



Australian Government
Inspector-General of Taxation

Review into the Tax Office's Small Business Debt Collection Practices

Summary of submissions and evidence

Inspector-General of Taxation

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Payment arrangement interactive voice phone line

4.18 On its letters sent to debtors, the Tax Office provides details of a phone line through which a debtor may propose a payment arrangement—the payment arrangement interactive voice response (IVR) phone line.

4.19 This IVR phone line is linked to an automated program that prompts debtors to provide identifying information, proposed repayment amounts and frequency of repayments. The program uploads the recorded information to the Tax Office's mainframe systems overnight. The mainframe systems checks that the data is valid and that the proposal meets the Tax Office's business rules for accepting payment arrangements.

4.20 The Tax Office advises that these business rules are not absolute as debtors with extraordinary circumstances may contact the Tax Office's call centre staff to discuss alternative arrangements.

4.21 The Tax Office reports:

Approximately 60,000 taxpayers with debts totalling \$24 million have used the service to establish a payment arrangement since July 2003.

4.22 The Tax Office did not provide a break up of this figure into number of small businesses or number of recurrent debtors.

AFTER DEBT DUE AND PAYABLE—MANUAL PROCESSES

4.23 The Tax Office has a number of business areas that focus on different aspects of the debt recovery process. These areas are discussed below.

4.24 However, the Tax Office states that it does not have enough resources to action manually every debt case each year. Therefore, it must prioritise cases for attention by tax officials.

Net Risk

4.25 The Tax Office has implemented an automated system, Net Risk, which was designed to select those cases for human response that posed the greatest risk of non-payment without tax official intervention. The Net Risk system is based on a two-stage process: determining 'likelihood' and 'consequence'.

Likelihood

4.26 'Likelihood' indicates the likelihood that a particular debt case will require 'high-end' debt recovery action through some human intervention. This is calculated by comparing the case with a risk matrix of 46 characteristics that have been identified as historically indicating that likelihood. The Tax Office contracted academic mathematicians to develop an algorithm based on this matrix of characteristics.

4.27 Once this algorithm is applied to a particular debt case it is given a numerical score and allows a comparison against other cases.

4.28 However, a case's likelihood score is disregarded when considering which cases should receive 'high-end' debt recovery action through some human intervention. The Tax Office states that the function was providing results which were inconsistent with the Tax Office's allocation of resources.

4.29 The Tax Office prioritises its recovery resources on the basis of the value of the debt outstanding – that is, the larger the debt the more likely the case will receive 'high-end' debt recovery action through some human intervention. The exception to this are the cases referred to the Tax Office's 'project teams'.

Consequence

4.30 'Consequence' generally refers to determining the appropriate response that will achieve recovery of the debt. Examples of responses include garnishing bank accounts, entering into payment arrangements and issuing Director Penalty Notices.

4.31 The Tax Office is not using the consequence function of Net Risk as it states that the function was providing results which were inconsistent with the Tax Office's allocation of resources. It states that it is aiming to incorporate a similar function into the Tax Office's 'Change Program' to be implemented by December 2008. The Tax Office states that this new system will enable the Tax Office to better filter those cases requiring human intervention and better indicate appropriate responses.

4.32 Effectively, Net Risk does not determine either a debt case's priority or indicate an appropriate compliance response. In the meantime, the Tax Office uses its computerised Receivables Management System (RMS) to:

- stream debt cases to different business areas based on internal business rules; and
- prioritise debt cases for action by those business areas based on the case's debt levels.

4.33 Concerns were raised in relation to the Tax Office's effectiveness in case selection and methods of risk assessment. In the Inspector-General's view these issues would be more appropriately considered by other bodies. However, these issues do affect the equitable treatment of taxpayers. This aspect of these issues is considered further in chapters 5 and 6.

Main business areas

4.34 The following are the main business areas of the Tax Office that are tasked to manage debt:

- call management centres;
- outbound call centres;
- arrangement management teams;
- pre-legals teams;
- legals and complex case teams; and
- insolvency teams.

Call management centres

4.35 Various debt- and lodgment-related letters and publications contain a telephone number, 13 1142, through which taxpayers may contact the Tax Office to discuss debt- and lodgment-related matters. Calls on this number are directed to the call management centres. Other areas of the Tax Office may also direct calls to the call management centre where debt and lodgment issues are raised by external callers.

4.36 Approximately 400 tax officials staff call management centres in six sites across Australia.

4.37 Staff in the call centre management centres have the delegation and authorisation to:

- remit the general interest charge on the grounds of a Tax Office error;
- defer the date due and payable for tax debts;
- suspend debt collection activity; and
- agree to arrangements to pay a tax debt by instalments.

4.38 Staff record notes of their calls with taxpayers in electronic 'narrations' recorded on the RMS.

4.39 Representatives of staff from these areas indicated that the focus of their work in relation to debtors was to 'keep the taxpayer engaged in the tax system' by entering arrangements. Generally, this focus is an application of a compliance strategy based on the compliance model (see Chapter 3). It seeks to change a debtor's compliance behaviour from paying only if forced to resigned self-enforced compliance with payment obligations. These staff rely on the taxpayer's assessment of their own capacity to repay.

4.40 Staff receive guidance through a number of documents, team and national support networks. The guiding documents include the *ATO receivables policy*, call centre scripting and practice notes.

4.41 Staff deal with work on a transactional basis. They do not have ongoing contact with particular taxpayers and finish their involvement with the taxpayer's case once the purpose of the call is fulfilled.

Outbound call centres

4.42 Outbound call centres are the areas which initiate contact with those debtors in identified areas of risk who have not contacted the Tax Office. This centre's workload is generated by the RMS identifying cases selected for Tax Office-initiated contact. Approximately 240 tax officials staff the outbound call centres in six sites across Australia.

4.43 The RMS allocates cases for staff to action. Allocation is made on the basis of level of debt, available resources and identified skills. Staff undertake preliminary work to establish the debt then contact the debtor to determine the reason for non-payment of the debt. Their aim is to achieve payment of the debt either in full or by instalments, rectify non-compliant behaviour and case manage, to a limited extent, the debtor. The outbound call centres aim either to agree and monitor the initial payment of an acceptable payment arrangement or to escalate the matter to the pre-legals team when negotiations break down.

4.44 The Tax Office states that in circumstances where debtors have defaulted on a previous payment arrangement with the Tax Office, outbound call centres attempt to keep the taxpayer engaged by entering into another payment arrangement. The telephone conversations are noted and recorded by staff on the RMS.

Arrangement management teams

4.45 The arrangement management teams deal with defaulted payment arrangements and provide a focus of Tax Office expertise in payment arrangements. This centre's workload is generated by the RMS identifying cases selected for Tax Office-initiated contact. Approximately 333 tax officials staff the arrangement management teams in five sites across Australia.

4.46 The RMS allocates cases for staff to action. Allocation is made on the basis of level of debt, available resources and identified skills. Lower debt level cases are sent automatically generated letters asking the debtor either to pay or call the call centre management teams.

