

## 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 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:** 30 November 2010

**Key legislation:** Section 255-10 of Schedule 1 to the *Taxation Administration Act 1953* (TAA).

## 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 and sets out the circumstances in which the Commissioner may exercise that power.

## INTRODUCTION

2. Tax-related liabilities fall due for payment at specific times, and the ATO expects all taxpayers to be in a position to pay their debts at those times. It can generally be expected that the ATO 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 TAA enables the Commissioner to defer the time for payment of a tax-related liability having regard to the circumstances of a particular case. The mere existence of that power does not confer upon a debtor any right or entitlement to its exercise.
4. A deferral of the payment time under section 255-10 of Schedule 1 to the TAA varies the time at which the amount is due and payable. Any general interest charge (GIC) or other relevant penalty applicable to any unpaid amount of the tax-related liability begins to accrue from the time as varied under the section.
5. Deferring the time for payment of a tax-related liability without the imposition of additional charges facilitates collection from debtors who can demonstrate that they are unable to pay by the due date but have the potential to pay in full at a particular time in the future. It also provides debtors with a further period in which to pay without being penalised and provides the ATO with an alternative to legal action to recover debts not paid by the original due date.

## POLICY

6. Without limiting the Commissioner's discretion in relation to any particular case, the time for payment will generally not be deferred unless the debtor can demonstrate that:
  - (i) Payment cannot be (or has not been) made by the original due date because of circumstances beyond their control, and the debtor has taken reasonable steps to mitigate the effects of those circumstances.
  - (ii) Payment in full can be made at a later time, once the circumstances that led to non-payment have been alleviated.
  - (iii) Once the circumstances referred to in (i) above have been resolved, continuing tax-related liabilities are likely to be paid as and when they fall due (and accordingly, the debt will not escalate after that time).
7. It is not possible to anticipate every circumstance which may prevent payment by the due date 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 deferral will be granted where the debtor can show the inability to pay on time can be directly linked to:
  - natural disasters (flood, fire, drought, earthquake and the like)
  - other disasters that may have, or have had, a significant impact on a debtor or region
  - the serious illness of the debtor where there is no other person that can make (or could have made) the payment
  - a legal impediment (such as probate not being granted or access to funds being denied by the order of a court)
  - the embezzlement of the debtor's payment by the tax agent, solicitor or other third party.

Such circumstances do not commonly occur and there would be few others that would give rise to a debtor qualifying for a deferral.

8. The Commissioner may grant a blanket deferral of time for payment to a class of debtors in a particular industry or region - see subsection 255-10(2A) of Schedule 1 to the TAA. The Commissioner's decision to defer in these circumstances will be published on the ATO website. The taxpayer is not required to individually apply for a deferral where the Commissioner has granted a blanket deferral.
9. In those situations where individual application for a deferral is made each request will be considered on its merits. 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 and being granted a deferral of the time for payment of a particular tax-related liability.
10. 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 misappropriation does not alter the fact that the tax liability of that debtor remains undischarged and the Commissioner would not be precluded from taking appropriate action to collect the

liability concerned. However, there is a possible exception to this rule where the payment was made by a cheque drawn in favour of the ATO or the Commissioner and that cheque has been used for the payment of another debtor's tax-related liability. In such a situation, the ATO will usually be obliged to give effect to the drawer's intention by crediting the drawer's account to the value of the cheque drawn.

11. The Commissioner will not agree to defer the payment time of any tax-related 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 deferral will only be granted to assist the debtor to overcome immediate problems.
12. If the Commissioner defers the time for payment, legal proceedings are unable to be initiated until after the deferred payment time (unless the Commissioner brings forward the due date - see section 255-20 of Schedule 1 to the TAA).
13. 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 tax-related 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 deferral 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.
14. Once legal action for collection of the debt has commenced, the time for payment cannot be deferred.

### **Transfer pricing cases**

15. In cases where the ATO 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. For further information refer to Taxation Ruling TR 2000/16. It is recognised that the collection of tax during the 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 ATO will agree to defer recovery action under section 255-5 of Schedule 1 to 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**

16. In all cases where it has been decided to defer the payment time of any tax-related liability, the debtor will be advised in writing:
  - of the debt(s) to which the deferral applies
  - of the deferred payment time by which payment is to be made and from which additional charges for late payment will be calculated

- that the decision to defer the payment time is to specifically alleviate the difficulties caused by particular circumstances and is not a permanent deferral
- that future liabilities are to be paid as and when they fall due (such that the debt does not escalate)
- 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
- 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 deferral extends the time for payment of a debt without attracting additional charges for late payment (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 deferred. It differs from the situation where a debtor is permitted to pay by instalments where additional charges 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, time for payment or due date – means the time at which an amount of a tax-related liability is, or would become, due and payable.

Tax-related 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) that is administered by the Commissioner – see subsection 255-1(1) of Schedule 1 to the TAA. 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 in section 250-10 of Schedule 1 to the TAA.

### Chapter 9 - Archived versions

Version 4 – July 2006 (will link to chapter 9 pdf)
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Version 5 – August 2008 (will link to Chapter 9 pdf)
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