



Australian Government
Inspector-General of Taxation

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

**Report to the Minister for Revenue and
the Assistant Treasurer**

Inspector-General of Taxation

12 April 2005

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12 April 2005

The Hon Mal Brough MP
Minister for Revenue and Assistant Treasurer
Parliament House
CANBERRA ACT 2600

Dear Minister

I am pleased to present to you my report of the Review into the Tax Office's Small Business Debt Collection Practices. The report has been prepared under section 10 of the *Inspector-General of Taxation Act 2003* ('the Act').

In accordance with the requirements of section 25 of the Act, I have provided the Commissioner of Taxation with the opportunity to respond to the report's findings and recommendations. His reply and associated comments on individual recommendations have been incorporated into the report. It will be noted that the Commissioner has agreed with all of my recommendations.

I offer my thanks for the co-operative approach of the Tax Office staff and the support and contribution of many professional bodies, business groups, individuals and government bodies. The willingness of many to provide their time in preparing submissions and discussing issues with me and my staff is greatly appreciated.

Yours sincerely

A handwritten signature in black ink that reads "David Vos".

David R Vos AM
Inspector-General of Taxation

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CHAPTER 1: INTRODUCTION

1.1 This is the report on the review conducted by the Inspector-General of Taxation (Inspector-General) of the Australian Taxation Office's (ATO or Tax Office) small business debt collection policies and practices, pursuant to section 10 of the *Inspector-General of Taxation Act 2003* (IGT Act).

1.2 The review was announced on 21 April 2004. Its terms of reference are reproduced at Appendix 1 to this report. Details of how the review was conducted are given in Appendix 2.

1.3 The review was conducted pursuant to subsection 8(1) of the IGT Act, being a review conducted on the initiative of the Inspector-General. The decision to undertake the review was prompted by concerns raised by industry and tax practitioners and media reports.

1.4 Information gathered as part of this review has been published in the accompanying document, *Review into the Tax Office's Small Business Debt Collection Practices – Summary of submissions and evidence*.

1.5 During the course of the Inspector-General's review, the Tax Office made or proposed changes to its debt collection policies and practices. These changes made or proposed by the Tax Office are noted in this report wherever relevant.

1.6 Unless otherwise noted, all statistics used in this report were provided by the Tax Office.

ACKNOWLEDGEMENTS

1.7 Sincere thanks are extended to those organisations representing small businesses, accountants, tax practitioners, insolvency practitioners and lawyers; and, small businesses, accountants, tax practitioners, insolvency practitioners, lawyers and commercial debt recovery agents who participated in meetings and workshops. Those who prepared written submissions for this review made a particularly important contribution.

1.8 The Inspector-General of Taxation acknowledges with thanks the assistance of the Taxation Ombudsman and his Special Tax Adviser, the Official Trustee of Bankruptcy and staff of the Australian Securities and Investments Commission.

1.9 The Inspector-General of Taxation acknowledges the continued cooperation of the Commissioner of Taxation and his staff.

CHAPTER 2: INSPECTOR-GENERAL'S SUMMARY AND RECOMMENDATIONS

2.1 Over 838,000 small business taxpaying entities (about one-third of all small business taxpaying entities¹) owed the Tax Office nearly \$6.7 billion of tax as at 30 June 2004. None of this outstanding tax was in dispute. Most of the outstanding tax resulted from the lodgment of income tax returns and Business Activity Statements, with a significant component being tax withheld from employee wages and salaries.

2.2 Although nearly 788,000 small business taxpaying entities each owed less than \$25,000 (505,000 of these taxpayers owed less than \$2,500) as at 30 June 2004, the Tax Office has advised that some 50,812 taxpayers each owed more than \$25,000. This group owed the Tax Office a total of \$4.002 billion.

2.3 Media reports have suggested that the Tax Office is unnecessarily harsh with, or too quick to take legal action against, small business tax debtors. Notwithstanding isolated cases, there is no evidence to suggest that this approach is taken on a systemic basis. There is a broadly held view that the Tax Office is lenient in its debt collection approach towards small businesses and offers small businesses adequate opportunity to trade out of debt. The Tax Office describes its broad approach as one of seeking to encourage businesses to remain 'engaged in the system'. Only a small percentage of all collectable tax debt cases end in Tax Office-initiated bankruptcy or liquidation (about 0.6 per cent).

2.4 Despite this lenient approach, there is significant private sector disquiet concerning the Tax Office's understanding of the small business environment, characteristics, motivations and the effect that these factors have on small business tax debtors' compliance with tax payment obligations. These concerns are outlined in the document, *Review into the Tax Office's Small Business Debt Collection Practices – Summary of submissions and evidence*. Some of the issues would benefit from changes to Tax Office approaches, others would benefit from better information and communication by the Tax Office.

2.5 A key theme raised by small businesses and their advisers during the review related to the Tax Office's inability, on a broad systemic basis, to distinguish between the different general categories of tax payment compliance attitudes: those businesses wanting to meet tax payment obligations but unable to do so without short-term assistance; and those businesses either incapable of meeting tax payment obligations or in serial default. This inability has broad effects, potentially disadvantaging both compliant small business competitors and other creditors.

2.6 The business community highlighted a competitive disadvantage where the same payment leniency shown to normally compliant businesses, facing 'manageable' cash flow problems, was also shown to serial defaulters and those incapable of meeting their tax payment obligations. More small business debt cases are in default of their repayment arrangements than those not in default. Non-compliant businesses have reduced operating

1 While there are an estimated 1.2 million small businesses, each business may consist of more than one small business taxpaying entity.

costs where tax debts continue to remain unpaid and are therefore believed to be able to undercut compliant businesses' prices.

2.7 Difficulty in meeting tax payment obligations can also forewarn a small business of potential non-viability and signals wider problems for all creditors. Continued trading by small businesses on Tax Office-supplied credit can significantly disadvantage creditors – usually other small businesses – by their increased exposure to loss.

2.8 The Inspector-General acknowledges that the Tax Office's relatively lenient approach may create a competitive disadvantage to self-funding small businesses or businesses that borrow funds on the open market to meet their tax payment obligations. Small businesses with established tax debts are effectively using the Tax Office as a source of funding for their business, on either a short-term or a long term basis, to enable them to continue to trade. However, it is noted that the imposition of the general interest charge on outstanding tax debts, when subsequently paid, minimises the competitive advantage arising in these situations.

