

## ATO RECEIVABLES POLICY

### PART B The Collection of Taxation Debts

# Chapter 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 or misleading, please advise the Tax Office.*

**Date of effect:** 24 July 2008 (This version replaces the 2006 version.)

**Key legislation:** Division 2 of Part IIB of the *Taxation Administration Act 1953*

## PURPOSE

1. This chapter deals with:
  - the establishment of running balance accounts (RBAs)
  - the use of RBAs in the legal collection process.

## INTRODUCTION

2. The establishment of RBAs is provided for in Division 2 of Part IIB of the *Taxation Administration Act 1953* (TAA). The Commissioner has been able to establish separate RBAs to account for the primary tax debts of pay as you earn (PAYE), prescribed payment system (PPS), reportable payment system (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 (GST) and pay as you go (PAYG) 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.
3. Specifically the law provides for:
  - the establishment of RBAs for any primary tax debt – section 8AAZC of the TAA
  - the allocation of tax debts to RBAs – section 8AAZD of the TAA
  - the allocation of payments and credits to RBAs – sections 8AAZLA and 8AAZLB of the TAA
  - the imposition of the general interest charge (GIC) on an RBA deficit debt – section 8AAZF of the TAA, and
  - the Commissioner to recover an RBA deficit debt – sections 8AAZH, 8AAZI, 8AAZJ and 255-5 of the TAA.

4. 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
- wine equalisation tax
- luxury car tax
- PAYG withholding
- PAYG instalments
- fringe benefits tax instalments (FBT instalments)
- deferred company instalments (DCIN), and
- fuel tax law liabilities.

An IAS is used to notify:

- PAYG withholding
- PAYG instalments
- FBT instalments, and
- DCIN liabilities.

5. 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.
6. 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.
7. 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.

## **POLICY**

8. 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.
9. 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.

10. 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.
11. 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.
12. 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.
13. 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.
14. 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.
15. 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 of the TAA
  - an insolvency administration
  - a court judgment.
16. 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.

## **TERMS USED**

Entity – 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.

GIC – the general interest charge worked out in accordance with Division 1 of Part IIA of the 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.

Non-RBA tax debt – 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.

Prima facie evidence – evidence sufficient to establish a fact in the absence of any evidence from the opposing side.

Primary tax debt – 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.

RBA – a running balance account established under section 8AAZC of the 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 of the TAA).

RBA deficit debt – 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.

Secondary tax debt – an amount that is not a primary tax debt, but is due to the Commonwealth in connection with a primary tax debt (for example, an amount due to the Commonwealth under an order of a court made in a proceeding for recovery of a primary tax debt).

Tax debt – 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*.

### **Chapter 33 - Archived version**

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