PS LA 2011/4 - Collection and recovery of disputed debts

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PS LA 2011/4
Collection and recovery of disputed debts

This Law Administration Practice Statement provides guidelines for managing the collection and recovery of disputed debts.

This Practice Statement is an internal ATO document and an instruction to ATO staff.

Definitions

1. The following terms are used in this Practice Statement:

Administrative overpayment means an amount that the Commissioner has paid to a person by mistake, being an amount to which the person is not entitled.[1]

Disputed debt means a tax-related liability that is subject to an objection, review or appeal under Part IVC of the TAA. It includes both the disputed principal tax debt and related amounts. These related amounts include tax shortfall penalty, shortfall interest charge (SIC) and general interest charge (GIC).

Disputed principal tax debt means the primary tax at the centre of a tax dispute. It includes amounts such as assessed income tax, assessed net amounts of goods and services tax (GST), and assessed fringe benefits tax. It does not include other related amounts that may arise from the making of an assessment, such as tax shortfall penalty, SIC and GIC.

GIC means the general interest charge dealt with in Part IIA of the TAA.

Recovery action for the purposes of this Practice Statement means:

- legal action in which the Commissioner sues in a court of competent jurisdiction to recover a tax-related liability
- the issue of a garnishee notice
- the issue of a departure prohibition order
- seeking or actioning writs or warrants of execution, or warrants of seizure and sale
- pursuing freezing orders or Mareva injunctions preventing debtors dealing with assets, and
- the use of equitable remedies or declaratory and restitution orders.

SIC means the shortfall interest charge that applies to shortfalls of income tax, minerals resource rent tax, petroleum resource rent tax, excess non-concessional contributions tax, and tax under Division 293 of the *Income Tax Assessment Act 1997* (ITAA 1997). Liability to SIC is covered in Division 280 of Schedule 1 to the TAA.

Tax-related liability means any pecuniary liability to the Commonwealth arising directly under a taxation law (including a liability the amount of which is not yet due and payable). It encompasses all types of taxes, penalties, and additional charges for late payment. A table which lists the various tax-related liabilities is in section 250-10 of Schedule 1 to the TAA.

50/50 arrangement means an administrative arrangement between the Commissioner and a taxpayer whereby the taxpayer pays a minimum of 50% of the disputed principal tax debt. In return the Commissioner defers recovery of the balance of the disputed debt under section 255-5 of Schedule 1 to the TAA and agrees to partially remit the GIC which would otherwise be payable. This arrangement is subject to certain conditions as outlined in this Practice Statement.

General approach

2. A tax-related liability that is due and payable is a debt due to the Commonwealth and payable to the Commissioner.[2] The Commissioner can take action to recover such a debt even where it is disputed, that is, where the taxpayer has lodged an objection, application for review or appeal disputing the liability.[3]

3. The ability of the Commissioner to recover a tax debt where a dispute is on foot is an important feature of the tax system. It ensures that disputes are not used as a mechanism to inappropriately delay or frustrate the payment or recovery of tax, and it gives the community confidence that the right amount of tax is not only assessed but also collected.

4. Our approach to the collection of disputed debts considers each taxpayer's individual circumstances and the need to prevent those who do not pay on time from gaining an unfair financial advantage over those who do. The decisions and actions we take must be consistent with the commitments in our Charter.

5. While we expect tax debts to be paid on time, we recognise that taxpayers have the right to dispute

[1] Subsection 8AAZN(3) of the *Taxation Administration Act 1953* (TAA).

[2] Section 255-5 of Schedule 1 to the TAA.
[3] Sections 14ZZM and 14ZZR of the TAA.

their liability through the objection, review and appeal processes. This means that additional considerations apply in managing the collection of disputed debts over and above those that apply when a debt is not disputed, and we tailor our approach accordingly.

6. Where there is a dispute about a taxpayer's liability, any recovery action we take is based on an assessment of the risk the case poses to the revenue, taking into account the taxpayer's individual circumstances. This risk assessment is a fundamental part of the disputed debt process and continues during the various stages of a dispute, while a disputed debt remains unpaid.