2.9 The Tax Office's debt collection policy is directed towards identifying and applying the most appropriate debt collection response to each particular case, having regard to individual circumstances. However, there are many obstacles in applying this policy in practice to all tax debtors. Obstacles include large numbers of debt cases, Tax Office resource allocations, unsophisticated risk identification techniques and varying quality and reliability of small business financial information. The Tax Office also has a policy of minimising the costs of tax compliance.

2.10 Notwithstanding these obstacles, and while acknowledging that the majority of small businesses do have an effective understanding of their cash flows, there are measures that can further assist small business to avoid or resolve tax debt:

- measures that encourage small businesses to make provision for future tax liabilities;
- measures that encourage small business tax debtors to critically examine their ongoing viability at a very early stage of tax payment difficulties; and
- measures that identify wilfully non-compliant small businesses at an early stage and escalate those cases for prompt and appropriate responses.

2.11 Since the announcement of this review, the Tax Office commenced a 'small business debt initiative'. This effectively offers an amnesty from legal recovery action to about 500,000 eligible small business cases with debts under \$25,000 on the condition that they enter an arrangement to repay their tax debt by direct debit within specified time frames. The initiative is aimed at reducing case numbers and debt holdings, and it signals firmer action against those businesses not complying with their tax payment obligations. It is estimated that full implementation of the initiative will take over 18 months.

2.12 The Inspector-General supports the concept of the initiative as a positive encouragement to small businesses to finalise outstanding debts. It provides some certainty to taxpayers and has received endorsement from tax advisers and their professional associations.

2.13 The Commissioner of Taxation has signalled 'firm' action against those eligible businesses that do not accept the offer. Current indications are that the initial high take up

rate by small business debtors may not be maintained. In the Inspector-General's view, the effectiveness of the Commissioner's signals in encouraging payment of outstanding tax will not be as a result of the severity of the threatened action but as a result of the certainty of action being taken.

2.14 The Inspector-General notes that there is little complaint about the Tax Office collection approach from businesses in respect of their own tax debts, particularly for debts under \$100,000. Provided such businesses enter into meaningful dialogue with Tax Office debt collection staff and meet their commitments as promised, or seek revision to previous extensions of time to pay, they will be allowed to trade out of their cash flow problems.

2.15 However, during the course of the review the Inspector-General has been reminded of the apparent commercial advantage which those organisations with significant outstanding tax are receiving compared with competitors in similar businesses. These compliant businesses may be either containing market growth or further investment in their business because of their commitment to meet their tax obligations as and when they fall due.

Recommendation 1

The Inspector-General recommends that the Tax Office addresses issues of competitive disadvantage by distinguishing collection approaches between:

- those small business tax debtors that want to comply with their payment obligations but need short-term assistance to do so; and
- those small business tax debtors that are either incapable of meeting tax payment obligations within a relatively short time frame or are in serial default.

ATO Response

We agree with the principle embedded in this recommendation – it is consistent with our directions for revenue administration generally. Consistent with this we are currently exploring the use of improved analytical tools to better distinguish our treatment of debt cases.

At the same time, as recognised in your report care needs to be exercised in making such judgements. Exactly how current practices would change will need to be carefully considered. The practicality of managing very large volumes of debt cases cannot be ignored in these considerations. This is notwithstanding the decision taken recently to deploy an additional 550 staff to debt collection.

The Tax Office will consult with stakeholders in pursuing this issue.

Recommendation 2

The Inspector-General recommends that the Tax Office works with the small business sector, and their representatives, to develop new administrative approaches to actively assist small businesses to better manage cash flows, if necessary, to meet tax liabilities as and when they fall due.

ATO Response

We agree with this recommendation. It too reflects current directions as evidenced by the taxi industry initiative referred to in your report and the education program we now run to support taxpayers identified as new to business.

CHAPTER 3: THE TAX OFFICE'S APPROACH TO COLLECTING TAX DEBTS FROM SMALL BUSINESSES

BACKGROUND

Small business

3.1 For the purposes of this review, the Inspector-General defined 'small businesses' as those businesses with an annual turnover of under \$10 million. This turnover threshold ensures that this review takes into account a very broad base of business taxpayers.

3.2 The Tax Office categorises businesses with annual turnovers of less than \$2 million as micro businesses and those with turnovers of between \$2 million and \$10 million as small businesses.

3.3 There is an apparent discrepancy between the Tax Office and Australian Bureau of Statistics (ABS) concerning the number of small businesses in Australia. This discrepancy may be due to Tax Office's figures counting each small business taxpaying entity within any economic unit rather than the economic unit. For example, a business may operate through a trading trust with a corporate trustee and also have a self managed superannuation fund as part of its business structure. These businesses may also include dependent contractor arrangements.

Table 3.1: Numbers of small businesses

Year	Tax Office figures (in millions)	Australian Bureau of Statistics figures (in millions)
2002-03	2.5	1.2
2003-04	2.4	Not available

Source: Tax Office and Australian Bureau of Statistics

3.4 On the Tax Office's figures, the largest group of small business taxpaying entities that received active business income are individuals. This figure excludes those individuals whose only business income was a distribution from a partnership or a trust.

Table 3.2: Numbers of small business taxpayers in 2003-04 by entity type

Entity type	Number
Company	665,503
Individual	876,491
Partnership	419,000
Superannuation fund	223,469
Trust	215,772
Total	2,400,235

Source: Tax Office

3.5 The Tax Office's approach to collecting debt is focused on the taxpaying entity rather than the economic unit to which the entity belongs.

Small business debt

3.6 Over 838,000 small business taxpaying entities (about one-third of all small business taxpaying entities) owe the Tax Office a collectable debt.

Table 3.3: Small business debt cases as at 30 June 2004

		Numbers	% of total small business numbers
Total small business taxpayer population		2,400,235	100.00
	small business debtors owing \$1-\$2,499	505,537	21.06
	small business debtors owing \$2,500-\$24,999	281,806	11.74
	small business debtors owing \$25,000 or more	50,812	2.12
Total small business debtors		838,155	34.92

Source: Tax Office

3.7 Small business debt cases make up the major proportion of all collectable debt value and cases. However, a significant proportion of these small business debt cases owe less than \$2,500.

