



FAQs for legal practitioners

What to do if your client has a debt with the ATO?

In the first instance, where your client has received correspondence directly from the ATO debt area that has the contact details (name of relevant ATO officer), you should contact the person named in this document as they are familiar with the matter.

Where you have debt case officer assigned to your case, all contact should be with this officer, they are the primary decision making point in relation to your case and have carriage of the matter.

If you have received correspondence from a legal firm representing the Commissioner on a matter, then all communication should be with that firm in relation to that particular matter.

Key reference documents

The following policies guide ATO officers in their administration of debt matters:

- [PS LA 2011/4 Collection and recovery of disputed debts](#)
- [PS LA 2011/7 Settlement of debt litigation proceedings](#)
- [PS LA 2011/12 Remission of General Interest Charge](#)
- [PS LA 2011/14 General debt collection powers and principles](#)
- [PS LA 2011/16 Insolvency – collection, recovery and enforcement issues for entities under external administration](#)
- [PS LA 2011/19 Administration of the penalty for failure to lodge](#)

Set out below are some common questions that may arise in relation to your client's debt with the ATO and the ATO's pursuit of litigation to recover the debt



Question 1: How do I become an authorised contact to act on behalf of my client to deal with the ATO?

Answer: Before you contact us on behalf of a client, you must be nominated as your client's ATO representative and this must be reflected on the ATO's records. Your client can nominate you as their legal representative or you can notify us of your appointment. For further details on how to nominate refer to the [ATO website](#).

Question 2: I have been engaged to act on behalf of my client who disagrees with the debt raised on his account – who can I speak to in the ATO Debt area about this?

Answer: This will depend on what specific part of the debt your client disagrees with.

Primary tax and/or penalties imposed

If your client disagrees with the primary tax payable and/or the penalties imposed as a result of an audit or other originating ATO action, they should:

- In the first instance, contacting the original decision maker (nominated ATO case officer where one is specified) directly to discuss the issue. If this approach is not successful you should then approach the manager of the original decision maker.

If you are still dissatisfied with our response consider the following options:

- [Lodging an objection](#) (noting there are legislative time limits) if one has not been lodged previously,
- If an objection has already been lodged and decided by the ATO, contact the Review Officer in the first instance to discuss their decision
- Where this option is available, seeking an [external review of the ATO's decision \(either with the Administrative Appeals Tribunal or the Federal Court\)](#).

You may also consider whether the use of an [Alternative Dispute Resolution](#) process - for example the [in-house facilitation](#) service provided by the ATO – may be appropriate to resolve the underlying dispute. In-house facilitation is a mediation process where an independent and impartial ATO facilitator guides a discussion between the ATO and the taxpayer to help both parties find some middle ground. The service is ideal for less complex disputes and can be used at any stage from the audit up to and including the litigation stage.

Interest Charges

If your client has incurred interest charges then you can request ,on behalf of your client, a remission (or part remission) of the interest charges - General Interest Charge (GIC) and/or

Shortfall Interest Charge (SIC). The ATO website provides details of how we assess a [request for remission of GIC or SIC](#) and how to request such a remission.

Failure to Lodge (FTL) Penalty

If your client receives a penalty notice for failure to lodge a return or statement on time they can [request a remission](#) in full or in part. Where the Commissioner refuses to remit part or the entire FTL penalty and the amount of penalty payable after the refusal is more than two penalty units, an entity may object to the decision. Use the relevant [objection form](#) - when completing the form at:

- question 8 – select penalties and interest;
- question 9 – state that the objection is in relation to a Failure To Lodge penalty; and
- then lodge the objection via the normal channels

Question 3: My client is concerned about how they are going to pay their debt. What can they do?

Answer: If your client is concerned with how to pay their debt or their ability to pay, they need to contact us to get [help with paying](#). Information regarding how to pay your debt and the various options can be found on the [ATO website](#). The relevant number to contact at the ATO will depend on the amount of the debt and whether the taxpayer is an individual or a business so please ensure you look at the information at the link provided.