7. In cases where a taxpayer's tax affairs are straightforward and the risk to the revenue is low, we will not take recovery action in respect of a disputed debt while an objection, review or appeal is on foot:

8. Taxpayers in this position may wish to enter into a 50/50 arrangement to reduce their exposure to GIC (as discussed at paragraphs 22 to 41 of this Practice Statement). On the other hand, we generally encourage large corporate groups to either pay their disputed debts or enter into a 50/50 arrangement. This is due to the significant contribution that large corporate groups make to the Australian economy and the critical role they play in supporting community confidence in the tax system.

9. In some cases, based on a careful risk assessment, we may determine that the risk associated with a case is serious enough that it necessitates action to secure the payment of the disputed debt before the dispute is resolved. In such cases, we will generally work with the taxpayer to explore other options as an alternative to initiating recovery action. These options may include agreeing to the payment of the debt by instalments and, in exceptional cases, to the provision of security in lieu of payment until the dispute is finalised. These arrangements can provide an appropriate level of protection to the revenue without the need to resort to recovery action.

10. It is rare for the Commissioner to initiate recovery action for a disputed debt. However, in a small number of cases, based on a careful risk assessment, action to recover all or part of a disputed debt may be taken. This will typically happen in high-risk cases where there are links to organised crime, phoenixing or other fraudulent activity, or where there is a serious concern about the dissipation of assets or the ability to pay in the event that the taxpayer is unsuccessful in the dispute. It may also happen where the taxpayer's objection is frivolous or without merit and the dispute is being used to inappropriately delay or frustrate the recovery of tax.

11. In all cases we encourage taxpayers to talk to us about their individual circumstances where they have a disputed debt that remains unpaid after the due date.

We are committed to improving the experience of taxpayers when dealing with us and this is especially so for taxpayers who are in a dispute with us. We recognise that when disputes are not managed well the effects can be long-lasting and costly. Our approach to the collection of disputed debts aims to provide the most appropriate outcome in the circumstances of each case.

Risk assessment process

12. Any action that we take in managing a disputed debt is based on an assessment of the risk that the case poses to the revenue, taking into account the taxpayer's individual circumstances. The concept of risk to the revenue covers **capacity to pay** but extends to other considerations as well. For example, depending on the taxpayer's circumstances it may include consideration of the taxpayer's behaviour, whether there is a genuine concern about the dissipation of assets, or whether the taxpayer's objection or appeal is reasonably perceived to be used as a delay tactic.

13. The ATO's risk assessment process is based on the principles contained in Law Administration Practice Statement 2011/6 *Risk management in the enforcement of lodgment obligations and debt collection activities*.

14. In undertaking a risk assessment, we consider the factors contained in paragraph 22 of PS LA 2011/6. These include, but are not limited to:

- the subject matter of the dispute including whether it may reflect a non-compliant attitude to taxation and superannuation laws
- whether a minimum of 50% of the debt in dispute has been paid (which would indicate good faith) reducing the GIC and lowering the perceived level of risk (see '50/50 arrangement' at paragraphs 22 to 41 of this Practice Statement), and
- any significant change in the taxpayer's financial position since the raising of the debt (that is, any evidence of dissipation or alienation of assets).

15. We also consider additional factors such as:

- the taxpayer's compliance history
- the size of the disputed debt and any other tax debts that remain unpaid
- the taxpayer's willingness to provide information necessary for the resolution of the dispute
- the taxpayer's willingness to cooperate with the ATO

- the extent to which the taxpayer's rights are being genuinely pursued so as to advance the dispute in a timely manner
- the merits of the taxpayer's case including whether the subject matter of the dispute has been decided by a court or tribunal in the Commissioner's favour in a substantially similar case
- the age of the debt in dispute
- the growth of the debt by accumulation of GIC
- whether the taxpayer's case is frivolous or without merit[4]
- whether there are reasonable grounds to think that the dispute is being used to inappropriately delay or frustrate the recovery of tax
- whether the action of a taxpayer may be prejudicial to their ability to pay or the Commissioner's recovery position (for example, restructuring of affairs)
- whether the taxpayer is otherwise up to date with its tax lodgment and payment obligations
- whether the taxpayer has the financial capacity to meet its tax-related liabilities, or to comply with an ongoing payment arrangement, and
- whether the dispute has been commenced at the later stages of recovery, as this may indicate a risk to collection.

