

# Australian Taxation Office

RE-RAISING WRITTEN-OFF TAX DEBTS

March 2009

Report by the Commonwealth and Taxation Ombudsman,  
Prof. John McMillan, under the *Ombudsman Act 1976*

REPORT NO. **04|2009**

## ***Reports by the Ombudsman***

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## EXECUTIVE SUMMARY

As an agency under section 47 of the *Financial Management and Accountability Act 1997* (FMA Act), the Australian Taxation Office (ATO) is enabled and expected by the Australian government to actively and appropriately manage debt cases. This includes the use of its legislative discretion to decide when and in what circumstances it is not economical to pursue a debt. The decision that a debt is uneconomical to pursue is termed 'write-off' and reduces the amount owing on a taxpayer's debt account.

Although not expressly required in the FMA Act, it can be implied that the consideration about whether a debt is economical to pursue is an ongoing one and may be reversed if circumstances change. The practice of reversing a decision to write off a debt is referred to as debt re-raise. It has the effect of increasing a taxpayer's account balance by the amount of the debt as well as interest accrued for late payment. The ATO has discretion to remit interest charges where this would be fair and reasonable and does so in many cases.

Complaints to this office raised concern about the operation of ATO policies to re-raise debts which were written off many years earlier, in many cases where taxpayers were unaware that they still had a collectable debt. In investigating these complaints, it was unclear whether the ATO's discretion to remit interest for late payment of the debt was being exercised.

The scale of ATO debt recovery activity is significant. In 2007–08 the ATO:

- processed over 10 million individual income tax returns
- finalised some 1.8 million collectable debt cases
- wrote off more than 240,000 debt cases
- re-raised over 7,000 debts totalling almost \$105 million.

There is a tension on the one hand between the ATO's guiding principles for its collection activities which are considering each case on its merits, assisting taxpayers to move on, being fair and equitable in the application of the law and, on the other hand, its processes and policy for re-raising debt. It is not easy to determine where the line should be drawn between allowing taxpayers to move on from debts and not rewarding taxpayers for being non-complaint or disengaged from the tax system.

The term 'write-off' is confusing for taxpayers. Unlike the commercial meaning of the term, it only reflects a decision not to pursue the debt for a period of time and can be reversed if and when the ATO considers that the person's circumstances have changed. The main trigger for the ATO deciding that a person's circumstances have changed is if the taxpayer submits a tax return which results in a credit of \$500 or more.

Our investigation has shown that there is scope to improve the ATO's administration of debt re-raise decisions. As a sole criterion, the current arbitrary \$500 tax credit as the trigger for re-raising written-off debt is too blunt an approach. It biases the selection of re-raised debts towards low income earners who receive tax rebates such as the low income off-set and does not appropriately take account of the taxpayer's situation or the original reason for debt write-off. The ATO undertook a pilot study while we were conducting our investigation. This pilot study trialled revised

criteria for determining whether to re-raise income tax debts. This office was not involved in the pilot however the ATO's investigation into more nuanced decision-making criteria is a positive step. The ATO should also consider whether other indicators, such as income level, could be used to determine if a taxpayer's situation has changed.

The ATO can also improve its taxpayer notification and recordkeeping practices. The quality of the ATO's initial approach to management of debt cases and administration of write-off decisions is also relevant to reducing problems with debt re-raise. The ATO's current activities to more actively manage debts earlier are a positive way to enhance the decision making about debt write-off and the fairness of debt re-raise.

## **Recommendations**

### **RECOMMENDATION 1**

The ATO should notify taxpayers about the decision to write off their debt indicating that there is an amount owing which the ATO has decided not to pursue at that time but may seek to do so later, the amount(s) that has been written off and the type of tax to which it relates. This information should also be provided on all notices of assessment related to the tax account.

### **RECOMMENDATION 2**

The ATO should provide further information to taxpayers when a debt is re-raised. This information should include the source of the debt (including how much interest has been charged), the circumstances which caused the debt to be re-raised and how to obtain further information.

### **RECOMMENDATION 3**

The ATO should ensure that the reasons for debt write-off and re-raise decisions are more clearly recorded, including decisions about application and remission of interest charges. Records of re-raise decisions should show what factors and criteria were applied and the reasons that interest charges were or were not remitted. Debts written off as a result of a bulk non-pursuit process could have standardised explanations but should still reflect which factors lead to the decision in each case.

### **RECOMMENDATION 4**

The ATO should not re-raise debts which pre-date the introduction of the ATO Integrated System (AIS) to avoid problems with archival of older account postings on legacy systems. Consideration should be given to the reasonableness of seeking to recover debts which have not been pursued for many years, taking into account the period of time for which taxpayers could be expected to retain relevant tax records.

**RECOMMENDATION 5**

The ATO should ensure that the criteria used in deciding to re-raise a debt are clearly related to whether it is economical to pursue the debt and whether it is efficient, effective and ethical to do so. This should include consideration of whether other triggers for debt re-raise, such as taxable income, should be applied.

**RECOMMENDATION 6**

The ATO should monitor the impact of its bulk non-pursuit process to ensure that this is operating appropriately.

## PART 1—INTRODUCTION

1.1 Under s 47 of the *Financial Management and Accountability Act 1997* (FMA Act) the Tax Commissioner must pursue recovery of all tax debts unless he or she is satisfied that the debt is not legally recoverable or considers that it is not economical to pursue recovery of the debt.<sup>1</sup>

1.2 Where the Tax Commissioner (or his or her delegate) makes a decision that there is justification for not pursuing a debt, the debt effectively becomes dormant. This is commonly referred to as a debt 'write-off'. The Australian Government regards taxation debts as Commonwealth assets. When a decision is made not to pursue a debt, the debt ceases to be regarded as a Commonwealth asset.

1.3 Debts which have been 'written off' as uneconomical to pursue can be re-raised where it is considered that the person's circumstances have changed. In this way the term 'write-off' differs from the commonly understood commercial meaning which is more in the sense of a final decision. Debts which have been written off as not legally recoverable cannot be re-raised.

1.4 This investigation was concerned with the circumstances in which the ATO re-raises income tax debts which have been written off as uneconomical to pursue. It did not consider the ATO's involvement in making recommendations to waive tax debts<sup>2</sup> or discretion to release some debts on the grounds of serious hardship.<sup>3</sup>

1.5 In the year ended 30 June 2008, the ATO re-raised 7,070 income tax debts totalling almost \$105 million. While most of these debts had been written off in the same year, others had been written off as far back as 1986. In the year ended 30 June 2007, the ATO re-raised written-off debts incurred as far back as 1982.

1.6 The Commonwealth Ombudsman has received complaints in relation to re-raised tax debts. In these cases complainants said that they were not aware that a written-off debt was recorded against them and could be re-raised. The trigger for their debts being re-raised was receiving income tax assessments of over \$500 credit. In some cases taxpayers were asked to pay general interest charge (GIC), a daily compounding penalty interest rate, applied back to the write-off date. In others, the GIC amount was remitted automatically. In one complaint investigated, debts dating back over 25 years and written off over 12 years earlier had been re-raised and charged interest for the write-off period.

1.7 It is in the public interest that the ATO's handling of written-off debts should be transparent, fair and consistent, and support taxpayers having an adequate understanding of the impact on their financial affairs.

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<sup>1</sup> Section 47 *FMA Act* imposes obligations on all agency Chief Executive Officers covered by the Act to pursue recovery of debts to the Commonwealth. It is not specifically about obligations on the Tax Commissioner.

<sup>2</sup> Section 34 *FMA Act* allows the Finance Minister and nominated delegates to waive the Commonwealth's right to payment of an amount owing to the Commonwealth. A debt that is waived cannot be reinstated and is extinguished for all time.

<sup>3</sup> Division 340 of Schedule 1 to the *Taxation Administration Act 1953* allows the Commissioner to grant an individual or the trustee of the estate of a deceased person, release from certain tax liabilities, if satisfying those liabilities would cause serious hardship.