4.47 Staff undertake preliminary work to familiarise themselves with the case and determine a process of negotiation. The Tax Office states that staff will call the debtor to clarify facts and issues, determine the reasons for default, seek to understand the business pressures and negotiate for another payment arrangement. Staff aim at keeping the taxpayer engaged in the system. They obtain financial information and determine the taxpayer's capacity to repay.

4.48 The Tax Office states that the arrangement management teams recognise that small business operators may be fearful of Tax Office debt collection activity. Such taxpayers may try to agree to further payment arrangements to get off the phone quicker without fully considering their capacity to make the instalments. Therefore the teams seek to determine these taxpayers' other debts and due dates, and income or ability to pay.

4.49 In the event that a payment arrangement is not entered into, staff will consider whether legal action is worthwhile. Chapters 21 and 26 of the *ATO receivables policy* set out the principles to be applied in making this decision. If legal action is determined to be worthwhile, the case will be prepared for legal action and referred to the legals area. If it is not worthwhile, the debt will be written-off as uneconomical to pursue (see 'Write off' below). However, the written off amount may be re-raised at a later date if the circumstances change.

4.50 The Tax Office states that approximately 4 per cent of arrangement management team cases are referred to the legals teams for legal action.

4.51 The arrangement management teams also seek to determine systemic reasons for taxpayer payment arrangement defaults.

Pre-legals teams

4.52 The pre-legals teams receive cases referred to them by the outbound call centres. They also focus on areas of identified risk. Approximately 150 tax officials staff pre-legals teams in five sites across Australia.

4.53 The RMS allocates cases for staff to action. Allocation is made on the basis of level of debt, available resources and identified skills. Staff initially review cases to ensure that the

taxpayer understood they had been given a reasonable opportunity to enter into a payment arrangement. Cases where taxpayers either did not understand or were not given a reasonable opportunity are contacted by either the outbound call centres or the pre-legals teams.

4.54 Failing the agreement of a payment arrangement, staff will investigate options for recovery of funds from debtors. Notices of intended legal action will be sent to the debtor. Depending on the type of debt and debtor, the notices may refer to possible garnishee action, Director Penalty Notices and statutory notices for winding up. The notices have the direct contact details of the staff member who is managing their case.

4.55 Taxpayers who contact the staff member have the option to enter a payment arrangement. Representatives from the pre-legals area stated that this does not happen often because their cases often involve a history of defaulted arrangement without reasonable evidence of a change in financial circumstances. The reasons for declining to accept a payment arrangement proposal are given in writing. If a suitable payment arrangement is not negotiated, staff will consider whether legal action is worthwhile in the same manner as the arrangement management teams (see above).

4.56 The Tax Office states that staff will also seek to educate the debtor as to why this action is occurring, what further steps the Tax Office will take and what the debtor's obligations are.

4.57 Cases that involve complex issues, such as possible insolvency, are referred to the complex case area of the legals teams.

Legals and complex case teams

4.58 The legals and complex case teams deal with those matters where there is a significant risk to revenue or some issue involving significant sensitivity or complexity. Cases referred to this area are either from a legals referral or a non-Tax Office initiated winding-up letter. Approximately 215 tax officials staff legals and complex case teams in 16 sites across Australia.

4.59 In the event of a matter of significant complexity or sensitivity, a legals team leader may be contacted by the compliance areas of the Tax Office for advice before the tax liability is determined. Following the determination of liability, the complex case team will be responsible for debt collection activities concerning that entity.

4.60 In the event of non-Tax Office initiated winding-up proceedings, the complex case area will determine, in accordance with chapters 18, 20 and 26 of the *ATO receivables policy*, whether the Tax Office will support the action.

4.61 In the event of a legals referral, staff will undertake preliminary work to assess whether all alternative debt collection action has been taken and that the proposed legal action is appropriate in the circumstances. Once satisfied, staff will instruct the Tax Office Legal Services Branch to commence legal proceedings to obtain a sequestration order or winding-up notice. If not satisfied, staff will either refer the case back to the referring area for further action or write off the case as uneconomical to pursue (see below).

4.62 Where the taxpayer is a corporate entity, the *ATO receivables policy* outlines a number of factors that should be considered before initiating liquidation action, including:

- the asset position of the company;
- the nature of the debt;
- the future income of the company;
- the risk to the revenue;
- the potential to recover from directors;
- whether there are matters that may warrant an examination by a liquidator; and
- whether there is evidence of fraudulent or criminal activities on the part of the directors.

4.63 Where satisfied, tax officials will serve a notice in terms of section 459E of the *Corporations Act 2001* and if payment is not made within 21 days or if suitable payment proposals are not agreed within that time, they will apply to the court to have the company wound up. If the company fails to comply with the demand to pay, it is presumed to be insolvent and its presumed insolvency may be used as a ground for winding up the company by the creditor who made the demand or by any other creditor or any other applicant for winding up.

4.64 The Tax Office indicates that action to wind up a company will be taken in circumstances where the company has failed to pay its debts and there has been no agreement on payment proposals. This action will also be taken in circumstances where it is considered a company is insolvent and there will be a detrimental effect on the revenue if it is allowed to continue to trade.

4.65 Liquidation occurs where a corporate debtor's affairs are placed into the hands of a liquidator. A liquidator will take steps to dispose of the debtor's assets to raise funds to meet the proven debts of all creditors.

4.66 Where the taxpayer is an individual, tax officials must be satisfied that the debtor is in fact insolvent. The *ATO receivables policy* outlines a number of factors that should be considered before initiating bankruptcy action, including:

- the asset position of the debtor;
- the nature of the debt;
- the future income of the debtor;
- the risk to the revenue;
- the cost of bankruptcy and the likely return;
- whether special circumstances exist; and
- whether the debtor is divesting himself or herself of assets.

Insolvency teams

4.67 The insolvency teams deal with cases where a debtor is declared bankrupt, is proposing to appoint an administrator, or is in liquidation. In relation to individuals, Insolvency and Trustee Services Australia notifies the insolvency teams on a weekly basis of those declared bankrupt and those who have been discharged from bankruptcy. Where the Tax Office is a creditor of a company in liquidation or administration, the administrator or liquidator is required by corporations law to notify the Tax Office of the liquidation or administration. Approximately 150 tax officials staff insolvency teams in seven sites across Australia.

4.68 In relation to bankrupts, the insolvency teams will consider any Part IX or Part X (of the *Bankruptcy Act 1966*) arrangement. The insolvency teams monitor the progress of the trustee-in-bankruptcy's work and write off the debt as irrecoverable in law (see below) once distribution of the bankrupt's property is completed.

4.69 In relation to companies in liquidation, the insolvency teams will provide the liquidator with the proof of debt, meet with the liquidator if the liquidator decides investigation is warranted and receive the liquidator's annual and final reports.

4.70 In relation to companies proposing voluntary administration, the insolvency teams are the proxy holders for the creditors' meetings and decide how the Tax Office will vote at these meetings.

4.71 The insolvency teams determine whether to support a proposal to appoint particular administrators. They also determine whether to support an administrator's recommendations. Preliminary work is undertaken to establish the debt, to trace assets, to investigate business relationships and to determine consistency of information. Also, insolvency teams determine if information divulged by creditors at meetings is inconsistent with the company's claims.