16. The Commissioner will initiate recovery action prior to the determination of an objection if the circumstances of the case indicate an unacceptable level of risk. Similarly, where a review or appeal is on foot, recovery action will be initiated before the dispute is finalised if the circumstances of the case indicate an unacceptable level of risk. Situations where this may occur include where:

- there is evidence that the taxpayer is involved in organised crime, phoenixing, or other fraudulent activity
- there is a serious concern about the dissipation of assets or the taxpayer's capacity to pay in the event that the taxpayer is unsuccessful in the dispute, or
- the taxpayer's objection is frivolous or without merit and the dispute is being used to inappropriately delay or frustrate the payment of tax.

17. The risk assessment process is a fundamental part of managing disputed debts and an assessment is regularly revisited throughout all stages of a dispute while a debt remains unpaid. The fact that a case is initially determined to be low risk does not mean that it may not be determined to be high risk at a later stage. Additional facts or considerations may emerge during a dispute which indicate that recovery action is necessary.

18. For example, the Commissioner might initially risk-assess the non-payment of a debt in relation to a lodged objection as acceptable. However, during the objection process, the objecting taxpayer may act inconsistently with the proper and timely advancement of the dispute, for example, by making repeated extension requests or failing to provide evidence or information reasonably required resulting in delay. The lack of genuine pursuit by the taxpayer of its objection rights may, in turn, factor into a reassessment of the debt recovery risk as unacceptable.

Low-risk cases

19. The majority of cases where there is a disputed debt involve taxpayers whose tax affairs are straightforward and the risk to the revenue is low. In such cases we will not take action to recover a disputed debt while an objection, review or appeal is on foot.

20. However, the law incentivises the prompt payment of tax debts by imposing GIC on debts which remain unpaid. This includes tax debts that are disputed. GIC continues to accrue on such debts even while a dispute is on foot.

21. We encourage taxpayers with a disputed debt to talk to us about their circumstances and about entering into a 50/50 arrangement to manage their disputed debt, including their exposure to GIC.[5]

50/50 arrangement

22. Subject to a risk assessment, we will generally allow a taxpayer with a disputed debt to enter into a 50/50 arrangement to limit their exposure to GIC.

23. A 50/50 arrangement can provide a mutually beneficial outcome for the taxpayer and the Commissioner. For the taxpayer, it minimises their

[4] The ATO may consider the case to be frivolous or without merit in instances where there is settled case law on an issue in dispute, or where the taxpayer does not present sufficient evidence to demonstrate they have an arguable case. There is a distinction to be made between these cases and genuine disputes where the ATO does not agree with the taxpayer's arguments.

[5] Where tax is paid and the dispute is resolved in favour of the taxpayer (in whole or in part), the Commissioner will pay interest on overpayments under the *Taxation (Interest on Overpayments and Early Payments) Act 1983*, in respect of certain types of tax which have been overpaid. See Law Administration Practice Statement PS LA 2011/23 *Credit interest.*

exposure to GIC which would normally be payable on an amount of a disputed debt that remains unpaid. For the Commissioner, it helps protect the revenue by ensuring that part of the disputed principal tax debt is collected in a timely way.

24. A 50/50 arrangement requires the taxpayer to:

- pay all undisputed tax debts and a minimum of 50% of the disputed principal tax debt
- cooperate fully in providing any requested information necessary for the resolution of the dispute within 28 days of the request or another agreed timeframe, and
- pay the whole of any subsequently arising tax-related liabilities that are not in dispute and for which no other deferral of recovery or payment arrangement has been granted.