## Scope and methodology

- 1.8 The objective of the investigation was to assess:
- the adequacy of administrative policies and procedures relating to the re-raising of written-off tax debts
  - whether the processes and procedures are being reasonably and consistently applied to affected taxpayers.
- 1.9 The investigation concentrated on three core issues:
- whether there is consistency and transparency in the way written-off tax debts are re-raised
  - whether adequate and appropriate information is being provided to taxpayers about the status of a written-off debt and the circumstances that will cause it to be re-raised
  - whether the ATO's approach to re-raising debts, including the recovery action taken, is fair and reasonable in all the circumstances.
- 1.10 The scope of the investigation was limited to the re-raising of individual income tax debts in accordance with legislative policy underpinning the FMA Act.
- 1.11 The methodology for this investigation involved:
- review and analysis of issues arising from relevant complaints to the Ombudsman's office
  - review of legislation and guidelines governing the write off and re-raising of tax debts
  - meeting with the ATO to discuss policy and procedures for re-raising written-off tax debts and emerging issues
  - reviewing information provided by the ATO about its procedures and practices for the re-raise of tax debts
  - analysis of a sample of 50 previously written-off tax debts which were re-raised in 2007–08. The sample was selected to cover a spread of debt values and number of years elapsed since write off.
  - review of the policy and outcomes from a pilot of revised criteria conducted on tax debts re-raised in June and August 2008.



## PART 2—ATO MANAGEMENT OF DEBT WRITE-OFF AND RE-RAISE

### Current policy framework

2.1. The ATO's Receivables Policy documents the policies for ATO staff to follow in the collection of taxation debts, in conjunction with relevant legislation. This policy is published on the ATO website.

2.2. Chapter 26 of the Receivables Policy deals with deciding not to pursue recovery of taxation debts. This includes the factors to be taken into account in deciding that it is not economical to pursue a debt and in deciding to re-raise a debt.

2.3. Other relevant parts of the Receivables Policy include:

- chapter 72 offsetting of refunds and credits against taxation and other debts—section 72.2.4 where costs associated with offsetting small amounts are excessive it may be considered uneconomical to pursue a debt therefore credit is not offset against debt
- chapter 93 regarding Commissioner's powers to remit GIC which has accrued on tax debts.

2.4. The ATO also provided a copy of the Chief Executive's Instruction—Debt Management. This includes provision for delegation to specified officials of the power not to pursue all debt and the responsibilities of those exercising this power.

2.5. During this investigation the ATO issued a general update to the Receivables Policy, including revisions to the policy for deciding not to pursue recovery of taxation debts in chapter 26. The new chapter omits a previous requirement for the ATO to maintain a register of all cases where the decision not to pursue has been approved, including debtor details, the amount and years of the debts not pursued and the reasons for non-pursuit.<sup>4</sup>

2.6. Excerpts of the current Receivables Policy which guide ATO staff involved in making decisions that debts are uneconomical to pursue and re-raising debts are at Appendix A.

### ATO investigation of possible policy refinement

2.7. At the outset of this investigation, the ATO indicated that it was seeking to include some additional flexibility in its systems and processes around primary tax written off as uneconomical to pursue with a view to the more even application of its discretion. To this end, the ATO had sought advice from the Department of Finance and Deregulation (Finance) in early 2008 about what scope it had to apply a more discretionary approach to the re-raise of debts that had been written off as uneconomical to pursue within the requirements of s 47 FMA Act.

2.8. The ATO advised that the outcome of consultation with Finance about this indicated that:

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<sup>4</sup> ATO Receivables Policy, Chapter 26.5.5 (4 July 2006 version).

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- The Commissioner (or appropriate delegate) is responsible for determining what constitutes an uneconomical debt for the Tax Office to pursue. The FMA Act does require that the decision must be aimed to produce an efficient, effective and ethical outcome, but does not prescribe rules for determining what is uneconomical to pursue.
- The automatic re-raise of debt is not an FMA Act requirement. The FMA Act would only require debt previously determined to be uneconomic to pursue to be re-raised if it was effective, efficient and ethical to do so.
- Debt that has been determined to be uneconomical to pursue is not waived or legally extinguished—a record of the debt must be maintained—but such debt may be ‘parked’ indefinitely.
- When deciding whether it is economical to pursue a current debt, or re-raise an old debt, the ATO should ensure that it takes into account all relevant costs of collection and must not ignore ethical considerations or the potential impact on community confidence in the tax system.<sup>5</sup>

2.9. During June and July 2008, the ATO implemented a six week pilot to trial the effect of additional criteria to consider before deciding whether to re-raise an individual taxpayer’s debt(s). This was after the selection of cases for this investigation and was therefore not reflected in the cases we reviewed. The outcome of the pilot and suggestions for possible changes to debt re-raise practice are relevant to this investigation and are discussed further below (in Part 4) in relation to areas for improvement.

### ATO debt write-off procedures

2.10. The ATO advised that writing off tax debt on the basis that it is uneconomical to pursue has traditionally been restricted to cases where there is considered to be little prospect of subsequent account activity, such as debts involving:

- smaller amounts where an entity has ceased business and through various checks, the tax officer is satisfied that there are no assets to pursue and no egregious behaviour on the part of directors
- deceased taxpayers where there is no prospect of collection or it would be insensitive to do so
- long term, untraceable taxpayers.

2.11. Generally write-off activity has occurred on a case-by-case basis. However, at times the ATO has implemented bulk write-off processes to remove large numbers of debt cases in respect of which there is considered to be little possibility of collection. Such a bulk write-off process occurred in 2007–08, resulting in write-off of over 240,000 income tax debts as uneconomical to pursue. The ATO advised that this bulk write-off process is continuing. It mostly involves tax debts of less than \$2,500, where the ATO considers that writing off these debts is the most appropriate and efficient action, but also the most effective in terms of outcomes for both the community and the taxpayer.

2.12. The following processes must be completed once an officer considers that a debt may be written off:

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<sup>5</sup> ATO internal issues paper response from ATO Finance to Debt Business Line dated 28 February 2008.

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- undertake necessary account transactions to ensure the correct debt is reflected on the account (for example, apply GIC to the account to bring the account up to date)
- generate a write-off recommendation work item in the receivables management system (RMS)
- delegated officer reviews and approves the RMS work item (updates RMS with notes)
- delegated officer initiates accounting write-off transaction on the host accounting system
- a supporting reconciliation process is undertaken on a monthly basis to ensure write-off transactions on RMS and the host system balance and are appropriate.

2.13. When the ATO approves write-off of a debt, the account balance is reduced by the debt amount and an indicator is placed on the taxpayer's file to show that a written-off debt is connected to the account. While a debt is written off it is inactive, so no interest or penalties are added. However, these can be added retrospectively if the debt is re-raised.

### ATO debt re-raise procedures

2.14. The ATO policy for determining when a written-off debt ceases to be uneconomical to pursue occurs in a largely automated way linked to lodgement of income tax returns.

2.15. The ATO advised that the main mechanism by which debts are re-raised is where a taxpayer subsequently lodges an income tax return that results in a credit of over \$500. When this occurs the written-off debt indicator activates a re-raise 'exception' which must be followed before the tax return can be finalised.

2.16. Income tax re-raise procedures are available to processing staff on the ATO systems and indicate that 'all actions should be finalised within 72 hours of receipt of such cases'. Broadly, the procedure outlines the following steps:

- checking for current ATO legal action
- if there is no pending legal action, identifying the non-pursuable debt from write-off account postings (including requesting microfiche records in some cases)
- processing an accounting transaction to re-raise the full amount of the debt to the income tax account
- updating the GIC for the period since the write-off and ensuring that this is updated correctly
- updating systems to remove the written-off debt indicator, record reasons for actions and a generic contact phone number for taxpayer queries, release the tax return for processing
- considering collectability of the re-raised debt and relevance of pursuit versus write-off again
- if it is still uneconomical to pursue, carrying out the write-off process in accordance with the ATO write-off procedures.

2.17. Currently, the procedures for tax officers processing debt re-raise cases indicate that consideration should be given to whether remission of GIC is appropriate. The ATO advised that this discretion is not routinely exercised but that automatic remission of GIC occurs where the monthly interest amount is below a threshold.

2.18. The \$500 income tax refund re-raise threshold is not referred to in the Receivables Policy or the Income Tax Re-raise Procedures but is built into the ATO systems as the trigger for requiring a re-raise procedure to be undertaken. The ATO was unable to advise us of the origin of the \$500 threshold, but indicated that it was introduced around 2001–02 and is assumed to represent a level at which it becomes economical to pursue a debt again.

2.19. At the commencement of this investigation there was no control to ensure that any residual balance of the re-raised debt after offsetting of the tax credit(s) is reconsidered for write-off. The ATO's revised policy for re-raising debts now indicates that:

18. If a debt is re-raised and, after the allocation of a subsequent credit, there is still an amount outstanding, options for recovery of the remaining debt (for example, a payment arrangement) should be considered.

