

Part B The Collection of Taxation Debts**33 RUNNING BALANCE ACCOUNTS**

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, please advise the Tax Office.

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33.1 PURPOSE

33.1.1 This chapter deals with:

- the establishment of Running Balance Accounts (RBAs).
- the use of RBAs in the legal collection process.
- the refunding of RBA surpluses and excess non-RBA credit.

33.2 LEGISLATION

33.2.1 The establishment of RBAs is provided for in Division 2 of Part IIB *Taxation Administration Act 1953* (TAA). The Commissioner has been able to establish separate RBAs to account for the primary tax debts of PAYE, PPS, RPS and sales tax since 1 July 1999. These RBA arrangements were expanded so that from 1 July 2000 the Commissioner may establish an RBA to account for any type of primary tax debt and may also account for more than one type of primary tax debt within the same RBA. For example, primary tax debts for goods and services tax and Pay As You Go withholding amounts may be allocated to the same RBA. An RBA can also be established to record assessed income tax and assessed fringe benefits tax liabilities.

33.2.2 Specifically the law provides for:

- the establishment of RBAs for any primary tax debt – section 8AAZC TAA;
- the allocation of tax debts to RBAs – section 8AAZD TAA;
- the allocation of payments and credits to RBAs – sections 8AAZLA and 8AAZLB TAA;
- the imposition of the General Interest Charge (GIC) on an RBA deficit debt – section 8AAZF TAA; and
- the Commissioner to recover an RBA deficit debt – sections 8AAZH, 8AAZI, 8AAZJ and 255-5 TAA.

33.3 INTRODUCTION

33.3.1 The first RBA arrangements, which commenced from 1 July 1999, applied to establish separate RBAs to account for PAYE, PPS, RPS and sales tax debts. These arrangements represented the initial step towards the establishment of an integrated account to record the entire taxation obligations of a taxpayer.

- 33.3.2 With the introduction from 1 July 2000 of a range of new business tax obligations there was a need to expand the scope of RBAs. Accordingly the Commissioner may, from 1 July 2000, establish an RBA for any primary tax debt and may also allocate different types of primary tax debts to the same RBA.
- 33.3.3 Entities are required to notify the Commissioner of all liabilities under the new tax system. The *Business activity statement* (BAS) or the *Instalment activity statement* (IAS) are the approved forms that most businesses use to notify their liabilities so that those debts, any credit entitlements and payments made can be all recorded on one RBA.
- The following obligations are notified on a BAS:
- Goods and services tax (GST)
 - Wine equalisation tax (WET);
 - Luxury car tax (LCT);
 - Pay As You Go withholding (PAYG withholding);
 - Pay As You Go instalments (PAYG instalments);
 - Fringe benefits tax instalments (FBTI); and
 - Deferred company instalments (DCIN).
- An IAS is used to notify:
- PAYG withholding;
 - PAYG instalments;
 - FBTI; and
 - DCIN liabilities.
- 33.3.4 Separate accounts are maintained which record other liabilities such as assessed income tax, assessed fringe benefits tax and superannuation liabilities. The separate RBAs established under the first RBA provisions for PAYE, PPS, RPS and sales tax debts are still maintained, but only for the purpose of accounting for debts of those classes. For example, an entity may have an RBA that only records PAYE liabilities that arose prior to 1 July 2000.
- 33.3.5 The Commissioner can establish more than one RBA for an entity. Where this is the case, the Commissioner will be able to allocate a primary tax debt to one of those RBAs or between any of those RBAs. This could occur if separate RBAs are established to account for the tax debts of several operational branches of a large company. Although the tax debt for a particular period is the liability of the entity, the Commissioner can allocate each branch's debt to a separate RBA established for that branch.
- 33.3.6 There may also be more than one entity with an interest in an RBA. For example, where an entity is a partnership, each partner will be a tax debtor in respect of the partnership RBA deficit debt.
- 33.3.7 Where two or more eligible companies have formed a GST group, the group of companies is treated as a single entity for GST purposes, whereby the nominated representative member of that group deals with all the GST liabilities and entitlements (other than for certain taxable

importations). Although the representative member is responsible for notifying and paying the group's GST liabilities through its BAS, all members of the group are jointly and severally liable for the GST payable by that GST group. In addition, the Commissioner may apply any RBA surplus or excess credit of the representative member against any tax debt of other members of the group. This is discussed further in the chapter entitled 'Allocation of payments and credits'.