Quality assurance, professional accreditation and knowledge network

4.72 Through a system of quality assurance, professional accreditation, skilling and a knowledge network, the Tax Office states that it assures itself that staff meet certain technical standards and that faults are identified.

Quality assurance

4.73 The Tax Office states that it has three methods of assuring itself of the consistent and accurate application of rules to specific circumstances by tax officials involved in debt collection: technical quality review, functional analysis and team-based analysis.

Technical quality review

4.74 The technical quality review process assesses written interpretive advice to identify faults in policy, procedure and skilling. It does not identify faults in the balance that the *ATO receivables policy* strikes to achieve between the collection of the outstanding debt and ensuring a fair and equitable outcome. Where faults are identified the individual and their manager are notified and, if serious, senior tax officials as well. The results are collated and put on a register from which some qualitative analysis is undertaken and remedial strategies developed.

Functional analysis

4.75 There are two types of functional analysis: analysis in an area of risk identified by senior tax officials on an ad hoc basis; and analysis of a specific debt function over a period of time. Functional analysis provides feedback to the head of the functional area reviewed – for example, feedback has been provided to the head of the arrangements management area on a monthly basis since August 2003.

Team-based analysis

4.76 Team-based analysis is done within a team environment and tied to the performance of the tax official. Teams each have a team coach, a technical adviser and a team leader. Generally, performance is actively monitored by the team coach.

Professional excellence and accreditation

4.77 The professional excellence and accreditation process was initiated as a response to the Sherman report findings.²⁹ This process requires technical advisers at a senior level – the APS5 to EL1 level – to obtain and maintain professional accreditation.

4.78 Professional accreditation workshops assess staff's capabilities in decision-making. This assessment is based on historical information comprising a portfolio of previous decisions and an interview-like discussion, interview questions and a process check comprising a scenario and negotiation with colleagues and a 'taxpayer' to reach agreed outcomes.

4.79 From this process, training package development may be recommended for staff. If there is a deficiency, a report may be made to a staff member's team leader to recommend steps to address that deficiency in the staff member's learning plan.

Debt and Lodgment Learning Network

4.80 The Debt and Lodgment Learning Network is a forum of tax officials at the APS 4 and 5 levels in regional areas who meet to discuss issues of concern with a view to identifying steps and changes for improvement.

Debt recovery responses available to Commissioner

4.81 The Commissioner is empowered with a variety of responses to recover tax debts. These responses are outlined below. Responses that raise issues of concern are discussed in more detail in the following chapters.

Offset

4.82 Under Part IIB of the *Taxation Administration Act 1953* (TAA 1953), the Commissioner may offset a refund or credit owing to a taxpayer against a debt owed by the same taxpayer. The process is generally automatic but is subject to rules which except certain categories of taxpayers and circumstances in connection with the timing of establishment of some liabilities.

²⁹ Sherman, *Report of an Internal Review of the Systems and Procedures relating to Private Binding Rulings and Advance Opinions in the Australian Tax Office*, August 2000.

8.72 In response, the Tax Office states that bankruptcy or liquidation action will only be initiated after reasonable attempts are made to make contact with the taxpayer to determine whether an acceptable payment arrangement could be negotiated.

8.73 However, a number of accountants assert that quite often the Tax Office is not willing to consider or does not appreciate or understand the nature and circumstances of the business and will not adopt a flexible approach to help the business continue trading. They indicate that there is no assistance or initiative provided by the Tax Office to help businesses in this situation, but rather, the Tax Office appears determined to proceed to bankruptcy or liquidation.

8.74 In particular, a number of tax practitioners are of the view that the Tax Office does not seem to appreciate other external factors that may affect a small business meeting its tax obligations. An example of one such external factor is where a debtor of the small business goes into liquidation owing them money for goods or services supplied. Some practitioners are of the view the Tax Office lacks commerciality when dealing with such matters and takes a very hard-line approach without appreciating the underlying viability of the business and the cause of the outstanding debt. They state that in many instances, the Tax Office would indicate to them that maybe they should get another loan from the bank or sell a business asset to pay the debt. They argue that in some instances such external factors may have only have a short-term impact on cash flow without affecting the underlying viability of the business. They suggest that by the Tax Office not properly understanding the cause of the debt or the circumstances of the business and by not examining the viability of the business, it may unnecessarily force a business into administration or liquidation.

8.75 The Tax Office states that at various stages along the recovery action process, a tax officer may need to consider issues related to the viability of a taxpayer. For example, where the Tax Office has issued a section 459E notice and a tax officer considers a proposal to pay tax by instalments or defer payment for a short term, an important consideration is to determine, on the facts available, whether a reasonable person would believe the taxpayer was insolvent.

8.76 The Tax Office also states that in the majority of cases the tax officer is guided to decide in favour of the taxpayer so as to provide a clear opportunity to bring their obligations up to date.

Motivating proprietor to focus on payment

8.77 Commercial debt recovery agents state that it is important that the Tax Office aim to motivate debtors to pay the outstanding debt by focusing the debtor's attention on paying at an earlier point in time. They state, and tax practitioners confirm, that initially debtors may try to ignore the debt and hope that circumstances will improve. In such circumstances, if there is a delay in initiating the collection of the debt, then there is the risk that it may accumulate to the point where the debtor will not be able to repay.

8.78 They argue that the absence of a timely response on the part of the Tax Office, either in initiating legal action or even actively following up on an outstanding debt, means that small business debtors, in particular, those with cash flow problems, do not focus on paying their outstanding tax debt. Tax practitioners observe that in some cases there are debts that are one to two years outstanding where the Tax Office has not taken active follow-up action. They observe that in these situations the taxpayer normally receives an automatically generated reminder letter or final notice from time to time, but there is no follow-up action.

This, they argue, has the effect of creating an atmosphere where the Tax Office is seen as not simply as another creditor but one who does not chase up on its debts.

8.79 They assert that the Tax Office's current responses do not focus the debtor's attention to either paying the debt or entering into a payment arrangement. Rather, the lack of follow-up causes the debt to the Tax Office to be 'put near the bottom of the pile' notwithstanding the compounding interest charges.

8.80 Furthermore, they argue that the process of issuing of reminder notices after 60 days lacks commercial reality, as debtors will not put this account on their credit ledgers.

8.81 The Tax Office indicates that the Director Penalty Notice provisions are designed to provide directors of the company with the opportunity to assess whether they have the funds to pay the tax now or in the future. The Tax Office suggests that these provisions encourage directors to make an assessment of solvency.

8.82 The Tax Office states that it has issued approximately 20,000 notices to directors since July 2003, in relation to \$1.2 billion in outstanding tax.

8.83 The Tax Office also indicates that the common outcomes of issuing a section 459E notice are either payment or entry into a payment arrangement.

8.84 The Tax Office states that it has issued approximately 10,500 section 459E notices since July 2003, in relation to \$1.1 billion in outstanding tax. Of the 10,500 notices, the Tax Office indicates that the majority are issued in relation to businesses not responding to earlier opportunities to comply and the debt is escalating.

