

TAX DEBT MANAGEMENT IN NEW ZEALAND AND AUSTRALIA

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ABSTRACT

This study investigates approaches to the management of tax debt in New Zealand and Australia. Levels of tax debt are high in both countries: 12 per cent of total tax revenue collected in New Zealand and 9 per cent in Australia. While both countries have a wide range of options to collect debt, Australia uses more of the available options.

While tax authorities have a range of tools to assist with tax debt collection, the New Zealand and Australian tax authorities both hold large amounts of tax receivables. This suggests either that the current tools are not being utilised to the greatest extent to reduce tax debt or that the tools are insufficient to achieve the objective of collecting the maximum amount of tax revenue, taking into account available resources. Both countries have, as part of their debt book, large amounts of tax debt categorised by the tax authority as non-collectable. The rationale for retaining non-collectable debt as part of total debt is not evident.

The research suggests that in some cases tax debtors are treated leniently by the tax authorities in New Zealand and Australia. In both countries there are multiple opportunities for tax debt, penalties and interest to be remitted or reduced. When compared with other debtors to the state, tax debtors appear to receive preferential treatment.

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I INTRODUCTION

This study compares the approaches to debt management by the tax authorities in Australia and New Zealand. Tax debts held by each agency are high. In New Zealand, the value of total tax debt held by the Inland Revenue Department (IRD) is 12 per cent of total annual tax revenue.¹ In Australia, the equivalent value of tax debt held by the Australian Tax Office (ATO) is 9.1 per cent.² These are economically significant sums in both countries. However, large sums of debt are not collected, and significant amounts of penalties and interest imposed when tax is unpaid are also uncollected. This has a number of effects. First, it potentially undermines the integrity of the tax system. Second, it is likely to impact on the goodwill of compliant taxpayers towards the tax system, at least to the extent that they are aware of the large amount of tax that is not collected. Third, the impact of the penalty regime in encouraging taxpayers to pay their tax on time and in full is diluted when tax is frequently uncollected.

It is acknowledged that tax debt is not solely a function of tax debt management. A range of other factors combine to impact on total tax debt levels, including the numerous factors that impact on a taxpayer's decision of whether or not to pay tax, including their financial capacity to meet their obligations. However, tax debt management is an important function of tax administration, and tax debt collection is an economically significant activity in society.

In New Zealand and Australia, once tax debts are due they are deemed to be a debt to the government and payable to the tax authority. Where the debt is not settled at the due date, the tax authority will generally engage in some recovery action. This study investigates the debt management approaches in the two countries to see what lessons can be learned from the different methods adopted in each. In addressing this question, the study does not include compliance measures. Instead it considers the processes that exist to collect tax debts once taxpayers have outstanding obligations with the tax authority.

The article commences, in Part II, with some contextual information on tax debt in New Zealand and Australia. This is followed by parts III and IV, which explain the current approaches to debt management by the tax authorities in New Zealand and Australia, respectively. Part V engages in a comparative discussion of the different treatments of tax debt in New Zealand and Australia. It also compares the treatment of tax debtors with the treatment of other debtors to the state, and concludes that tax debtors may expect to receive preferential treatment. Final conclusions are drawn in Part VI.

¹ Tax revenue collected in New Zealand in 2011/12 was NZ\$49.2 billion, while total tax debt is NZ\$5.9 billion. The total tax debt figure is used in this calculation, which includes debt that is assumed to be non-collectable.

² Tax revenue collected in Australia in 2011/12 was A\$301 billion, while tax debt is A\$27.5 billion. The tax debt figure used in the calculation includes all tax debt, including that which is subject to appeal or investigation, and also includes debt that is likely to be non-collectable.

II BACKGROUND

This part provides some background information on the tax debt situations of the two countries, commencing with New Zealand. It outlines the general approach to debt management adopted by the IRD and the ATO, together with current levels of tax debt in each country.

