

**Taxpayers AUSTRALIA INC**

**Superannuation AUSTRALIA**

(A wholly owned subsidiary of Taxpayers Australia Inc)



## Submission to the Inspector-General of Taxation

### Review into the Australian Taxation Office's approach to debt collection

By Taxpayers Australia Inc.  
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## Introduction

We wish to thank the Inspector-General of Taxation for the opportunity to provide a submission into this review.

Taxpayers Australia has a membership in excess of 4000, largely consisting of tax agents, concentrated amongst smaller accounting and tax practices across Australia. This submission has been prepared as a result of face to face consultations undertaken with members in Melbourne and Perth through our tax discussion groups and through email submissions from other members across the country.

In interpreting the Inspector-General's terms of reference, we have focused on those areas which generated the greatest degree of member comment and also those areas where we as an organisation have the strongest views. We have not sought to cover all the terms of reference. Some of the comments we have made have multiple applications across various questions raised by the Inspector-General.

## The ATO's strategies to manage tax debts

It appears to Taxpayers Australia that the high level of ATO debt is largely a problem of the ATO's own making.

Ingrained within our tax system is a culture which is dependent on the reporting of transactions after they have occurred by taxpayers themselves. This means that reporting for tax purposes by definition happens after the event, once taxable income has been incurred. In many cases, reporting takes place many months after a transaction has been completed.

We note that many overseas jurisdictions have a much more advanced system of third party reporting and tax withholding than Australia does. In the UK for instance, all bank interest is paid to taxpayers with a component of income tax already deducted. The same applies to dividends. Payments of wages and salaries are made to employees net of tax which, thanks to a sophisticated system of PAYE coding, will equate almost to the penny to the actual amount of tax due.

The implications of third party reporting and withholding are that tax debts never accrue in the first place. Instead, as soon as a transaction is undertaken, the payer of the source of income remits tax to the tax authority, with the net amount paid to the taxpayer.

Australia should be moving much more decisively towards such a system. Whilst recognising that there is a hit-and-miss system of withholding against salary and wage income, the capacity to increase withholding against other sources of income, including rental income and even capital gains, should be well within the capacity of current technology.

Such a system would ensure that levels of tax debt are minimised with consequent efficiency savings through not having to maintain such an intensive focus on debt collection. In terms of making the current system work, the key factors which should be taken into account when determining the appropriate strategy to use in pursuing debts should be:

- 1 The amount of the debt
- 2 The age of the debt
- 3 Previous debt history
- 4 Previous broader tax compliance history
- 5 Taxpayer circumstance (personal, business, financial, etc)

Whilst this list might appear obvious, it isn't always clear that these factors are taken into account, or given sufficient weight by the ATO. In particular, we receive regular anecdotal feedback that the ATO appears to put disproportionate effort into collecting relatively modest debts, whilst leaving large debts for other taxpayers untouched.

No doubt the ATO will argue that it has a significant risk assessment system for determining which debts are chased and the priority which those debts receive. This may well be the case but it would be helpful to better understand the way in which that risk methodology actually works in order to help clarify some of the seemingly odd choices which the ATO sometimes makes about who to pursue and how to pursue.

Ultimately, the aim of the ATO's debt collection activities must be the collection of the maximum amount of debt in such a way that the ability of affected taxpayers to generate future income (and therefore tax) is not jeopardised. Over recent years, we have observed that the ATO's strategies to collect debt have become more sophisticated. In particular, the use of behavioural economics to tailor the content of debt letters towards the taxpayer's perceived risk profile is welcome and means that the previous "one size fits all" approach is less widely used.

Tailoring correspondence in this way means that messages can be better targeted at the recipient, recognising that the behaviours which drive taxpayers differ and therefore the treatment they receive must also differ. For example, a taxpayer who is not complying because of temporary financial difficulty should receive a very different treatment to a taxpayer who has deliberately set out to avoid paying a debt.

It is not clear to what extent the use of behavioural economics in this way is now standard practice rather than an experiment but the ATO should move rapidly towards increasing the use of these techniques, including increasing the ability to refine messages and differentiate between taxpayers based on the information which they already hold (which should be a good predictor of future behaviour).

## **The appropriateness and consistency of assistance that the ATO offers taxpayers**

The key feedback from members here was the perceived lack of consistency around the application of debt collection practices and around perceived variations in those procedures over time.

Several members noted that there appeared to have been a noticeable firming in the ATO's approach to debt collection over the last six years or so, pointing to the flexibility and understanding shown to businesses in particular in the immediate aftermath of the global financial crisis (GFC) and comparing that unfavourably to a harsher line taken with more recent debt cases. It was noted that this apparent change did not appear to equate in any way with overall levels of business confidence and sustainability, which in many sectors are no more favourable now than they were in 2008. Some members mused on the possibility that the harder line taken by ATO debt staff is tied to specific government policies to reduce the deficit, with some noting that the collection of outstanding debt represents an "easy win" for the government in its deficit cutting strategies.

Even in relation to current debt collection practices, it was commonly observed that there was inconsistency in the way these were applied. The level of flexibility and understanding appears to vary depending on the tax officer agents and clients are dealing with, and despite the introduction of models such as the propensity to pay/capacity to pay model which might be expected to systematise the process, practitioners noted that there is still a high degree of subjectivity exercised by individual debt officers which can fuel this inconsistency.

It was noted by members that the ability of the ATO to release debt for cases of serious financial hardship is rarely utilised, with members noting that the bar for accessing this debt release mechanism is set so high as to be meaningless. Reference was made to several recent AAT cases which have established that situations which any normal observer would regard as being cases of serious financial hardship were dismissed by the Tribunal, upholding the view of the ATO.

## **The ATO's use of third party debt collectors**

This was the subject that generated the greatest number of complaints from members. Views varied from a belief that the ATO should not subcontract part of their role to third parties at all, to an acceptance of the concept of the use of third parties but criticism of the policies, procedures and practices surrounding their use.

Those who believed the use of third parties was inappropriate consistently brought up the following points:

- 1 That the cost of using third parties was a "waste" of taxpayers money, with many forming the view (admittedly based on no more than supposition) that the third party telephony service would be substantially more expensive than the in-house ATO one.

- 2 That provision by the ATO of taxpayer information to external agencies represented a possible breach of taxpayer security. Whilst noting that in theory external agencies were bound by the same code of security as the ATO itself, some practitioners expressed a strong view that in practice the transmission of data from the ATO to an outside party and back again posed serious risks to the security of that data.

Those whose concerns were more around the application of the concept that the concept itself highlighted the following issues:

- 1 There was inconsistency with the way external collection agencies announced themselves to tax agents. Some announced themselves as being from the ATO, some from an external agency and some both in the same phone call (two members noted that the debt collectors announced themselves as from the ATO when first reaching the agent's reception desk before announcing themselves as from Dunn & Bradstreet – in this case – once they were put through to the agent).
- 2 There were several criticisms that the data external collection agencies appeared to be using was severely out of date, with a number of agents noting that they received phone calls regarding debts which had been cleared up to two weeks previously.
- 3 Several agents noted that the phone calls received from external debt collection agencies were noticeably less helpful than those received from the ATO, with the word "rude" used by a number of agents to describe the manner of the external operatives. Agents noted that whilst ATO staff were trained to differentiate between taxpayers and to understand each taxpayer's situation, the only prerogative of external agency staff was to collect the debt, come what may.