19. Where further recovery options are not viable, it may be considered appropriate to again decide not to pursue the balance. If this is the case, then the reason for non-pursuit must satisfy one of the grounds for non-pursuit.<sup>6</sup>

## **Taxpayer notification**

2.20. The ATO advised that taxpayers are not generally notified when their debts are written off because, in the main, these taxpayers are deceased, overseas or untraceable.

2.21. Tax agents may see where a debt is written off and re-raise transactions on their clients' accounts via the tax agent portal. Some taxpayers may see write-off and re-raise transactions on their accounts via the business portal. However, it is not clear the extent to which this would make it apparent that the debts can be re-raised.

2.22. One situation where the ATO does notify taxpayers about debt write-off decisions is where a taxpayer makes an application for release from payment of their debt which is not granted and the debt is instead written off as uneconomical to pursue.<sup>7</sup> In these circumstances, the taxpayer is advised by letter that the debt is not being pursued but may be in the future if circumstances change. The wording relating to release notification is as follows:

***Your application for release from payment of tax  
For your action***

After considering the circumstances in your application received on 5 March 2008, the Commissioner of Taxation has refused release from payment of tax. However following a review of your case and taking your current circumstances into account, the Commissioner

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<sup>6</sup> ATO Receivables Policy, Chapter 26, version released 24 July 2008.

<sup>7</sup> Under Division 340 of Schedule 1 to the *Taxation Administration Act 1953* the Commissioner is allowed to grant an individual or the trustee of a deceased estate, release from certain tax liabilities (including income tax debts) if satisfying those liabilities would cause serious hardship. The policy guidelines for this are in ATO Receivables Policy Chapter 24.

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has decided not to pursue your outstanding debt at this time, but if your circumstances change you have a responsibility to inform the Tax Office and pay this debt.

Your debt may be re-raised and action to collect the debt can commence at any time. A circumstance in which this may occur is future activity on your account/s. Any future tax credits or payments will be offset against any unpaid amount of your taxation liability.

2.23. Most write-off decisions are not linked to applications for release. Therefore the first time that most taxpayers will generally become aware that they had a debt(s) which had been written off is when their debts are re-raised. In the case of income tax debts, notification will occur through the notice of assessment in which the credit was offset against the debt.

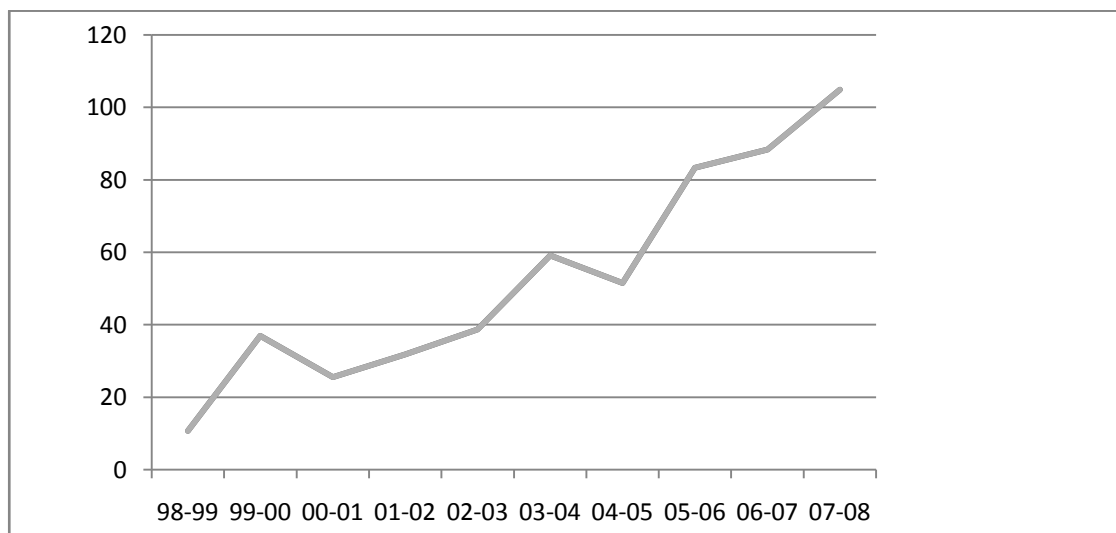
2.24. When debts are re-raised, taxpayers are notified either on the assessment notice or, in the case of the activity statement account, through the issue of a running balance account statement. The information provided on notices of assessment is limited to indicating that there was 'other amounts payable', the amount and tax type of the debt. An example of a notice of assessment for a re-raised debt case is at Appendix B.

### Tax debt re-raise profile and trends

2.25. Over a period of 30 years the ATO has re-raised almost 75,000 individual income tax debts. While this is a large number, it needs to be noted that in 2007–08 the ATO processed over 10 million individual income tax returns and finalised some 1.8 million collectable debt cases.<sup>8</sup>

2.26. As noted in paragraph 1.5, in 2007–08 the ATO re-raised 7,070 debts related to 6,753 taxpayers with a value of almost \$105 million, the highest annual value of re-raised debts the ATO has recorded. This does not mean that all of this was collected as revenue but it does create significant revenue potential.

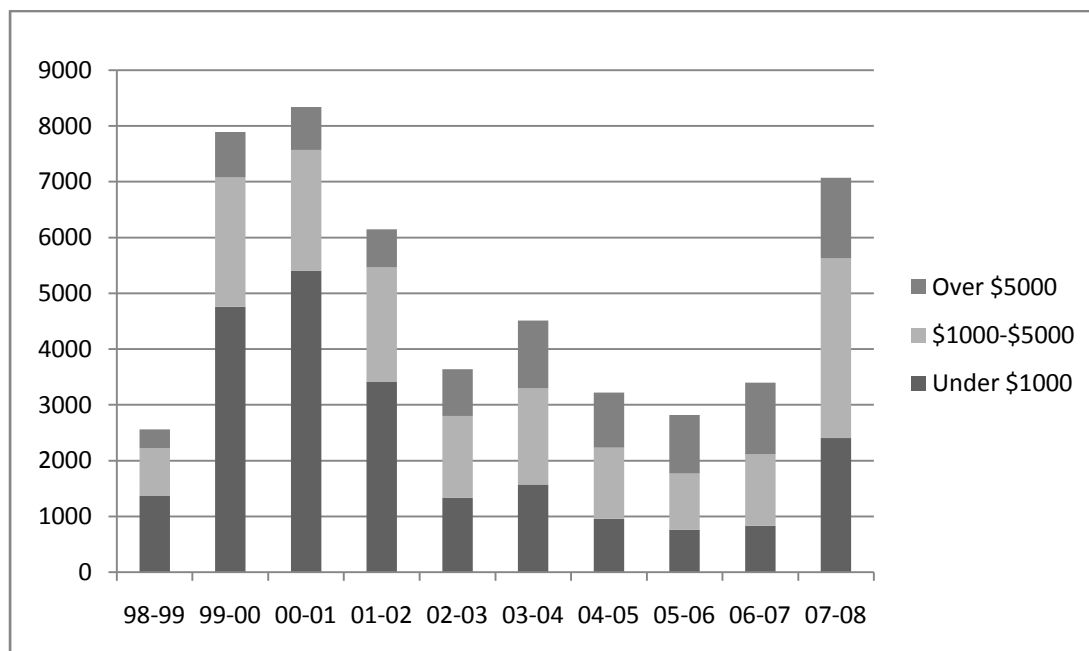
**Figure 1: Total value of re-raised debts by financial year (\$ million)**



<sup>8</sup> Commissioner of Taxation, *Annual Report 2007–08*, pages 43 and 46.

2.27. As shown in figure 1, the total yearly value of re-raised debts has grown significantly over the past 10 years. Information from the ATO confirms that this reflects an increase in the average debt amount since 2001–02.

