

## Part B The Collection of Taxation Debts

### 10 ARRANGEMENTS TO PAY TAX-RELATED LIABILITIES BY INSTALMENTS

*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.*

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#### 10.1 PURPOSE

10.1.1 This chapter should be read in conjunction with the chapter entitled 'Risk management'. It deals with:

- the Commissioner's powers to permit payment of tax-related liabilities by instalments, subject to the imposition of additional charges for late payment/general interest charge (GIC); and
- sets out the circumstances when payment will be accepted by instalments.

#### 10.2 LEGISLATION

10.2.1 The relevant provisions under the more common taxing statutes that enabled the Commissioner to accept payment of a debt by instalments before 1 July 2000 were:

- section 206 and section 209 (income tax), sections 220AAH, 220AAP, 220AAU and subsections 220AAE(3), 220AAM(3), 220AAR(3) (reportable payments, tax instalment deductions and prescribed payment amounts) *Income Tax Assessment Act 1936* (ITAA 1936);
- section 66 *Sales Tax Assessment Act 1992* (STAA 1992);
- section 92 *Fringe Benefits Tax Assessment Act 1986* (FBTAA 1986);
- section 48 *Superannuation Guarantee Administration Act 1992* (SGAA 1992);
- section 37 *Wool Tax (Administration) Act 1964* (WTAA 1964);

There was no specific power to accept payment of a debt by instalments in the superannuation surcharge legislation. However, further time for payment was allowed in certain circumstances.

10.2.2 For requests seeking permission to pay tax-related liabilities on or after 1 July 2000:

- section 255-15 of Schedule 1 to the *Taxation Administration Act 1953* (TAA) applies.

From 1 July 2000 all requests for permission to pay by instalments will be considered pursuant to this section, regardless of whether the

outstanding tax-related liability became due for payment before, on or after 1 July 2000.

- 10.2.3 For the relevant provisions under the more common taxing statutes providing for the accrual of additional charges/GIC, see the tables in chapters entitled 'Additional charges for late payment' and 'General interest charge'.
- 10.2.4 The provision that gives the Commissioner the power to permit taxpayers to pay an amount of a tax-related liability by instalments under an arrangement - whether or not the liability has already arisen - is section 255-15 of Schedule 1 to the TAA. An arrangement under this section does not vary the time at which the amount is due and payable. Any GIC or other relevant penalty, if applicable for any unpaid amount of the liability, begins to accrue when the liability is due and payable under the relevant taxation law, or at the time varied under sections 255-10 or 255-20 of Schedule 1 to the TAA.

### **10.3 INTRODUCTION**

- 10.3.1 Shortfalls in revenue or delays in its collection represent a cost to the community. It is the task of the Commissioner to administer the tax laws to ensure tax revenue is collected on time. If tax revenue is collected on time, the level of Government borrowing and public debt interest may be reduced.
- 10.3.2 The general expectation is that taxpayers should organise their financial affairs to ensure that they pay their tax debts by the due date. (See chapter entitled 'Taxation debts and the due date for payment' for additional information)
- 10.3.3 If a taxpayer does not pay by the due date or does not contact the Commissioner to explain why payment cannot be made on time, the Commissioner may take action to establish a debt and/or proceed with appropriate action to recover the debt (see chapter entitled 'Introduction to the collection of taxation debts').
- 10.3.4 The Commissioner accepts that some taxpayers may experience cash flow difficulties that will prevent them from paying their debt on time. In those instances, the Commissioner will consider requests to accept payment of the debt by instalments over a period of time. Accepting payment of an overdue amount by instalments provides the Commissioner with an alternative to more-formal recovery procedures. Accordingly, such an arrangement will usually involve a deferment of legal action which means the Commissioner will not exercise his powers under subsection 255-5(2) of Schedule 1 to the TAA to sue for and recover tax-related liabilities at that time.
- 10.3.5 Special rules exist regarding deferment of legal recovery action on disputed debts (See chapter entitled 'Recovering disputed debts').
- 10.3.6 The Commissioner is of the view that taxpayers have a responsibility to manage their cash flow to ensure they meet all their tax debts when those debts fall due for payment. It would be unusual for the Commissioner to grant concessions to those who continually fail to pay on time or who continually fail to meet their lodgment obligations on time. In making a decision on whether to accept payment by instalments the Commissioner will consider the particular circumstances of the taxpayer, including their past behaviour, and reasons for any previous non-