Table 3.4: Collectable debt as at 30 June 2004

Type of debtor		Value (\$m)	% of total collectable debt	Cases	% of total collectable cases
Total all debtors		8,343	100.00	1,224,232	100.00
	small business debtors owing \$1-\$2,499	313	3.75	505,441	41.29
	small business debtors owing \$2,500-\$24,999	2,380	28.53	281,806	23.02
	small business debtors owing \$25,000 or more	4,002	47.97	50,812	4.15
Total small business debtors		6,695	80.25	838,059	68.46

Source: Tax Office

3.8 Most of the outstanding tax resulted from the lodgment of income tax returns and Business Activity Statements, with a significant component being tax withheld from employee wages and salaries.

3.9 About 58 per cent of the small business tax debt value arises from the activity statement and about 32 per cent from the income tax return form. Tax Office longitudinal analysis of additional debt cases for February 2004 indicates that, for the segment of businesses with annual turnovers of less than \$2 million, 72.04 per cent of additional

integrated instalment account debt comprised of Pay As You Go withholding while 22.17 per cent related to GST.²

Tax Office debt collection function

3.10 The Tax Office is the Commonwealth's principal revenue collection agency. In 2003-04, it collected 88 per cent of the Commonwealth's revenue (about \$165 billion) and \$33 billion of GST on behalf of the States and Territories. As at 30 June 2004, about \$8.34 billion³ in undisputed tax debt (collectable debt) was owed.

3.11 Almost all Organisation for Economic Cooperation and Development (OECD) countries maintain a dedicated tax collection function within their revenue authority.⁴

3.12 The Tax Office has a functional approach to collecting debt. The Tax Office's internal organisational structure in dealing with debt is located within the Operations business line, headed by a Deputy Commissioner (Operations) tasked with responsibility for various functions, including debt collection. Approximately 2,600 tax officials are involved in directly managing debt recovery or involved in supporting those directly involved.

3.13 With the exception of project teams, resources are divided along functional lines without distinction between market segments. Project teams focus on particular lodgment and payment risk areas – for example, mass – marketed scheme participants, superannuation debts and phoenix companies. The project teams have their own process for debt recovery that is tailored to that identified risk area. There is no specific project team for small business debt.

3.14 Resources are applied to actively monitor, on an individual basis, the larger level debts for those debtors that do not engage with the Tax Office. The lower level debts are dealt with through automated responses that do not distinguish between the different characteristics of small businesses. Debt recovery work is prioritised primarily on the basis of value of debt outstanding: the larger the debt the more likely it is to receive a quick and individualised response. Further information on the Tax Office's process is provided in the document, *Review into the Tax Office's Small Business Debt Collection Practices – Summary of submissions and evidence*.

3.15 Since the commencement of this review, the Tax Office has restructured its senior management in the Operations business line, including the creation of the position of Deputy Commissioner (Debt). This reflects the intention for one area to maintain both a strategic focus on debt issues as well as the operational function of debt recovery.

2 The Tax Office longitudinal analysis was developed by the Tax Office for the purposes of ongoing analysis only and not intended by the Tax Office for reporting purposes.

3 The collectable debt amounts provided to the Inspector-General, which have been used for the purposes of this analysis and discussion, are 'unadjusted' and differ from overall debt reported in Commissioner of Taxation's 2004 annual report. Collectable debt figures in that annual report have been adjusted to 'reflect account posting corrections' and 'accounting modifications and extraordinary collection factors that increased the level of collectable debt reported' (see pp. 53–54). However, all debt figures the Tax Office provided to the Inspector-General were based on unadjusted amounts.

4 Organisation for Economic Co-operation and Development, *Tax administration in OECD countries: a comparative series (2004)*, Paris, October 2004, p. 27.

Small businesses present greatest compliance challenge

3.16 For a tax administration, small businesses often create the greatest compliance challenge because of factors like poor-record keeping, intertwining of business and personal affairs, fluctuating profitability and a constant need for working capital to maintain viability. It is generally accepted that a certain level of business failure in this sector is inevitable. A challenge for the tax administrator, while striving for an acceptable level of compliance from this sector, is to avoid accelerating the level of business failure by inappropriate administrative policies and procedures. Equally, the administration needs to ensure that viable and growing businesses are not disadvantaged by the non-compliant activities of business competitors. A key challenge for the tax administration is to target its resources to those areas of greatest compliance risk, whilst maintaining operational efficiencies and ensuring that debt collection policies and practices are equitable and uniformly enforced.

3.17 Business generally expects that a tax administration will play a supportive role, but also expects the administration to deal firmly with blatant non-compliance because of the competitive disadvantages this creates. Business is generally accepting of some inconvenience (within reasonable limits) if it is seen as addressing serious abuses of the tax system. If, on the other hand, business does not see appropriate action being taken against recalcitrant taxpayers, it may address the competitive disadvantage by adopting similar practices.

Private sector disquiet with debt collection policies and practices

3.18 Business is concerned that Tax Office debt collection policies do not provide certainty, transparency or appropriately consider the viability of a business. Business is also concerned that the debt collection practices do not uniformly apply the relevant policies, result in inequities and do not deliver fair or proportionate debt collection responses in individual cases. These concerns are outlined in the document, *Review into the Tax Office's Small Business Debt Collection Practices – Summary of submissions and evidence*.

3.19 Concerns were also raised with the internal efficiency and effectiveness of the Tax Office's debt collection function. However, in the Inspector-General's view these issues are more appropriately considered by Tax Office management and other bodies.

ISSUES

Issue 1

There is no evidence that the Tax Office is unnecessarily harsh with, or too quick to take legal action against, small business tax debtors on a systemic basis.

3.20 Media reports have suggested that the Tax Office is unnecessarily harsh with, or too quick to take legal action against, small business tax debtors. Notwithstanding isolated cases, there is no evidence to suggest that this approach is taken on a systemic basis. There is a broadly held view that the Tax Office is lenient in its debt collection approach towards small businesses and offers small businesses adequate opportunity to continue to trade out of debt. Only a small percentage of all collectable tax debt cases end in Tax Office-initiated bankruptcy or liquidation.

