

Part B The Collection of Taxation Debts

9 DEFERRING THE TIME FOR PAYMENT

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.)*

9.1 PURPOSE

9.1.1 This chapter:

- deals with the Commissioner's power to defer the time for payment of a tax-related liability without the imposition of additional charges for late payment including the General Interest Charge (GIC); and
- sets out circumstances in which the time for payment will be deferred.

9.2 LEGISLATION

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9.2 LEGISLATION

9.2.1 Prior to 1 July 2000 there were specific provisions under the various Acts administered by the Commissioner which gave the Commissioner power to vary the requirements of the legislation and extend the time for payment of a liability.

9.2.2 The relevant provisions under the more common taxing statutes conferring this power before 1 July 2000 were:

- sections 206 (income tax), 220AAH, 220AAP, 220AAU (reportable payments, tax instalment deductions and prescribed payment amounts) *Income Tax Assessment Act 1936* (ITAA1936)
- section 66 *Sales Taxation Assessment Act 1992* (STAA1992)
- section 92 *Fringe Benefits Taxation Assessment Act 1986* (FBTAA1986)
- section 48 *Superannuation Guarantee (Administration) Act 1992* (SGAA1992). There was no specific power to extend the due date for payment in the superannuation surcharge legislation. However, further time for payment was allowed in certain circumstances.

The power to defer the time for payment of a tax-related liability on or after 1 July 2000 is found in:

- section 255-10 of Schedule 1 to the *Taxation Administration Act 1953* (TAA)

From 1 July 2000, all requests for deferment of the time for payment should be considered pursuant to this section, regardless of whether the tax-related liability became due and payable before, on, or after 1 July 2000. The existence of the power to defer the payment time does not confer any right or entitlement to its exercise upon a debtor.

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9.2.3 A deferment of the payment time under section 255-10 of Schedule 1 to the TAA varies the time the amount is due and payable. Any GIC or other relevant penalty, applicable to any unpaid amount of the liability, begins to accrue at the time as varied under this section.

9.3 INTRODUCTION

9.3.1 Taxation liabilities fall due for payment at specific times, and the Commissioner expects all taxpayers to be in a position to pay their debts at those particular times. It can generally be expected that the Commissioner will take action to recover overdue amounts, including the additional charges imposed by legislation, if debtors do not pay on time. (See the policy chapter entitled 'Taxation debts and the due date for payment' for additional information).

9.3.2 The TAA provides that the Commissioner may defer the time for payment of tax-related liabilities, or permit payment to be made by instalments under an arrangement, as circumstances warrant. The latter option is discussed in the policy chapter entitled 'Arrangements to pay tax-related liabilities by instalments'. For liabilities under a remittance provision or liabilities to pay estimates, there is also an option for a formal payment agreement under section 222ALA of the ITAA 1936 (see the policy chapter entitled 'Payment agreements').

9.3.3 The purpose of deferring the time for payment of a liability without the imposition of additional charges is to facilitate the collection of tax-related liabilities from debtors who can demonstrate that, because of unusual

circumstances, they are unable to pay by the payment time but have the ability or potential to pay **in full** at a particular time in the future.

- 9.3.4 Deferring the time for payment provides debtors with a further period in which to pay without being penalised and provides the Commissioner with an alternative to legal action to recover debts not paid by the original time for payment.

9.4 POLICY

- 9.4.1 Without limiting the Commissioner's discretion in relation to any particular case, the time for payment will not normally be deferred unless the debtor can demonstrate that:

- (i) payment cannot be, or has not been, made by the original time for payment because of circumstances beyond their control, and the debtor has taken reasonable steps to mitigate the effects of those circumstances; and
- (ii) payment in full can be made at a later time (when the circumstances that led to non-payment have been alleviated).

- 9.4.2 It is not possible to anticipate every circumstance which may prevent payment by the requisite payment time and which is also beyond the control of a debtor or the debtor's representative (such as the trustee of the debtor's deceased estate). However, it can generally be expected that a deferment will be granted where the debtor can show the inability to pay on time can be directly attributed to:

- (i) natural disasters (flood, fire, drought, earthquake and the like); or
- (ii) other disasters that may have, or have had, a significant impact on a debtor or region; or
- (iii) the serious illness of the debtor where there is no other person that can make (or could have made) the payment; or
- (iv) a legal impediment (such as, probate not being granted or access to funds being denied by the order of a Court); or
- (v) the embezzlement of the debtor's payment by his/her tax agent, solicitor or a third party.

The above situations do not commonly occur and there would be few other situations that would give rise to a debtor qualifying for a deferment.

- 9.4.3 The Commissioner will not generally grant a blanket deferment of time for payment to debtors in a particular industry or region. In all cases where deferment is being sought, the onus is on the debtor (or the debtor's representative) to satisfy the Commissioner that:

- (i) the inability to pay by the original payment time is/was directly caused by the circumstances that were beyond control;
- (ii) payment in full of the particular liability or liabilities can be made by the deferred payment time; and
- (iii) once the circumstances are under control, continuing liabilities will be paid as and when they fall due (and, accordingly, that the debt will not escalate after that time).

- 9.4.4 Each request will be considered on its merits and the deferred payment time will be determined having regard to the particular circumstances of

the debtor and the circumstances that led to the inability to pay on time. The fact that a debtor may have other outstanding debts or a poor compliance record should not prevent that debtor from applying for deferment of the time for payment of a particular liability.

