

November 2019 / No. 4

Can the tax office take money out of your account? Your right to know

You might have seen the recent spate of media freedom advertisements as part of the Your Right to Know campaign. The prime-time advertising states that the Australian Tax Office (ATO) can take money from your account without you knowing. The question is, do you really know what powers the ATO have?

The ATO is one of the most powerful institutions in Australia with very broad and encompassing powers. Over the last few years the approach has been to work with taxpayers to ensure that the tax they owe is paid. But this level of understanding only lasts so long and they will take action where taxpayers are unwilling to work with them, repeatedly default on an agreed payment plan, or don't take steps to resolve the situation (these steps include an expectation that you go into debt to clear your tax debt). And, there are also circumstances where the ATO can swoop in where they believe there is a need to secure assets such as bank accounts if there is a risk of disposal or flight risk.

The ATO's principal purpose is to collect the majority of the Federal Government's revenue. According to an Inspector-General of Taxation's report earlier this year, in 2016-17:

- 88% of tax payments owing were made by the due date
- 7% (\$33.4bn) was paid within 90 days after the due date
- 1.3% (\$6.1bn) was paid within a year after the due date, and
- \$15 billion was left unpaid after a Year.

At the end of the 2016-17 financial year, the total of undisputed collectable tax debt was \$20.9 billion.

Here are just a few of the ATO's powers to ensure that tax owing is collected:

- **Issue a garnishee notice to someone holding money on your behalf** - for example a bank. For salary and wage earners, the ATO can require your

employer to take part of your salary and pay it to them until your tax debt is paid. This is generally limited to a maximum of 30% of your salary. If you are a business, the ATO can go as far as accessing your merchant facility if you have credit owing.

- **Director penalty notice** - Directors can personally incur penalties equal to their company's unpaid PAYG withholding liabilities or superannuation guarantee charge. The Government wants to expand this to cover unpaid GST liabilities as well. If this debt is not paid, the ATO may issue a director penalty notice to start legal proceedings (and withhold any refunds due to the director).
- **Direction to pay super guarantee** - if employers receive a direction to pay superannuation guarantee, any outstanding Superannuation Guarantee Charge must be paid within the period specified. It's a criminal offence not to comply with this notice and may result in enforced penalties and/or imprisonment.
- **Impose a freezing order** - for example, on your bank accounts. That is, without notice the ATO can freeze and then if required strip your accounts, particularly where they believe you have alternative sources of income. This freezing order cannot be initiated by the ATO but must be granted by a court.
- **Issue writs or warrants of execution, or warrants of seizure and sale** - for example, they can force you to sell certain assets to pay your tax debts.
- **Winding up - liquidate your company or bankrupt you** - Most taxpayers don't believe how strongly the ATO will act. The ATO can commence winding up procedures before any dispute is decided, In 2017-18 the ATO bankrupted 470 taxpayers and wound up 1,282 entities. The ATO would argue that in many cases the wind up forces the inevitable and prevents further debt being incurred either to the ATO or other parties.

The message is, make sure you are on top of your paperwork. If the ATO has queries or suspects something is not right, you need to be able to respond. The longer you take, or a lack of evidence, will only escalate the situation.

So, can the ATO take money out of your account without advising you first? With the support of the courts, absolutely and a whole lot more.