



How to survive ATO Debt

Contrary to what many people think, the ATO actually want to help you get back on track, pay what you owe and then ensure that you comply with your obligations in the future. My experience is that if you handle the situation in the right way and have the capacity to actually pay the debt that is owing, ATO officers are generally helpful and understanding and will try and help you.

Apart from the fact that you should pay what you owe, the ATO does not want a taxpayer, who is not meeting its obligations, to have a commercial advantage in the market place over another taxpayer who is doing the right thing and paying what they are required to. This is a fundamental rule that the ATO adheres to.

1. Find out how much you owe.

Sounds pretty basic but too often taxpayers (referred to in this article as either an individual or business entity) are not aware of how much they owe. ATO debt may include income tax, GST, PAYGW, Superannuation Guarantee Charge PLUS interest and penalties that have been added along the way. If you owe a large amount the interest and penalties will mount up pretty quickly.

Superannuation is the sleeper because unlike other ATO debt where you can log in and see the balance owing, Superannuation Guarantee Charge is not generally known or calculated by the ATO until you are audited although if your accounting system is up to date you should know how much you owe.

Determine how much you can offer as a 1st up instalment and how much you can afford to pay per month. The ATO generally want the debt paid within the shortest possible time however they will go to two years in certain circumstances.

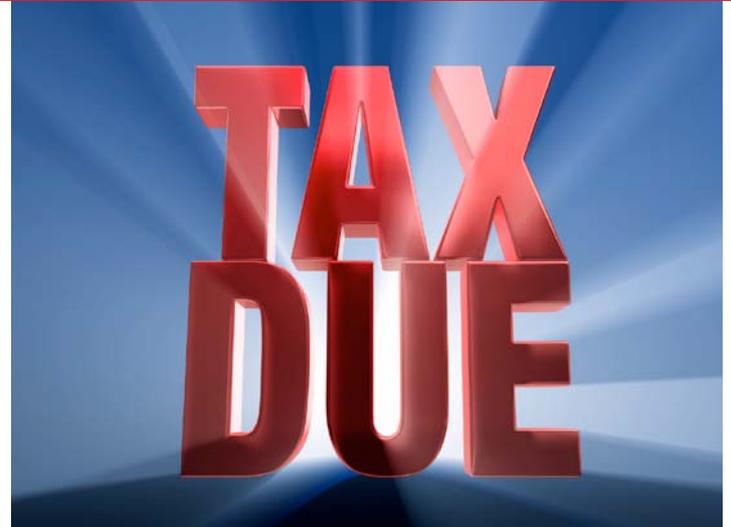
2. Discuss the situation with your Accountant/Tax Agent ("Accountant")

I strongly recommend that you seek assistance from your Accountant or Trusted Advisor because it can be a minefield trying to negotiate on your own. It is only natural that an ATO officer will take a different attitude when speaking to a tax professional.

I have one important qualification to the above statement. Make sure you have a good Accountant who understands one of my golden rules which is "the impossible takes longer". Too often, when acting for taxpayers who have come to us for help at one minute to midnight, I am told "my Accountant said to declare bankruptcy (or go into liquidation) because I can't help you". I find this attitude totally unacceptable. We have been able to save taxpayers time and time again when everything else pointed to total catastrophe simply because we refused to accept that there was no way out.

Without wishing to offend the Solicitors out there I believe that a good Accountant will usually get a more understanding hearing from the ATO than a Solicitor simply because once a Solicitor is involved there is an assumption that things may become confrontational. Again there is no magic rule because it depends on the experience and attitude of the person doing the negotiations and I am sure there are plenty of good Solicitors out there.

Unfortunately there are too many bad Accountants and Solicitors who fail to look after their clients.



3. Make sure your Accountant contacts the ATO

Here is another one for having a good Accountant. Again I have often been told "My Accountant is looking after it" when in fact the Accountant has neglected to contact the ATO or not replied to letters or phone calls – or simply given up.

I might suggest that if you do owe the ATO a lot of money your Accountant has a responsibility to know about it and to make sure that you are dealing with the problem.

Best practice says that all correspondence etc from the ATO should go to your Accountant however you should, on a regular basis, ask your Accountant to show you a copy of your ATO account balances which can be obtained from the ATO Portal. You can also organise to have access to the ATO Portal yourself.