- 9.4.5 It should be noted that in the case where a debtor has entrusted money intended for payment of a tax liability to a tax agent, solicitor or a third party and such money has been misappropriated, the Commissioner may defer the time for payment of the particular tax-related liability, or permit payment to be made by instalments under an arrangement, as circumstances warrant. However, the tax liability of that debtor will remain undischarged and the Commissioner would not be precluded from taking appropriate action to collect the liability concerned. The exception to this rule is where the payment was made by a cheque drawn in favour of the Tax Office or the Commissioner and that cheque has been utilised for the payment of another debtor's tax liability. In the latter situation, the Commissioner would be obliged to credit the drawer's account to the value of the cheque drawn.
- 9.4.6 The Commissioner will not agree to defer the payment time of any liability on a permanent basis. Similarly, in the case where a debtor's payment has been misappropriated by another entity, the Commissioner will not extend the deferred payment time indefinitely to await payment which may be expected from the outcome of a successful litigation. A deferment will only be granted to assist the debtor to overcome immediate problems.
- 9.4.7 If the Commissioner defers the time for payment, legal proceedings are unable to be initiated until after the deferred payment time (except in certain cases where the Commissioner may bring forward the payment time – see section 255-20 of Schedule 1 to the TAA). The Commissioner will only agree to defer the payment time of any tax-related liability where it is considered that there is little or no risk to the revenue in deferring the time for payment. (See the policy chapter entitled 'Risk management').
- 9.4.8 Action to recover the debt and the additional charges for late payment (calculated from the deferred payment time) will be commenced if a debtor does not pay a liability by the deferred payment time and does not come to some alternative arrangement for payment of that debt. An alternative arrangement may include a further deferment or may involve the Commissioner accepting payment of the debt by instalments, subject to the imposition of additional charges for late payment from the deferred payment time.
- 9.4.9 Once legal action for collection of the debt has commenced, the time for payment cannot be deferred.

Transfer Pricing Cases

- 9.4.10 In cases where the Commissioner makes a transfer pricing or profit re-allocation adjustment, the debtor may seek Competent Authority assistance, under the Mutual Agreement Procedure article contained in Australia's double tax agreements, to attempt to have the matter resolved with the other tax jurisdiction involved. In such cases, the debtor may apply for a deferment of the time for payment under section 255-10 of Schedule 1 to the TAA. A detailed discussion of factors that will be taken into account in cases where Competent Authority assistance has been

sought is included in the relevant taxation ruling. However, as a general guide, the following types of factors will be considered:

- whether the assessment is disputed and whether the Commissioner accepts that the dispute is genuine and that arguable questions of law are involved;
- the size of the tax liability and the ability or potential of the taxpayer to pay the tax liability;
- risks to revenue;
- whether actual double taxation will occur.

The International Tax Division should be consulted where the debtor raises Competent Authority assistance issues.

9.5 ADVICE TO TAXPAYER

9.5.1 In all cases where it has been decided to defer the payment time of any liability, the debtor is to be advised in writing:

- (i) of the debt(s) to which the deferment applies;
- (ii) of the deferred payment time by which -
 - payment is to be made; and
 - from which additional charges for late payment will be calculated;
- (iii) that the decision to defer the payment time is to specifically alleviate the difficulties caused by particular circumstances and is not a permanent deferment;
- (iv) that future liabilities are to be paid as and when they fall due (such that the debt does not escalate);
- (v) that additional charges continue to apply in relation to any other outstanding debt which is not the subject of the application to defer the time for payment; and
- (vi) that action to recover will be commenced without further notice if payment is not made by the deferred payment time and if alternative arrangements for payment have not been made.

9.6 TERMS USED

9.6.1 'Deferring the time for payment' means to vary the time at which a tax-related liability becomes due and payable. In a practical sense, such a deferment defers the time for payment of a debt without attracting additional charges for late payment/GIC (provided the debt is paid at or before the deferred time). As a result, the debt is no longer due and payable on the original due date, but becomes payable on the date as varied. It differs from the situation where a debtor is permitted to pay by instalments where additional charges/GIC accrue from the original due date. In the latter case, the time at which a tax-related liability becomes due and payable is not varied and interest on any unpaid amount commences to accrue from that time. (See the policy chapter entitled 'Arrangements to pay tax-related liabilities by instalments').

9.6.2 'Additional charges' refers to the specific additional amounts for late payment (including the GIC imposed by the various Acts administered by

the Commissioner) whenever an amount is not paid by the time for payment.

9.6.3 'Payment time' or 'time for payment' means the time at which an amount of a tax-related liability is, or would become, due and payable.

9.6.4 'Tax-related liability' or 'liability' is a term used to define any pecuniary liability to the Commonwealth arising directly under a taxation law (including a liability the amount of which is not yet due and payable). It thus encompasses all types of taxes, penalties, additional charges for late payment, etc (including amounts previously defined under the ITAA1936 as 'tax' and under the SGAA 1992 as 'superannuation guarantee charge' etc). A table which lists the tax-related liabilities is found at section 250-10 of Schedule 1 to the TAA. This includes excise and diesel fuel rebate debts administered under the provisions of the *Excise Act 1901*, diesel fuel rebate debts administered under the 'diesel fuel rebate Customs provisions' of the *Customs Act 1901* and both grant scheme debts administered under the provisions of the *Diesel and Alternative Fuel Grants Scheme Act 1999* and *Product Grants and Benefits Administration Act 2000*.