

ATO RECEIVABLES POLICY

PART B The Collection of Taxation Debts

Chapter 10 PAYMENT ARRANGEMENTS

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

PURPOSE

1. This chapter deals with the Commissioner's powers to permit payment of tax-related liabilities by instalments and sets out the circumstances when payment will be accepted by instalments. It should be read in conjunction with Chapter 3 'Risk management'.

INTRODUCTION

2. Taxpayers have a responsibility to manage their cash flow to ensure they meet all their tax debts when those debts fall due for payment. 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 by instalments provides the Commissioner with an alternative to more formal recovery procedures.
3. Section 255-15 of Schedule 1 to the *Taxation Administration Act 1953* (TAA) 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.
4. An arrangement under section 255-15 does not vary the time at which the amount is due and payable. Any GIC or other relevant penalty, if applicable, in respect of 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 as varied under sections 255-10 or 255-20 of Schedule 1 to the TAA. For the relevant provisions under the more common taxing statutes providing for the accrual of additional charges/GIC, see the tables in Chapter 93 'General interest charge'.
5. Section 222ALA of the *Income Tax Assessment Act 1936* provides a more specific capacity for the Commissioner to make a written agreement with a debtor under which that debtor is required to pay specified amounts on specified days for the purpose of discharging specified liabilities, each of which is liability under a remittance provision, or an estimate of a liability under a remittance provision. Where a company defaults on its obligations under a section 222ALA payment agreement, each person who was a director at any time from the day the

agreement was made and until the day on which it defaulted becomes personally liable for the unpaid instalments due under that agreement.

POLICY

6. Taxpayers cannot expect the Tax Office 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 compliance model clearly links risk with the indicators of unwillingness to comply with taxation obligations. Concessions are unlikely to be granted to those who continually fail to pay on time or who continually fail to meet their lodgment obligations on time. 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. The Tax Office will also consider their past behaviour, and reasons for any previous non-compliance. Relevant considerations are outlined later in this chapter.
7. A decision to accept payment of a debt by instalments may be made by the Tax Office having due regard to the information provided by debtors. Consideration will be given to any advice from financial advisers whom taxpayers have engaged to assist in sorting out their financial affairs, but this does not relieve them from the responsibility for providing other relevant information to the Tax Office. 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 Tax Office to agree to the request.

Application process

8. Responsibility for demonstrating that payment cannot be made by the due date rests solely with the taxpayer. A taxpayer who cannot pay on time should 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.
9. Taxpayers applying to pay their debts by instalments must provide all necessary information within agreed timeframes to enable the Tax Office to give proper consideration to the request. If they do not provide the required information within the agreed timeframe, they will be advised that action to recover their debts may be initiated (or continued) without further warning.
10. An application to pay by instalments should:
 - (i) explain the reasons for non-payment
 - (ii) satisfy the Tax Office as to their inability to pay the full amount by the due date (as opposed to providing reasons why they have decided to not pay by the due date)
 - (iii) 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)
 - (iv) satisfy the Tax Office that, generally, they are treating their tax debts with the same priority they are giving to 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)

- (v) forward a proposal for payment of their debt in full in the shortest possible timeframe
- (vi) contain sufficient information to satisfy the Tax Office 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.)
- (vii) be accompanied by an initial payment to the extent of the taxpayer's present capacity as a sign of their genuine commitment to pay
- (viii) pay any additional charges for late payment including GIC, and
- (ix) reimburse any costs that were incurred pursuant to any recovery action that the Tax Office had commenced in respect of the debt.

Factors taken into account

11. In deciding whether to agree to accept payment by instalments, the Tax Office will consider:

- (i) the information provided by the taxpayer and other information that may be held (or obtained) by the Tax Office
- (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 3 '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 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, and
- (xi) the willingness of the taxpayer to accept the conditions under which the Tax Office will agree to a payment arrangement.

