

ATO RECEIVABLES POLICY

PART B The Collection of Taxation Debts

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

Key legislation: Part IVA of the *Taxation Administration Act 1953*

PURPOSE

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.

INTRODUCTION

2. 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.
3. 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 that 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 discharged.
4. 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 issued, the Tax Office will consult with the Department of Immigration, Multicultural and Indigenous Affairs about revoking the DPO.

POLICY

5. 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 Tax Office recognises the impact of this restriction on a debtor's freedom of movement.

6. The critical phase in the making of an order is the process of determining whether there are 'reasonable grounds' which make it desirable to ensure the debtor does not depart from Australia without discharging or making arrangements satisfactory to the Commissioner to discharge the tax liability.
7. In deciding whether to issue a DPO, the Tax Office will take a number of factors into account including 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-realizable form
 - (iii) recovery proceedings are in course
 - (iv) the debtor has recently disposed of assets to associated persons or entities (the transaction 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 (for example, 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) an 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
 - (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).
8. When an order is made, the Commissioner or his delegate is required to serve a copy of the order on the debtor. However, 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 is not considered to affect the validity of the DPO.
9. 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 transaction can also be discharged or would be irrecoverable.

TERMS USED

Tax liability – is defined in the TAA to mean a liability to the Commonwealth arising under, or by virtue of, a taxation law.

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*

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