TAX OFFICE APPROACH AT CREDITORS' MEETINGS

8.85 Another concern raised by insolvency practitioners is that, at times, the Tax Office is not commercial when voting at creditors' meetings. They indicate that the Tax Office appears to be unduly influenced, at the detriment of other creditors, by promoting compliance. They argue that the position adopted by the Tax Office at creditors' meetings should be solely based on commercial outcomes. They reject the Tax Office's contention that voting at these meetings should be used effectively to punish non-compliant proprietors. They suggest that there are other avenues available for the Tax Office to effect compliance without unduly affecting other creditors' interests. This could include taking a far stricter approach with non-compliant proprietors in the future.

8.86 Insolvency practitioners indicate a tendency on the part of the Tax Office to vote against proposed deeds of arrangement. This is despite a better commercial outcome for all creditors if the arrangement was accepted as opposed to proceeding to winding-up the business. Insolvency practitioners argue that the Tax Office should not be punishing businesses for non-compliance through the non-acceptance of proposed deeds of arrangement, especially where other creditors are also involved.

8.87 The *ATO receivables policy* provides some guidance on how the Tax Office approaches settlement offers made to liquidators by debtors to a company in liquidation.

8.88 The *ATO receivables policy* states that in the course of the winding-up, a liquidator is required to pursue amounts due to or claimed by the company. When seeking to recover these amounts, it is common for the liquidator to receive settlement offers for a sum less than

the full claim. If the amount claimed is more than \$20,000 the liquidator cannot compromise the debt without the approval of the court, the committee of inspection or a resolution of creditors.⁷⁴

8.89 The Tax Office states that, as a creditor, it will generally vote in favour of such a compromise offer when it appears that the settlement will result in a greater return to the liquidation administration than if litigation to recover debts is allowed to take its full course.

8.90 In coming to such a decision, some of the relevant considerations listed in the *ATO receivables policy* include:

- the chances of success if litigation is to be initiated or continued;
- if the litigation is ultimately successful, the ability of the defendant to meet the judgment debt;
- the costs of pursuing the debt, particularly if creditors, including the Commissioner, will have to indemnify the liquidator to progress the litigation further;
- the time it may take to achieve recovery through litigation, including the additional costs of the liquidator that will be incurred in this period and which will rank ahead of the unsecured creditors' claims; and
- the attitude of other 'arms length' creditors.

8.91 The Tax Office also states that in some instances the Commissioner may, for public interest reasons, consider that an offer should be rejected and litigation continued. An example of where the Tax Office may take such a stance is where a director has deliberately structured the company's and their own affairs in an attempt to minimise creditors' chances of recovery.

8.92 The Tax Office is of the view that to accept an offer in these circumstances, especially for a token amount, may only encourage non-compliant behaviour in the future.

8.93 However, before voting against an offer solely on public interest grounds, the Commissioner states that he will also consider the attitude of the other 'arms length' creditors and the effect that his vote will have on them. In particular, this will include the extent to which they may be financially disadvantaged by the rejection of the settlement offer.

8.94 Insolvency practitioners have also expressed some concern that the Tax Office does not provide any explanation or basis at such meetings as to why it is rejecting a settlement offer, leaving other creditors frustrated and generally unhappy with the Tax Office stance. In response, the Tax Office has indicated that quite often its stance would be based upon additional information it has in its possession. However, under the taxation law secrecy provisions a tax officer is precluded from disclosing information relating to the taxpayer to another person.

8.95 Additionally, insolvency practitioners observe that in many instances the Tax Office will not turn up at creditors' meetings.

⁷⁴ Pursuant to subsection 477(2A) of the *Corporations Act 2001*.

CHAPTER 9: COMPROMISE OF TAX DEBTS

INTRODUCTION

9.1 The third focus for the terms of reference asks the Inspector-General to examine the impact of the Tax Office's small business debt collection policies and practices on aspects of that collection. One of those aspects specified in the terms of reference is the Tax Office's approach to the compromise of tax debts. Few submissions voiced views on this aspect of the Tax Office's small business debt collection practices. This chapter outlines those views.

Background

9.2 Essentially, a compromise represents an agreement between a creditor and a debtor that involves the creditor accepting a lesser sum in full satisfaction of a debt.

9.3 The Tax Office defines a compromise as an arrangement in which it accepts an amount less than the primary tax outstanding in full settlement of an undisputed debt in circumstances where a taxpayer does not have the capacity to pay a debt in full. By contrast, an arrangement in which the Tax Office accepts less than the primary tax in full settlement of a disputed debt is called a 'settlement' by the Tax Office.

9.4 Applications for compromise are considered on a case-by-case basis. A tax officer is to follow the guidelines set out in Chapter 27 of the *ATO receivables policy* in considering an application for compromise.

9.5 The Commissioner has delegated to all tax officers carrying out the debt collection function the power to reject applications from taxpayers to compromise tax debts due to the Commonwealth.

9.6 Any applications for compromise that are to be rejected are handled at the case officer level. If a tax officer is of the view that the circumstances set out in an application may warrant compromise of the tax debt, then the case is escalated to a tax officer who has the authority to approve a compromise application.

9.7 According to the *Instrument of Delegation*, the Commissioner's power to approve applications from taxpayers to compromise tax debts due to the Commonwealth has been delegated to only 13 senior tax officials. However, in later correspondence the Tax Office has stated that only six senior tax officials presently hold the delegation to approve compromise applications.

9.8 For the year of income 2001-02, the Tax Office states that it received a total of four applications for the compromise of tax debts totalling approximately \$1.3 million. Three applications were from small business taxpayers, totalling \$610,885. For the year of income 2002-03, the Tax Office states that it received a total of five applications for the compromise of tax debt totalling approximately \$2.5 million. Two applications were from small business taxpayers, totalling \$1,682,866.

9.9 However, private sector submissions have indicated that there may be more applications for compromise than those reported by the Tax Office.

Views

9.10 The main theme of the views expressed to the Inspector-General regarding the Tax Office's compromise policy relates to whether the compromise policy strikes an appropriate balance between the competing interests of the debtor, the Tax Office as a creditor, the additional obligations imposed upon the Commissioner by the *Financial Management and Accountability Act 1997* (FMAA 1997) and the public interest.

9.11 Specifically, submissions express the following views:

- The Tax Office's compromise policy is far too strict in its approach.
- The Tax Office's compromise policy is not commercial, with little or no regard for the ongoing viability or circumstances of a business.
- The Tax Office's compromise policy is unclear whether losses are taken into consideration in determining whether to accept a compromise.
- The Tax Office's compromise policy and practices do not promote a transparent and accountable process.
- There is general confusion concerning the Tax Office's compromise policy.

TAX OFFICE APPROACH

9.12 Submissions indicated that the Tax Office was too strict in its approach to compromise because:

- the Tax Office's approach to compromise is more onerous than bankruptcy or liquidation; and
- the Tax Office does not compromise a part of tax debts.

