

Question No. 1

Supplementary Submission No. 50.4

(Hansard PA40)

1. What was the amount of debt written off by the Tax Office in 2005-06?

\$1.085 billion.

2. What criteria does the Tax Office use in determining to write off a debt?

In deciding not to pursue further action to collect a tax debt, the Tax Office is governed by the requirements of the *Financial Management and Accountability Act 1997*.

Tax Office staff rely on Chapter 26 of the *ATO Receivables Policy*, 'Deciding not to pursue recovery of taxation debts', when considering if write off is the most appropriate course of treatment for an individual debt case.

Debts not pursued are those determined to be either:

- irrecoverable at law, or
- uneconomical to pursue.

Debts that are irrecoverable at law are mainly associated with insolvency. The Tax Office has little control over write offs in this category, which simply reflect the outcome of insolvency action.

Irrecoverable at law also includes instances where the Tax Office grants an individual or the trustee of the estate of a deceased person, release from certain tax liabilities (in part or whole), if satisfied that payment of those would cause serious hardship.

Debts considered as uneconomical to pursue are determined on a case by case basis, having regard to the taxpayer's individual circumstances and the facts of the case.

A debt may be written off as uneconomical to pursue if:

- it is probable that the total cost of recovery action will exceed the return to the Commonwealth, or
- the taxpayer has no assets or funds and there is little chance of their financial circumstances improving.

Question No. 2

(Hansard PA41)

1. How much has been collected from compliance activities related to EBA arrangements?

The Tax Office accounts operate on a running balance account basis. Payments made against the account are not apportioned against a particular debt but against the whole debt outstanding on the client's account at a point in time.

In November 2000, in relation to EBAs, Mr Fitzpatrick stated at the Senate Select Committee on Superannuation and Financial Services:

"The best estimate at this point in time is still around \$1.5 billion in deductions for those various arrangements, which is around \$600 million in tax on my best calculation."

It is estimated that \$650 million in payments and credits have been collected up to October 2006, in relation to EBAs.

2. How much is estimated to be outstanding?

In November 2006, the account balances for taxpayers who participated in EBA arrangements totalled about \$380 million. We estimate that, of this, about \$240 million relates to EBAs.

3. How much is in dispute?

In November 2006, the account balances for taxpayers who participated in EBA arrangements totalled about \$380 million. It is estimated that the amount in dispute is about \$190 million.

4. How does the collections figure compare to any Tax Office estimate of revenue expected from EBA arrangements?

In April 1999 an amount of \$1.5 billion in contributions was quoted in a submission from the Tax Office to the House of Representatives Standing Committee on Employment Education and Workplace Relations

"The ATO is currently reviewing the products of over 40 promoters involved in the "employee benefit arrangements" described above. On the data we have to date, we would estimate that the total contributions made by clients of these identified promoters will, on a conservative measure, amount to approximately \$1.5 billion."

In November 2000, in relation to EBAs, Mr Fitzpatrick stated at the Senate Select Committee on Superannuation and Financial Services:

"The best estimate at this point in time is still around \$1.5 billion in deductions for those various arrangements, which is around \$600 million in tax on my best calculation."

In Senate Estimates hearings on 20 February 2002, Mr Fitzpatrick stated that *“we have raised just under \$1 billion to date”* in respect of amended assessments for EBA schemes. Mr Fitzpatrick pointed out that this figure included both income tax and FBT assessments in some cases and that it was not expected to maintain both taxing points in those cases.

In response to Senator Sherry’s questioning on the estimated tax to be collected from EBAs, Mr Fitzpatrick stated:

“My best judgment would be that the total tax collected, if we win through the courts, will be a little bit less than \$1 billion – maybe \$800 million or thereabouts.”

In 2005 estimates increased to \$1.98 billion for deductions in the various EBA arrangements. About \$650 million in payments and credits have been collected up to October 2006, in relation to EBAs

5. Did Kevin Fitzpatrick quote a figure of \$2.3 billion and if so, where?

There is no evidence found that Kevin Fitzpatrick referred to a figure of \$2.3 billion in outstanding tax in respect of EBAs. The only evidence of the estimated tax to be collected are figures of around \$600 million referred to by Mr Fitzpatrick in November 2000 and around \$800 million in February 2002.

