

Part B The Collection of Taxation Debts**13 DEPARTURE PROHIBITION ORDERS**

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.)*

13.1 PURPOSE

13.1.1 This chapter deals with the Commissioner's power to stop a debtor from leaving the country until such time as:

- a debt is paid in full; or
- suitable arrangements for payment of the debt are made.

13.2 LEGISLATION

13.2.1 Part IVA of the *Taxation Administration Act 1953* (TAA) gives the Commissioner the power to issue a Departure Prohibition Order (DPO) which prohibits the debtor from leaving Australia, regardless of whether the debtor intends to return.

13.2.2 The Commissioner's ability to exercise this power depends upon the existence of certain preconditions. These are:

- (i) the debtor must have a tax liability; and
- (ii) the Commissioner must believe on reasonable grounds that it is desirable to issue an order for the purpose of ensuring the debtor does not depart Australia without:
 - wholly discharging the tax liability; or
 - making arrangements satisfactory to the Commissioner for the tax liability to be wholly discharged.

13.3 INTRODUCTION

13.3.1 By its very nature, a departure prohibition order imposes a significant restriction on the normal rights of a debtor in that it basically deprives debtors of their liberty to travel outside Australia. The impact of this restriction on a debtor's freedom of movement must be recognised.

13.3.2 The legislation applies to both Australian nationals and foreign nationals who are liable to pay Australian tax (except if a deportation order is in force). Where a deportation order is made after a DPO has been imposed, the Tax Office will consult with the Department of Immigration, Multicultural and Indigenous Affairs about revoking the DPO. While a DPO is in force, a debtor may not leave Australia without first having obtained a departure authorisation certificate.

13.3.3 The Australian Federal Police and the Australian Customs Service are notified immediately of the making of an order. Where an order is issued in respect of a foreign national or a person with dual citizenship, the

Department of Immigration, Multicultural and Indigenous Affairs is also notified. The Australian Customs Service and the Australian Federal Police have responsibility for enforcing DPOs.

- 13.3.4 When an order is made, the Commissioner or his delegate is required to serve a copy of the order forthwith on the debtor. This is by:
- (i) personal service on the debtor; or
 - (ii) leaving a copy at the debtor's last known place of residence or place of business; or
 - (iii) sending the copy by pre-paid post to the debtor's last known place of residence or place of business.
- 13.3.5 Debtors who know that an order is in force against them are guilty of an offence if they attempt to depart Australia without a departure authorisation certificate. The penalty on conviction is a fine not exceeding \$5000 or imprisonment for 12 months, or both.

13.4 POLICY

- 13.4.1. The critical phase in the making of an order is the deliberative process to determine whether 'reasonable grounds' exist which make it desirable to ensure the debtor does not depart from Australia without wholly discharging, or making arrangements satisfactory to the Commissioner to wholly discharge, the tax liability.
- 13.4.2. There are a number of factors that should be taken into account when deciding whether to issue a DPO. Some of these are whether:
- (i) there is a tax liability and whether it can be recovered;
 - (ii) known assets are sufficient to pay existing and future debts and whether those assets are in a readily-realisable form;
 - (iii) recovery proceedings are in course (whether the debtor is unwilling or unable to pay);
 - (iv) the debtor has recently disposed of assets to associated persons or entities (the transactions may be overturned in bankruptcy);
 - (v) there is any information to suggest concealment of assets (bank accounts in false names, use of an alias) or movement of funds (eg AUSTRAC reports);
 - (vi) the debtor has entered into transactions that 'charged' assets in Australia and then moved the borrowed funds offshore;
 - (vii) the debtor has assets overseas adequate to maintain a comfortable lifestyle;
 - (viii) funds have been transferred overseas (and the purpose of the transfer);
 - (ix) the debtor has significant business interests in Australia;
 - (x) the debtor is subject to investigation for criminal activities (and whether any charges have been laid);
 - (xi) there is a threat against the debtor's life as a result of criminal or other activities;
 - (xii) there is Tax Office audit activity (or similar activity from other Government agencies);

- (xiii) the debtor holds (or the debtor has applied for) Australian or foreign passport/visa/work permit;
 - (xiv) the debtor has given an indication of likely overseas travel, and there is no apparent need for travel; and also
 - (xv) the debtor's family situation (this information may not be relevant by itself, but when combined with a number of other factors, it may influence a decision to issue an order).
- 13.4.3. If it is considered that a DPO should issue, the matter is to be discussed with either the relevant technical area or Serious Non-compliance area. Only appropriately-authorized senior officers can approve the issue of any order.
- 13.4.4. The existence of a DPO is not dependent on the debtor being informed of its making. While service should take place as soon as possible after a DPO is made, the failure to inform the person forthwith is not considered to affect the validity of the DPO.
- 13.4.5. An order remains in force until it is revoked by the Commissioner or set aside by a court. The Commissioner will revoke an order when the debtor's tax liabilities are discharged or irrecoverable, and the Commissioner is satisfied that any impending debts arising out of completed transactions also be discharged or would be irrecoverable (subsection 14T(1) TAA).
- 13.4.6. A departure authorisation certificate may be issued, on application by the debtor, if the debtor enters into suitable arrangements for payment of the debt (this may include, but is not restricted to, a bond or other suitable security). As with the issue of a DPO, a decision to either revoke such an order, or to issue a departure authorisation certificate, is to be approved by an appropriately-authorized senior officer.

13.5 TERMS USED

- 13.5.1 'Tax liability' is defined in the TAA to mean a liability to the Commonwealth arising under, or by virtue of, a taxation law.
- 13.5.2 'Taxation law' is defined in the TAA to mean an Act of which the Commissioner has general administration, or regulations under such an Act, but does not include:
- (a) Excise Acts as defined in section 4(1) of the *Excise Act 1901*; or
 - (b) *The Fuel (Penalty Surcharges) Administration Act 1997*