Broadly held view that the Tax Office is lenient

3.21 With the exception of those involved in mass-marketed tax effective schemes and isolated cases brought to the Inspector-General's attention, representatives for small business, the accounting, tax practitioner and legal professions all agree that the Tax Office is lenient in its approach to collecting debt from the small business sector. The Taxation Ombudsman has also observed that on the basis of complaints made to his office that there is no evidence to suggest that the Tax Office takes precipitate legal action.

Adequate opportunity to trade out of debt provided

3.22 Through its debt collection policies and practices, the Tax Office affords small business tax debtors adequate opportunity for viable small businesses to continue to trade out of their tax debts. Provided such businesses enter into meaningful dialogue with Tax Office debt collection staff and meet their commitments as promised, or seek revision to previous extensions of time to pay, they will be allowed to trade out of their cash flow problems.

3.23 Repayment arrangements are entered without onerous repayment terms or a requirement for supporting documentation. Where small businesses experience short-term difficulties, the Tax Office will generally accept repayment arrangements meeting the accruing general interest charge. The Tax Office also generally accepts repayment arrangements proposing to finalise the debt within 12 months without the need for documentation or negotiation. Small businesses are also able to re-negotiate repayment arrangements as the need arises. The Tax Office supports this approach with a policy to accept taxpayers' reasons for changing arrangements without corroborating evidence unless a substantial history of defaulted arrangements exists. This approach minimises small businesses compliance costs.

3.24 A significant proportion of small business debtors have entered repayment arrangements (about 20 per cent).

Table 3.5: Payment arrangement numbers⁵

Collectable debt cases	Total payment arrangements	
	Value of debt (\$m)	Cases
Total for all debtors (a)	2,756	291,878
Total for small business debtors (a)	2,348	194,093
Total for small business debtors owing more than \$25,000 (b)	1,459	23,447

Source: Tax Office

(a) Information current as at 30 June 2004.

(b) Information current as at 13 September 2004.

3.25 A small proportion of small business debtors are subject to advanced debt recovery action (about 6 per cent). Advanced debt recovery action is generally taken in those cases where a debt remains unpaid, the Tax Office has taken reasonable steps to contact the taxpayer to negotiate repayment of the debt and either the taxpayer has not entered a repayment arrangement or the taxpayer has a history of defaulted arrangements. Advanced debt recovery action means the commencement of significant collection action including the initiation of legal action or issuing Director Penalty Notices (notices which force the director

⁵ These figures include an unascertainable proportion of 114,636 cases with credit or zero balances.

of a company to take action to resolve their company's debts within 14 days or else become personally liable for those debts). Release applications are also counted in the Tax Office's figures for advanced debt recovery action. A release application seeks to extinguish a taxpayer's debt on the grounds that the taxpayer is suffering serious hardship.

Table 3.6: Collectable debt by advanced debt recovery action

Debtors subject to advanced debt recovery action	Value (\$m)	% of total collectable debt by value	Cases
Total collectable debt – all debtors (a)	2,135	25.59	63,665
Total collectable debt – all small business debtors (a)	1,689	20.24	49,442
Total collectable debt – all small business debtors owing >\$25,000 (b)	1,102	13.22	12,904

Source: Tax Office

(a) Information current as at 30 June 2004.

(b) Information current as at 13 September 2004.

3.26 Over 2003-04, the value of small business collectable debt subject to advanced debt recovery action has remained relatively constant.

Small percentage of cases end in bankruptcy or liquidation

3.27 There is a low proportion of advanced debt recovery cases involving the initiation of bankruptcy or winding up proceedings. Bankruptcy occurs when an individual's property is placed under the control of a trustee in bankruptcy for the benefit of creditors. Liquidation occurs where a corporate debtor's affairs are placed into the hands of a liquidator.

3.28 The Tax Office policy states that bankruptcy or winding up proceedings are used as a last resort to recovering tax debts.

Table 3.7: Approximate 2003-04 collectable value by advanced debt recovery action

Legal action	Number of notices issued/actions initiated since July 2003 (Approximate)	Collectable debt by legal actioning (\$m)
Director Penalty Notices	20,000	1,500
Garnishee Notices	4,200	400
Section 459E Notices	10,500	1,100
Statement of Liquidated Claim	7,900	500
Writ of Execution	150	10
Bankruptcy	880	165
Winding up	1,700	240

Source: Tax Office

3.29 Only a small percentage of tax debt cases are resolved through bankruptcy or liquidation (less than 0.6 per cent). They also comprise a small percentage of all business-related bankruptcies each year (about 3.5 per cent). However, they comprise a significant percentage of all liquidations over the past two years (about 28.5 per cent).

3.30 In 2003-04, Tax Office-initiated bankruptcies and liquidations (715 cases) comprised less than 0.6 per cent of the total number of collectable debt cases on hand (approximately 1.2 million) and less than 1.5 per cent of the number of small business collectable debt cases involving advanced debt recovery action (approximately 49,000 cases).

3.31 There has been an overall decrease and plateau in the number of business-related personal bankruptcies initiated by the Tax Office over time.

Table 3.8: Tax Office-initiated business-related personal bankruptcies 1996-97 to 2003-04

Financial year	Total business related bankruptcies	Tax Office-initiated business-related bankruptcies	Percentage of Tax Office-initiated business-related bankruptcies
1997	5,191	387	7.5%
1998	4,854	287	5.9%
1999	4,962	210	4.2%
2000	3,899	118	3.0%
2001	4,574	98	2.1%
2002	4,212	148	3.5%
2003	4,103	143	3.5%
2004	4,149	135	3.3%

Source: Insolvency and Trustee Service Australia.

3.32 Commercially available figures show an increase in the number of Tax Office-initiated liquidations over the 2003-04 year when compared with the 2002-03 year. Figures for previous years have not been made available.

Table 3.9: Tax Office-initiated liquidations 2002-03 to 2003-04

Period	Total number of court liquidations	Tax Office-initiated liquidations	% of Tax Office-initiated liquidations
11 July 2002 to 10 July 2003	1,897	320	16.8%
11 July 2003 to 10 July 2004	2,036	580	28.5%

Source: Insolvency Notices Pty Ltd.