A New Zealand

The mission of the IRD is to '*contribute to the economic and social wellbeing of all New Zealanders by collecting and distributing money*'. The revenue collection function is the largest task of IRD, with responsibility for collecting approximately 89 per cent of government revenue.³ In 2011/12, the IRD collected tax revenue of NZ\$49.2 billion. The distribution function of IRD relates to some social assistance programs, such as Working for Families Tax Credits, Child Support and Paid Parental Leave. In addition, the IRD is involved in the collection and redistribution of funds relating to KiwiSaver superannuation savings schemes and collection of Student Loan repayments. The IRD has additional functions in relation to providing policy advice. The overriding obligations for the IRD are to maintain the integrity of the tax system and to collect the highest net revenue that is practicable within the law, having regard to available resources.⁴

IRD debt as at 30 June 2012, and for the two previous periods, is outlined in Table 1. Outstanding tax debt in 2011/12 was \$5.9 billion. This was approximately 12 per cent of the total tax collected in New Zealand in 2011/12.⁵ Of the total debt, NZ\$2.1 billion, or 36 per cent was classified as non-collectable.⁶ Debt categorised as collectable was 7.6 per cent of total revenue collected. A large proportion of total debt was made up of interest and penalties—at nearly 46 per cent in 2011/12.

Table 2 shows the aged debt of the IRD over the same three-year period. Most of the individual cases (55 per cent) were less than one year old. However, the majority of the value of the debt (61 per cent) was older than two years, with only 21 per cent of total debt value less than one year old. A large proportion of this amount comprised interest and penalties. In 2011/12 the proportion of older debt increased. This was due to the change of focus on early intervention and debt prevention by the IRD.⁷ Despite this focus, total overdue debt increased by NZ\$394 million (7 per cent) to NZ\$5.9 billion in the 2011/12 period.⁸ The average value of outstanding debt per tax debtor in 2011/12 was NZ\$14,479. The average value of debt per customer in debt has remained reasonably stable over time, with a small increase in the most recent period.

³ Inland Revenue Department, 2008, Statement of Intent 2008–11, Available at <http://www.ird.govt.nz>.

⁴ *Tax Administration Act 1994*, (TAA) ss 6(1) and 6A(3).

⁵ This figure includes all tax debts, that is, debts from all entities as well as individuals. The IRD cannot provide a breakdown of debt by debtor type.

⁶ Non-collectable debt comprises deferred debt, debt under dispute in the courts, assessments raised by the IRD when a tax return has not been filed by a taxpayer or debt that is with the Official Assignee or Liquidator.

⁷ IRD, above, n 9, 24.

⁸ IRD, above, n 9, 25.

Table 1: Inland Revenue Department Debt (2009/10 to 2011/12)⁹

Debt type	2009/10 (NZ\$ million)	2010/11 (NZ\$ million)	2011/12 (NZ\$ million)
Debt under arrangement	\$937.7	\$1,146.6	\$1,176.3
Other collectable debt	\$2,548.6	\$2,663.5	\$2,582.7
Total collectable debt	\$3,486.3	\$3,810.2	\$3,759.0
Total non-collectable debt	\$1,664.3	\$1,711.9	\$2,157.4
Total debt	\$5,150.6	\$5,522.1	\$5,916.4
Penalties and interest	\$2,149.7	\$2,359.0	\$2,711.3
Penalties and interest (% of total debt)	41.7%	42.7%	45.8%
Customers in debt (cases)	363,814	389,947	408,606
Average value of debt per customer in debt	\$14,157	\$14,161	\$14,479

⁹ Inland Revenue Department, 2012, *Annual Report 2011/12*, Available at www.ird.govt.nz, 45.

Table 2: Inland Revenue Department Aged Debt (2009/10 to 2011/12)¹⁰

	2009/10		2010/11		2011/12	
	NZ\$ mil	Cases	NZ\$ mil	Cases	NZ\$ mil	Cases
< 1 year	\$1,500.3	216,815	\$1,377.7	220,597	\$1,254.7	224,520
1–2 years	\$1,386.4	84,000	\$1,387.7	89,063	\$1,079.1	72,219
2–5 years	\$1,542.0	50,839	\$1,787.7	63,840	\$2,310.9	92,119
> 5 years	\$721.9	13,660	\$969.0	16,447	\$1,271.6	19,748
Total	\$5150.6	363,814	\$5,522.1	389,947	\$5,916.4	408,606

