

**Part B The Collection of Taxation Debts****25 WAIVER OF TAXATION DEBTS**

*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.*)

**25.1 PURPOSE**

25.1.1 This chapter deals with the waiver of taxation debts.

**25.2 LEGISLATION**

25.2.1 From 1 January 1998, section 34 of the *Financial Management and Accountability Act 1997* (FMAA 1997) gives the Finance Minister the power to waive recovery of a debt due to the Commonwealth.

**25.3 INTRODUCTION**

25.3.1 The Minister for Finance and Administration has the power (subject to certain procedural requirements in some cases) to waive the right of the Commonwealth to payment of an amount payable to it, including revenue debts. Such a waiver expunges the debt, such that the legal right to pursue and recover that debt is irrecoverably abandoned.

25.3.2 The Minister has not delegated this power to the Commissioner. There is no equivalent power expressly conferred upon the Commissioner in tax legislation, or elsewhere, to waive tax debts. However, the Commissioner can approve release from payment of some taxation debts on the grounds of serious hardship.

25.3.3 The Minister must consider a report of an Advisory Committee before taking action on waiver in cases where the proposed waiver involves, or is likely to involve, a total amount of more than \$100,000. The Committee is comprised of the Chief Executive Officers (or their designated substitutes) of the Department of Finance and Administration, the Australian Customs Service and the agency that is responsible for the matter on which the Committee has to report. Waiver applications involving lesser amounts are generally considered by delegates within the Department of Finance and Administration.

25.3.4 Debtors have a right to apply to the Department of Finance and Administration or the Minister for a waiver of their debt. Under the FMAA 1997, the decision maker has an unfettered discretion to consider each request for a waiver on a case by case basis. The most common condition under which a waiver may be granted is where, due to the particular circumstances of the case, the decision maker concludes that there is a moral obligation, rather than a legal obligation, on the Commonwealth to extinguish the debt due to equity or ongoing financial hardship considerations. Finance Circular 2001/01 outlines three broad categories of applications that are commonly considered in relation to waiver of Commonwealth debts. These categories are:

- Applications based on the Tax Office's actions or omissions in administering the tax laws where those actions or omissions have caused the taxpayer to incur unintended debts to the Commonwealth (Note: this chapter does not deal with acts or omissions that may warrant the payment of compensation – refer to 'Claiming Compensation' on the Tax Office website at [www.ato.gov.au](http://www.ato.gov.au));
- Applications based on the operation of the tax laws themselves, in that the relevant Act has caused the taxpayer to incur an unintended debt to the Commonwealth, the recovery of which would produce an anomalous or inequitable result;
- Applications for waiver of Commonwealth debt on the ground that repaying the debt will cause genuine and significant financial hardship.

25.3.5 Sometimes, debtors write directly to the Tax Office. There is no specific form of application, but it is expected an applicant will provide sufficient information to enable a decision to be made (for example, details of the amount for which a waiver is sought, how the liability arose, the grounds for the application, details of assets and liabilities/income and expenditure and any other relevant information that will assist the Minister to reach a decision).

25.3.6 Generally, where the application is sent directly by the debtor to the Department of Finance and Administration, the department will notify and consult the Tax Office about the case before briefing the Minister or relevant delegate on the request.

## 25.4 POLICY

25.4.1 In cases where an application for waiver is received directly by the Tax Office, the request should be referred to the Department of Finance and Administration. To the extent that the relevant secrecy provisions permit the disclosure of taxpayer information in this situation, the Tax Office should, upon request, provide the Department of Finance and Administration with sufficient information to enable an informed assessment of the case including, as appropriate:

- details of the debt(s) and any other relevant information in relation to the debt (ie how the debt arose, action taken to recover the debt, whether there is any dispute in relation to the debt, offers of payment and the Tax Office decision in relation to those offers);
- specific details of the Commonwealth's role, if any, that may have directly contributed to the debtor's situation;
- any history/background to the case, including any available information on the person's assets, income, future income earning capacity, other debts, health and family circumstances;
- any other information that may be relevant to the decision maker's consideration of the particular circumstances;
- a recommendation, either supporting or not supporting the application and the reasons for adopting that stance.

25.4.2 Where advice is received from the Department of Finance and Administration that it is in receipt of a waiver request, the information

detailed above should be provided, to the extent that the disclosure of the taxpayer information is permissible under the relevant secrecy provisions.

- 25.4.3 Although secrecy provisions in the acts administered by the Commissioner would generally prevent the disclosure of taxpayer information, such information may sometimes be divulged where it occurs in the course of the performance of an officer's duties. Disclosure of information to either the Department of Finance and Administration or to the Minister pursuant to an application for waiver is considered as being within the performance of an officer's duties as it has a direct effect on the amount of tax recoverable by the Tax Office.
- 25.4.4 Although the wording of some secrecy provisions creates an absolute prohibition on disclosure of information to Ministers, where the FMAA 1997 requires the Minister for Finance to consider applications, this specific requirement of the FMAA 1997 overrides the general prohibition on disclosure to Ministers created by the secrecy provisions.
- 25.4.5 The debtor should be provided with a copy of any information, comments or recommendation provided by the Tax Office to the Department of Finance and Administration to afford them the opportunity to provide an alternative view to the Minister.
- 25.4.6 Where the application for waiver of the taxation debt is made solely on the grounds of serious hardship, it is more appropriate for the request to first be considered by the Commissioner pursuant to his power under Division 340 of Part 4-50 of Schedule 1 to the *Taxation Administration Act 1953* (TAA) to grant release from certain taxation liabilities. The liabilities which may be considered for release are listed at section 340-10 of Schedule 1 to the TAA, and in the *ATO Receivables Policy* chapter entitled, 'Release from payment of some taxation debts'.
- 25.4.7 Action to recover an amount for which the debtor has sought a waiver may not necessarily be stayed while the application is being considered. A decision in this regard will need to be made in light of the particular circumstances of the case. The Department of Finance and Administration should be advised of these developments.
- 25.4.8 Department of Finance and Administration guidelines state that waiver claimants will be provided with adequate information regarding the details of the decision of their application including a summary of reasons for the Commonwealth's acceptance, partial acceptance, or rejection of their claim. The Department has also stated that a copy of the letter advising the claimant of the decision will also be forwarded to the relevant agency for information and action.

## 25.5 TERMS USED

- 25.5.1 'Waiver' is a special concession granted to a person or organisation by the Finance Minister that expunges the debt owed to the Commonwealth. That is, the debt is completely wiped out so that the Commonwealth cannot pursue the debt at a later date should that person's or organisation's financial circumstances improve.