9.13 However, an insolvency practitioner counsels caution in the use of the power because of the high risk of treating compliant businesses inequitably and the Tax Office's difficulty in assuring itself that a business has disclosed all assets.

Bankruptcy or liquidation approaches

9.14 A submission to the Inspector-General from a taxpayers' representative body argued that the practical result of a compromise with the Tax Office is more onerous than bankruptcy or liquidation. This is because compromise with the Tax Office entails taking all the assets of the taxpayer without any of the legal protection or objectivity afforded by bankruptcy or liquidation.

9.15 The Tax Office responds that the power to compromise undisputed debt is not an unfettered power to accept a lesser sum in full satisfaction of a debtor's indebtedness for any reason which it thinks appropriate:

The Commissioner's power to compromise must be exercised in accordance with the purpose of the taxation legislation (that is, to secure the highest net return taking into account considerations of good management and/or administrative common sense).⁷⁵

Debtor's total net assets in full satisfaction of the taxation debt

9.16 The Tax Office states that any compromise offer will be expected to consist of no less than the full value of the whole of the debtor's present property, with such conditions also applying to corporate debtors. Excluded from such property would be items of basic necessity such as clothing, furniture, tools of trade and the like.

9.17 The Tax Office states that given this approach, a compromise will generally deliver a better result for the Commissioner than would be obtained by any other available recovery process. It also states that the amounts ultimately recovered using other recovery approaches may be significantly less than the amounts calculated under this approach.

9.18 In fact, the Tax Office suggests that it may be for this reason that many, if not most, debtors may be unwilling to reach a compromise settlement. The Tax Office takes the view that corporate debtors would therefore probably seek an arrangement with creditors under Part 5.3A of the *Corporations Act 2001* or go into liquidation.

9.19 The Tax Office requires that there must be some benefit flowing to it in entering into a compromise agreement. That benefit may take different forms:

[it] might take the form of a saving in the costs of collection, collection at an earlier date than would otherwise be the case, collection of a greater sum than could be otherwise recovered or abandonment by the debtor of some claim or right arising under a taxation law that has a monetary value (for example, the right to carry forward losses).

Consideration will not be focused solely on the short term benefits and costs. Longer term considerations such as general compliance with taxation legislation are also relevant. Any immediate benefit of cost savings may be offset many times over if the debtor's compliance history is poor.⁷⁶

Benefit over and above bankruptcy or winding-up

9.20 The *ATO receivables policy* specifically provides that the Tax Office will not accept compromise proposals unless there is a benefit in doing so, over and above the return that would flow from taking actions under either the *Bankruptcy Act 1966* or the *Corporations Act 2001*. The Tax Office indicates that it will take this position notwithstanding that it may suffer the expense and delay of legal proceedings necessary to realise assets.

9.21 The reason for the Tax Office's stance is the view that to do otherwise would be to reward behaviour which amounts to non-compliance with a debtor's obligations. It argues that this would be inconsistent with the objective of achieving a high level of voluntary compliance by the community generally.

⁷⁵ Commissioner of Taxation, *ATO receivables policy*, April 2003, available from www.ato.gov.au viewed on 4 April 2004, paragraph 27.6.3.

⁷⁶ *ibid*, paragraph 27.6.4.

9.22 The Tax Office states that in considering whether or not to enter into a compromise, it is necessary to ensure that the proposed compromise does not disadvantage any other creditor. The Tax Office will not consider a proposal if another creditor intends to take, or has initiated, formal recovery proceedings. Also, a compromise proposal will be refused unless it can be shown that all affected creditors consent to the arrangement.

9.23 This also means that any compromise arrangements that have been, or are proposed to be, made in relation to other creditors do not place them in a position of advantage relative to the Commonwealth.

9.24 Further, the Tax Office states that not only do debtors have a responsibility to meet their payment obligations as they fall due for payment but that any alternative arrangements must be perceived as equitable by other taxpayers who do meet their payment obligations.

No compromise of part of the debt

9.25 Accountants and business advisers comment that the Tax Office's compromise policy appears to be an 'all-or-nothing' approach. They argue that the Tax Office's compromise policy does not address instances where a taxpayer seeks compromise of only part of the tax debt with an arrangement entered into for the remaining debt.

TAX OFFICE COMPROMISE POLICY'S REGARD FOR ONGOING VIABILITY OF BUSINESS

9.26 Taxpayers' representative bodies and tax practitioners also raise the concern that the Tax Office's compromise policy is not commercial and has little or no regard for the ongoing viability or circumstances of a business. This is especially so where the most significant assets of the business are intellectual property rights or rights to occupy premises or conduct a particular business. They argue that if the debtor was to be made bankrupt or enter into voluntary administration in such circumstances there would be a forfeiture of all such rights. This would mean the business has lost its most significant asset and along with it any prospect of continuing to trade.

9.27 The Tax Office states that it is not in a position to determine the viability of a business. However, it points out that in considering a compromise proposal, tax officials are required to make an assessment of what the position will be without a compromise. They are required to consider the value of the debtor's present property along with the debtor's future prospects, past transactions and the position of any related entities.

9.28 The Tax Office has stated that it has additional obligations imposed under the FMAA 1997 that do not allow a purely commercial approach to be taken in deciding when to compromise a tax debt. It also argues that a broader exercise of the compromise power would have a detrimental effect on promoting and encouraging voluntary compliance. As such, the Tax Office argues that the compromise power should only be exercised in very limited circumstances, especially given the other legal avenues available to deal with outstanding debt such as bankruptcy and liquidation.

9.29 The Tax Office indicates two broad areas where it thinks it is appropriate to enter into a compromise agreement.

9.30 Firstly, it may be appropriate where considerations of good management or administrative commonsense mean that it is the most efficient way in which to achieve the purpose of collecting taxation liabilities.

9.31 Secondly, it may be appropriate where the Commissioner concludes that more tax can be recovered by entering into a compromise than by pursuing alternative remedies, such as agreeing to accept payment over an extended period of time or instituting legal proceedings leading to bankruptcy or liquidation.

9.32 However, the Tax Office has qualified the comments regarding the circumstances where compromise is appropriate by stating that:

considerations which are not directly related to the Commissioner's function of collecting taxes cannot justify the use of the power to compromise.

9.33 By way of example, the Commissioner has listed the following circumstances where it would not be permissible to compromise to:

- (i) assist those debtors who may have overcommitted themselves;
- (ii) save a business from closure because a large number of people in a particular region depended on the business for employment;
- (iii) avoid the failure of a business because the activities of the business might be seen to be serving a national interest (for example, a large exporter, a producer of a key raw material or product);
- (iv) alleviate what may be perceived to be a harsh or unfair operation of a tax law in particular circumstances;
- (v) avoid hardship (such as the need to sell a home or a business); or
- (vi) create for the Commissioner a benevolent public image or in the furtherance of some charitable objective.

9.34 Further, the losses arising from the costs or delay involved in enforcing any remedies outside compromise are seen by the Tax Office as costs associated with the achievement of the broader objective of voluntary compliance by the taxpaying community at large. For the Tax Office, exercising good management and administrative commonsense in the general administration of the tax law entails giving precedence to this objective over the recovery of some additional funds in individual cases.