Question 4: My client would like to set up a payment arrangement. What do I need to do?

Answer: Where your client is having difficulty paying their tax bill on time a [tailored payment plan](#) may be the best option. Information on what number to call in the ATO and how to set up a payment plan including our online payment plan calculator is on the [ATO website](#).

Question 5: My client has had their payment arrangement refused. Who can I contact to discuss the reasons for refusal?

Answer: One of the reasons why your client's payment arrangement may have been refused is if it did not satisfy the ATO's guidelines. For information on the [eligibility for a payment plan](#) for business please refer to the ATO website.

In making decisions on whether to grant or refuse a payment plan you need to be aware of the considerations as referenced in:

- [PS LA 2011/6](#) - *Risk management in the enforcement of lodgment obligations and debt collection activities*
- [PS LA 2011/14](#) - *General debt collection powers and principles*

If your client has had a payment arrangement refused, they should contact the ATO on the Debt enquiries line 13 11 42 to discuss this matter. Depending on what stage your matter is at, you may be transferred to a debt officer.

Question 6: My client is not satisfied with the timeliness, client experience or processes adopted by the ATO in relation to the debt matter. What can I do?

Answer: If your client is not satisfied with the responses given or actions undertaken by the ATO, there are three options you can pursue:

1. In the first instance, we encourage you or your client to contact the manager of the original decision maker to discuss your concerns.
2. Lodge a complaint – the ATO supports your right to complain and treats all complaints seriously. Complaints are dealt with quickly and the ATO learns from them. Information on how to [complain](#) can be found on the ATO website. It is an important principle of our complaints management function that if a complaint is lodged in relation to the behaviour, conduct or actions of an ATO officer that the named officer is made aware of such a complaint.
3. Approach the Inspector-General of Taxation (IGT) – in addition to your client's right to have the ATO's actions reviewed by the courts, you can approach the [IGT](#) to address your complaint issue. Where a formal complaint has not been lodged with the ATO, the IGT will generally refer the matter back to the ATO in the first instance to resolve your issue. It is therefore recommended you follow steps 1 & 2 before approaching the IGT.

Question 7: My client has lodged an objection with the ATO but they have been contacted by the debt area to pay their tax bill. Who can I contact to discuss this?

Answer: Even though your client has lodged an objection to a tax debt, the tax liability remains due and payable under law.

You should contact the ATO on the Debt enquiries line 13 11 42 to discuss this matter.

This contact will escalate the matter and alert the Review and Disputes Resolution area within the ATO who handle objections. The debt is still due and payable and your client may be requested to enter into a [50/50 payment arrangement](#) and/or to provide security.

Information on what happens if your client [does not pay their debt](#) can be found on the ATO website - this includes the ATO's use of external collection agencies and legal action may commence.

Question 8: What happens in situations where my client has been refused a 50/50 payment arrangement (or it is likely to be refused)? Who can I contact to discuss?

Answer: The Commissioner has discretion to grant a 50/50 payment arrangement but this is not an automatic entitlement. Please refer to [PS LA 2011/4 Collection and recovery of disputed debts](#) - paragraph 26 onwards is relevant. This practice statement discusses the circumstances in which 50/50 arrangements are appropriate and what is taken into account in making any such decision to grant or not grant this arrangement.

The ATO encourages taxpayers to engage with us at the earliest opportunity to discuss their debt matters. Information regarding our [disputes policy](#) can be found on the ATO website.

If a case officer has refused a [50/50 payment arrangement](#) for your client, you can:

- contact the case officer to discuss the reason for refusal and ascertain whether a revised proposal would be acceptable
- request an internal review by a senior officer

If your client is not satisfied with the responses given or actions undertaken by the ATO, there are two options you can pursue:

1. Lodge a complaint – the ATO supports your right to complain and treats all complaints seriously. Complaints are dealt with quickly and the ATO learns from them. Information on how to [complain](#) can be found on the ATO website. It is an important principle of our complaints management function that if a complaint is lodged in relation to the behaviour, conduct or actions of an ATO officer that the named officer is made aware of such a complaint.
2. Approach the Inspector-General of Taxation (IGT) – in addition to your client's right to have the ATO's actions reviewed by the courts, you can approach the [IGT](#) to address your concerns or complaints. This will be a matter within the discretion of the IGT if they choose to progress with your complaint.

