

Standing Committee on
ANSWERS TO QUESTIONS ON NOTICE
Australian Taxation Office

Inquiry into the Commissioner of Taxation Annual Report 2018-19

Friday 31 July 2020

Department/Agency: ATO

Question: 1

Topic: Cash Flow Boost ineligibility

Reference: Spoken – 31 July 2020

Member: Falinski

Question:

Falinski: We are getting a lot of reports of small businesses being told – particularly around the cash flow boost payment – they need to repay that, or they face potential penalties. They are obviously a bit burnt by that; they didn't ask for the payment and they don't feel like they've done anything wrong, and they would probably like to have a discussion with you about that first. Are you saying that they are incorrect, and haven't received letters to that effect.

Mr Hirschhorn: One thing I've learned, is never say never in such a large organisation. But, as I understand it, the letters are saying to people 'it looks to our records like you are ineligible, can you please explain.' If they don't explain, they may then get a letter which says in a sense the explanation means they are not entitled, we will indeed potentially ask them to pay the money back, because its money they are not entitled to, its Australian Taxpayers money, not the ATOs money. Of course if a business has spent the money and is struggling to repay it we are very willing to talk about payment plans and other ways of helping that company manage repaying the money they're not entitled to.

Falinski: Does the information you send to them, talk about that? Or would you like to take that on notice?

Mr Hirschhorn: If I can take that on notice, I know we have certain forms of standard communication, it might be easier than talking through it in this hearing, to potentially give you some of that under notice.

Falinski: That would be very helpful. If we could get clarity around that it would be very helpful.

Answer:

The ATO have begun writing to cash flow boost recipients where we have seen an unusual or unexpected change to the amounts reported in recent activity statements, asking clients to check these amounts. If these clients revise their activity statement to correct any errors, we will not impose penalties and will remit any interest.

The letters acknowledge that any revisions may mean that they have been overpaid and will need to repay that amount. The letter explicitly highlights that we have a range of options available to support them in their repayments and provides a link to relevant pages on our website where they can source further information about getting help to pay, including payment plans.

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Department/Agency: ATO

Question: 2

Topic: CRS guidance campaigns

Reference: Spoken – 31 July 2020

Member: Stephens

Question:

Stephens: I've got a few questions around Superannuation, and the early access of super which has obviously been spectacularly heightened due to COVID, but more generally around the compassionate release of super. I'm wondering what your sort of open communication and advice is generally about compassionate release of super and how you're communicating that generally?

Mr Hirschhorn: We have quite significant info on our website, I'd have to take on notice what we do above our website, but there is a lot of info on our website. The nature of it is, it's very hard to know if we have an external communications campaign around compassionate release. Some of those decisions are in the hands of the super fund, not the hands of the ATO, depending on the category. I can certainly, if you find it interesting, get a copy of our website material to you.

Stephens: No that's fine, I can look at the website stuff. I was just wondering if there was anything broader than that.

Answer:

Services Australia, APRA and MoneySmart websites provide information about compassionate early release of superannuation and includes links to the information on the ATO website.

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Department/Agency: ATO

Question: 3

Topic: Medical usage of CRS

Reference: Spoken – 31 July 2020

Member: Falinski

Question:

Falinski: I just wanted to clarify though, this is interesting. This isn't part of the COVID response, but I assume to get early access you have to demonstrate that its life saving weight reduction surgery, not just 'I'd like to look better' surgery. Is that right?

Mr Hirschhorn: I'm going to have to take the details on notice, my understanding is it does have to be for health reason, not cosmetic?

Answer:

Compassionate release of superannuation (CRS) is not available for cosmetic reasons. The ATO assesses applications for CRS based on reports provided by medical practitioners.

CRS applications for medical treatment must meet the following requirements:

1. The individual or their dependent must require treatment for either:
 - a life-threatening illness or injury
 - an acute or chronic pain
 - an acute or chronic mental illness.
2. The medical treatment needed is not readily available through the public health system.
3. In addition to providing quotes/invoices setting the medical expenses, an individual must provide two medical reports:
 - one from a registered medical specialist and
 - one from either a registered medical practitioner or a registered medical specialist.

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Department/Agency: ATO

Question: 4

Topic: Debt write-offs

Reference: Spoken – 31 July 2020

Member: Falinski

Question:

Owens: A witness this morning was talking about the ATOs inability to forgive debt. We heard that you have much more flexibility to make adjustments to payment to penalties where people have done the wrong thing, than you do for the repayment of debt even though the debt may have been incurred by business that's been hit by something external. Is that true, and do you feel you have enough flexibility at the moment to handle the growing number of small businesses who *[inaudible]* over the next couple of years.

Mr Geale: With regards to the imposition of penalties, we have a number of administrative and formal discretions. We do have an ability, when we go to impose penalties in the first place, they're imposed at different levels responding to different types of behaviours. We have to first ascertain the type of behaviour we see, and then we have a further formal ability to remit that penalty and have to give consideration to the remission of that penalty and so it gets taken into account, broader circumstances, whether or not it is appropriate to remit that penalty. That would happen both at an audit stage, and as the taxpayer exercise their rights of review. It would also happen in terms of their independent review and objection rights, and then further a court or a tribunal – In the case of a tribunal, they sit in the Commissioner shoes and they can exercise those again. So potentially the taxpayer gets at least, if not more 3 bites at the cherry in terms of someone looking at and exercising those discretions on penalties.