222ALA Payment agreements

12. In deciding whether to enter a payment agreement under section 222ALA of the TAA, the Tax Office will, in addition to the factors in the preceding paragraph, also take account of:
 - (i) whether there has been a recent change in directors and, if so, the reasons for that change and the compliance history of the company under the retiring directors, and
 - (ii) whether recently-retired or recently-arrived directors have a previous association with companies that have been wound-up while owing tax debts
13. The Tax Office will pursue recovery action against any directors who become personally liable to pay a penalty as a result of the company's breach of a payment agreement. However, before commencing such action, the Tax Office will have due regard to any relevant documentation and evidence provided by a director who claims to have a valid defence.

RBA deficit debt

14. Where the outstanding debt is a running balance account (RBA) deficit debt, the Tax Office 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 Chapter 33 'Running balance accounts'.

Risk analysis

15. Payment by instalments will not be accepted if prospects of recovery in the longer term would be diminished or the revenue would be disadvantaged. If there is insufficient information to enable the Tax Office to make a decision, taxpayers will be advised that the offer is unacceptable and formal action to recover the debt will be instituted or will continue. Where the Tax Office has concerns about the solvency of taxpayers, or their ability to meet the terms proposed, they may be required to provide adequate security or a surety.
16. Taxpayers paying by instalments are expected to finalise their debts in the shortest possible timeframe. However, the Tax Office 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. In these circumstances, the taxpayer may be required to provide security or a surety (see Chapter 29 'Securities'). The arrangement will also be reviewed regularly to take into account potential changes to the taxpayer's financial situation.
17. In some cases, where it is considered appropriate based on an analysis of the associated risk (see Chapter 3 '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.

Terms and conditions of arrangement

18. Taxpayers will be advised in writing of the details of the payment arrangement (that is, 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 that is acceptable to the Tax Office). Taxpayers are expected to make payments in accordance with their payment proposals while the Tax Office is assessing that proposal.

19. Arrangements to accept payment of a debt by instalments will stipulate that GIC imposed by the legislation applies from the original due date of the liabilities 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.
20. Where payment of a debt by instalments is accepted, the Tax Office 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. Taxpayers are expected to acknowledge the debt and, if legal proceedings have commenced or are about to commence, consent to the Commissioner being granted judgment in the event of any default in payment.
21. 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 Tax Office may, having regard to any representations that have been made by the taxpayer, vary the terms of the arrangement.
22. If a taxpayer is not prepared to agree to the terms put forward by the Tax Office, then formal legal action to recover the debt may be commenced or continued without further warning.

Commissioner's discretion to offset

23. As a result of the operation of subsection 8AAZL(2) of the 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 (sub-subsection 8AAZL(3)(b)). If the taxpayer is complying with the terms of an arrangement to pay by instalments, the Tax Office will exercise the Commissioner's discretion not to offset where it is fair and reasonable to do so. (See Chapter 7 'Allocation of payments and credits' and Chapter 72 'Offsetting of refunds and credits against taxation and other debts'.)
24. Taxpayers will generally be advised at the time of payment negotiations that offsets will occur, and this will be confirmed in writing.

Allocation of payments

25. The Tax Office may require taxpayers to accept the condition that it will allocate payments to outstanding tax in an order that is in the best interests of the Commonwealth (see Chapter 7 'Allocation of payments and credits'). When allocating payment to outstanding tax, the Tax Office 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 Tax Office to collect those debts, and the stage reached in legal proceedings for any part of the debt.

Termination of arrangement

26. The Tax Office may 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
 - (ii) the taxpayer does not pay the instalments as required
 - (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 Tax Office forms the view that the payment arrangement should be terminated rather than varied.
27. 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.

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 due date for payment.

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.

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, (including amounts previously defined under the *Income Tax Assessment Act 1936* (ITAA 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.

Chapter 10 - Archived versions

Chapter 10: Version 4 – July 2006 (will link to chapter 10 pdf)

Chapter 11: Version 4 – July 2006 (will link to chapter 11 pdf)
