

# DLK ADVISORY

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## ATO SHIFTING TO FIRMER DEBT COLLECTION

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Aggregated turnover: Commissioner discretion



With less than 6 months left in his tenure as the Commissioner of Taxation, Chris Jordan has unapologetically flagged the ATO's shift to firmer debt collection actions where appropriate in a recent speech. This coincides with reactivation of debts that the ATO previously put on hold during the 2020 COVID-19 pandemic.

The Commissioner noted that most collectable debts with the ATO are self-assessed and do not only include income tax debt, but also unremitted GST, unpaid PAYG withholding, as well as super guarantee charges related to businesses. In addition, he also noted that small businesses continue to be over-represented in the ATO's debt book, owing over \$33bn of the \$50.2bn of collectable debt, with \$23bn of that being unpaid business activity statement debt.

According to the ATO, it is seeing a trend of profitable businesses that have the capacity to pay their tax debts but are actively choosing not to do so. It is concerned that businesses appear to be de-prioritising payment of tax and super and in some cases treating ATO liabilities like a free loan. The ATO reiterates that businesses are only temporary custodians of GST, PAYG withholding and super guarantee and those that don't pay or engage with the ATO will be subject to a range of actions.

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In general, if taxpayers do not pay their tax by the due date or engage with the ATO by the due date to work out a payment plan, General Interest Charge (GIC) will be applied to any unpaid amounts. GIC is automatically calculated on a daily compounding basis on the amount outstanding and added to taxpayers' accounts periodically. The rate of GIC is revised every quarter and is calculated using the 90-day Bank Accepted Bill rate and an uplift factor of 7%. The GIC annual rate for the October-December 2023 quarter is 11.15%.

In addition to GIC being applied to unpaid debts, the ATO is also legally required by law to use any credits or refunds taxpayers become entitled to, to pay off any debt that is owed, including any debts that are "on-hold" by way of offsetting. This includes any refund that individuals may receive in relation to income tax, and any GST refunds that businesses may receive. The ATO notes there are very limited circumstances in which it has the discretion not to offset a debt, such as serious financial hardship.

The ATO states that the following taxpayers will generally be subject to stronger enforcement action:

- those deemed "unwilling" to work on addressing the debt;
- those that repeatedly default on agreed payment plans;
- those that don't have the capacity to pay the debt but also do not take any steps to resolve the situation;
- those that have been subject to an audit where deliberate avoidance is detected and payment avoidance continues; and
- those that appear to be engaging in phoenix activities.

Some of the stronger enforcement actions that the ATO may use include: issuing garnishee notices to a person or business that holds money now or in the future for the taxpayer; issuing director penalty notices for unpaid amounts; disclosure of business tax debt to credit reporting agencies; and legal action (ie claim or summons, bankruptcy notice, creditor's petition, statutory demand, and wind-up action). While the ATO has previously referred debts to external debt collection agencies, it no longer does so. However, it has not ruled out doing so for future debts.

While the recent speech by the Commissioner highlighted the fact that small businesses were overrepresented in terms of collectable debt, he specifically noted that it does not mean that the ATO is solely targeting debt collection in the small business space. In reality, it is very focused on every group in the tax system whether it be individuals or large businesses.

## **CONTACT**

If you have any queries, please feel free to contact us.

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