

# TAX TALKS

Australia's Tax News Podcast - The Podcast for Australian Tax Professionals

*The following information is only of a general nature and should not be taken as professional advice.*

## 10 | Tax Collection

Tax collection is an essential function of our tax system. Imagine if that wasn't working. It would undermine everything.

### Tax Collection

The collection of taxes happens through the withholding and subsequent remittance of taxes as well as direct payments. All tax payments go to the Australian Taxation Office (ATO). The ATO is the principle revenue collection agency of the Australian government. Collecting taxes and administering the federal taxation system is the ATO's main responsibility.

### Tax Administration

Tax collection doesn't happen in isolation. The lodgement of returns, the issue of assessments and the application of penalties and interest help to facilitate the collection of taxes. It all falls under the umbrella of tax administration.

The framework around tax collection is legislated in the Tax Administration Act 1953 (TAA), Schedule I to the TAA and Part IV of the Income Tax Assessment Act 1936 (ITAA 36).

### Part IV of the Income Tax Assessment ACT 1936

Part IV of ITAA36 covers lodgment of income tax returns, deemed and default assessments and amendments of assessments.

### Tax Administration Act 1953

The Tax Administration Act 1953 (TAA) covers a wide net of topics. From general interest charges (GIC) and penalties. Over the prosecution of taxation offences and reviews by the AAT. To objections and appeals all the way up to the Federal Court of Australia.

### Schedule I to the TAA

The collection, recovery and administration of income tax – in particular PAYGW and PAYGI – is in Chapter 2 Schedule 1 to the TAA.

Chapter 3 of Schedule 1 to the TAA deals with collection, recovery and administration of other taxes (including indirect tax assessment).

And Chapter 4 of Schedule 1 to the TAA contains generic collection and recovery rules. These generic collection and recovery rules give the Commissioner wide discretion. There is generally no right to object or appeal under Part IVC of the TAA against their decisions.

### **Commissioner's Collection Powers and Duty**

Division 340 of Schedule 1 to the TAA gives the Commissioner discretion to release individual taxpayers from payment of certain income tax obligations in cases of hardship. But only income tax.

The Commissioner has no discretion to release taxpayers from the payment of GST, PAYGW or higher education contributions. See paras 18 and 19 of Law PS LA 2011/17.

The Commissioner's powers and obligations are also governed by the *Public Governance, Performance and Accountability Act 2013* (Cth). This Act imposes a positive duty on the Commissioner to pursue each debt they are responsible for.

The Commissioner does not have any power to "write off" taxation liabilities in a commercial sense. Nor do the various state laws imposing limitation periods apply to Commonwealth taxation liabilities.

But on the other hand, the Commissioner has no obligation to pursue recovery of a debt at all costs. If they are satisfied it is not legally recoverable, they can stop the pursuit. Common examples are the bankruptcy of a debtor. Or when a company is wound up in insolvency.

The Commissioner may deem that a liability is uneconomic to pursue, and cease active recovery action. However, that liability remains on the Commissioner's books. So any future credits to which a taxpayer may become entitled may be applied in reduction of it.

### **Law Administration Practice Statements**

The main references for the ATO's policies regarding tax collection are a number of Law Administration Practice Statements (PS LAs).

These PS LAs replaced the ATO's Receivables Policy archived on 14 April 2011. So here are the PS LAs that govern the ATO's collection of taxes.

**PS LA 2011/2** – Administration of the penalty for the non-electronic notification (NEN penalty and the penalty for non-electronic payment (NEP penalty)

**PS LA 2011/3** – Compromise of undisputed tax-related liabilities and other amounts payable to the Commissioner

**PS LA 2011/4** – Collection and recover of disputed debts

**PS LA 2011/5** – Recovery of administrative overpayments

**PS LA 2011/6** – Risk management in the enforcement of lodgment obligations and debt collection activities

**PS LA 2011/7** – Settlement of debt litigation proceedings

**PS LA 2011/8** – The registration of entities

**PS LA 2011/9** – The registration of entities in the BAR

**PS LA 2011/10** – Waiver of tax-related liabilities in proceeds of crime matters

**PS LA 2011/11** – Refunds of certain pay as you go withholding amounts

**PS LA 2011/12** – Remission of General Interest Charge

**PS LA 2011/13** – Cross border recovery of taxation debts

**PS LA 2011/14** – General debt collection powers and principles

**PS LA 2011/15** – Lodgment obligations due dates and deferrals

**PS LA 2011/16** – Insolvency – collection, recovery and enforcement issues for entities under external administration

**PS LA 2011/17** – Debt relief

**PS LA 2011/18** – Enforcement measures used for the collection and recovery of tax related liabilities and other amounts

**PS LA 2011/19** – Administration of the penalty for failure to lodge

**PS LA 2011/20** – Payment and credit allocation

**PS LA 2011/21** – Offsetting of refunds and credits against taxation and other debts

**PS LA 2011/22** – Refunds of running balance account surpluses and credits – Commissioner's discretion to retain refunds and the discretion to pay refunds in a different way

**PS LA 2011/23** – Credit interest

(You might wonder why Law Administration Practice Statements are abbreviated to PS LA and not LA PS. Great question and we would love to know that answer too.)

So this is a short overview of the legislation that governs the tax collection in Australia.

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