- 33.3.8 Similarly, two or more eligible companies may operate together in a GST joint venture with the aim to achieve certain things, such as joint survey for mineral deposits. The companies involved in the GST joint venture are treated as a single entity for GST purposes. A nominated joint venture operator of the joint venture pays the GST and is entitled to the input tax credits that relate to supplies, acquisitions and importations it makes for the purposes of the joint venture on behalf of the other participants of that GST joint venture. Although the joint venture operator is responsible for notifying and paying the joint venture's GST liabilities through its BAS, all participants to the joint venture are jointly and severally liable for the GST payable by that joint venture.
- 33.3.9 From 1 July 2002, the head company of a wholly-owned group of entities can elect to consolidate and thereafter be treated as a single entity for income tax purposes. The head company is liable for payment of any income tax attributable to the group's activities. However, if the head company fails to pay the group liability by the due time, the subsidiary members of the group automatically become jointly and severally liable for the group liability, unless an agreement (a tax sharing agreement (TSA)) has been entered into.
- 33.3.10 A valid TSA is an agreement which reasonably allocates the group liability amongst the parties to that agreement. Should the head company fail to pay the group liability covered by the TSA by the head company's due time, the TSA limits a member's liability to that portion of the group liability that was allocated to it under the agreement. Regardless of whether the subsidiary members are jointly and severally liable or whether they are parties to a valid TSA, the head company remains liable for the full amount of the unpaid liability.
- 33.3.11 The allocation of a primary tax debt to an RBA establishes a parallel liability between the underlying primary tax debt and the balance of that RBA. Each is a distinct recoverable liability. Where the underlying primary tax debt remains unpaid, even if that debt has been allocated to an RBA, it is a debt owing to the Commonwealth and payable to the Commissioner. As such, it can be sued for and recovered in the Courts. Similarly, any unpaid balance on an RBA, where that primary tax debt has been allocated, is a debt for which a tax debtor can be sued. This parallel system was established to give the Commissioner the flexibility to pursue unpaid tax in proceedings for either a primary tax debt or for the balance on a related RBA which reflects that debt, but not both.
- 33.3.12 An RBA enables the Commissioner to automatically produce regular statements of account detailing an entity's outstanding tax debts. The RBA deficit debt claimed in recovery proceedings will often be a different balance amount to that shown on the RBA statement last issued to a tax debtor. The difference will usually be due to updating the GIC to a later date. It could also be due to the establishment of further liabilities or the processing of subsequent payments and credits.

- 33.3.13 For the purposes of allocating tax debts to an entity's RBA, primary tax debts do not include an RBA deficit debt or GIC. Unpaid primary tax debts are subject to the imposition of GIC worked out daily on a compounding basis under Division 1 of Part IIA TAA. If there is a debit balance on an RBA to which the primary tax debt was allocated then GIC is also payable on that deficit debt under section 8AAZF TAA. The balance on the RBA is altered to reflect the GIC payable at the end of the day.
- 33.3.14 To ensure liabilities in respect of debts allocated to an RBA and the corresponding RBA deficit debt remain parallel, special rules are needed for the treatment of payments and credits. The RBA arrangements for the allocation of payments and credits prior to 1 July 2000 required payments and credits to be applied first against the primary tax debt before allocating the same amount to the corresponding RBA. From 1 July 2000, these arrangements were extended by introducing an alternative approach, which allowed the Commissioner to allocate amounts first against an RBA before applying the same amount to the corresponding component primary tax debts.
- 33.3.15 Section 8AAZLA TAA allows the Commissioner to first allocate a payment or credit to an RBA. If such an amount is first allocated to an RBA, then the Commissioner must also reduce the non-RBA tax debts allocated to that RBA, and the GIC that has accrued on those non-RBA tax debts by the same amount. For example, where a debit assessment for income tax has been allocated to an RBA and the taxpayer then pays the full amount of that assessment, if the Commissioner first allocates the payment to the RBA that payment must also then be applied against the debit assessment.
- 33.3.16 Conversely, section 8AAZLB TAA allows the Commissioner to first apply a payment or credit to reduce non-RBA tax debts or any GIC on those debts. If a payment or credit is first applied against non-RBA tax debts that have been allocated to an RBA, then the Commissioner is required to also allocate that payment or credit to the related RBA. For example, if the Commissioner had instead first applied the payment in the above example to the debit assessment that payment must also then be allocated to the RBA. Both of these approaches maintain the parity between the RBA deficit debt and the total amount outstanding of the non-RBA tax debts allocated to that RBA and the GIC that accrued on those tax debts.
- 33.3.17 An RBA surplus will exist where the amount of payments or credits allocated to an RBA are greater than the primary tax debts allocated to that account. Similarly, where payments or credits are greater than the non-RBA tax debts to which they are applied there will be an excess non-RBA credit.
- 33.3.18 The RBA surplus and excess non-RBA credit can be related (ie the credit balance on an RBA can relate to the underlying non-RBA credit, just like the underlying primary tax debt relates to the RBA deficit debt). For example, where the allocation of a credit assessment places the RBA that records only income tax debts into surplus, the total of the account that records only non-RBA income tax debts will then also be in credit for the same amount as that RBA surplus. If the RBA surplus and excess non-RBA credit are related it could be said that there is a parallel credit entitlement. If one of these amounts is used to reduce a tax debt, being