9.35 This means that non-compliant behaviour in the form of reckless or careless failure to make provision to pay an expected tax liability, even by instalments over time, is not rewarded or condoned by the Tax Office.

POSITION REGARDING AVAILABILITY OF TAX LOSSES

9.36 A submission by a taxpayers' representative body raised the concern that the Tax Office's compromise policy is unclear regarding whether losses are taken into consideration in determining whether to accept a compromise proposal. It suggests that, if this were not the case, it would be a serious short coming as it would mean that a debtor is not able to use

its available prior losses as a trade-off to allow the business to continue trading, especially where particular circumstances have placed the business in trouble.

9.37 In any event, the body suggests that the *ATO receivables policy* needs to be clearer on this issue and provide far greater guidance to taxpayers on what the Tax Office will consider so as to allow taxpayers to prepare compromise proposals that will provide a business with every opportunity to continue to trade.

9.38 The Tax Office points out that the *ATO receivables policy* makes specific mention of losses in the context of a compromise settlement: paragraphs 27.6.34 to 27.6.37. These paragraphs require tax officials to bind the debtor not to claim losses against income of future years and to exclude capital losses from the calculation of future net capital gains or losses. No reason for this approach is provided by the Tax Office other than:

it would be quite unacceptable that a debtor be allowed the benefit of a compromise, whether in respect of an income tax debt or some other tax debt, but at the same time retain the right to offset losses against future income or capital gains.⁷⁷

TAXPAYER UNCERTAINTY WITH TAX OFFICE'S COMPROMISE POLICY

9.39 In discussions with various stakeholders including accountants, tax agents, legal practitioners and a taxpayers' representative body, an issue of concern raised was whether the Tax Office's policy and practices promoted a transparent and accountable process.

9.40 Stakeholders suggest that there is a lack of awareness that the Tax Office even has a compromise policy or that the compromise policy is not widely revealed by the Tax Office.

9.41 A submission from a taxpayers' representative body stated that, apart from the *ATO receivables policy*, there is very little information available on the Tax Office's administration of the compromise power. This includes the number of compromise applications received by the Tax Office, number of compromise applications accepted by the Tax Office and forms for making an application for compromise of a tax debt.

9.42 The Tax Office provided the following information for the 2001-02 year.

Table 9.1: Total compromise applications for 2001-02

| Total Cases | Amount subject to compromise request | Decision pending | Referral to SES/EL2 | Accepted by SES/EL2 |
|-------------|--------------------------------------|------------------|---------------------|---------------------|
| 1 | \$45,062.57* | No | Yes | Yes |
| 1 | \$673,098.18 | Yes | No | No |
| 1 | \$200,583.71* | No | Yes | Yes |
| 1 | \$365,238.91* | No | Yes | Yes |
| 4 | \$1,283,983.37 | | | |

Source: Tax Office

* relates to small business taxpayers

9.43 The Tax Office provided the following information for the 2002-03 year.

⁷⁷ *ibid*, paragraph 27.6.34.

Table 9.2: Total compromise applications for 2002-03

| Total Cases | Amount subject to compromise request | Decision pending | Referral to SES/EL2 | Accepted by SES/EL2 |
|-------------|--------------------------------------|------------------|---------------------|---------------------|
| 1 | [no amount provided] | No | Yes | Yes |
| 1 | \$762,089.51 | No | Yes | Yes |
| 2 | \$1,682,866.00* | No | Yes | Yes |
| 1 | \$18,402.00 | Yes | No | No |
| 5 | \$2,463,357.51 | | | |

Source: Tax Office

* relates to small business taxpayers

9.44 The taxpayers' representative body was of the view that that there is little additional guidance on determining whether or not the Commissioner would compromise a taxation debt. It commented that the Tax Office could provide clearer guidance on key terms that are relevant in that determination.

9.45 The Tax Office states that the *ATO receivables policy* outlines the relevant considerations in determining whether or nor to compromise a taxation debt. The Commissioner indicates that in determining whether a taxation debt should be compromised, there are a number of matters that need to be considered. These include:

- determining the potential return to the Commissioner if there is no compromise;
- what allowance should be made, if any, for tax losses that may be available; and
- determining the return to the Commonwealth if the compromise were accepted.

9.46 Further, the Tax Office states that the *ATO receivables policy* specifies the circumstances in which it will not enter a compromise and those circumstances in which it will.

GENERAL CONFUSION CONCERNING 'COMPROMISE'

9.47 Other concerns were raised with the Tax Office's compromise policy including whether such a policy actually existed, the complexity of the policy, what compromise entailed and the circumstances in which compromise was available.

9.48 There was also some uncertainty as to what the term 'compromise' actually entailed. For some, the term was associated with the liability to pay the debt as opposed to the obligation to pay. Also some people confused the compromise of primary tax debts with the notion of remitting interest and penalties.

CHAPTER 10: RELEASE

INTRODUCTION

10.1 The third focus for the terms of reference asks the Inspector-General to examine the impact of the Tax Office's small business debt collection policies and practices on aspects of that collection. One of those aspects specified in the terms of reference is the Commissioner's exercise of his power to release small businesses from their tax debts on the grounds of serious financial hardship. Few submissions voiced views on this aspect of the Tax Office's small business debt collection practices. This final chapter outlines those views.

Background

10.2 Division 340 of Schedule 1 to the *Taxation Administration Act 1953* (TAA 1953) confers a discretion on the Commissioner to release taxpayers from tax-related liabilities on the grounds that the taxpayer is suffering serious hardship if they are required to satisfy the liability. A 'release' is a term used in taxation law to mean the extinguishment of a taxpayer's tax liability.

10.3 Prior to legislative changes on 1 September 2003, the Tax Relief Board had the power to grant release.

10.4 For the 2002-03 year, the Tax Relief Board considered 1798 release applications. Of those applications, 636 were granted a full release, 270 a partial release, 835 were refused and 57 either were deferred or withdrawn. These figures are substantially similar to those for the 2001-02 year. The Tax Office was unable to provide details on how many of these applicants were small businesses as they state that no data is available from the former Board. However, from 1 September 2003 to 30 April 2004, the Tax Office reports that approximately 30 per cent of release applicants have been small businesses.

Views

10.5 Submissions express the following views:

- the Tax Office's published release policy is out-of-date;
- the Tax Office's interpretation of 'serious hardship' is inconsistent with the underlying legislative policy when considering a debtor's family home and the income of the debtor's spouse;
- the Tax Office did not properly advise Parliament, and consequently the public, of the removal of non-individuals' eligibility to apply for release; and
- the Tax Office insufficiently informs potential applicants of the existence of their right to apply for release.

CURRENCY OF POLICY

10.6 Before 1 September 2003, sections 265 of the *Income Tax Assessment Act 1936* (ITAA 1936) and 133 of the *Fringe Benefits Tax Assessment Act 1986* (FBTAA 1986) conferred a discretion on the Commissioner to release taxpayers from tax-related liabilities on the grounds of serious hardship. On 1 September 2003, both sections 265 and 133 were repealed and effectively replaced by Division 340 of Schedule 1 of the TAA 1953.

