of a corporate debtor. These actions will normally be used only after other recovery actions have been taken and proven unsuccessful (that is, the debtor, by their actions or inaction, can reasonably be categorised as high risk).
4. These options are a normal commercial response to non-payment and invariably result in significant costs for the Commissioner, which he will always attempt to recoup from the debtor's estate. The Commissioner, as a creditor, is entitled to make use of the legislation that provides for this sanction and he will use the sanction if, in his judgment, that is the most appropriate manner of dealing with the debtor.

POLICY

Initial Action

5. Generally, client statements are produced automatically as part of the GIC review of client accounts. Running balance account (RBA) statements are statements of activity. However, a client will usually only receive a statement if there is an outstanding balance on their account.

6. In most cases, a notice calling for payment of the outstanding amount will issue to debtors before the debts are referred for collection activity. Generally, these notices are issued automatically by computer process, but in some instances they are manually produced.

7. There is no legislative requirement for the Commissioner to issue a notice prior to the institution of collection activity. For some high risk debts, it would be inappropriate to issue a notice before initiating other more appropriate debt collection options. Thus debtors cannot rely on the non-receipt of a notice as an excuse to avoid the implications of not paying their debts by the due date.

8. Subsection 8AAZL(2) of the *Taxation Administration Act 1953* (TAA) requires the Commissioner to offset all credits, payments or RBA surpluses against any taxation debts. However, the Commissioner has a discretion not to offset in limited circumstances. This includes situations where the tax debt is the subject of an arrangement to pay by instalments, and the debtor is complying with the terms of that arrangement. See Chapter 7 'Allocation of payments or credits' and Chapter 72 'Offsetting of refunds and credits against taxation and other debts'.

Subsequent action

9. If a debtor does not respond to a notice calling for payment of the debt, it is reasonable for the Tax Office to assume the debtor is not going to pay and take action to recover the debt. That action may involve any one or more of the following:

   (i) telephone or further written contact with the debtor

   - The Tax Office expects debtors to accept responsibility for either paying on time or making contact prior to the due date and entering into a suitable arrangement for payment of the debt by instalments. Debtors cannot expect to be contacted prior to the institution of other recovery alternatives.

   (ii) accepting payment of a debt by instalments

   - The onus is on debtors to demonstrate that they cannot pay by the due date and to provide the Tax Office with all necessary information to determine whether they can pay by instalments (See Chapter 10 'Payment arrangements').

   (iii) Where a long-term payment arrangement is offered and in other risk-based circumstances, the Tax Office may accept a security to protect revenue, for examples, registered first mortgage over property. On those occasions, the debtor would be expected to cover the legal costs of the mortgage (See Chapter 29 'Securities').

   (iv) the issue of a ‘garnishee’ notice

   - The notice may be issued to an employer or contractor, a financial institution or someone holding money for or on behalf of the Tax Office debtor which requires payment of the money to the Commissioner of so much of the money as is required to satisfy the debt. (See Chapter 12 ‘Garnishee’).

(v) the issue of a departure prohibition order, preventing a debtor from leaving the country

- While this action does not necessarily guarantee payment, the debtor is prevented from leaving the country. This enables the Commissioner to pursue other recovery alternatives against the debtor or the debtor's assets to secure payment or receive acceptable security. (See Chapter 13 'Departure prohibition orders').

(vi) The issue of injunctions preventing debtors dealing with their assets

- This option will be pursued where the Commissioner sees it as appropriate to secure assets that may be dissipated at the expense of the revenue. Injunctions will be sought through the courts in appropriate cases. (See Chapter 36 'Mareva injunctions').

(vii) Formal legal action, up to, and including, the liquidation of companies or the bankruptcy of an individual

- It may be appropriate to initiate legal action even if the debtor is insolvent, to prevent escalation of the debt. (See Chapter 18 'Bankruptcy action').
- Legal action covers three basic steps: summons/writs/claims; judgment and post judgment execution. Generally, the Commissioner will not consent to set aside a judgment that has been properly entered. However, where the judgment debt has been satisfied, the Commissioner may provide a letter of comfort to a taxpayer confirming this.

(viii) oral examinations/enforcement hearings

- The Commissioner, as a judgment creditor, may make an application to the court for an order that the judgment debtor be orally examined.
- Failure to attend, or refusal to answer questions may result in the Court directing the arrest or apprehension of the debtor. Accordingly, because of these serious implications, the approval for arrest or apprehension of the debtor for failing to attend the hearing should come from a senior level.

(xi) notice to provide information available under section 353-10 of Schedule 1 to the TAA

- Powers available under section 353-10 of Schedule 1 to the TAA are wider and administratively more efficient than the oral examination/enforcement hearing processes. Accordingly, the Tax Office will give serious consideration to using these powers in preference to invoking court processes. (See Chapter 111 'Introduction to information gathering').

(x) Writs or warrants of execution, or warrants of seizure and sale

(xi) Bankruptcy or liquidation

- Under bankruptcy and liquidation provisions, the debtor's affairs are placed into the hands of a trustee in bankruptcy or a liquidator who will take steps to dispose of the debtor's assets to raise funds to meet the proven debts of all creditors. (See Chapter 18 'Bankruptcy action' and Chapter 21 'Liquidation action').

(xii) Taking action to recover against directors of companies personally

- (See Chapter 14 'Personal liabilities of company directors').

Other action

10. Officers dealing with debts will not only concentrate on recovering those debts, but will also take action to ensure the debtor is complying with other requirements under the taxing statutes (for example, following up on non-lodgment of returns). Tax Office forms used in the collection of debts (for example, arrangements to pay by instalments) will include questions to ascertain this information. They will also be looking to identify cases suitable for prosecution action for breaches of legislation.

TERMS USED

Mareva injunction – is an interlocutory injunction which restrains a debtor or the debtor's agents, servants or otherwise from removing assets from the jurisdiction or disposing of, or dealing with, those assets so as to frustrate a creditor seeking to recover from the debtor.

Injunction – is an order by which the court directs someone to refrain from acting in a particular way, or in some instances, to perform a particular act (known as a mandatory injunction).

Interlocutory – proceedings or applications are those actions taken during the course of an action which are incidental to the principal object of the action. In the collection context, it may be a further application made after a writ or summons has been issued for the recovery of a debt. These proceedings can also be taken prior to legal action being initiated provided the Commissioner gives an undertaking he will issue the relevant process (for example, writ or summons) within a certain time.

Chapter 8 - Archived version

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