Issue 2

The Tax Office does not understand enough about small business tax debtors to deliver on a systemic basis fair and proportionate debt collection responses.

3.33 Despite the Tax Office's lenient approach, there is significant private sector disquiet concerning the Tax Office's understanding of the small business environment, characteristics, motivations and the effect that these factors drive small business tax debtors' compliance with tax payment obligations. These concerns are articulated in the document, *Review into the Tax Office's Small Business Debt Collection Practices – Summary of submissions and evidence*.

3.34 Behind these concerns are broad issues of unease expressed by small business. These issues include:

- uncertainty about the debt collection process, including the perceived lack of clarity, practical guidance and certainty provided by the Tax Office's debt collection policies;
- disquiet about the way in which the Tax Office implements its debt collection policies and the impact of the Tax Office's management of debt collection cases including:

- the perceived failure by the Tax Office to understand the underlying causes of small business collectable tax debts;
- the perceived lack of consistency, certainty and transparency in the implementation of its debt collection policies;
- disquiet about a lack of commercial orientation in aspects of debt collection including the timeliness of response by the Tax Office and approach at creditors meetings;
- the perceived lack of co-ordination with other agencies;
- disquiet about the way in which the Tax Office exercises judgement in determining recovery action including:
 - the perceived Tax Office's lack of appreciation of the pressures faced by small business and the perceived lack of consideration given to the impacts on businesses and their creditors when determining recovery action;
 - the failure by the Tax Office to consider the underlying viability of a debtor business as part of its debt collection practices;
 - the failure by the Tax Office to consider how its actions will affect the underlying viability of the debtor's creditors and competitors;
 - the perceived lack of differentiation between large/small or high risk/low risk or compliant/non-compliant small businesses when determining recovery actions;
 - the perceived reliance and inflexible adherence to processes and procedures rather than judgments designed to manage risks;
- apprehension with the Tax Office's approach to debt collection including:
 - the perceived lack of transparency and accountability in the Tax Office's debt collection systems including the perceived reliance on automated processes and procedures; and
 - the perceived lack of timely and clear communication over debt issues;
- apprehension about the capability of debt collection officers; and
- disquiet about a lack of timeliness and consistency in the Tax Office's approach to legal action with the debt collection policies not promoting a transparent and accountable process.

3.35 Some of the issues would benefit from changes to Tax Office approaches, others would benefit from better information and communication by the Tax Office.

Issue 3

The Tax Office should improve its ability to distinguish, at an early stage, between those businesses that want to pay their tax debts but are having short-term difficulty doing so from those businesses that will not pay.

3.36 A key theme raised by small businesses and their advisers during the review relates to the Tax Office's inability, on a broad systemic basis, to distinguish between the different general categories of tax payment compliance attitudes: those businesses wanting to meet tax payment obligations but unable to do without short-term assistance; and those businesses either incapable of meeting tax payment obligations or in serial default. This inability has broad effects, potentially disadvantaging both compliant small business competitors and other creditors.

3.37 The Tax Office has an unsophisticated process for selecting cases for human intervention. Small businesses' previous compliance history is not considered for the purpose of streaming cases to appropriate functional areas for action. Therefore, a small business tax debtor's payment compliance behaviour is established in each individual case afresh. The inherent delay in establishing a compliance history in each case increases the likelihood of inequitable treatment of compliant small business competitors and debtors' creditors. Opportunities exist to better determine, on a broad systemic level, payment compliance responses on the basis of a small business's willingness or capacity to pay.

Broad systemic approach to case selection

3.38 Tax debtors' different behaviours and circumstances require different payment compliance responses to secure their compliance with payment obligations. The Tax Office's debt collection policies require individual consideration of debtors' circumstances and behaviour when choosing a compliance response towards that debtor. One aim is that tax officials choose compliance responses that have a future effect of moving debtors towards an attitude of voluntary compliance and away from attitudes requiring resource intensive or severe compliance strategies.

3.39 Due to the number of debt cases, 1.6 million in 2003-04, and the number of tax officials focused on debt collection, about 2,600, automated processes are used to select cases for human intervention and compliance responses.

3.40 However, the Tax Office's automated process for the initial streaming of cases for compliance responses is not focused on determining whether a small business requires short-term assistance to continue to trade out of debt or whether they are either incapable of repaying the debt or in serial default. The existing processes prioritise cases, firstly, on the basis of whether cases fall within identified high risk non-compliant groups and, secondly, on the basis of the level of debt outstanding in any particular case. Cases in high risk areas are allocated to the project teams focused on those risks – for example, phoenix companies, superannuation debts and mass marketed tax effective scheme participants. The remaining majority of cases are streamed to functional areas for prioritisation and action on the basis of the amount of debt outstanding.

3.41 Generally, cases are sent automatic reminder letters. These are an effective means to prompt those small businesses that have 'forgotten' to pay their liability. Approximately 60 per cent of cases will pay after receiving a reminder letter. Depending upon debtors'

responses, cases will receive a series of these letters before being allocated for possible human intervention. Lower debt levels will generally receive little or no tax official attention.

3.42 Higher debt level cases may be escalated for firmer collection responses where the debt remains unpaid and the debtor does not seek to contact the Tax Office (or does not seek to become 'engaged in the system') to negotiate a repayment arrangement. Non-compliant payment behaviour on previous occasions is generally disregarded. As long as a serial debtor, or a debtor who is incapable of repaying the debt, remains 'engaged in the system' they will generally receive the same leniency as other small business debtors.

3.43 More small business debt cases are in default of their repayment arrangements than those that are not in default.

Table 3.10: Small business collectable debt cases by arrangement type⁶

Type of debtor	Total payment arrangements		Defaulted arrangements	
	\$m	Cases	\$m	Cases
Total collectable debt – all debtors (a)	1,451	134,159	1,305	157,719
Total collectable debt – small business debtors (a)	1,214	89,253	1,134	104,840
Total collectable debt – small business debtors owing >\$25,000 (b)	898	12,832	561	10,615

Source: Tax Office

(a) Information current as at 30 June 2004.