If you have a debt, the ATO will usually mail out a statement to your Accountant each month showing the balance owing. In this case request your Accountant to send you a copy of that statement every month.

4. Make sure the Postal Address of all Directors is up to date with the ATO and Australian Business Register (ABR) – this one only applies to Directors of companies. And if you know you are in trouble check your mail every day.

There is an interesting document called a Director Penalty Notice (DPN) which effectively gives a Director 21 days (from the date that the ATO issues the letter) to take certain actions or the Director becomes automatically liable for the debt of the company if the company does not pay.

Once issued the DPN will not go away except for exceptional circumstances. While some people may think it is better that the ATO does not know where they live, a DPN does not allow for excuses.



5. Interest and the ATO

Contrary to what a lot of people think, the ATO is not a bank although lots of taxpayers treat it like an unsecured lender. ATO data shows the tax man was owed \$35.3 billion in 2013-14, which is equivalent to nearly 2.3 per cent of Australia's annual economic output that year. The amount of tax debt outstanding was up 9.7 per cent on the previous financial year.

The ATO computers automatically calculate interest (currently 9.14%) and charges it to your account. The interest is tax deductible which does soften the blow however if you have a large debt it grows quickly.

Fortunately our experience is that providing you are seen as trying to do the right thing and you pay the actual amount owing it is not too hard to have the interest remitted.

6. Liquidation or Bankruptcy does not have to happen

While there are certainly instances when there is no other option, if the matter is handled properly and quickly, and there is an ability to pay the debt in a reasonable time the ATO will co-operate providing they do not believe that you are trying to take advantage of them or that you will simply revert back to your old ways.

If you are a repeat offender or the ATO believes that you have been deliberately trying to avoid your responsibilities they will send in the Liquidators and once you are in that situation your chances of coming out at the other end are very much reduced. Liquidators are charged with the responsibility of recovering as much as possible for the creditors (more often than not the ATO is the largest creditor) and if there are assets available in the company or the ATO or some other creditor is prepared to fund the Liquidator to investigate further, a Liquidator is not going to show you much sympathy.

Another point to remember is that if there is a large ATO debt, there is a good chance that the Directors will have used a substantial amount of that money for their own personal use which will mean that the Liquidator can take action to recover the debt – often the only way a Liquidator gets paid.

7. Make sure you learn from past mistakes and don't repeat them

We all make mistakes in our life. It is the lessons you learn from the mistakes that you make and the steps you take to ensure that you do not repeat them that makes all the difference.

If you have run up a large ATO debt (or any debt for that matter) ask yourself why or how did that happen? Analyse the situation and if necessary seek expert advice to make sure it does not happen again.

8. Phoenix Operators

Over the past decade or two many Directors and Shareholders have taken advantage of a lack of compliance procedures to rip off the system by operating a business for a time, not paying any monies to the ATO (and often other creditors) and then letting the company fail with substantial debts owing to the ATO (Phoenix Operators). The ATO and ASIC have endeavoured to stop this practice so anyone who thinks they can continue as before should think again.

The ATO are carefully monitoring the activities of those who have been involved in Phoenix activities and in some instances they require up-front payments based on estimates of the likely future tax liabilities. Unfortunately it is very difficult staying one step ahead of such unscrupulous people however at least there is now a concerted effort to stamp out the practice which has seen many millions of taxes lost to government.

9. What happens when the ATO writes off a debt?

As a general rule the ATO does not write off debt (interest and penalties excepted) however in certain circumstances they will make a commercial decision not to pursue a debt where they consider it is not cost effective to chase or as is more often the case a taxpayer disappears from the system. The problem for the taxpayer is that the debt never really goes away - it just sits there waiting for you to resurface down the track. For an individual, if and when you lodge a tax return in the future and your taxable income exceeds the magic figure (approx. \$50,000) the computers automatically reinstate the original debt back on to your account and the ATO will attempt to recover it – often by taking the refund that you were hoping for!!

This action will apply equally to a company unless the company is deregistered by ASIC or the company is wound up by some other means.

10. Don't ignore the problem – it won't go away

Seek professional help if you can't pay your ATO debt. Call me on 1800 630 531 for a no obligation phone call or meeting. Remember the longer you leave it the harder it gets.



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