Question No. 3

(Hansard PA42)

1. How many taxpayers are in the quarterly PAYG(I) system?

The number of taxpayers in the quarterly PAYG(I) system fluctuates as a taxpayer's obligation to pay instalments is assessed whenever they lodge or amend their most recent income tax return. At any one point in time there are approximately 2 million taxpayers with a quarterly PAYG instalment obligation. In addition, there are approximately 230,000 taxpayers who are eligible and who have chosen to pay an annual PAYG instalment in 2006-07.

The number of taxpayers in the quarterly PAYG(I) system over a 4 year period (across all entities) are outlined in the table below.

PAYG Instalment Payers								
Income Tax Instalment Payer Cycle	FY 2004	%	FY 2005	%	FY 2006	%	FY 2007	%
Annual	313,916	14.27	291,324	12.76	272,529	11.67	238,871	10.42
Quarterly Rate payers	515,995	23.45	503,583	22.06	475,664	20.36	447,618	19.53
4 instalment payers	1,290,638	58.66	1,408,182	61.68	1,508,985	64.60	1,529,497	66.73
2 instalment payers	79,523	3.61	79,911	3.50	78,544	3.36	76,000	3.32
TOTAL	2,200,072	100%	2,283,000	100%	2,335,722	100%	2,291,986	100%

2. In 2005-06, how many late lodgment or failure to lodge penalties were applied to PAYG(I) payers?

48,803 taxpayers with a PAYG instalment obligation incurred 71,963 failure to lodge penalties in respect of activity statements for the 2005-06 income year that were either not lodged or lodged late. Of these 45,233 taxpayers had at least one other obligation on their activity statement.

3. In 2005-06, how many PAYG(I) payers attracted an interest payment or charge?

The amount of General Interest charge applied for late payment of PAYG Instalments is not readily available. Activity Statement liabilities are posted to a running balance account, which over time, may include unpaid amounts for different periods of GST, PAYG Withholding, PAYG Instalments, Luxury Car tax, Wine Equalisation tax, Fringe Benefits Instalments and Deferred Company Instalments.

The purpose of the introduction of the Running Account Regime in 1999 was to be able to provide taxpayers with a 'credit card' style of account where individual payments and credits were not assigned to the individual debts shown on a running balance account (RBA). This was supported by a single interest charge, devoid of culpability considerations, which could be applied to all the debts on an RBA – the General Interest Charge. This interest charge accrues on a daily compounding basis.

Accordingly, to ascertain the actual amount of GIC that relates to unpaid or late payments of PAYG Instalments would require a very resource intensive manual 'deconstruction' of each account and each period using the payment and credit allocation rules in Chapter 7 of Practice Statement Law Administration 2006/11 – the *ATO Receivables Policy*.

4. What is the process for applying a late lodgment penalty? Is a statement lodged "a couple of days late" subject to an automatic penalty?

Failure to lodge on time penalty (FTL) is imposed by law for either non-lodgment or late lodgment of a lodgment obligation. FTL is applied automatically for late lodgment via the corporate penalty system. Failure to lodge penalties may also be applied manually on un-lodged documents as a result of targeted enforcement action.

Current Tax Office policy supports the application of a penalty where the efficient operation of the tax system is at risk, a late lodger gains a benefit or advantage over others, or where the application has a positive effect on community confidence in the tax system.

In determining whether to apply a penalty the Commissioner will have regard to the lodgment history of a taxpayer and the effort taken by the Tax Office to obtain lodgment. A penalty will only be applied where the client has received a warning that a penalty can apply for failing to lodge on time and the warning was provided in current or immediate prior period.

There is a seven day period of grace to prevent the imposition of the failure to lodge penalties for documents lodged a couple of days late.

Question No. 4

(Hansard PA42)

1. In what situations does the Tax Office pay interest to taxpayers?

The *Taxation (Interest on Overpayments and Early Payments) Act 1983*, (the Act) sets out the circumstances when the Commissioner must pay interest to a taxpayer.