(b) Information current as at 13 September 2004.

3.44 Small businesses with higher debt levels have the lowest number of defaults due to tax official intervention.

3.45 This process for determining payment incapacity and non-compliant payment behaviour involves inherent delays, aggravating potential competitive disadvantage.

Competitive disadvantage

3.46 The business community highlighted a competitive disadvantage where the same payment leniency shown to normally compliant businesses, facing 'manageable' cash flow problems, was also shown to serial defaulters and those incapable of meeting their tax payment obligations. Non-compliant businesses have reduced operating costs where tax debts continue to remain unpaid and are therefore believed to be able to undercut compliant businesses' prices.

3.47 Difficulty in meeting tax payment obligations can also forewarn a small business of potential non-viability and signals wider problems for all creditors. Continued trading by small businesses on Tax Office-supplied credit can significantly disadvantage creditors – usually other small businesses – by their increased exposure to loss.

Effect of general interest charge

3.48 Tax debts attract a general interest charge (GIC). The GIC may discourage taxpayers from using the tax system as an unsecured mechanism for borrowing. However, where a small business either does not intend to pay its outstanding tax or unable to access

⁶ These figures include an unascertainable proportion of 114,636 cases with credit or zero balances and may contain minor inaccuracies as they are taken from two sources of Tax Office information.

alternative financing, the small business will effectively use the Tax Office as a source of borrowings. In these circumstances the rate of the GIC will not act as a deterrent and its adverse effect may be offset by not needing to apply for borrowings, not having to pay for application fees for borrowings or not having to give notice to secured creditors of increasing debt exposure.

3.49 The Inspector-General acknowledges that the Tax Office's relatively lenient approach may create a competitive disadvantage to self-funding small businesses or businesses that borrow funds on the open market to meet their tax payment obligations. Small businesses with established tax debts are effectively using the Tax Office as a source of funding for their business, on either a short-term or a long term basis, to enable them to continue to trade. However, it is noted that the imposition of the GIC on outstanding tax debts, when subsequently paid, minimises the competitive advantage arising in these situations.

Recommendation 1

The Inspector-General recommends that the Tax Office addresses issues of competitive disadvantage by distinguishing collection approaches between:

- those small business tax debtors that want to comply with their payment obligations but need short-term assistance to do so; and
- those small business tax debtors that are either incapable of meeting tax payment obligations or are in serial default.

ATO Response

We agree with the principle embedded in this recommendation – it is consistent with our directions for revenue administration generally. Consistent with this we are currently exploring the use of improved analytical tools to better distinguish our treatment of debt cases.

At the same time, as recognised in your report care needs to be exercised in making such judgements. Exactly how current practices would change will need to be carefully considered. The practicality of managing very large volumes of debt cases cannot be ignored in these considerations. This is notwithstanding the decision taken recently to deploy an additional 550 staff to debt collection.

The Tax Office will consult with stakeholders in pursuing this issue.

Issue 4

The Tax Office should take early action to assist those small businesses experiencing short-term cash flow problems to avoid incurring or accumulating tax debts

3.50 The Tax Office's debt collection policy is directed towards identifying and applying the most appropriate debt collection response to each particular case, having regard to individual circumstances. However, there are many obstacles in applying this policy in practice to all tax debtors. Obstacles include large numbers of debt cases, Tax Office resource

allocations, unsophisticated risk identification techniques and varying quality and reliability of small business financial information. The Tax Office also has a policy of minimising the costs of tax compliance.

3.51 Notwithstanding these obstacles, and while acknowledging that the majority of small businesses do have an effective understanding of their cash flows, there are administrative measures that can further assist small business to avoid or resolve tax debt:

- measures that encourage small businesses to make provision for future tax liabilities;
- measures that encourage small business tax debtors to critically examine their ongoing viability at a very early stage of tax payment difficulties; and
- measures that identify wilfully non-compliant small businesses at an early stage and escalate those cases for prompt and appropriate responses.

Provision for future tax liabilities

3.52 The Tax Office has shown that it can work with industry to proactively manage cash flows to better meet tax payment obligations and help businesses to avoid incurring collectable tax debts – for example, the Taxi Industry payment card and early payment reminder letters that are issued to previously non – compliant debtors before their new debt is due and payable.

3.53 Business supports the exploration of further proactive measures to assist a broader range of small businesses to make provision for future tax liabilities.

Small business to examine ongoing viability

3.54 Overly lenient approaches to non-viable businesses aggravate their slide towards insolvency. The great majority of small businesses are viable and manage their payment obligations well. However, a number of small businesses are undercapitalised from the commencement of the business or during expansion, or lack the planning of larger businesses which have management tools such as business plans and regular reporting. The consequence is that these small businesses may lack sufficient cash flow and find it difficult to borrow the funds required to enable continued trading or expansion. Despite using the tax withheld or collected from employees and sales as working capital, these small businesses sometimes find it difficult to make provision for future tax debts.

3.55 A key challenge for the tax administrator is determining to what degree it must assure itself of a small business tax debtor's viability and capacity to repay tax debts. Non-payment of tax debts is a tax risk that needs to be actively managed. However, access to necessary information may increase business compliance costs and be hampered by poor record-keeping practices, insufficient insolvency expertise, limited administration resources or taxpayer non-cooperation. Any increased cost of compliance should be matched to the risk of non-payment.

3.56 Where a business is experiencing cash flow problems the Tax Office is typically the last creditor to be paid and the business may be signalling potential insolvency. Without some event to force a loss-making business to dispassionately assess its viability, the business may miss opportunities to make the changes needed to turn itself into a profit-making enterprise.

3.57 A range of interest groups, with the notable exception of the small business sector, are of the view that the Tax Office should be tougher in assessing small businesses' terms for repayment and their eligibility to enter payment arrangements as a means of forcing businesses to assess their viability.

3.58 However, the Inspector-General would have concerns if the Tax Office took action which would cause otherwise viable businesses to go into liquidation simply because of short-term cash flow problems. Also, the Inspector-General would also have grave concerns if the Tax Office implemented reactive measures to recover the outstanding collectable debt amounts within short time frames without considering the implications for the business sector.