25. In return, the Commissioner will:

- defer recovery under section 255-5 of Schedule 1 to the TAA of the unpaid balance of the disputed debt until 14 days after (as applicable)
  - the Commissioner determines the taxpayer's objection
  - the relevant tribunal or court hands down its final decision[6], or
  - the Commissioner determines that the risk posed by the case requires recovery action to be taken (see paragraphs 49 to 54 of this Practice Statement), and
- remit 50% of the GIC that accrues on the unpaid balance of the disputed debt as described at paragraph 30 of this Practice Statement (this will increase to remission at the rate of 75% if the dispute is subject to the Test Case Litigation Program).

26. In some cases we may encourage a taxpayer with a disputed debt to enter into a 50/50 arrangement. We generally take this approach with large corporate groups who make a significant contribution to the Australian economy and play a critical role in supporting community confidence in the tax system. A taxpayer can also submit an offer to enter into a 50/50 arrangement to the Commissioner. In either case the same considerations apply.

27. A 50/50 arrangement is generally given effect to by way of correspondence from the Commissioner. The correspondence will detail the circumstances where the Commissioner may revoke the arrangement in accordance with paragraphs 37 to 38 of this Practice Statement.

28. The provision of security in lieu of payment will not satisfy the requirements of a 50/50 arrangement.

29. The amount of any withholding tax remitted by the taxpayer will not be taken into account in setting the amount of the disputed principal tax debt to be paid under a 50/50 arrangement.

GIC imposed or remitted under a 50/50 arrangement

30. Where the Commissioner and a taxpayer enter into a 50/50 arrangement, the taxpayer will be liable for the GIC as follows:

- The disputed debt will be subject to GIC at the full statutory rate from the due date for payment until, but not including, the day the taxpayer pays a minimum of 50% of the disputed principal tax debt.
- For the period starting on the day the taxpayer pays a minimum of 50% of the disputed principal tax debt, and ending 14 days after (as applicable)
  - the Commissioner determines the taxpayer's objection, or
  - the relevant tribunal or court hands down its final decision

  the Commissioner will remit 50% of the GIC (75% if the dispute is subject to the Test Case Litigation Program) that accrues on the unpaid balance of the disputed debt during that period. The Commissioner will generally remit the relevant amounts after the dispute has been finalised.

From the 15th day after (as applicable):

- the Commissioner determines the taxpayer's objection, or
- the relevant tribunal or court hands down its final decision

the unpaid balance of the disputed debt will be subject to GIC at the full statutory rate until paid in full.

GIC deductible under a 50/50 arrangement

31. Section 25-5 of the ITAA 1997 provides for the deductibility of GIC. Conversely, subsection 20-25(2A) of the ITAA 1997 requires the taxpayer to return any amount of GIC remitted as recouped income. Under

[6] Where a taxpayer lodges an application for review or an appeal, the Commissioner will generally extend any 50/50 arrangement in place during the objection stage until 14 days after a final decision is handed down by the relevant tribunal or court.

section 20-25 of the ITAA 1997 a credit adjustment to GIC is treated as recouped income.[7]

32. Taxpayers whose disputed debt is subject to a 50/50 arrangement will effectively be entitled to claim a deduction for 50% of the total amount of GIC incurred over the life of the arrangement. Where the Commissioner remits the interest at the end of the arrangement, taxpayers who wish to claim a deduction for GIC, when completing their tax return, will need to:

- deduct the full amount of GIC accrued during the particular financial year, and
- return the amount remitted under the 50/50 arrangement as recouped income in the financial year in which the remission occurs.

Exclusions from 50/50 arrangements

33. A taxpayer is not eligible for a 50/50 arrangement where:

- the dispute relates to a debt which arose under the *Superannuation Guarantee (Administration) Act 1992*. This is because a 50/50 arrangement in such circumstances may negatively impact on employee entitlements
- the dispute relates to a diverted profits tax (DPT) assessment[8]
- the tax officer who has responsibility for determining the taxpayer's objection considers it to be frivolous or without merit, or
- the proposed 50/50 arrangement would disadvantage the revenue or is not otherwise appropriate having regard to the facts and circumstances of the case.