**Figure 2: Number and value profile of re-raised debts 1989–99 to 2007–08**



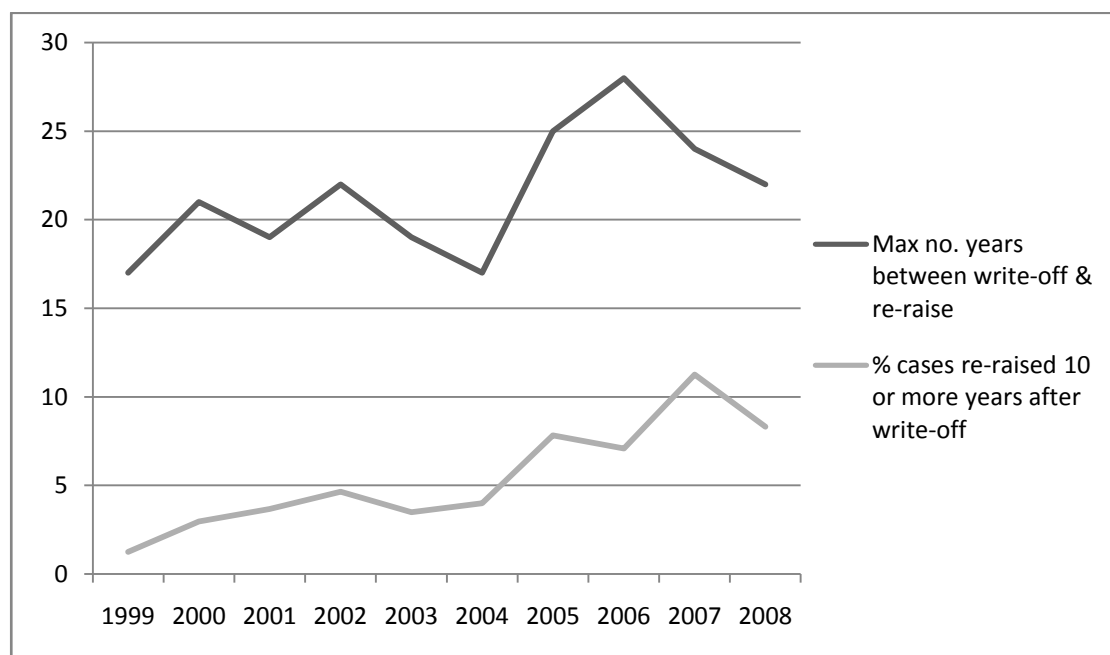
2.28. As shown in Figure 2, over the last 10 years the number of debts re-raised each year has varied significantly. The value profile of re-raised debts also increased until 2006–07, with a much smaller proportion of debts under \$1,000 being re-raised in the years since 2001–02. In the last financial year, the trend reversed with a jump in the number of smaller debts re-raised.

2.29. Changes in the number of debts being re-raised during this period have also followed the ATO’s approach to debt write-off. The decline in the numbers of re-raised debts after 2002 might be associated with the introduction of the \$500 re-raise threshold around this time. In 2007–08, the number of re-raised debts was more than double the number from the previous year. The bulk non-pursuit process implemented last year appears to be the main reason for this jump, with almost half the debts re-raised having been written off in the same year.

2.30. The ATO was unable to provide data about the ages of written-off debts but did provide data about the year in which debts had been written off. Until 1998, the longest gap between write-off and re-raise of a debt was 10 years. Since then cases spanning a much greater period between write-off and re-raise have increased, up to 28 years in one case.

2.31. While this is only a very small minority of cases, it is still significant to highlight the extent to which very old debts can be brought up against taxpayers, particularly as the time period to which the debts relate is even further back than the write-off.

**Figure 3: Profile of re-raising aged debts 1998–99 to 2007–08**



2.32. As shown in figure 3, the span of years between debt write-off and re-raise has generally increased over the past 10 years, but has dropped off somewhat in the last two years. A similar trend has occurred in the proportion of debts re-raised 10 or more years after they were written off. However, it should be noted that the overwhelming majority of debts re-raised in this period were not more than 10 years from write-off.

2.33. In 2007–08, 56% (3,994 of 7,070) of re-raised debts were written off in the same year, reducing the proportion of debts re-raised less than 10 years after write-off. It is important that the ATO monitor the extent to which debts are being re-raised in the same year as they are written off to ensure that debt write-off discretion is being exercised appropriately and to avoid administrative churn.

## PART 3—TAX DEBT RE-RAISES IN PRACTICE

### Complaint issues

3.1 This review was initiated after investigation of four complaints in 2007–08 about the ATO re-raising previously written-off income tax debts. While this is not a large number of complaints, they raised concerns about issues that had the potential to impact on a large number of taxpayers. Key issues from these cases were:

- the age of debts being raised for collection (oldest one dating back to 1981)
- whether there was sufficient proof to enforce debts where there is no record of the original notice of assessment or account posting
- the time period between debt write-off and re-raise (up to 13 years)
- a lack of information being provided to taxpayers about the existence or status of their debt, even when they lodged subsequent tax returns with small refunds
- apparent inconsistent decisions about the remission of GIC and penalties
- the impact on taxpayers, such as those with disabilities or low incomes returning to the workforce.

3.2 This investigation also considered complaints made to the ATO about re-raised debts. The ATO advised that between 2005 and 2008, 49 complaints were received. Of these, 32 related to the existence of the debt, 11 were complaints about not receiving responses from the ATO to enquiries about the debt, five were about the age of the debt and one related to a release application not being granted.

3.3 Noting that the number of re-raised debts between 2005 and 2008 was over 16,000, the number of complaints received by the ATO and the Ombudsman is very low. In some of the cases reviewed in this investigation, particularly for very old debts, system notes of contact between taxpayers and the ATO indicated that concerns were raised or taxpayers objected to the debt re-raise. However, the ATO did not process these approaches as complaints. Therefore, the level of concern about debt re-raise may be somewhat higher than the complaint figures suggest.

#### **CASE STUDY: Aged debt**

Ms A, a disability pensioner for over 27 years, returned to part-time work in 2005–06. In 2006–07 her tax return yielded a credit of over \$800 from an income of about \$6,000. Instead of receiving this amount, her credit was offset against a debt of just over \$2,000 and \$4,000 in GIC.

Ms A complained that she did not think she had a debt. The ATO advised that the original debt related to her 1981, 1982 and 1985 income tax assessments and a late payment penalty. Ms A wanted to know why the ATO had not contacted her about the debt before then, especially when she received a tax return of \$153 the year before. The ATO advised that Ms A's debt had been written off as not economical to pursue in 1994 (without notifying her) and that the ATO's policy was not to re-raise debts where the refund was less than \$500. The ATO subsequently remitted the GIC and the late payment penalty imposed.

The ATO was not able to provide copies of the notices of assessment related to the original debits or microfiche records of the original account postings to substantiate the debt.



3.4 The ATO can and should improve the information it provides to taxpayers, both before and after the re-raising of debts. The failure to notify taxpayers of the existence of a written-off debt or to advise them of the circumstances in which it might be re-raised does not fit a 'community first' approach.<sup>9</sup> An example of a notice of assessment provided when a debt is re-raised is at Appendix B.

3.5 In a number of the cases we reviewed, including some complaints, taxpayers had lodged tax returns in the period between write-off and re-raise which did not result in their debt being re-raised because they did not receive a refund in excess of \$500. This was a source of confusion and concern for taxpayers and contributed to concerns about the correctness of ATO debt records. The *Aged debt* case study provides an example of this situation.

**RECOMMENDATION 1**

The ATO should notify taxpayers about the decision to write off their debt indicating that there is an amount owing which the ATO has decided not to pursue at that time but may seek to do so later, the amount(s) that has been written off and the type of tax to which it relates. This information should also be provided on all notices of assessment related to the tax account.

**RECOMMENDATION 2**

The ATO should provide further information to taxpayers when a debt is re-raised. This information should include the source of the debt (including how much interest has been charged), the circumstances which caused the debt to be re-raised and how to obtain further information.

3.6 Not all write-off decisions are because the ATO is unable to contact the taxpayer, even in the bulk non-pursuit process. In these cases the ATO should consider providing a standard notice to taxpayers advising them about the decision not to pursue their debt at that time or ensuring that the information on ATO portals gives a clear indication that there is still a debt linked to the account which can be re-raised. The explanation provided to taxpayers who are refused release but have their debts written off provides an appropriate model for this.

## **Review of sample of re-raised debt cases**

### ***Sample selection and information***

3.7 The Ombudsman's office reviewed a sample of 50 individual income tax debts which had been re-raised in 2007–08 when income tax returns were lodged. The sample was selected by this office from a de-identified list of cases covering a range of debt values and length of time since debt write-off.<sup>10</sup>

3.8 In a number of cases where the written-off debt was incurred before 1992, the ATO was not able to locate microfiche records showing the original account posting

<sup>9</sup> Such as is described in Operations practice notes 2007/002 *A community first culture* which describes the Tax Commissioner's preferred approach to the management of debt.