3.59 Other opportunities exist to encourage small businesses to dispassionately assess their viability. These invariably increase the costs of the debtor and should be proportionate to the level of risk of non-payment, effect on the broader community's voluntary compliance and the value of the debt.

Early intervention successful

3.60 Tax Office longitudinal analysis of debts confirms general commercial experience that the longer a debt remains outstanding, the less likely it is that the amounts owed will be recovered. Early intervention is successful in helping small businesses to resolve their debts. However, where further tax debts are accumulated the likelihood of the tax debt remaining outstanding over 12 months and becoming bad or doubtful almost triples.

Table 3.11: Small business collectable debt cases finalisation rates over 12 months for 2003-04 by debt type

Type of case	Number unfinalised at start date	Number unfinalised after two months	Number unfinalised after six months	Number unfinalised after 12 months
Small business - new debt cases	1,033,967	544,149	324,743	220,102
Small business - additional debt case	634,984	578,383	471,816	369,748

Source: Tax Office

3.61 The Tax Office also dedicates a number of resources to help new small businesses to establish a pattern of payment compliance by monitoring initial payments made by the business. Anecdotal evidence suggests that notwithstanding the resource intensity of the measure it is successful in helping new businesses to establish an awareness of making provision for future tax liabilities. Further measures assisting a broader range of small business tax debtors to avoid incurring tax debts are encouraged.

3.62 A range of submissions, including those from the Taxation Ombudsman and representatives of the tax profession, raised concerns with the Tax Office's lack of timeliness in taking action to recover collectable debt. The issue of timely recovery action is being considered by Tax Office management.

Recommendation 2

The Inspector-General recommends that the Tax Office works with small business and their representatives to develop new approaches to actively assist small business to manage cash flows to meet tax liabilities as and when they fall due.

ATO Response

We agree with this recommendation. It too reflects current directions as evidenced by the taxi industry initiative referred to in your report and the education program we now run to support taxpayers identified as new to business.

Issue 5

The Tax Office should monitor the effectiveness of its small business debt initiative in achieving behavioural change towards voluntary compliance.

3.63 Since the announcement of this review, the Tax Office commenced a 'small business debt initiative'. This effectively offers an amnesty from legal recovery action to about 500,000 eligible small business cases with debts under \$25,000 on the condition that they enter an arrangement to repay their tax debt by direct debit within specified time frames. The initiative is aimed at reducing case numbers and debt holdings, and it signals firmer action against those businesses not complying with their tax payment obligations. It is estimated that full implementation of the initiative will take over 18 months.

3.64 Tax amnesties provide short-term solutions by alleviating strains on tax administration resources in targeting areas of non-compliance. However, they pose some risks to tax administration. Compliant businesses are disadvantaged by the concessions offered to non-compliant businesses, effectively receiving a competitive advantage through reduced financing costs. A potential reaction is for previously compliant businesses to adopt non-compliant practices.

3.65 Notwithstanding these risks, the Inspector-General supports the concept of the initiative as a positive encouragement to small businesses to finalise outstanding debts. It provides some certainty to taxpayers and has received endorsement from tax advisers and their professional associations.

3.66 The Commissioner of Taxation has signalled 'firm' action against those eligible businesses that do not accept the offer. Current indications are that the initial high take up rate by small business debtors may not be maintained. In the Inspector-General's view, the effectiveness of the Commissioner's signals in encouraging payment of outstanding tax will not be as a result of the severity of the threatened action but as a result of the certainty of action being taken.

APPENDIX 1: TERMS OF REFERENCE

A1.1 On 21 April 2004, the Inspector-General announced the terms of reference for his review into the Tax Office's small business debt collection policies and practices. These were:

This review will investigate the fairness of the ATO's small business debt collection policies and practices. It will examine some of the perceptions and concerns raised by stakeholders in the course of the scoping review and prioritisation project. It will evaluate whether the ATO's small business debt collection policies and practices strike an appropriate balance between the competing underlying tensions of efficiently collecting tax debts and recognising the benefits of viable businesses' ongoing trading.

It will focus upon the following matters:

- to identify and determine whether the ATO small business debt collection policies adequately take into account the provision of assistance to small businesses who wish to meet their tax obligations without harming their underlying viability;
- to consider the manner in which the ATO implements its small business debt collection policies;
- to examine the impact of the ATO's small business debt collection policies and practices on aspects of small business tax debt collections, particularly:
 - the impact of the ATO's current approach to payment arrangements in assisting small businesses get out of debt without unduly affecting the viability of the business;
 - the ATO's management of debt collection cases, including their timeliness, co-ordination and commercial approach, with regard to the Taxpayers' Charter and the Compliance Model;
 - whether the Commissioner's policies and practices unnecessarily force small businesses into either bankruptcy or liquidation;
 - the consistency of the Commissioner's exercise of a release from tax debts based on serious financial hardship (Division 340 of Schedule 1 to the *Taxation Administration Act 1953*, previously section 265 of the *Income Tax Assessment Act 1936*) with the legislation's underlying policy; and
 - the ATO's approach to the compromise of tax debts.

APPENDIX 2: CONDUCT OF REVIEW

A2.1 On 7 December 2003, the Inspector-General of Taxation released five issues papers that outlined about 60 systemic tax administration issues of concern which were raised by taxpayers and their representatives during the course of his scoping review. Paragraphs 68 to 74 of Issues Paper 4 outlined the issues of concern about the Tax Office policies and practices for collecting debt from small businesses:

68 ATO debt collection practices are of critical concern to small businesses. Around 2.5 million micro-businesses in Australia with an annual turnover of less than \$2 million each account for around 10 per cent of Commonwealth revenue but 60 per cent of the overdue debt collected by the ATO.⁷

69 The Auditor-General has reviewed the ATO's debt collection administration in the past, most recently in 1999, finding that the ATO had been successful in reducing debt 'written off' and also increasing the value of debt finalised, notwithstanding that, as the Australian National Audit Office (ANAO) noted:

... the ATO considers broader social issues and believes that a \$ expended to \$ collected equation, which applies in a commercial environment, should not be the sole consideration for the ATO.⁸

70 There is a perception amongst some small business taxpayers and tax practitioners that the ATO's policy is that, if a business taxpayer cannot demonstrate an ability to pay tax debts within a year, then the ATO 'winds the business up' (that is, initiates bankruptcy proceedings).