34. Where the tax officer considers that the proposed 50/50 arrangement would disadvantage the revenue, the tax officer should consider proposing an alternative arrangement. The alternative arrangement may involve the taxpayer paying a larger portion of the disputed debt in order to ensure an appropriate amount of revenue is collected.

Example

In the 2021 income year, Company Ltd is issued with a notice of amended assessment in respect of an income tax shortfall for the 2002 income year.

By operation of law, GIC is imposed from the original due date for payment of the 2002 assessment. Company Ltd is entitled to a deduction in the 2021 income year for GIC in respect of the tax shortfall amount, referable to the period from the 2002 income year to the 2021 income year. The result of this is that Company Ltd is put into a loss position in the 2021 income year which it can use to reduce its taxable income in subsequent years.

Company Ltd objects against the amended assessment and offers to enter into a 50/50 arrangement with the Commissioner. Under the proposed 50/50 arrangement, upon payment of 50% of the disputed principal tax debt, the Commissioner would defer recovery under section 255-5 of Schedule 1 to the TAA of the unpaid balance of the disputed debt.

In determining whether to accept the arrangement, the responsible tax officer considers that the deduction available to Company Ltd in respect of GIC accrued over the 2002 to 2021 period greatly exceeds the amount of the disputed principal tax debt that would be paid under a standard 50/50 arrangement.

The responsible tax officer proposes an alternative arrangement whereby the taxpayer pays a larger portion of the disputed debt, to ensure that an appropriate amount is collected having regard to the size of the GIC deduction available in the 2021 income year.

35. Where the disputed debt is equal to or greater than $50 million, before proceeding with a 50/50 arrangement, the responsible tax officer must first obtain formal approval from both an:

- Assistant Commissioner in Client Engagement Group, and
- Assistant Commissioner in Lodge and Pay.

36. As part of obtaining this approval the tax officer must show that entering into a 50/50 arrangement will not disadvantage the revenue and is otherwise appropriate having regard to the facts and circumstances of the case.

When a 50/50 arrangement may be refused or revoked

37. A 50/50 arrangement will be refused or revoked and recovery action may be initiated even before a dispute is finalised where there are reasonable grounds for the Commissioner to believe that the associated risk requires such action. Situations where this may occur include those detailed at paragraph 16 of this Practice Statement.

38. The effect of revoking a 50/50 arrangement is that the deferral of recovery action under section 255-5 of Schedule 1 to the TAA will end. Any amounts paid

[7] For further discussion of the deductibility and assessability of GIC, see Law Administration Practice Statement PS LA 2011/12 *Remission of general interest charge*.

[8] Section 155-5 of Schedule 1 to the TAA.

towards the debt will not be refunded and there will be no remission of GIC.

Offsetting of credits when a 50/50 arrangement is in place

39. Offsetting occurs when a taxpayer's credit or running balance account surplus is applied to another liability of the taxpayer. We are required to offset all credits a taxpayer becomes entitled to, except in specific situations. In these situations, we have the discretion to refund rather than offset credits.

40. Relevantly, we have the discretion to refund a credit in situations where we have deferred recovery under section 255-5 of Schedule 1 to the TAA.[9] For further details about our approach to offsetting, see Law Administration Practice Statement PS LA 2011/21 *Offsetting of refunds and credits against taxation and other debts*.

41. In relation to credits, such as those arising from subsequent income tax assessments or activity statements, the Commissioner will generally exercise the discretion to refund such credits rather than offset them against the unpaid balance of a disputed debt where the taxpayer has a deferral of recovery in place under a 50/50 arrangement. However, if there is new evidence since the deferral was granted that there is an unreasonable risk to revenue, the credit should be offset.[10]

Alternatives to recovery action

42. If as part of our ongoing risk assessment process, we identify that a case poses a significant risk to the revenue, we may request a submission from the taxpayer regarding the options available to mitigate the risk.