<sup>10</sup> Tax File Numbers were replaced by the ATO with a list number which our office and the ATO used to identify and discuss case information. Taxpayers' name and address details were also excluded as this was not necessary for the issues under investigation.

for the debt.<sup>11</sup> We selected all 14 cases where the debt write-off was recorded on microfiche and the ATO was able to locate the original posting information. The rest of the sample was selected based on a spread of small to large debt values and length of time between write-off and re-raise.

3.9 Only a very small proportion of re-raised debts in 2007–08 were written off before 1990 (less than 1%). Therefore the sample we selected is skewed toward older debts and is not representative of the general profile of re-raised debts. We considered this was an appropriate sample bias as one of the key issues which lead to this investigation was the age of debts being re-raised and the ATO had identified issues with older account postings on legacy systems as a key reason for not being able to easily reconcile all write-off and re-raise accounting entries.

3.10 The ATO provided data for each case about the debt amount, date of write-off, the taxpayer's age, occupation, income at time of re-raise (generally for 2006–07), benefit status, use of a tax agent and whether there is an active arrangement for any remaining income tax debt. Information reviewed for each case included income tax account postings and a running balance account, system notes about the debt history and decisions, notices of assessment which triggered the debt re-raise or were issued between write off and re-raising of the debt. The ATO advised that it had not received complaints for any of the selected re-raised debt cases so there was no information about this to review.

### ***Analysis of sample cases***

3.11 The sample of re-raised debts related to 49 taxpayers (two debts were for the same taxpayer). Over half (25) of these taxpayers had a taxable income less than \$25,000 and were therefore entitled to the full low income tax offset of \$600 for 2006–07.<sup>12</sup> Fifteen taxpayers (30%) earned more than the cut off level for the 2006–07 low income tax threshold of \$39,999 and would not have been entitled to any rebate amount. The ATO provided information for 2007–08 debt re-raises which also showed that only about 20% of taxpayers whose debts were re-raised earned over \$50,000. Therefore the operation of the \$500 tax refund criteria has the effect of targeting lower income earners.

3.12 Information for the sample cases also indicated a lack of clear and appropriate records. In many cases the reasons for debt write-off were not clearly articulated. Notes about decisions and transactions by the ATO are contained on more than one system (Compact and Siebel). Postings on the ATO's income tax account system related to debt write-offs and re-raise transactions were not consistently recorded. Remission of GIC debits was not routinely described.

#### **CASE STUDY: Problematic re-raise**

This taxpayer incurred a \$3,438.37 income tax debt from their 1991–92 tax return which by September 1993 was reduced to \$1,145.80 through a number of credits to his account. In 1996 an ATO officer noted that the taxpayer had not lodged a tax return since 1992 and was receiving social security benefits. The ATO officer decided that the debt should be written off. A late payment penalty of \$533.89 was then added to the account and both the income tax and the penalty amounts were written off, reducing the account balance from \$1,679.69 to zero.

<sup>11</sup> Thirty-nine individual income tax debts were written-off during or before 1991–92. The ATO was not able to locate the microfiche record of the account posting in 24 of these cases.

<sup>12</sup> Assuming that they were Australian residents for tax purposes.

In 2007 the taxpayer lodged their tax return for 2006–07, their first return since 1992, generating a refund of \$1,216.25 to the taxpayer (including \$600 for the low income tax offset). This tax return triggered the re-raising of the two debts written off as uneconomical to pursue. The debt amounts were then posted back on to his income tax account (retrospectively to the write-off date of 17 April 1996 to enable GIC interest of \$2,436.53 to be automatically updated). It appears that GIC was then automatically remitted (subtracted from the account). The whole refund was offset against the \$1,679.69, leaving a residual debt of \$463.44.

There is no evidence that the taxpayer was ever told about the write-off or that he was contacted about payment of the debt before this occurred. The only information about the debt re-raise on his notice of assessment is the reference to 'Other amounts payable' for income tax.

3.13 Maintaining accurate, comprehensive and accessible records is a core aspect of good public administration.<sup>13</sup> This review highlighted a number of areas where improvement of ATO records is warranted, including records of decisions about debt management and the accuracy and accessibility of accounting systems.

3.14 The ATO's National Taxpayer System (NTS) is designed to show the date a debt is re-raised as being the same date as the debt was written off. While the actual date of the debt re-raise is recorded, the account balance does not reflect this. Rather it is altered retrospectively, to reflect the fact that the debt continued to exist and accrue GIC. This means that the balance on a taxpayer's NTS income tax account at a particular date will not reflect what it historically was between write off and re-raise. This is confusing for taxpayers and can create questions about the legitimacy of debts they have been asked to pay.

3.15 A concern raised in complaints is that taxpayers do not agree that they had a debt or that the ATO can bring it back. The lack of a clear account record in relation to debt write-off and re-raise has the potential to undermine taxpayers' confidence in the tax system. It is therefore important that the ATO be able to provide clear explanations to taxpayers about the implication of debt write-off both at write-off and re-raise.

### RECOMMENDATION 3

The ATO should ensure that the reasons for debt write-off and re-raise decisions are more clearly recorded, including application and remission of interest charges. Records of re-raise decisions should show what factors and criteria were applied and the reasons that interest charges were or were not remitted. Debts written off as a result of a bulk non-pursuit process could have standardised explanations but should still reflect which factors lead to the decision in each case.

3.16 While the cases reviewed indicated some situations where re-raise of debts appeared unfair or unreasonable (such as in the *Aged debt* case study), in others, it would appear that the debt re-raise was fair and reasonable. An example of this is the *Appropriate debt re-raise* case study.

<sup>13</sup> Commonwealth Ombudsman, *Lessons for public administration*, Report no. 11/2007.

***CASE STUDY: Appropriate debt re-raise***

The taxpayer's debt of \$532.44 was written off in 2002 as uneconomical to pursue. This happened over four years after a court judgement to enforce the debt and ATO agreement to a payment arrangement. The taxpayer did not make any payments and no further action was taken to enforce the debt.

The ATO re-raised the debt in 2007 when the taxpayer lodged income tax assessments for 2003 to 2007 which generated refunds of almost \$10,000. The ATO offset the debt against the tax credits and remitted all amounts of GIC. The decision to re-raise this debt seems fair and reasonable taking into account the taxpayer's poor compliance history, current taxable income of \$60,706 and records to indicate under reporting of income in the 2006 tax return.

3.17 The existence of sufficient records to support enforcement of pre-1990 debts seems doubtful as account postings do not record the full details of the debt. For debt cases which arose before the introduction of the AIS, records of transactions are dependent on microfiche archives. In a significant proportion of cases, these archive records cannot be located. Where microfiche records are available they do not provide adequate information to substantiate the details of the original debt.

3.18 Problems with automated reconciliation of account information are not isolated. Of the nearly 75,000 individual income tax debts re-raised over the past 30 years, the ATO advised that approximately 54,000 of the re-raised postings were completely matched to the write-off postings. The ATO advised that due to the age of the income tax system and archival of some older account postings on legacy systems, it would be able to reconcile the transactions only with substantial manual effort due to the span of years and number of different systems and processes used over that time.

3.19 As referred to above, the ATO Receivables Policy previously required that a register of debt write-off cases be maintained. Such a register might be a useful mechanism for keeping track of debt.

3.20 In addition to these aspects of re-raise policy and procedure, the significance of debt management and write-off practices to debt re-raise decisions was evident. It is more efficient and effective to collect a debt closer to the time that it is incurred. In cases where it did not appear that a debt had been actively managed or reasons for the write-off were not clear, there is also less information to confirm that the decision to re-raise the debt was ethical in all the circumstances.

## PART 4—SCOPE FOR REFINEMENT OF DEBT RE-RAISE CRITERIA

4.1 Writing-off and re-raising debts are useful and reasonable tools for the ATO to use in managing debts, particularly 'stale' debts for small amounts and where the ATO has not been able to contact the taxpayer. However, the cases considered highlight scope for improvement in some areas. Recommendations 1 to 4, mentioned in Part 3, identify improvements which can be made in relation to taxpayer notification and recordkeeping. There is also scope for improving the criteria used for deciding to re-raise a debt.

4.2 As noted above, refinement of re-raise policies and procedures should be viewed in context of the debt management and write-off practices that precede them. In deciding that the circumstances which made a debt not economical to pursue have changed, it is appropriate to consider what the original circumstances leading to debt write-off were. For example, if a taxpayer disengaged from the tax system and avoided payment of a debt this supports more active action to re-raise the debt (as illustrated in the *Appropriate debt re-raise* case study). Alternatively, if debt records show that the ATO did not actively seek to recover the debt before write-off or wrote off a debt as an alternative to release on financial hardship grounds, it may be more fair and reasonable to exercise discretion not to re-raise the debt in favour of assisting taxpayers to move on.