another RBA deficit debt or non-RBA tax debt of the entity, then the Commissioner must adjust the related surplus or credit by the same amount. For example, where the RBA surplus in the above example is allocated against an RBA deficit debt which records the current BAS/IAS obligations, to the extent that the RBA surplus is allocated to that RBA deficit debt, the total of the non-RBA credit must also then be adjusted by the same amount.

- 33.3.19 The Commissioner must refund any RBA surplus or excess non-RBA credit where there are no other tax debts to which they can be allocated or applied, although there are some exceptions which are discussed below. Where an RBA surplus is refunded the parallel excess non-RBA credit is reduced accordingly. Similarly, if an excess non-RBA credit is refunded, then any related RBA is adjusted by the same amount.
- 33.3.20 Where an excess non-RBA credit or RBA surplus arises from a voluntary payment in anticipation of future tax debts, the Commissioner is not required to refund that amount. However, the Commissioner will be required to refund such an RBA surplus or an excess non-RBA credit if a taxpayer makes a request, in the approved manner, for it to be refunded.
- 33.3.21 If an entity has not notified all of their tax obligations to the Commissioner as required under the BAS provisions, notwithstanding a requirement to otherwise refund an excess non-RBA credit or RBA surplus, the Commissioner may retain this amount until the entity gives this notification. For example, if an entity has not notified a required BAS obligation, the Commissioner may retain an RBA surplus or credit amount recorded against an income tax account for that entity, until that notification is received. For further information refer to the chapter entitled 'Withholding of refunds - approved forms or information not provided'.
- 33.3.22 Additionally, any refund in respect of these BAS obligations must be paid into a financial institution account nominated by the entity. The Commissioner can withhold a refund until the entity nominates an account. However, the Commissioner does have the discretion to pay refunds to the entity in a different way, such as by cheque. For further information refer to the chapter entitled 'Withholding of refunds - financial institution account details not provided'
- 33.3.23 Where the Commissioner must refund an RBA surplus or an excess non-RBA credit and that amount relates to one of the following:
- a surplus on an RBA reflecting the allocation of a BAS amount to the RBA following the correct lodgment of the BAS;
 - a surplus on an RBA reflecting a voluntary payment that arises because a payment is made in respect of an anticipated tax debt under a BAS provision; or
 - a surplus on an RBA arising from remission of a penalty relating to a BAS amount;

then if that refund is not paid by the Commissioner 14 days after the latest of either the day the RBA went into surplus, or the day the entity requested a remission of that penalty or a refund of that voluntary payment, the entity will be entitled to interest on the amount not refunded. This is discussed further in the chapter entitled 'Delayed refund interest'.

33.4 POLICY

- 33.4.1 Where the Commissioner has established more than one RBA to reflect the administrative arrangements of an entity's business operations, the Commissioner will have regard to those administrative arrangements when allocating the primary tax debts to the RBAs.
- 33.4.2 There is no legislative requirement for the Commissioner to issue an RBA statement detailing the outstanding amount prior to the commencement of recovery proceedings. Debtors cannot rely on the non-receipt of an RBA statement as an excuse to avoid the implications of not paying their tax debts by the due date.
- 33.4.3 An RBA statement may be prepared at any time and can contain such particulars as the Commissioner determines. The RBA statement, or a copy appropriately signed, will be able to be used as prima facie evidence that the RBA has been duly kept and that the amount and particulars in the statement are correct.
- 33.4.4 Where an RBA statement that has been issued does not properly describe the entity for which the RBA has been established, the Commissioner may prepare a further RBA statement correctly describing the entity liable to the RBA deficit debt. In such cases it will not be necessary to serve the corrected RBA statement before using it in any recovery proceeding.
- 33.4.5 When an entity is subject to legal action for the recovery of an outstanding amount and that amount includes tax debts that have been allocated to an RBA, the automatic issue of RBA statements may be suppressed. This does not prevent the Commissioner from instigating legal action for the recovery of further debts that have subsequently become due for payment.
- 33.4.6 If a debt is not paid when it falls due for payment the Commissioner may use either the RBA deficit debt or the primary tax debts as the basis of the claim in recovery proceedings.
- 33.4.7 In most cases an RBA deficit debt will be used as the basis of a claim in recovery proceedings because it condenses the claim into one cause of action.
- 33.4.8 Recovery proceedings may be instigated using the primary tax debts in preference to the RBA deficit debt where components of the liability are subject to an impediment. Some of these impediments may include situations where components of the RBA deficit debt are subject to:
- a dispute under Part IVC TAA;
 - an insolvency administration;
 - a court judgment.
- 33.4.9 The Commissioner may establish further RBAs for an entity where this would expedite recovery of primary tax debts that have not already been allocated to an existing RBA. For example, an additional RBA may be established for liabilities that have become due for payment subsequent to where a judgment has been granted by the courts in respect to an existing RBA deficit debt.