compliance. For example, previous non compliance could be the result of an unwillingness to pay rather than an inability to pay because of circumstances outside the control of the taxpayer. The 'ATO Compliance Model' (see chapter entitled 'Risk management') recognises that an unwillingness to pay warrants a more severe response compared to an inability to pay which may warrant a more appropriate (ie less severe) approach to achieve payment. One example of a situation where the Commissioner would agree to accept payment by instalments is where an employee who is engaged under a contract that is wholly or principally for their labour, and who has genuinely erred in claiming non-employer sponsored superannuation deductions, has the claimed deductions disallowed. If the issue of amended assessment/s to an employee causes payment difficulties in such a case, the Commissioner will accept a payment arrangement.

- 10.3.7 Taxpayers who seek an arrangement to pay their tax-related liability by instalments may be asked to complete an 'Application for an Arrangement to Pay by Instalments' form. The onus is on those taxpayers to:
- (i) satisfy the Commissioner as to their inability to pay the full amount by the due date (as opposed to reasons why they have decided to not pay by the due date);
  - (ii) explain the reasons for non-payment;
  - (iii) satisfy the Commissioner that, generally, they are treating their tax debts with the same priority they are treating their other payment obligations (For example, they would need to show that payment of private debts, like credit card debts and mortgage obligations, have not assumed a priority over payment of their tax debts and that any short-term priority afforded their business debts was appropriate and that the business was viable);
  - (iv) forward a proposal for payment of their debt in full in the shortest possible timeframe. The Commissioner may require such a proposal to be supported by written details of the taxpayer's current financial position;
  - (v) forward a payment at the time of the proposal to demonstrate genuine commitment to pay;
  - (vi) pay any additional charges for late payment including GIC; and
  - (vii) reimburse any costs that were incurred pursuant to any recovery action which the Commissioner had commenced in respect of the debt.
- 10.3.8 Taxpayers cannot expect the Commissioner to agree to accept payment by instalments as a matter of course. Any decision to enter into an arrangement to accept payment by instalments will be made in accordance with risk management guidelines. The 'ATO Compliance Model' clearly links risk with the indicators of unwillingness to comply with taxation obligations. The individual circumstances of the taxpayer will be considered in each case, including consideration of any steps taken or proposed to be taken by the taxpayer to mitigate the risk. Relevant considerations are outlined later in this chapter.
- 10.3.9 A decision to accept payment of a debt by instalments maybe made by the Commissioner (or a duly authorised officer), having due regard to the

information provided by debtors. Taxpayers cannot impose conditions on the Commissioner and if they do not provide sufficient information to support their application to pay by instalments, they cannot expect the Commissioner to agree to the request. Consideration will be given to any advice from financial counsellors taxpayers may have used for assistance in sorting out their financial affairs, but this does not relieve them from the responsibility for providing other relevant information to the Commissioner.

- 10.3.10 Action to recover the debt and the additional charges for late payment (calculated from the original due date) will commence if a taxpayer does not make a payment instalment by the agreed date or contravenes the arrangement in any way and does not come to some alternative acceptable arrangement for payment of that debt.