### ATO proposed changes to re-raise approach

4.3 During the course of our investigation, the ATO implemented a six-week pilot to trial the effect of additional criteria to consider before deciding whether to re-raise a taxpayer's income tax debt. The ATO's intended outcomes from the pilot were to:

- prevent the re-raise of aged debts that have little likelihood of collection
- reduce the potentially negative impact on future compliance behaviour where clients are attempting to engage with the ATO
- reduce the number of debt cases that need to be manually processed
- reduce the number of complaints relating to the re-raise of these debts
- obtain learnings to influence or implement auto-assessment solutions in future Change Program releases.

A debt will not be re-raised where	Rationale
The write-off occurred more than seven years ago. Or	Taxpayers are only required to retain records for seven years.
The taxpayer is 70 years of age or older. Or	The current retirement age for males is 65.
The taxpayer earns \$50,000 (gross) or less. Or	The current average wage is \$50,000 (no great increase in material wealth).
Other returns have been lodged since the write-off and the debt was not re-raised.	<ul style="list-style-type: none"> <li>• The community first approach, particularly the need to maintain community confidence in the consistency of Tax Office procedures</li> <li>• The effect on taxpayer re-engagement</li> </ul>

## Commonwealth and Taxation Ombudsman—ATO: Re-raising written-off tax debts

	<ul style="list-style-type: none"> <li>To allow taxpayers to move on where they choose to re-engage rather than revisiting former issues that have not been worthy of recent action by the Tax Office.</li> </ul>
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4.4 The pilot used the following additional criteria for to decide if a debt should be re-raised:

4.5 These criteria were of equal importance and are listed in the order that the information was presented when reviewing the case.

4.6 The ATO also considered inclusion of an increased re-raise threshold of over \$1,000 but did not incorporate this because of current system constraints. The ATO indicated that it may be practical to incorporate this suggestion into re-raise procedures in the future.

4.7 The ATO provided the following results and findings to the Ombudsman and indicated that it would welcome our views on the criteria, results and draft recommendations.

A total of 1,471 cases were processed throughout the six weeks. A number of cases were excluded from the results below for various reasons:

- two cases with potentially high re-raise values (e.g. over \$1 million) were referred to Advanced Recovery for further investigation of the taxpayers' circumstances
- 31 were excluded as notice of assessment information was not available
- 17 were excluded as write-off postings could not be located and hence the amount of the original debt written off could not be quantified without expending considerable time and effort. These write-offs are likely to have taken place prior to 1990 with the postings being held on microfiche.

Results are based on the remaining 1,421 cases summarised in Tables 1 and 2 below.

Table 1: Not re-raised				
No. of cases	Total available credit (notices of assessment)	Potential credit offset against other Commonwealth debts (e.g. CSA)	No. potential debt cases (if re-raised)	Value of potential debt cases (exc. GIC)
1,281	-\$3,590,477	-\$1,320,510	465	\$1,596,413

Table 2: Re-raised			
No. of cases	Total available credit (notices of assessment)	No. debt cases	Value of debt cases (inc. GIC)
140	-\$801,727	49	\$448,695

Additional ATO analysis of the 1,471 cases showed:

- The examined cases had a total write-off value of \$3,923,104
  - not re-raised \$3,252,458
  - re-raised \$670,646.
- Of those cases that were not re-raised, nearly one third of the taxpayers already had another Commonwealth debt which absorbed the available credit.
- Nearly 50% (708) of the 1,471 cases had a credit less than \$2,000.

## Commonwealth and Taxation Ombudsman—ATO: Re-raising written-off tax debts

- The average value of the actual debt cases created by re-raising the debts was close to \$9,000. The likelihood of collecting these debts is unknown.

Table 3 provides a breakdown of the 1,281 cases not re-raised.

Table 3: Reason (based on the pilot procedures)	Number of cases	Percentage of total
Income < \$50,000	1,107	86.4
Write off > 7 years	169	13.2
Client > 70 years	5	0.4
<b>TOTAL</b>	1,281	100

While all criteria are of equal importance, they are considered in the order that the information is presented when reviewing the case. The last to be checked is whether other returns have been lodged since the write-off and the debt was not re-raised. As all 1,281 cases met one of the other three criteria, there was no requirement to check if previous returns had been lodged.

4.8 Based on the pilot results, the ATO Debt Operations business service line made preliminary internal recommendations that:

- criteria from the pilot become the standard approach to re-raising income tax debts and be considered for processing other types of tax debts
- the value of the \$500 re-raise threshold be reviewed and possibly increased, taking into account the cost of administering re-raised debt procedures.

### Ombudsman comment on pilot results and findings

4.9 The effect of the additional criteria considered by the ATO in the pilot was that they operated as filters for a re-raise decision, once the \$500 credit triggered the process. The outcome of applying the filters meant that the vast majority of debts were not re-raised and a significant amount of potential revenue was not recovered.

4.10 It should be noted that the broad impact of the pilot was to treat cases arising during a six-week period differently from cases arising before and since the pilot. It was not necessary for the ATO to do a live pilot of revised criteria. The same information could have been obtained through a review of finalised cases to determine how the outcomes of selected cases would have differed if the additional criteria had been applied. This would have been more consistent with the ATO's Taxpayers' Charter which includes a commitment to treating taxpayers fairly and reasonably by acting consistently in interpreting and applying the law.<sup>14</sup> As the ATO does not publish the criteria which will cause a debt to be re-raised, affected taxpayers will not know if or how they were impacted by the pilot.

#### ***Length of time between write off and re-raise***

4.11 The number of years since a debt was written off is a criterion that would have some value in this process as it is based on the sound reason that taxpayers are not required to keep tax records forever. The limitation of this criterion is that it is only a proxy for the true age of the debts, which may be written off some years after they arise. Also the imposition of a time restriction could be seen to reward taxpayers for

<sup>14</sup> *Taxpayers' charter: Treating you fairly and reasonably*, page 7 NAT 2549-01.2007.

having a poor compliance history (as demonstrated in the case study, *Appropriate debt re-raise*, where a court judgment and a payment arrangement were ignored).

4.12 The cases we reviewed also highlighted the scope for debts to be re-raised which date back many years and longer than taxpayers are expected to keep their own tax records. There is a question about the ethics of re-raising a debt which has not been pursued for a number of years and in circumstances in which the taxpayer could not reasonably be expected to have retained relevant records.

4.13 Given the critical importance of ATO accounting systems and records to debt administration, it is concerning that postings of debt write-off and re-raise transactions cannot readily be fully reconciled in a large number of cases. For debt cases which arose before the introduction of the ATO Integrated System, records of transactions are dependent on microfiche archives. In a significant proportion of cases, these archive records cannot be readily located. Even where there are microfiche records they do not provide adequate information to substantiate the details of the original debt. Therefore it is not clear that the ATO can satisfy itself that it is ethical to re-raise such debts.

#### **RECOMMENDATION 4**

The ATO should not re-raise debts which pre-date the introduction of the ATO Integrated System (AIS) to avoid problems with archival of older account postings on legacy systems. Consideration should be given to the reasonableness of seeking to recover debts which have not been pursued for many years, taking into account the period of time for which taxpayers could be expected to retain relevant tax records.

#### ***Age of taxpayer***

4.14 The suggestion for a filter based on taxpayer age does not seem appropriate as a definitive factor. A criterion based on income levels would provide the appropriate relief for older taxpayers on lower incomes.

#### ***Income threshold of over \$50,000***

4.15 The operation of the current, unpublished \$500 re-raise threshold is problematic, in that it operates in an arbitrary and opaque way. For example, a taxpayer who lodges tax returns for two years, each of which result in credits of \$400 would not have their debt re-raised if they lodged these returns separately but would if they lodged them concurrently.

4.16 A greater number of low income earners are affected by the \$500 threshold because of the low income rebate. A criterion not to re-raise debts unless a taxpayer earns over \$50,000 may reduce the number of re-raised debt cases.

4.17 A taxpayer's income level may be seen as a relevant and appropriate indicator of whether a taxpayer can afford to repay a debt. However, the level in the pilot operated to exclude the majority of cases that would have been re-raised. Therefore the loss in potential revenue would need to be taken into account in any further consideration of implementing an income threshold.