10.7 Chapter 24 of the *ATO receivables policy* sets out the Commissioner's policy in exercising his discretion to release taxpayers from taxation debts on the grounds of serious hardship. However, chapter 24 does not refer to Division 340 but rather refers to sections 265 and 133. Both of these provisions were repealed on 1 September 2003. There are significant differences between the repealed provisions and Division 340.

10.8 The Tax Office advises that the policy is in the process of being updated to reflect the September 2003 amendments. The Tax Office provided the Inspector-General with a copy of a draft updated release policy. However, as at 13 October 2004 chapter 24 of the *ATO receivables policy* has still not been updated.

September 2003 amendments

Before 1 September 2003

10.9 Before 1 September 2003, the Tax Relief Boards were empowered with the discretion to release taxpayers, both individual and non-individual, on the grounds of serious hardship from liabilities under the ITAA 1936 and the FBTAA 1986.⁷⁸ The Boards comprised the Commissioner of Taxation, the Secretary of the Department of Finance and Administration and the Chief Executive Officer of the Australian Customs Service.

10.10 For debts under \$500, the Commissioner could take the place of the Boards. The Boards could refer any application for release to the Administrative Appeals Tribunal (AAT). For debts over \$10,000, the Boards were required to refer the application to the AAT. The merits of a Board's decision could not be reviewed.

1 September 2003

10.11 On 1 September 2003, the Tax Relief Boards were abolished along with the AAT's role in receiving and investigating applications for release.⁷⁹ The Commissioner of Taxation was empowered to exercise the discretion in his own right. However, the Commissioner's decisions could now be reviewed under Part IVC of the TAA 1953. This meant that the merits of the decision could be reviewed by the AAT.

10.12 Additionally, the range of liabilities was expanded to income tax, Medicare levy, Medicare levy surcharge, administrative penalties, general interest charge, other penalties, FBT instalments and Pay As You Go instalments.

⁷⁸ Section 265 of the ITAA 1936 and section 133 of the *Fringe Benefits Tax Assessment Act 1986*.

⁷⁹ Schedule 9 to the *Taxation Laws Amendment Act (No. 6) 2003*.

10.13 Serious hardship remained the sole criterion for deciding whether release should be granted. However, only individual taxpayers and trustees of deceased estates could apply to the Commissioner of Taxation for release.

INTERPRETATION OF 'SERIOUS HARDSHIP'

10.14 Some submissions indicate that the Tax Office is not exercising the release power consistently with the underlying legislative intent. They point to the Tax Office's policy which requires tax officials to consider the income of the debtor's spouse and the value of the debtor's family home.

10.15 A taxpayer representatives' group comments that the Tax Office policy of considering whether proceeds from the sale of a jointly owned family home or the debtor spouse's income could be used to help repay a debtor's tax debt is generally unfair. Additionally, the Commonwealth Ombudsman recommended in relation to its investigation of the Tax Office's handling of investors in the mass-marketed tax-effective investment 'Main Camp' that:

the Commissioner not seek to make a person bankrupt, or to require them to sell their principal place of residence to repay a debt, unless an unacceptable risk factor has been identified.⁸⁰

10.16 The Tax Office points out that its interpretation of serious hardship is supported by case law. For example, Justice Gummow in the Federal Court considered whether the Board had taken irrelevant considerations into account when not exercising a discretion for relief under section 265 (the predecessor to Division 340):

the determination of whether the exaction of the full amount of the tax would entail serious hardship properly involves a consideration of the financial affairs of the taxpayer, including his financial relations with the other members of his household, and with any family company.⁸¹

Tax Office policy

10.17 In considering whether to release a taxpayer from a tax-related liability, the Commissioner decides whether the taxpayer is suffering from serious hardship. Chapter 24 of the *ATO receivables policy* does not define 'serious hardship'. Although chapter 24 does not reflect the September 2003 changes to the release provisions, the Tax Office states that the amendments did not affect the definition of 'serious hardship' and therefore the updated policy guidance for what constitutes serious hardship will not change.

10.18 In determining the existence of serious hardship the *ATO receivables policy* provides three tests that:

follow a conceptual position that the term serious hardship has connotations of unduly burdensome consequences, the magnitude of which would be likely to lead to persons being deprived of necessities according to normal community standards. Thus, serious hardship would be seen to exist where payment of a tax liability would result in the debtor being left

80 Commonwealth Ombudsman, *The ATO and Maincamp*, Canberra, January 2001, recommendation 17, pp. 5 and 24.

81 *Van Grieken v Veilands* 1991 ATR 1639/91 ATC 4423, per Gummow J, at paragraph 21.

without the means to achieve reasonable acquisitions of food, clothing, medical supplies, accommodation, education for children and other basic requirements.⁸²

10.19 In considering an application for release, the effect of hardship may be on other family members:

As a first step in considering an application for release, the [Commissioner] must determine the person or persons to be included in its assessment of hardship factors. Although hardship will be largely personal to the debtor, or the dependant of a deceased debtor, it is not limited to the immediate state of that person. Rather, the prospect of inability to provide food, clothing, etc., for family members or others for whom the person has responsibility will also constitute a hardship faced by the person.⁸³

10.20 However, the *ATO receivables policy* states that the financial resources of family members may also be taken into account when assessing the capacity to meet family expenditures:

Conversely, although a debtor's immediate situation may suggest inability to meet the combined total of the tax debt and family expenditures, that factor will not indicate hardship if the income or asset positions of other members of the family are such as to suggest that the debtor cannot reasonably be regarded as responsible for all relevant outgoings. For example, the separate earnings, allowances or benefits received by other family members will be relevant to an assessment of the debtors overall financial circumstances.⁸⁴

10.21 Additionally, the Tax Office states that if an applicant has other creditors, then a more appropriate avenue for an applicant in financial hardship may be to apply for voluntary bankruptcy under the bankruptcy laws. It is of the view that these laws are aimed at achieving a balance between protecting creditors and enabling a debtor to bring finality to a financially unsurmountable position and allow them to start again.

10.22 The Tax Office also points to the September 2003 amendments that provide a release applicant with the right to apply to the AAT to have the merits of the release decision independently reviewed.

REMOVAL OF NON-INDIVIDUALS' ELIGIBILITY

10.23 The repealed sections 265 of the ITAA 1936 and 133 of the FBTAA 1986, entitled a 'person' to apply for release. A person is defined in section 6 of the ITAA 1936 as including a company.

10.24 However, the new subsection 340-5(3) of Schedule 1 to the TAA 1953, only permits either an individual or a trustee of a deceased estate to apply for release. An individual is defined as a natural person.⁸⁵

10.25 There is no express statement in the material surrounding the legislative change that it would remove rights from non-individuals.

82 Commissioner of Taxation, *ATO receivables policy*, April 2003, available from www.ato.gov.au viewed on 4 April 2004, paragraph 24.4.1.

83 *ibid*, paragraph 24.4.3.