43. Where a taxpayer wishes to provide a submission, we will generally require a full and true disclosure of the financial position of the taxpayer and all associated entities upon which the taxpayer can reasonably be expected to rely for financial assistance. In addition to providing this information, the taxpayer may be asked to disclose information such as the name of the owners of properties where the taxpayer resides or conducts business.

44. Where the risk associated with a case cannot be mitigated to an acceptable degree, we may take action to secure payment of a disputed debt before the dispute is finalised. However, in such cases we will consider the following options as alternative to initiating recovery action:

- the payment of the disputed debt by instalments
- the payment of 50% of the disputed debt in a lump sum with the balance to be paid by instalments
- the payment of 50% of the disputed debt in a lump sum together with the provision of acceptable security for the balance, and
- the provision of acceptable security for the disputed debt in its entirety.

45. The responsible tax officer must obtain approval from an EL2 officer in Lodge and Pay before taking any action to secure payment of a disputed debt before the dispute is finalised.

46. Acceptance of any of the options provided in paragraph 44 of this Practice Statement is not to be considered as entering into a 50/50 arrangement and will not automatically entitle the taxpayer to the remission of GIC. However, consideration should be given to remission whenever it is requested by the taxpayer. For further details about the remission of GIC see PS LA 2011/12.

Securities

47. Where action is taken to secure payment of a disputed debt before the dispute is finalised, tax officers must first seek to have the debt addressed by payment, or an agreement to pay the disputed debt by instalments. Securities will only be considered in lieu of payment where the tax officer determines that the taxpayer does not have the capacity to repay the debt within a reasonable period of time, or the taxpayer is experiencing exceptional circumstances (see Law Administration Practice Statement PS LA 2011/14 *General debt collection powers and principles*).

48. However, given action is only taken to secure payment where the taxpayer presents as higher risk, it may also be appropriate to obtain security for part of the debt, where payment for a portion of the disputed debt is made.

Recovery action in high-risk cases

49. In a small number of cases, based on a careful risk assessment, the level of risk associated with the case may require the Commissioner to take action to recover all or part of a disputed debt. Where this happens, such action will be taken by the most appropriate means available taking into account the circumstances of the case.

[9] Subsection 8AAZL(3) of the TAA.
[10] See PS LA 2011/21.

50. Examples of the type of action the Commissioner may take to recover a disputed debt include:

- in the case of a corporation, issuing a statutory demand in respect of the debt
- commencing proceedings in court to obtain judgment in respect of the debt
- obtaining a writ or warrant of execution to enforce judgment in respect of the debt
- seeking a freezing order or Mareva injunction to prevent the risk that the judgment (or prospective judgment) of the court will be wholly or partly dissatisfied, and
- applying to appoint a provisional liquidator.

For further details on enforcement and insolvency actions, see Law Administration Practice Statement PS LA 2011/18 *Enforcement measures used for the collection and recovery of tax-related liabilities and other amounts* and Law Administration Practice Statement PS LA 2011/16 *Insolvency – collection, recovery and enforcement issues for entities under external administration*.

51. The responsible tax officer must obtain approval from an EL2 officer in Lodge and Pay before taking recovery action in respect of a disputed debt.

52. In deciding whether to proceed with recovery action in a particular case, in addition to considering the matters outlined at paragraphs 13 to 16 of this Practice Statement, we will consider any adverse consequences to the taxpayer that may flow from recovery action being instituted prior to the finalisation of the dispute. Examples of adverse consequences include:

- recovery action would leave the taxpayer with insufficient funds to progress their underlying dispute or meet legal fees in respect of those processes
- in the case of an individual, the recovery action would cause the taxpayer serious hardship[11], or
- recovery action would significantly impact the taxpayer's ability to continue trading or conduct their business.

53. However, these considerations need to be carefully balanced against the risk factors that resulted in the case being deemed high-risk, and the Commissioner's obligation to ensure that taxpayers pay their tax-related liabilities.