## **10.4 POLICY**

- 10.4.1 Responsibility for demonstrating that payment cannot be made by the due date rests solely with the taxpayer. The Commissioner expects a taxpayer who cannot pay on time to apply for an arrangement to pay by instalments before that due date has passed. If an application cannot be made by the due date, the taxpayer should apply as soon as possible after the due date.
- 10.4.2 An application to pay by instalments should:
- (i) set out the reasons why payment was not made on time;
  - (ii) contain a detailed statement of the taxpayer's current financial position (including details of what steps have been taken to obtain funds to pay the debt and what arrangements are in place to pay other creditors);
  - (iii) contain sufficient information to satisfy the Commissioner that payment can be made by instalments without the total debt escalating. (Taxpayers will need to specify the steps they've taken to ensure that future debts will be met as and when they fall due);
  - (iv) be accompanied by an initial payment to the extent of the taxpayer's present capacity as a sign of their genuine commitment to pay; and
  - (v) if appropriate, be accompanied by a payment to meet the costs the Commissioner has incurred in taking legal recovery action against the taxpayer.
- 10.4.3 Matters the Commissioner will take into consideration when deciding whether to agree to accept payment by instalments include:
- (i) the information provided by the taxpayer and other information that may be held (or obtained) by the Commissioner;
  - (ii) the circumstances that led to the inability to pay;
  - (iii) the taxpayer's current financial position, including other current payment obligations and actions taken by the taxpayer to rearrange finances or borrow to meet the debt;
  - (iv) the stage that any legal recovery action has reached and any grounds offered by the taxpayer to justify a request that further legal action be deferred;

- (v) the offer made and the ability to meet payment of the debt (and the additional charges for late payment imposed by legislation) on those terms without seriously impacting on the taxpayer's ability to meet other obligations;
- (vi) whether there is a likely risk to the revenue by accepting payment by instalments and whether that risk could be overcome by seeking some form of security for the debt from the taxpayer (See chapter entitled 'Risk management');
- (vii) the solvency of the taxpayer and arrangements made with other creditors (arm's length or otherwise) to pay debts;
- (viii) compliance with other taxation obligations or commitments (for example, whether all lodgment obligations including their activity statements (BAS/IAS) are up to date) and the history of the taxpayer's prior dealings with the Tax Office;
- (ix) whether there are alternative collection options that may result in payment in a shorter timeframe (for example, the use of 'garnishee' provisions);
- (x) the willingness of the taxpayer to enter into 'direct debit' arrangements if that facility exists;
- (xi) the willingness of the taxpayer to accept the conditions under which the Commissioner will agree to accept payment by instalments; and
- (xii) the taxpayer's past compliance history.

- 10.4.4 The Commissioner will not accept payment by instalments if his prospects of recovery in the longer term would be diminished or the revenue would be disadvantaged. If there is insufficient information to enable the Commissioner to make a decision, taxpayers will be advised the offer is unacceptable and formal action to recover the debt will be instituted or will continue.
- 10.4.5 Where the Commissioner has concerns about the solvency of taxpayers or their ability to meet the terms proposed, he may require them to provide adequate security or a surety.
- 10.4.6 The Commissioner expects taxpayers paying by instalments to finalise their debts in the shortest possible timeframe. However, he acknowledges there will be instances where that timeframe may extend beyond one, two or more financial years depending on factors such as the ability to pay, the size of the debt and the likely costs of alternative collection activity.
- 10.4.7 In these circumstances, the taxpayer may be required to provide security or a surety (see chapter entitled 'Securities'). The arrangement will also be reviewed regularly (for example, three or six monthly) to take into account potential changes to the taxpayer's financial situation.
- 10.4.8 In some cases, where it is considered appropriate based on an analysis of the associated risk (see chapter entitled 'Risk management'), the Commissioner may accept an arrangement to pay by instalments without immediately deferring legal action. For example, the Commissioner may require execution of judgment or that the taxpayer consent to judgment as a precondition of the arrangement to pay by instalments.
- 10.4.9 Where the outstanding debt is a Running Balance Account (RBA) deficit debt, the Commissioner will usually consider an application for an

arrangement to pay by instalments based on the RBA deficit debt rather than on each of the individual component tax debts that contribute to that balance. The nature of an RBA deficit debt is discussed in the chapter entitled 'Running Balance Accounts'.