71 The ATO has advised that this is not the case. At 3 October 2003 the ATO had in place 84,187 tax debt repayment arrangements to the value of \$1.109 billion, including 14,538 repayment arrangements to the value of \$323 million that relate to tax debts over 12 months old, and these figures include small businesses.⁹

72 There are related concerns that the ATO ignores the hardship provisions in section 265 of the ITAA 1936 for small businesses in debt, as well as declining to use the discretionary provisions for the remission of the GIC in section 8AAG of the TAA 1953.

73 If the ATO is too aggressive in collecting debt from small businesses, there is a possibility that other creditors of small businesses, as well as employees and the community, may suffer. Small business taxpayers struggling to pay tax debts may, in some cases, be competing in the market against businesses that evade all their tax obligations.

7 Australian Taxation Office, *Compliance Program 2003 – 04*, Canberra, August 2003, p. 12.

8 Australian National Audit Office, *The Management of Debt Collection: Australian Taxation Office*, Audit Report No. 23 of 1999 – 2000, Canberra, 2000, summary.

9 Commissioner of Taxation, letter to the Inspector-General, dated 14 October 2003.

74 A review into this matter could examine the fairness of the ATO's small business debt collection program, with a particular focus on the processes and practices of 'winding up' small businesses. The review will examine if the ATO's repayment arrangements assist small businesses to get out of debt.

A2.2 Following a meeting in January 2004 with representatives from industry, business and tax practitioner organisations, the Inspector-General placed the issue of the Tax Office small business debt collection policies and practices on his forward work program.

A2.3 The Inspector-General announced the review into the Tax Office's small business debt collection policies and practices on its website, www.igt.gov.au, from 21 April 2004. *The Australian Financial Review* reported the commencement of the review on 22 April 2004. The Inspector-General invited 118 organisations and people to make submissions.

A2.4 From May to August 2004, the Inspector-General received submissions from:

- government bodies;
- organisations representing small businesses, accountants, tax practitioners, insolvency practitioners and lawyers; and,
- small businesses, accountants, tax practitioners, insolvency practitioners, lawyers and commercial debt recovery agents.

A2.5 Inspector-General staff visited the Tax Office's national, Sydney, Parramatta, Penrith, Hurstville, Terrica Place (Brisbane), Market Street (Brisbane) and Moonee Ponds offices to interview Tax Office staff and access documents. Staff also visited eight private sector offices, conducted focus groups with tax practitioners in Melbourne and Perth and visited the offices of the Australian Securities and Investments Commission, the Official Trustee of Bankruptcy and the Commonwealth Ombudsman.

Other relevant documents and developments

A2.6 During the course of the review, the Inspector-General was made aware of the following documents which concerned aspects of the Tax Office's small business debt collection policies and practices:

- Australian National Audit Office, *Audit Report number 13 of 1996-1997: Tax Debt Collection*, Canberra, 18 November 1996;
- Australian National Audit Office, *Audit Report number 23 of 1999-2000: The Management of Tax Debt Collection*, Canberra, 20 December 1999;
- Australian Taxation Office, *Compliance Program 2003-04*, Canberra, August 2003;
- Australian Taxation Office, *Compliance Program 2004-05*, Canberra, 17 August 2004;
- Australian Taxation Office, *Australian Taxation Office response to the Ledlin report*, September 2003;¹⁰

¹⁰ Available at <http://www.ato.gov.au/print.asp?doc=/content/37886.htm> viewed on 24 August 2004.

- Commonwealth Ombudsman, *The ATO and Maincamp*, Canberra, January 2001;
- Commonwealth Ombudsman, *Annual Report 2002-03*, Canberra, July 2003;
- CPA Australia, *Small Business Survey Program: Perceptions of Risk*, August 2002;
- Senate Economics References Committee, *Inquiry into mass marketed tax effective schemes and investor protection – interim report*, Canberra, June 2001; and
- Sensis, *Sensis® Business Index – small and medium enterprises*, February 2004.¹¹

¹¹ Available at http://www.sensis.com.au/media/pdf/sensis_bizindex_feb2004.pdf viewed on 4 May 2004.

APPENDIX 3: LETTER FROM THE COMMISSIONER OF TAXATION



Australian Government
Australian Taxation Office

COMMISSIONER OF TAXATION

Mr David Vos AM
Inspector General of Taxation
GPO Box 551
SYDNEY NSW 2001

Dear David

REVIEW INTO THE TAX OFFICE'S SMALL BUSINESS DEBT COLLECTION PRACTICES

I am writing to provide our formal response to the recommendations contained in your report on the above review.

Recommendation 1

The Inspector-General recommends that the Tax Office addresses issues of competitive disadvantage by distinguishing collection approaches between:

- **those small business tax debtors that want to comply with their payment obligations but need short-term assistance to do so; and**
- **those small business tax debtors that are either incapable of meeting tax payment obligations within a relatively short time frame or are in serial default.**

We agree with the principle embedded in this recommendation – it is consistent with our directions for revenue administration generally. Consistent with this we are currently exploring the use of improved analytical tools to better distinguish our treatment of debt cases.

At the same time, as recognised in your report care needs to be exercised in making such judgements. Exactly how current practices would change will need to be carefully considered. The practicality of managing very large volumes of debt cases cannot be ignored in these considerations. This is notwithstanding the decision taken recently to deploy an additional 550 staff to debt collection.

The Tax Office will consult with stakeholders in pursuing this issue.

Recommendation 2

The Inspector-General recommends that the Tax Office works with the small business sector, and their representatives, to develop new administrative approaches to actively assist small businesses to better manage cash flows, if necessary, to meet tax liabilities as and when they fall due.

We agree with this recommendation. It too reflects current directions as evidenced by the tax industry initiative referred to in your report and the education program we now run to support taxpayers identified as new to business.

Yours sincerely

A handwritten signature in black ink that reads "Michael Carmody". The signature is written in a cursive style with a horizontal line underneath the name.

Michael Carmody
COMMISSIONER OF TAXATION

5 April 2005

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