Question 9: My client has received a copy of a garnishee notice that has been issued. Who do I contact in the debt area to discuss the matter?

Answer: Your client would have received a copy of the notice and a letter from the ATO – this letter will also contain contact details.

Alternatively, you or your client can contact the Early Intervention debt area on:

- 1300 466 859 - for all tax debts except superannuation
- 1800 007 195 - for Superannuation Debt

This area provides assistance to taxpayers in managing their obligations and preventing the debt from escalating.

Question 10: The ATO has initiated legal recovery action on my client for an outstanding debt. Who can I contact in the debt area to discuss the matter?

Answer: The answer to this question will depend on what stage of the process the legal recovery of the debt is at.

Pre-litigation stage

If your client has received a debt collection letter from the Australian Taxation Office or a notice of intended legal action, you can contact the Debt Formal Recovery area on:

- 1300 303 570
- Choose Option 2 - for Debt issues related to ongoing garnishee, estimate notice and Director Penalty Notices
- Choose Option 3 - for Legal Notices (our formal recovery action)

Creditors' Statutory Demand, Statement of Claim (or Writ) or Bankruptcy Notice

If your client has received a Creditors' Statutory Demand, Statement of Claim (or Writ) or Bankruptcy Notice your client is required to comply with the strict requirements outlined in these notices. These documents also contain the relevant ATO contact information.

Litigation stage

If the Commissioner has commenced bankruptcy proceedings or winding-up proceedings you should contact the author of the correspondence you have received (which may be a law firm that represents the Commissioner or a Review and Dispute Resolution Officer).

Question 11: My client is in administration/liquidation – is there an area within debt that handles these matters?

Answer: Once a company is an incapacitated entity, a tax officer can and will disclose information about that entity to the incapacitated entity's liquidator, receiver or other insolvency practitioner. This is because these insolvency practitioners are the incapacitated entity's 'covered entity' for the purposes of the taxation law confidentiality provisions.

Representatives of the entity before it became incapacitated are not covered entities for the incapacitated entity and the ATO can no longer disclose information to them on that basis.

If an individual is a bankrupt, a tax officer can disclose information about that individual to their trustee in bankruptcy (or a legal practitioner representing the trustee).

The ATO can also continue to disclose information about the individual to the person themselves or to their representative, including a legal practitioner representing the individual in relation to their taxation affairs.

If you are acting for an administrator or liquidator contact debt Insolvency Operations on:

- If your correspondence from the ATO provides a direct contact, please contact this person directly; or
- 1300 303 570 (Option 1)

Question 12: My client received a letter a few years ago from the ATO advising that the payment (due to the ATO) is not being pursued because there is no chance of recovery. They have now received a tax bill from the ATO – why?

Answer: Unless your client has been [released from their tax debt](#), or the debt is irrecoverable at law, then the debt will always remain due and payable but may not be actively pursued. The policy for this can be found in [PS LA 2011/7 Settlement of debt litigation proceedings](#) under Section C, paragraph 13, reproduced below:

C. NOT PURSUING A TAX DEBT ON THE BASIS THAT IT IS EITHER NOT ECONOMICAL TO PURSUE OR NOT LEGALLY RECOVERABLE**13. When can you make a decision to not pursue a debt?**

The Commissioner has the power to not pursue a debt if he is satisfied that the debt is:

- uneconomical to pursue, or
- irrecoverable at law.⁶

If a decision is made to not pursue a debt on the basis that it is uneconomical to pursue, the debt can be re-raised on a client's account at a future time. A debt that is irrecoverable at law is effectively extinguished.