#### ***A broader approach to re-raise triggers and decision-making criteria***

4.18 It is not unreasonable for the ATO to seek to offset tax refunds against tax debts. The existence of a tax refund reduces the cost to the ATO of pursuing the debt and increases the chance that a debt is economical to pursue. However, it is unclear



that using the value of a tax refund is the best indicator that a taxpayer's circumstances have changed and that it is now effective and appropriate to re-raise a debt. For example, the amount a taxpayer earns may be a better indicator of capacity to pay than the amount of refund.

4.19 The ATO should continue to consider whether other triggers to the re-raise process, such as taxable income, might be applied to determine if a debt should be re-raised.

**RECOMMENDATION 5**

The ATO should ensure that the criteria used for deciding to re-raise a debt are clearly related to whether it is economical to pursue the debt and whether it is efficient, effective and ethical to do so. This should include consideration of whether other triggers for debt re-raise, such as taxable income, should also be applied.

**Impact of debt management and write-off practices**

4.20 Improvement in decision making about re-raising debts is dependent on the operation of debt write-off decisions and the ATO's previous approach to management of the debt. In some cases reviewed, it was not clear that the ATO had actively pursued a debt before write off. This undermines the ATO's credibility in reactivating the debt and pursuing it at a later time. The ATO has expanded its active management of debt cases; this increased focus on debt collection includes the use of outsourced debt collection agencies. If this continues, there should be more certainty that debts are being written off because they could not reasonably be collected rather than lack of action on the part of the ATO.

4.21 It is also worth noting that the doubling of the number of debt re-raise cases in the last financial year was largely related to the bulk non-pursuit process within the same year. This suggests that there could be a need for refinement of the bulk non-pursuit process to prevent this type of administrative churn.

**RECOMMENDATION 6**

The ATO should monitor the proportion of debt re-raises related to its bulk non-pursuit process to ensure that debt write-off discretion is being exercised appropriately.

## ATO RESPONSE

### General comment

The ATO's Community First commitment ensures that we make fair and consistent decisions based on a consideration of each taxpayer's individual circumstances. Nonetheless, there is always scope to improve the taxpayer experience. Prior to the Ombudsman's investigation, the ATO had identified re-raising written off debts as an area of potential improvement. The Ombudsman's report has provided the ATO with extra impetus in this regard.

The Ombudsman acknowledges that the ATO's debt recovery and related processing support areas are significant, with millions of transactions being executed each year. The Ombudsman also recognises that relatively few complaints arise from the 2,700 cases re-raised on average each year. The report raises some concern around reconciliation of accounts containing re raised debts. The ATO places critical importance on the accuracy of accounting systems used in managing taxpayers' accounts. The ATO would be able to reconcile the transactions only with substantial manual effort as they span 30 years and a number of different systems and processes used over that time. At the time of the investigation it was agreed that the ATO would supply those cases which could be reconciled using a quick computer selection process. It was also agreed that this approach would be sufficient to enable the Ombudsman to complete a timely investigation.

In the current operating environment that requires effective responses on a vast range of new government policies and delivering on an already substantial and complex Change Program, the ATO must balance its resource allocation carefully.

Recommendations 1, 2 and 3 impact relatively few taxpayers and would require substantial resource investment, particularly information technology resources which are heavily committed for the foreseeable future.

The ATO considers that implementation of recommendations 4 and 5 will substantially reduce the instances of debt being re-raised and necessitate only procedural changes in regards to recommendations 1, 2 and 3. The pilot project of introducing more differentiated treatment to re-raise cases supports this view.

The ATO considers that recommendation 6 has been effectively implemented.

The report also expresses some concern that the requirement to maintain a write-off register in the ATO Receivables Policy has been removed. This is reflective of a decision to remove procedural elements from the policy document (part of a wider overall review) and allow them to be addressed in other ways. The requirement to maintain a register remains in the Chief Executive Instruction – Debt Management. Accordingly, the monthly register is still being maintained.

## Response to recommendations

### **RECOMMENDATION 1**

The ATO should notify taxpayers about the decision to write off their debt indicating that there is an amount owing which the ATO has decided not to pursue at that time but may seek to do so later, the amount(s) that has been written off and the type of tax to which it relates. This information should also be provided on all notices of assessment related to the tax account.

#### ***ATO response to recommendation 1—Partially agreed***

The primary reason for non-pursuit of debt classed as uneconomical to pursue is that taxpayers are untraceable, overseas or deceased. In these cases it would be inappropriate to attempt issue of a letter.

In instances where debt is written off and there is ongoing contact with the taxpayer, the ATO will advise that the amount to be written off will not be pursued at this time.

From time to time the ATO may undertake further bulk write-offs of small debts without attempting additional contact, for example, after exhausting automated letters and referral to external collection agencies. In these instances, the ATO considers that the resources required to attempt additional contact should be applied to higher risk debt and more productive collection activity.

The ATO does not consider it viable to alter the format of the notice of assessment to add information on debts written off and not re-raised. The system changes are substantial for the relatively small number of taxpayers with written off debts who subsequently lodge returns. Furthermore, implementation of later recommendations relating to re-raise decisions would substantially reduce the instances where the notification would be required.

### **RECOMMENDATION 2**

The ATO should provide further information to taxpayers when a debt is re-raised. This information should include the source of the debt (including how much interest has been charged), the circumstances which caused the debt to be re-raised and how to obtain further information.

#### ***ATO response to recommendation 2—Agreed***

Debt re-raise procedures will be adjusted to ensure that the taxpayer is advised in writing of the source of the debt, the amount of interest charged and the reasons for re-raise. As changes to the notice of assessment are not viable, this information will be provided in a separate letter that will issue when the re-raise exception is actioned.

**RECOMMENDATION 3**

The ATO should ensure that the reasons for debt write-off and re-raise decisions are more clearly recorded, including decisions about application and remission of interest charges. Records of re-raise decisions should show what factors and criteria were applied and the reasons that interest charges were or were not remitted. Debts written off as a result of a bulk non-pursuit process could have standardised explanations but should still reflect which factors lead to the decision in each case.

***ATO response to recommendation 3—Partially agreed***

The ATO has ongoing review processes to examine the clarity and appropriateness of narratives. Examples include technical quality reviews (introduced in 2001) and team based quality assurance. In the context of a high volume outbound collection environment, these processes must balance the additional resources that extended narratives require against using the same resources to achieve additional productive collection conversations. There has been significant improvement in the quality of narratives as the ATO has migrated from host and case management systems where narratives may have been more restrictive and, as a result, less informative.

Current procedures require that a summary of all actions taken on a case be recorded in a narrative. Debt re-raise procedures will be adjusted to include a list of the specific information that must be recorded when a debt is submitted for non-pursuit and when a debt is re-raised.

The bulk write off process is limited by the amount of information that can be recorded as a note on the current computer system and the fact that the wording is encoded in the bulk non-pursuit process. The ATO does not consider it viable to attempt any system changes in the foreseeable future due to Change Program priorities and less future reliance on bulk write-offs as older cases are progressively cleared.

**RECOMMENDATION 4**

The ATO should not re-raise debts which pre-date the introduction of the ATO Integrated System (AIS) to avoid problems with archival of older account postings on legacy systems. Consideration should be given to the reasonableness of seeking to recover debts which have not been pursued for many years, taking into account the period of time for which taxpayers could be expected to retain relevant tax records.

***ATO response to recommendation 4—Agreed***

The ATO accepts this recommendation, recognising that there may be the odd exception for cases involving fraud or serious non-compliance. The ATO agrees that consideration should be given to the reasonableness of seeking to recover debts which have not been pursued for many years, taking into account the period of time for which taxpayers could be expected to retain relevant tax records. The implementation of the criteria trialled in the re-raise pilot project has shown that debts written off more than seven years ago will not generally be re-raised.

**RECOMMENDATION 5**

The ATO should ensure that the criteria used in deciding to re-raise a debt are clearly related to whether it is economical to pursue the debt and whether it is efficient, effective and ethical to do so. This should include consideration of whether other triggers for debt re-raise, such as taxable income, should be applied.

***ATO response to recommendation 5—Agreed***

The Tax Office acknowledges that, in order to ensure outcomes are appropriate to taxpayers' individual circumstances, the criteria used in decisions needs to be economical, efficient, effective and ethical.

The ATO accepts this recommendation and will implement the criteria trialled in the re-raise pilot.