Then there is a very separate question on debt, and our ability to remit those debts. There are a broad range of circumstances and criteria and it depends on the type of taxpayer you are looking at.

In terms of individuals, we do have a power to reduce the debts in circumstance of hardship. In other cases we can refer those off to the Dept. of Finance as well.

Commissioner: There's a very important point there, there are limited discretions to actually write-off a debt. Its actually the Minister of Fin who has to ultimately exercise a power to write that debt off, its not within the ATO.

Mr Geale: Correct. Outside of those circumstances we do have the ability to remit interest, so we again take into account circumstance as to whether its appropriate to remit all or some of the interest, which in some of these cases the interest can be a significant component. We also have a ministry of powers to defer the payment which is what we have done in the COVID circumstances, and earlier this year in terms of bushfires. Is that we have extended the dates for payment and remitted the imposition of interest, because the circumstances the community or taxpayer is facing, that is the appropriate outcome.

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Once we get beyond that phase, we also have very broad powers to enter into payment arrangements with a taxpayer because it is in our interest to assist the TP to pay their debt. So, we do that by entering into an arrangement by way of instalments over an appropriate period of time. But equally there are unfortunately TPs (and it will be a factor we will have to deal with in the coming months ahead) that are not in a position to pay. Again, it's coming up with appropriate arrangements and assisting the taxpayer to respectfully exit the system in terms of insolvency arrangements. Of course, our first call is to try and assist the taxpayers to do that in a cooperative fashion.

Commissioner: In some other cases, it might be that we just don't follow I up. It's 'uneconomic' to collect a small amount, we sort of don't chase it up.

Geale: That's right. But unlike a bank, we don't have the power to say 'its uneconomic so I will just write that off'. We don't have that power. I'm not advocating whether we should or shouldn't. But we are different to commercial lenders in that we just don't have that ability.

Falinski: Sorry to interject deputy chair. If you did have that power to write it off, what would the impact be on the organisation.

Geale: I think we'd have to take a question like that on notice. I'm not responsible for Debt. And I think there would be very broad implications for an organisation in terms of what you're proposing.

Commissioner: I think it would mean that our debt book would decrease, but I think there would also be a large element of disputation of 'I want my debt written off'. Right now there is no power, so there is no dispute. Other than its small, and we just let it go because its uneconomic to take action to collect it

Answer:

The ATO does not currently have the power to 'write off' (or 'waive') a debt owed to the Commonwealth, in full. However the commissioner has administrative powers to remit Penalties and Interest charges within debts, that reduce the size of total debt, thereby improving the propensity for debts to be resolved.

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Question: 5

Topic: Compassionate Release of Super comparative data

Reference: Spoken – 31 July 2020

Member: Stephens

Question:

Stephens: Allied to that, are you finding you've had to dramatically increase your resources to handle the increase in demand for Early access?

Mr Hirschhorn: So, If I maybe talk to the more traditional early access, then talk to the Early Release of Super, the COVID related one. So on Compassionate Release that was shifted across to us to administer, we have not traditionally administered as much as we do now. I think in 2019/20 we had a smidge under 40,000 people apply and made 60,000 odd applications between them. That's the sort of order of scale there.

ERS measure is obviously of a much greater scale, it has been designed to be primarily automated, the upfront application process is primarily digital with automatic checks. We have in terms of administering some of the exceptions, and some maybe more 'suspicious' applications, we have got about 130 people working on that currently.

Stephens: Have you had any look compared to the DHS (now Services Australia) that were administering. Prior to COVID-19, so I suppose 18/19 year, is there any sort of comparative data around the rate of access, and the determination you make, I suppose the percentage you say yes to, compared to when it was administered by DHS?

Mr Hirschhorn: I'll have to take that on notice, I don't have those figures in front of me, I do have in front of me is that the 19/20 year was about a 10% increase on the previous year, in terms of the number of individuals that had applied and indeed the number of applications. And the amount approved went up slightly more than 10%, in 19/20 we approved a bit over \$500 million in early release, and in the previous year we had approved about \$450 million in early release. So that's about \$15,00 per person on average, and the approval rate was in the mid-fifties, about 55-60 percent. But I'd have to take on notice how that compared.

Answer:

The ATO does not have a comparative analysis of our administration of the Compassionate Release of Super compared to Services Australia's (DHS) administration.

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Question: 6

Topic: Reducing the cost of running a SMSF

Reference: Spoken – 31 July 2020

Member: Falinski

Question:

Falinski: Are there any clear or easy ways to reduce the cost of running a Self Managed Super Fund in terms of maybe only having an audit every second year under a certain size?

Jeremy: So chair, I think there has been explorations of how costs of running a Self Managed Super Fund could be reduced, I understand that there was at least the policy announcement of simple Self Managed Super Fund's having an audit every three years. Im going to have to confess that im not sure where that is in the policy and legislation process. I think there was some pushback from SMSF auditors about that proposition, and in particular I think you would need to stagger it so that not everybody's third year was the same third year. I would have to take on notice that exact status of that measure but I know there was at least some policy announcement.

Answer:

Any policy changes to reduce SMSF running costs are a matter for Government.