Interest may be payable for certain early payments or overpayments of tax made by the taxpayer. Interest may also be payable where the Commissioner does not pay certain refunds in a timely manner. The entitlement to interest varies depending on the type of tax involved and the particular circumstances leading to the refund. The following is only a general description of the interest entitlements under the Act.

Interest on Early Payment (IEP)

Generally, a taxpayer will be entitled to IEP when they make a payment towards their assessed income tax liability (including any related shortfall interest charge and higher education scheme compulsory repayment) more than 14 days before the due date of the assessment.

A taxpayer's IEP entitlement can only be determined after the due date for payment of the income tax liability has elapsed. For the purpose of establishing whether an entitlement to early payment interest arises, payments do not include the application of any credit entitlement against the income tax liability (e.g. the credit balance of another account or pay as you go (PAYG) credits).

IEP is only payable in relation to the early payment of certain *income tax* related liabilities, i.e. IEP is not payable in relation to the early payment of liabilities notified on the business activity statement.

Interest on an overpayment (IOP)

An overpayment of income tax may arise when the Commissioner applies, in payment of assessed tax, credits relating to amounts payable under the PAYG regime. Generally, an IOP entitlement will arise where these PAYG credits exceed the assessed income tax payable and the Commissioner takes more than 30 days after the day that the taxpayer furnished their income tax return to refund or apply the excess against other tax liabilities owed.

A reduction in the amount of tax assessed may give rise to an overpayment following a credit amendment to an earlier assessment. There will be an overpayment of tax in any case where an amount in excess of the reduced amount of tax has already been paid. An IOP entitlement will arise where there is a refund of an overpaid amount following an amendment to an assessment reducing the liability to income tax, fringe benefits tax, goods and services tax (GST), wine equalisation tax (WET) or luxury car tax (LCT).

IOP may also be payable where a taxpayer requests:

- remission of certain penalties relating to income tax that have been paid (e.g. the shortfall interest charge imposed in relation to an amended assessment increasing a taxpayer's liability to income tax or the general interest charge imposed for paying income tax late); or
- a refund of a voluntary payment made on account of income tax.

The taxpayer will be entitled to interest where the amount is remitted or refunded more than 30 days after the date of the request.

IOP entitlements may also arise in respect to overpayments resulting from certain amended assessments of the superannuation surcharge and advanced instalments of the surcharge.

Delayed Refund Interest (DRI)

The introduction of the business activity statement (BAS) regime from **1 July 2000** also established new accounting arrangements. These new arrangements included the introduction of a delayed refund interest (DRI) regime and the expansion of the running balance account (RBA) regime. The RBA is primarily used to account for BAS obligations (these obligations include GST and PAYG amounts). The Act was amended to provide for the payment of interest where there is a delayed refund of an RBA surplus pertaining to BAS amounts.

Generally, a taxpayer will be entitled to DRI where the following types of refunds are not paid within 14 days:

- a surplus on an RBA reflecting the allocation of a BAS amount to the RBA following lodgment of the BAS;
- a surplus on an RBA arising from the remission of a penalty relating to a BAS amount; or
- a surplus on an RBA reflecting a voluntary payment made in respect of an anticipated tax debt under a BAS provision and where the taxpayer has requested that amount to be refunded.

The Act defers the start date for the calculation of DRI in certain circumstances, including where:

- the taxpayer has not provide eligible financial institution account details; or
- the taxpayer has not lodged one or more outstanding BAS.

2. Is the situation raised by Senator Watson a situation where the Tax Office would not pay interest to the taxpayer?

The answer to this question will turn on whether the amounts referred to pertain to credit entitlements or a reduction in a related debt obligation. That is, whether the amounts pertain to pay as you earn (PAYE) credits belonging to a payee or a refundable franking credit tax offset belonging to a recipient of a dividend; or a reduction in an obligation on a payer to withhold PAYE or a reduction in obligation on a corporate taxpayer to pay an assessed amount of franking deficit tax.

The former credit amounts may attract interest, while a reduction of the later debt obligations does not attract interest. This outcome is a direct result of the law and is not an administrative decision on the part of the Tax Office.

Reference -

A detailed explanation of interest entitlements can be found in Law Administration Practice Statement PS LA 2006/11- Part E of the *ATO Receivables Policy*. This can be provided if required.