84 *ibid*, paragraph 24.4.4.

85 Section 995-1 of the *Income Tax Assessment Act 1997*.

10.26 The Explanatory Memorandum states that:

Schedule 9 to this bill amends the ITAA 1936, FBTA 1986, TAA 1953, ITAA 1997 and the *Administrative Appeals Tribunal Act 1975* to streamline the procedures under which an individual taxpayer can be released from a tax liability where payment would entail serious hardship.⁸⁶

10.27 The table under that paragraph indicates that the repealed law only applied to individual taxpayers also.

10.28 The Tax Office confirms that one of the main effects of Division 340's introduction was that non-individual taxpayers were not entitled to release.

10.29 However, there is no reference in the Explanatory Memorandum or the Second Reading Speech that indicates that under the repealed law a non-individual was eligible to apply for release on the grounds of serious hardship.

10.30 The Tax Office states that it is unable to advise how many non-individual taxpayers applied for release on the grounds of serious hardship before September 2003, as those records were kept with the Board.

DEBTORS' AWARENESS OF HARDSHIP PROVISIONS

10.31 Submissions indicated that the Tax Office may not bring to debtors awareness that they may apply for release on the grounds of serious hardship. In 2001, the Commonwealth Ombudsman commented that this was the case in relation to certain investors in mass-marketed tax-effective investments. He recommended that:

The Commissioner ... consider providing taxpayers with information about ATO debt recovery policy, the existence and role of the Tax Relief Board, and relevant contact points, including access to the Ombudsman, when they are advised that a debt is to be raised.⁸⁷

10.32 The Tax Office states that it now publishes a booklet, *Difficulty in paying your tax debt (business clients)*.⁸⁸ This booklet contains the following entry on applications for release:

What if the payment will cause you serious hardship?

Serious hardship is when you are unable to provide food, accommodation, clothing, medical treatment, education, or other necessities for yourself or your family, or other people for whom you are responsible.

You can apply to the Tax Office for a release from payment of your tax debt.

For more information and an application, phone the Client Account Management helpline on 13 11 42.

10.33 Other Tax Office publications contain substantially similar wording. Additionally, the *ATO receivables policy* states that debtors should be made aware of the right to apply for a release.

⁸⁶ Explanatory memorandum to the Taxation Laws Amendment (No. 6) Bill 2003, paragraph 4.1.

⁸⁷ Commonwealth Ombudsman, *The ATO and Maincamp*, Canberra, January 2001, recommendation 18, p. 7.

⁸⁸ First published on 2 September 2003.

Appendix 1: Business-related personal bankruptcies where the Tax Office has been disclosed as a creditor

| State | Financial Year Ending | Debt Levels | | | | | | | | | | Total |
|---------|-----------------------|--------------------|----------------------|----------------------|-----------------------|------------------------|------------------------|------------------------|------------------------|------------------------|--|-------|
| | | Less than \$25,000 | \$25,001 to \$50,000 | \$50,001 to \$75,000 | \$75,001 to \$100,000 | \$100,001 to \$125,000 | \$125,001 to \$150,000 | \$150,001 to \$175,000 | \$175,001 to \$200,000 | Greater than \$200,000 | | |
| NSW/ACT | 2002 | 469 | 62 | 31 | 10 | 12 | 2 | 16 | 4 | 20 | | |
| | 2003 | 443 | 82 | 30 | 22 | 11 | 2 | 6 | 0 | 23 | | |
| | 2004 (YTD) | 391 | 107 | 44 | 17 | 15 | 6 | 5 | 7 | 32 | | |
| | Total | 1303 | 251 | 105 | 49 | 38 | 10 | 27 | 11 | 81 | | |
| QLD | 2002 | 549 | 62 | 20 | 5 | 6 | 2 | 2 | 4 | 6 | | |
| | 2003 | 642 | 83 | 31 | 13 | 2 | 1 | 2 | 1 | 6 | | |
| | 2004 (YTD) | 494 | 98 | 32 | 12 | 1 | 6 | 3 | 4 | 12 | | |
| | Total | 1685 | 243 | 83 | 30 | 9 | 9 | 7 | 9 | 24 | | |
| SA/NT | 2002 | 92 | 17 | 9 | 5 | 2 | 1 | 0 | 1 | 0 | | |
| | 2003 | 143 | 28 | 16 | 4 | 2 | 6 | 1 | 1 | 2 | | |
| | 2004 (YTD) | 149 | 27 | 10 | 3 | 5 | 1 | 2 | 0 | 7 | | |
| | Total | 384 | 72 | 35 | 12 | 9 | 8 | 3 | 2 | 9 | | |

Business-related personal bankruptcies where the Tax Office has been disclosed as a creditor (continued)

| State | Financial Year Ending | Debt Levels | | | | | | | | | | Total |
|-------|-----------------------|--------------------|----------------------|----------------------|-----------------------|------------------------|------------------------|------------------------|------------------------|------------------------|-------------|-------|
| | | Less than \$25,000 | \$25,001 to \$50,000 | \$50,001 to \$75,000 | \$75,001 to \$100,000 | \$100,001 to \$125,000 | \$125,001 to \$150,000 | \$150,001 to \$175,000 | \$175,001 to \$200,000 | Greater than \$200,000 | | |
| TAS | 2002 | 77 | 8 | 2 | 1 | 0 | 1 | 0 | 0 | 0 | 2 | |
| | 2003 | 93 | 6 | 1 | 4 | 1 | 0 | 0 | 0 | 1 | | |
| | 2004 (YTD) | 55 | 5 | 2 | 1 | 1 | 0 | 0 | 0 | 3 | | |
| | Total | 225 | 19 | 5 | 6 | 2 | 1 | 0 | 0 | 6 | | |
| VIC | 2002 | 317 | 34 | 16 | 9 | 8 | 2 | 7 | 2 | 7 | | |
| | 2003 | 320 | 40 | 17 | 9 | 5 | 5 | 2 | 1 | 7 | | |
| | 2004 (YTD) | 311 | 46 | 23 | 12 | 14 | 9 | 4 | 3 | 13 | | |
| | Total | 948 | 120 | 56 | 30 | 27 | 16 | 13 | 6 | 27 | | |
| WA | 2002 | 380 | 34 | 23 | 9 | 4 | 7 | 2 | 0 | 2 | | |
| | 2003 | 293 | 39 | 22 | 8 | 0 | 0 | 0 | 4 | 1 | | |
| | 2004 (YTD) | 210 | 42 | 22 | 5 | 4 | 1 | 3 | 1 | 2 | | |
| | Total | 883 | 115 | 67 | 22 | 8 | 8 | 5 | 5 | 5 | | |
| | 2002 | 1884 | 217 | 101 | 39 | 32 | 15 | 27 | 11 | 37 | 2363 | |
| | 2003 | 1934 | 278 | 117 | 60 | 21 | 14 | 11 | 7 | 46 | 2488 | |
| | 2004 | 1610 | 325 | 133 | 50 | 40 | 23 | 17 | 15 | 69 | 2282 | |

Source: Insolvency and Trustee Service Australia

