

ATO RECEIVABLES POLICY

PART B The Collection of Taxation Debts

Chapter 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: 24 July 2008 (This version replaces the 2006 version.)

Key legislation: *Taxation Administration Act 1953*

PURPOSE

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 the circumstances in which the Commissioner will exercise that power.

INTRODUCTION

2. Taxation liabilities fall due for payment at specific times, and the Tax Office expects all taxpayers to be in a position to pay their debts at those particular times. It can generally be expected that the Tax Office will take action to recover overdue amounts, including additional charges imposed by legislation, if debtors do not pay on time.
3. Section 255-10 of Schedule 1 to the *Taxation Administration Act 1953* (TAA) enables the Commissioner to defer the time for payment of a tax-related liability. The mere existence of that power does not confer upon a debtor any right or entitlement to its exercise. A deferment of the payment time under section 255-10 varies the time at which 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 the section.
4. 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 they are presently unable to pay by the payment time but have the potential to pay **in full** at a particular time in the future. Deferring the time for payment provides debtors with a further period in which to pay without being penalised and provides the Tax Office with an alternative to legal action to recover debts not paid by the original due time for payment.

POLICY

5. 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, once the circumstances that led to non-payment have been alleviated.
6. 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 linked to:
 - (i) natural disasters (flood, fire, drought, earthquake and the like)
 - (ii) other disasters that may have, or have had, a significant impact on a debtor or region
 - (iii) the serious illness of the debtor where there is no other person that can make (or could have made) the payment
 - (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 the tax agent, solicitor or other third party.

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

7. 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 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 directly caused by circumstances that were beyond their 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).
8. 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. 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 used for the payment of another debtor's tax liability. In such a situation, the Tax Office would be obliged to credit the drawer's account to the value of the cheque drawn.

10. 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.
11. 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 Chapter 3 'Risk management'.)
12. Action to recover the debt and the additional charges for late payment (calculated from the deferred payment time) may 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.
13. Once legal action for collection of the debt has commenced, the time for payment cannot be deferred.

Excess contributions tax cases

14. In cases where a taxpayer's superannuation contributions are such that they are liable for an excess contributions tax (ECT), the taxpayer may make a written request seeking a deferment of the payment of the ECT. A request for deferment of the payment of an ECT assessment will generally only be considered in circumstances where the taxpayer has requested an exercise of the Commissioner's discretion to disregard contributions, or allocate those contributions to another financial year pursuant to section 292-465 of the *Income Tax Assessment Act 1997* (ITAA 1997).
15. The due date for payment of an original ECT assessment should not be deferred unless it is more probable than not that the taxpayer's request that the Commissioner disregard contributions, or allocate those contributions to another financial year, will be decided in favour of the taxpayer. This requires consideration of the provisions which provide the framework for ECT assessments as outlined in Division 292 of the ITAA 1997.
16. In deciding whether or not a deferral is appropriate, the following types of factors will be considered:
 - (i) whether a contribution made in the relevant financial year would more appropriately be allocated towards another financial year instead
 - (ii) if it was foreseeable, when a contribution was made, that the taxpayer would have excess concessional or non-concessional contributions for the relevant financial year

- (iii) if the contribution was made by a party other than the taxpayer, the terms of any agreement or arrangement between the taxpayer and the contributor and the timing of the contribution, and
- (iv) the extent to which the taxpayer had control over the making of the contribution.

Transfer pricing cases

17. In cases where the Tax Office makes a transfer pricing or profit reallocation adjustment, the debtor may seek Competent Authority assistance under the Mutual Agreement Procedure (MAP) article contained in Australia's double tax agreements in an attempt to have the matter resolved with the other tax jurisdiction involved. It is recognised that the collection of tax during MAP will in most instances impose double taxation on the taxpayer because the same profits have been subject to tax in both jurisdictions. As such, the Tax Office will agree to defer recovery action under section 255-5 of the TAA until an agreed future date, which is usually the date that the MAP process is concluded, unless:
- (i) there is a risk to revenue
 - (ii) the taxpayer has other liabilities unpaid after the due date, or
 - (iii) the taxpayer has failed to meet other tax obligations when required.

Advice to taxpayer

18. In all cases where it has been decided to defer the payment time of any liability, the debtor will 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.

TERMS USED

Additional charges – refers to the specific additional amounts for late payment (including GIC imposed by the various Acts administered by the Commissioner) whenever an amount is not paid by the time for payment.

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 begins to accrue from that time. (See Chapter 10 'Payment arrangements.')

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.

Tax-related liability or liability – is a term used to describe 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, (including amounts previously defined under the *Income Tax Assessment Act 1936* as 'tax' and under the *Superannuation Guarantee (Administration) Act 1992* as 'superannuation guarantee charge'). 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*, grant scheme debts administered under the provisions of the *Diesel and Alternative Fuel Grants Scheme Act 1999* and the *Product Grants and Benefits Administration Act 2000*, and net fuel amount debts under the present fuel tax credit system governed by the *Fuel Tax Act 2006* that replaces these fuel grants and rebate schemes from 1 July 2006.

Chapter 9 - Archived version

Version 4 – July 2006 (will link to chapter 9 pdf)