54. Where we have already commenced recovery proceedings, it is also open to the taxpayer to seek a stay of the proceeding or a stay of execution of the judgment where the examples in paragraph 52 of this Practice Statement arise.

Objections after the commencement of recovery action

55. In some cases, an objection may be lodged after we have commenced action to recover a tax debt. In such cases the taxpayer's objection may be accompanied by a request for the Commissioner to stop recovery action while the objection is being determined.

56. Where such a request is made, we will consider this as a request to defer recovery action under section 255-5 of Schedule 1 to the TAA. At this point, we will undertake a risk assessment as to whether or not the recovery action should continue. In doing so, a tax officer must take into account the factors outlined at paragraphs 13 to 16 of this Practice Statement and reassess whether or not recovery action remains appropriate.

57. Where a risk assessment results in the Commissioner determining not to proceed with recovery action, the Commissioner may discontinue recovery action in favour of an administrative arrangement to address the disputed debt. This arrangement could be a 50/50 arrangement, or an alternative arrangement detailed at paragraphs 42 to 48 of this Practice Statement.

58. Where the taxpayer and the Commissioner cannot agree to an administrative arrangement, the taxpayer may seek to have the recovery proceeding, or the enforcement of the judgment[12], stayed pending determination of the objection.

Cases involving the Mutual Agreement Procedure

59. In cases where the Commissioner makes a transfer pricing or profit reallocation adjustment, the taxpayer may seek Competent Authority assistance under the Mutual Agreement Procedure (MAP) article contained in Australia's double tax agreements, to attempt to have the matter resolved in consultation with the other tax jurisdiction.

60. Where a taxpayer initiates the MAP in respect of such an adjustment, we will treat the relevant tax debt as a disputed debt for the purposes of this Practice Statement. Where the MAP is initiated, the responsible

[11] See further Law Administration Practice Statement PS LA 2011/17 *Debt relief, waiver and non-pursuit*.

[12] Where in the case of a corporate taxpayer the Commissioner has issued the taxpayer a statutory demand, the taxpayer may make an application to the court to set aside the statutory demand on the basis it has a genuine dispute to the underlying liability.

tax officer must follow the principles set out in this Practice Statement in managing the collection and recovery of the disputed debt.

61. For information about the remission of GIC which has accrued during the MAP, see Mutual agreement procedure.

Administrative Appeals Tribunal orders in relation to small business taxation assessment decisions

62. In cases before the Small Business Taxation Division of the Administrative Appeals Tribunal (AAT)[13], the taxpayer may request that the AAT make orders staying or otherwise affecting the operation or implementation of a reviewable objection decision that relates to a small business taxation assessment decision.[14] For example, the AAT may order the Commissioner to not sue in a court or to not issue a garnishee notice to recover a debt under review.

63. Where the taxpayer seeks such orders, the taxpayer must satisfy the AAT that the application is not frivolous, vexatious, misconceived, lacking in substance or otherwise intended to unduly impede, prejudice or restrict the proper administration or operation of a taxation law in the context of both the particular circumstances of the decision under review and the overall taxation system.[15]

64. In considering the application, relevant considerations for the AAT may include:

- the prospects of success of the underlying application for review
- the financial consequences for the applicant of the refusal of a stay
- the public interest
- the consequences for the ATO in carrying out its functions
- whether the application for review will be rendered null if a stay were not granted, and
- any other matters the AAT considers relevant.[16]

We will seek to assist the AAT by providing any relevant information.

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	OperationalPolicyAssuranceandLawWorkManagement@ato.gov.au

9 November 2023

Part	Comment
Throughout	Updated to new template format; added in footnote references; repositioned several paragraphs.
Throughout	The Practice Statement clarifies as a general principle that the Commissioner will generally not seek to recover a debt when there is a dispute, save in exceptional cases where there is a significant risk to revenue (generally in high-risk cases).
Paragraph 1	Included definition of 'recovery action' for the purposes of this Practice Statement.
Paragraph 8	Included a statement regarding our general encouragement for large corporate groups to either pay their disputed debts or enter into a 50/50 arrangement.
Paragraphs 12 to 18	Included greater discussion around the Commissioner's risk assessment process.
Paragraphs 22 to 41	Included further guidance around 50/50 arrangements.
Paragraph 29	Included new statement outlining that any withholding tax remitted by the taxpayer will not be taken into account in setting the amount of the disputed principal tax debt to be paid under a 50/50 arrangement.

