



ATO COURT HEARINGS: NEGOTIATING EXTRA TIME / ADJOURNMENTS

Take the ATO seriously. It isn't your friend. It isn't your bank.

Court actions - Bankruptcy and Liquidation

I often work with accountants to obtain more time from the ATO to bring lodgements up to date and to prepare arrangements to pay.

This includes when Court action has already been commenced by the ATO to bankrupt individuals (known as creditors petitions) or to liquidate companies (known as winding-up applications).

The Court lists are full of these actions by the ATO.

Roles: Accountants and Lawyers working together

The earlier you engage with the ATO, the more chance a negotiated outcome can be reached (e.g. instalment arrangements, penalty or GIC remission etc).

Whenever you engage with the ATO, the ATO's main focus is usually to first ensure that all lodgements are up to date.

The role of the accountant is to ensure all outstanding returns are lodged. More time is often needed to do this.

My role is then to negotiate with the ATO to adjourn (postpone) the relevant Court bankruptcy/liquidation hearings to allow the accountants to bring the returns and lodgements up to date. Then I assist with the proposal to the ATO regarding the debt.

Often the Court actions could have been avoided entirely by early engagement with the ATO. It is also often cheaper.

I question why so many taxpayers do not engage early with the ATO...



Misconceptions about the ATO

I hope that these misconceptions about the ATO's approach to these matters are no longer commonplace and preventing early engagement:

1. The ATO isn't a business, so it isn't serious about enforcing lodgements and payments, so it can be ignored;
2. The ATO should "be patient" and "fit in" with the busy lives of business operators and directors;
3. The ATO is wrong about the amount of the debt, and so cannot proceed to bankruptcy or liquidation;
4. The ATO must give taxpayers more time to bring lodgements up to date and enter payment arrangements; or
5. The ATO will "settle" tax debts, if it can be shown the ATO will receive less in bankruptcy or liquidation.
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That is ALL WRONG.

Instead:

1. When debts are owed to the ATO it will take steps to receive payment. The ATO is not a bank. Don't rely on tax monies to fund to rest of your business.
2. The ATO is not required to "be patient". When debts are owed, it will seek payment.
3. It is often TOO LATE to raise disputes about the debt once bankruptcy or liquidation action commences. The dispute should have been argued earlier.
4. The ATO is NOT obliged to provide more time bring lodgements up to date, or to enter into negotiations, or to allow time to pay.
5. The ATO is POLICY driven; all taxpayers should lodge their returns and pay their tax debts. Comparing an "offer" to bankruptcy or liquidation will rarely (if ever) persuade the ATO to negotiate. This is especially so where there is a pattern of recalcitrance or avoidance.

Obtaining more time - postponing Court hearings

The ATO is not obliged to postpone a Court hearing or allow more time to do anything.

When seeking more time from the ATO, **at least** the following should be addressed:

1. Why engagement with the ATO has not occurred already (or what engagement has occurred).



2. Why lodgements have not already been brought up to date.
3. The steps which are being taken to bring lodgements up to date.
4. The possibilities for payment of the debt once lodgements are finalised (and the total tax debt is known).
5. The time necessary to undertake the lodgements and proposal for payment.

If the ATO does not agree to adjourn (postpone) a hearing, it is then up to the taxpayer to show the Court that it should nevertheless order the adjournment. The Court has a discretion in this regard. The Court is not obliged to grant an adjournment.

Get legal and accounting advice immediately

Get legal advice and representation IMMEDIATELY you receive a creditors petition or winding-up application.

Better yet, get legal advice as soon as you receive a demand (or even better still, when you anticipate there may be a future cash flow issue regarding a tax debt).

In addition to more time to lodge and prepare applications regarding tax debts, we can also consider your overall position, structure and viability. Tax debts are often a symptom of underlying issues, which we can also address.

Murfett Legal's Business Advisory, Insolvency and Litigation team work closely with our Tax and Commercial team in such matters.

Accountants are an integral part of the process, as is adopting an approach whereby the ATO is given the attention and consideration it demands.

For further information or assistance with ATO matters contact Murfett Legal on +61 8 9388 3100.

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