The ATO will consider the merits of using government pension and offset indicators instead of taxpayer age when adjusting the procedures.

Implementing more structured guidelines will promote a consistent approach to the re-raise of debts. The updated criteria will consider taxable income and therefore reduce the impact on low income earners caused by the \$500 re-raise threshold.

Increasing the \$500 threshold may be considered in the future. However, due to Change Program implementation priorities, the required system adjustments are not likely for some time.

**RECOMMENDATION 6**

The ATO should monitor the impact of its bulk non-pursuit process to ensure that this is operating appropriately.

***ATO response to recommendation 6—Partially agreed***

The ATO had been monitoring the bulk non-pursuit process to ensure that there were no unintended consequences of writing off a significant number of small debts in early runs. This monitoring helped refine criteria for further write off runs that were undertaken. When considering the rate of re-raise compared to the number of cases processed through bulk non-pursuit, there is no evidence of adverse systemic issues.

The increases in the number of debt re-raise cases in the same year and the value of re-raised debt seems to be a leading factor behind this recommendation. Further analysis of the large value cases has shown that they were not related to the bulk non-pursuit process. Rather, they were cases involving bankruptcy. The Tax Office is legally obliged to retain refunds for the period of bankruptcy, which is generally three years. The increase in the number of debt re-raise cases can be explained by a significant rise in the number of bankruptcy cases since 2004. Due to the legal obligation to retain income tax return credits, these cases are often re-raised more than once.

The number of cases available for bulk non-pursuit will gradually decline due to the nature of the criteria that the cases are required to meet. Nonetheless, the ATO will continue to monitor impacts of the bulk non pursuit runs.

## APPENDIX A—EXCERPTS FROM ATO RECEIVABLES POLICY CHAPTER 26

*(From version released 24 July 2008.)*

### **Uneconomical to pursue**

9. A debt or an amount of revenue may not be treated as uneconomical to pursue unless a delegate is satisfied on all the facts that it is probable that the total costs of recovery action will exceed the return to the Commonwealth. The question of whether an amount is uneconomical to pursue will need to be decided on a case by case basis.

10. Some factors that should be taken into account by a delegate considering non-pursuit of amounts of revenue under this heading are:

- (i) the amount of revenue involved
- (ii) the length of time the amount has been outstanding, the steps taken to recover the debt to date and the costs to the Tax Office involved in those steps
- (iii) whether adequate steps have been taken to locate or trace a debtor if the grounds for non-pursuit of the debt are that the debtor cannot be located
- (iv) the likely cost of continuing action to recover the debt and the anticipated return from such action, including likely recovery of any costs awarded to the Commissioner (balanced against the need to maintain the integrity of the tax system)
- (v) advice provided by the Tax Office's solicitor where this has been sought, and
- (vi) the type of revenue involved. For example, an unpaid amount of Superannuation Guarantee Charge (SGC) and related general interest charge (GIC) may be viewed differently to other revenue types because its collection directly affects the superannuation entitlements of the employees in respect of whom that SGC is owing. Whilst this does not preclude SGC amounts being viewed as 'uneconomical to pursue,' a delegate should bear the particular nature of SGC debts in mind when making a decision.

No one factor by itself is conclusive so all the factors relevant to a taxpayer's circumstances should be considered in determining whether the debt is uneconomical to pursue.

For example, in balancing the costs of recovery against the likely return to the Commonwealth, it will frequently be the case that the older the debt and the more steps taken and costs incurred, the more likely the conclusion that all available avenues for collection have been exhausted, and that the costs of any further action will exceed any possible return to the Commonwealth. However, while the size of the debt is only one factor, larger debts will necessarily warrant a higher degree of scrutiny by the tax officer to satisfy themselves that continued pursuit is not likely to be productive. Similarly, the more a delegate feels that all reasonable steps have been taken to locate or trace a debtor (without success); the more likely they are to

approve non-pursuit. The more that the delegate feels there may be integrity concerns, the less likely they are to approve non-pursuit.

### **Re-raising a debt**

16. A debt may be re-raised for a variety of reasons. The most common are where new information becomes available that suggests recovery action is now viable (for example, the debtor's whereabouts have been traced or the debtor.) or a later tax return has been lodged. In the case of debts not pursued because:

- they were uneconomical to pursue for some reason under either former s 70C of the Audit Act or s 47 of the FMA Act or
- because a debtor had no funds or assets under former s 70C of the Audit Act

the situation may have improved and the debtor may be able to pay the debt in full, or be able to pay the debt by instalments over a period of time. Alternatively, legal recovery action may now be a viable option.

17. However, before re-raising a debt, consideration must be given to whether or not the debt can be legally re-raised. If the ground for non-pursuit was one of the following:

- (i) uneconomical to pursue under either former 70C of the Audit Act, or s 47 FMA Act or
- (ii) the debtor had no funds or assets and there is no prospect of the financial situation improving, under former s 70C of the Audit Act

then the total debt can be re-raised. For all taxes, the additional charges for late payment/general interest charge (GIC) should also be updated and imposed. Where appropriate, remission of GIC should also be considered. See Chapter 93 for further information on remission of GIC. Once the debt and any other relevant details have been updated, relevant recovery action may commence.

18. Re-raising the debt will ensure that the full debt will be shown on the account and, if there is a credit the credit will be absorbed. If a debt is re-raised and, after the allocation of a subsequent credit, there is still an amount outstanding, options for recovery of the remaining debt (for example, a payment arrangement) should be considered. See Chapter 8 for further information on available collection processes.

19. Where further recovery options are not viable, it may be considered appropriate to again decide not to pursue the balance. If this is the case, then the reason for non-pursuit must satisfy one of the grounds for non-pursuit.

## APPENDIX B—EXAMPLE OF A NOTICE OF ASSESSMENT FOR A RE-RAISED DEBT CASE

NOTICE OF ASSESSMENT 1936 1997 2007			
Your Taxable Income is \$17075			\$ ¢
Tax on Taxable Income	A		1661.25DR
Medicare Levy	O		33.50DR
PAYG Withholding Credits	E		2311.00CR
Tax Offsets and Other Credits	G		600.00CR
Balance of this Assessment	L		1216.25CR
Other amounts payable			1679.69DR
Amount payable			463.44DR
**** Due date for payment of \$463.44	****		
**** is as previously advised	****		
Amount Payable Rounded Down by			04CR
Actual Amount Payable			463.40DR
***** Additional Information *****			
Label G includes an amount of \$600.00 for Low Income Tax Offset			
Other amounts payable includes-			
Income Tax - 999999999			\$1679.69DR
Status: ISSUED			

The shaded areas on the above notice of assessment are the advice taxpayers receive when their debt has been re-raised as a result of an assessment of more than \$500 credit (shown at label L).



## ACRONYMS AND KEY TERMS

AIS	ATO integrated system introduced in 1989 provides manual and automated processes for ATO staff to register taxpayers, record and maintain information about taxpayers' identity details, involvement in different tax areas and relationships with other taxpayers (e.g. partnership arrangements)
ATO	Australian Taxation Office
COMPACT	COMPUter Assistance for the Collection of Taxes—a case actioning and case management system to support the collection of overdue taxes introduced in 1987 and replaced by the receivables management system in 2000.
Finance	Department of Finance and Deregulation
FMA Act	<i>Financial Management and Account Act 1997</i>
GIC	General interest charge is a uniform interest charge imposed where there is a late payment of a tax debt. It replaced the late payment penalties system from 1 July 1999 and is a common rate of interest which is applied across all liabilities administered by the ATO, including: <ul style="list-style-type: none"><li>• self-assessed liabilities (e.g. liabilities arising from the lodgement of an activity statement or income tax return)</li><li>• a ATO notified notional amount (such as an income tax instalment amount provided by us)</li><li>• a penalty not paid by the due date.</li></ul>
NTS	National Taxpayer System
Remission (of GIC)	Reduction of interest applied to taxpayer account at ATO discretion (guided by the ATO Receivables Policy and other ATO operational notes).
Re-raise (of a tax debt)	Reversal of a previous ATO decision that a debt is not economical to pursue.
RMS	Receivables management system is a debt and lodgement case management system, which assists the ATO to collect outstanding debts and lodgement. It superseded the COMPACT system in 2000.
Offsetting	Application of a credit otherwise payable to a taxpayer to a tax debt.
Write-off	A decision not to pursue a debt to the Commonwealth under s 47 FMA Act. In this investigation all cases related to write-off because the debt was considered uneconomical to pursue.