33.5 TERMS USED

- 33.5.1 'Additional charges' or the 'GIC' means the General Interest Charge worked out in accordance with Division 1 of Part IIA TAA that a person is

liable to pay when a provision of an Act of which the Commissioner has general administration makes the person liable. For example, a person is liable to pay the charge if an amount that the person must pay to the Commissioner is not paid on time

- 33.5.2 'BAS provisions' means:
- (i) Part VII of the *Fringe Benefits Tax Assessment Act 1986*; and
 - (ii) the indirect tax law (within the meaning of Part VI of the TAA); and
 - (iii) Parts 2-5 and 2-10 in Schedule 1 to the TAA (which are about the PAYG system); and
 - (iv) the following:
 - (a) Section 221AZK of the *Income Tax Assessment Act 1936* (ITAA 1936) in cases in which section 221AZKC ITAA 1936 applies (that section allows deferral of tax instalment payments);
 - (b) Section 221AZKD ITAA 1936 (which requires notification of deferred tax instalment payments).
 - (v) sales tax law as defined in section 5 of the *Sales Tax Assessment Act 1992*.
- 33.5.3 'Entity' means any of the following:
- a company, including any body or association (whether incorporated or not);
 - a partnership;
 - a person in a particular capacity of trustee;
 - a body politic;
 - a corporation sole;
 - any other person.
- 33.5.4 'Non-RBA tax debt' means a primary or secondary tax debt but does not include an RBA deficit debt. A debit assessment for income tax or a debit net amount in respect to a tax period for the goods and services tax and the GIC payable as a result of paying these amounts after they are due for payment are all examples of non-RBA tax debts.
- 33.5.5 'Prima facie evidence' means evidence sufficient to establish a fact in the absence of any evidence from the opposing side.
- 33.5.6 'Primary tax debt' means any amount due to the Commonwealth directly under a taxation law, including any such amount that is not yet payable. Primary tax debts are usually allocated to an RBA where they then are combined with other primary tax debts, payments and credits to form the balance of that RBA. For example, a primary tax debt includes a debit assessment for income tax and the GIC that would accrue as a result of paying this amount after it is due for payment. An RBA deficit debt is also a primary tax debt.
- 33.5.7 'RBA' means a running balance account established under section 8AAZC TAA to keep account of the primary tax debts, payments and credits allocated to that RBA. For the purposes of establishing an RBA, GIC that has accrued in relation to non-RBA tax debts cannot be

allocated to an RBA (an RBA deficit debt is subject to GIC under section 8AAZF TAA).

- 33.5.8 'RBA deficit debt' means a balance on an RBA in favour of the Commissioner, where the total amount of due and payable primary tax debts allocated to the RBA are greater than the payments and credits allocated to that RBA
- 33.5.9 'RBA surplus' means a balance on an RBA in favour of the entity where the primary tax debts allocated to the RBA are less than the payments and credits allocated to that RBA.
- 33.5.10 'Secondary tax debt' means an amount that is not a primary tax debt, but is due to the Commonwealth in connection with a primary tax debt (eg an amount due to the Commonwealth under an order of a court made in a proceeding for recovery of a primary tax debt).
- 33.5.11 'Tax debt' means a primary tax debt or a secondary tax debt. It includes grant scheme debts administered under the provisions of the *Products Grants and Benefits Administration Act 2000* but not grant scheme debts under the *Diesel and Alternative Fuel Grants Scheme Act 1999*.