[13] Where the application for review was filed from 13 December 2022.
[14] See section 41 of the *Administrative Appeals Tribunal Act 1975* as modified by section 14ZZH of the TAA.
[15] See section 14ZZH of the TAA.
[16] See paragraph 4.26 of the Explanatory Memorandum to the Treasury Laws Amendment (2022 Measures No. 2) Bill 2022; *Scott and Australian Securities and Investment Commission* [2009] AATA 798.

Part	Comment
Paragraph 33	Included DPT in exclusions from 50/50 arrangement.
Paragraph 35	Included a directive that where the disputed equal to or greater than $50 million, before proceeding with a 50/50 arrangement the responsible tax officer must first obtain formal approval from both an Assistant Commissioner from Client Engagement Group and an Assistant Commissioner from Lodge and Pay.
Paragraphs 39 to 41	Included further guidance around offsetting credits.
Paragraphs 42 to 46	Included further information regarding alternatives to recovery action.
Paragraphs 45 and 51	Included that approval from an EL2 officer in Lodge and Pay is required before taking action in respect of a disputed debt.
Paragraphs 47 to 48	Included discussion around taking of securities.
Paragraphs 45 and 52	Updated content regarding serious hardship to remove implication that a corporate taxpayer can suffer serious hardship.
Paragraphs 62 to 64	Included discussion of the application of new AAT orders in relation to small business taxation assessment decisions.
Previous paragraphs 16 to 21	Removed discussion of interest on overpayment regime in body of Practice Statement.
Previous paragraphs 69 to 72	Removed discussion of significant delay on the part of the ATO having 'negligible weight' on remission.

26 February 2015

Part	Comment
Paragraph 15	Corrected reference to paragraph 43.
Paragraph 39	Updated for clarification.
Paragraph 40	Corrected reference to paragraph 43.

23 December 2014

Part	Comment
General	Updated to meet ATO style guide requirements; added in footnote references; repositioned paragraphs dealing with interest on overpayment regime.
Various	Revised policy position – where a 50/50 arrangement is acceptable, the taxpayer will only be required to pay 50% of the principal tax component of the disputed debt to receive a deferral of legal action and a partial remission of GIC imposed on remaining balance of disputed debt (which includes associated shortfall penalties, SIC and GIC).
Terms used	Included definition for shortfall interest charge.
New paragraph 15 and paragraph 40 (previously 38)	Revised policy position - At review or appeal stage, the Commissioner will seek to enforce collection of any unpaid disputed debt unless a formal deferral of recovery action has been agreed to with the taxpayer, subject to a risk assessment.
New paragraphs 37 to 38	Explain the tax treatment of the GIC incurred and remitted under a 50/50 arrangement.
Paragraph 39 (previously 37)	Included a footnote to reference the ATO external website and documents on the independent internal review process.

Part	Comment
Paragraphs 43 and 45 (previously 41 and 43)	Explanation of conditions for deferral of recovery action.

References

	ITAA 1997 20-25 ITAA 1997 20-25(2A) ITAA 1997 25-5 ITAA 1997 Div 293 TAA 1953 8AAG(5)(a) TAA 1953 8AAZL(3) TAA 1953 8AAZN(3) TAA 1953 14ZZH TAA 1953 14ZZM TAA 1953 14ZZR TAA 1953 Sch 1 155-5 TAA 1953 Sch 1 250-10 TAA 1953 Sch 1 255-5 TAA 1953 Sch 1 255-10 TAA 1953 Sch 1 Div 280 SGAA 1992 Administrative Appeals Tribunal Act 1975 41 Taxation (Interest on Overpayments and Early Payments) Act 1983
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