- 10.4.10 Where the Commissioner agrees to accept payment of a debt by instalments, he will advise the taxpayer in writing of the terms and conditions of the payment arrangement. One condition will be that if the taxpayer does not meet a term of the arrangement, action to recover the whole of the outstanding debt may be initiated (or continued) without further warning. It is expected the taxpayer will acknowledge the debt and, if legal proceedings have commenced or are about to commence, will consent to the Commissioner being granted judgment in the event of any default in payment. The terms of the arrangement should not inhibit recovery action if there are indications of risk to the revenue, preferential payments or a significant change in a taxpayer's circumstances. Where a significant change in the taxpayer's circumstances occurs, the Commissioner may, having regard to any representations that have been made by the taxpayer, vary the terms of the arrangement.
- 10.4.11 If a taxpayer is not prepared to agree to these terms, then formal legal action to recover the debt may be commenced or continued without further warning.
- 10.4.12 The Commissioner will terminate any arrangement to accept payment by instalments and commence (or continue) action to recover the whole of the outstanding debt if:
- (i) it is established that the information provided by the taxpayer and upon which the decision was based was false or misleading; or
  - (ii) the taxpayer does not pay the instalments as required; or
  - (iii) the taxpayer fails to comply with subsequent lodgment and payment obligations for the duration of the arrangement; or
  - (iv) the taxpayer's circumstances change and the Commissioner forms the view that the payment arrangement should be terminated rather than varied.
- 10.4.13 As a result of the operation of subsection 8AAZL(2) TAA, the Commissioner must offset all credits, payments or RBA surpluses against any taxation debts. However the Commissioner has a discretion not to offset in the limited circumstances specified in subsection 8AAZL(3). This includes situations where the tax debt is the subject of an arrangement to pay by instalments, and the taxpayer is complying with the terms of that arrangement [paragraph 8AAZL(3)(b)]. (See chapters entitled 'Allocation of payments or credits' and 'Offsetting of refunds and credits against taxation and other debts'.)
- 10.4.14 If the taxpayer is complying with the terms of an arrangement to pay by instalments, the Commissioner will exercise the discretion not to offset where it is fair and reasonable to do so. (See chapter entitled 'Offsetting of refunds and credits against taxation and other debts').
- 10.4.15 Taxpayers will generally be advised at the time of payment negotiations that offsets will occur, and this will be confirmed in writing.

## **10.5 DEALINGS BETWEEN THE TAXPAYER AND THE TAX OFFICE**

- 10.5.1 Taxpayers applying to pay their debts by instalments must provide all necessary information within agreed time frames to enable the Commissioner to give proper consideration to the request. If they do not provide the required information within the agreed time frame, they will be advised that action to recover their debts may be initiated (or continued) without further warning.
- 10.5.2 Arrangements to accept payment of a debt by instalments will be in writing and will stipulate that GIC imposed by the legislation is accruing and will continue to accrue while the debt remains outstanding. If possible, taxpayers will be provided with an indication of the likely quantum of interest they will be required to pay under the arrangement. Taxpayers seeking a remission of GIC will have to demonstrate that remission is warranted.
- 10.5.3 Taxpayers will be advised in writing of the details of the payment arrangement (ie what is expected from them) if it is decided to accept payment by instalments. They will also be advised of the likely consequences if they fail to pay as required (or fail to come to some alternative arrangement for payment which is acceptable to the Commissioner).
- 10.5.4 Taxpayers are expected to make payments in accordance with their payment proposals while the Commissioner is assessing that proposal.
- 10.5.5 The Commissioner may require taxpayers to accept the condition that he will allocate payments to outstanding tax in an order that is in the best interests of the Commonwealth – (See chapter entitled 'Allocation of payments or credit amounts'). When allocating payment to outstanding tax, the Commissioner will give consideration to a number of matters including the nature of the tax types, the differing age of debts, the remedies open to the Commissioner to collect those debts, and the stage reached in legal proceedings for any part of the debt.
- 10.5.6 Additional charges for late payment /GIC will apply from the original due date for payment of the debt and continue to apply to the reducing balance until the debt is paid in full. If taxpayers do not pay the agreed instalments when they are due, the Commissioner will take immediate steps to recover the balance of the outstanding debt without further notice.

## **10.6 TERMS USED**

- 10.6.1 'Payment by instalments or payment over time' means to accept payment of a debt that has not been paid by the original due date, by regular payments over a period of time. The arrangement does not vary the time at which the amount is due and payable. GIC or other relevant penalty for any unpaid amount of liability will accrue from the due date for payment.
- 10.6.2 '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 due date for payment.
- 10.6.3 '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

*Income Tax Assessment Act 1936* (ITAA 1936) 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*.