B Australia

Similarly to the IRD in New Zealand, the ATO is the primary revenue collection agency in Australia as well as acting in a redistribution role. The ATO has a broader range of tasks than the IRD, also being responsible for the key components of Australia's compulsory superannuation system, managing the business operations of the Australian Valuation Office, and being custodian of the Australian Business Register. One of the roles of the ATO is to '*ensure the community has confidence in the administration of Australia's taxation and superannuation systems*'.¹¹

Current levels of tax debt held by the ATO are outlined in Table 3. Similar to the IRD, the ATO has also experienced an increase in collectable debt.¹² Collectable debt in Australia in 2011/12 represented 5.5 per cent of total collections, as shown in the last row of Table 3.¹³ This figure has remained relatively steady over the past three periods. However, collectable debt increased by 18 per cent in 2011/12, while the number of collectable debt cases also increased by 10.5 per cent.¹⁴

¹⁰ IRD, above, n 9, 25.

¹¹ Australian Tax Office, 2013, About Us, Available at <http://www.ato.gov.au>, Retrieved August 2013.

¹² Australian Tax Office, 2012, *Annual Report 2011/12*, 8.

¹³ ATO, above, n 12, 8.

¹⁴ ATO, above, n 12, 53, 58.

Table 3: Australian Tax Office Debt (2009/10 to 2011/12)¹⁵

Debt type	2009/10 (A\$ billion)	2010/11 (A\$ billion)	2011/12 (A\$ billion)
Collectable debt	\$14.7	\$14.1	\$16.6
Debt subject to objection or appeal	\$8.9	\$8.1	\$8.9
Insolvency debt	\$3.9	\$5.3	\$6.2
Total debt	\$27.5	\$27.5	\$31.7
Ratio of collectable debt to total cash collections	5.8%	5.2%	5.5%

Modelling undertaken by the ATO looks at over six billion items of data each week to determine the likelihood of payment across approximately three million cases.¹⁶ The objective of this analytical process is to improve ways of interacting with taxpayers in debt situations. In addition, all debts are risk-scored to estimate a particular taxpayer's likelihood of repaying their debt, together with their capacity to do so.¹⁷

III THE NEW ZEALAND APPROACH TO DEBT MANAGEMENT

The IRD and the ATO have similar approaches to debt recovery, which is to maximise the collection of tax debt. Under the *Tax Administration Act 1994* (TAA) the Commissioner of Inland Revenue in New Zealand must collect the highest net revenue that is practicable within the law, having regard to: available resources; promotion of compliance by all taxpayers; and compliance costs incurred by taxpayers.¹⁸ However, recovery of tax must not place the taxpayer in a position of serious hardship or be an inefficient use of IRD resources.¹⁹

The IRD claims a '*customer-centred approach*' that focuses on: preventing debt from arising in the first instance; early intervention when debt does arise; and targeting collection efforts on the cases that have the greatest prospect of collection.²⁰ Where debt does arise, the IRD focuses its efforts on early settlement of debt. This is because penalties and interest can quickly accumulate, resulting in the debt becoming unmanageable for the taxpayer. Moreover, the debt becomes more expensive for the IRD to collect as it becomes older.²¹

¹⁵ ATO, above, n 12.

¹⁶ ATO, above, n 12, 84.

¹⁷ ATO, above, n 12, 124. This is achieved through the use of analytics to predict and analyse patterns of behaviour.

¹⁸ TAA, s 6A(3).

¹⁹ TAA, s 176(2)(a)-(b).

²⁰ IRD, above, n 9, 25.

²¹ IRD, above, n 9, 24.

The 2012 IRD annual report communicates '*a mix of new and innovative interventions for managing debt*'.²² These include sending text messages and online advertising, including on social media outlets such as Facebook, to remind customers of payment deadlines. When payments are not made on time, calls are made to customers including the use of automatic dialler technology. This technology, together with recruitment of extra specialist staff, is claimed to have '*significantly improved the capacity and effectiveness of our outbound calling campaigns*'.²³ In 2011/12, 81 per cent of tax due on 7 February was paid on time.²⁴

The IRD discloses priority areas for recovery and enforcement, which currently include audit-assessed debt, the top high-risk customers, and debt associated with large enterprises and high-wealth individuals.²⁵ The IRD also acknowledges that its best prospects for debt collection lie in these areas.

A Instalment Arrangements

An instalment arrangement may be entered into by the IRD and the taxpayer. Any taxpayer can request an instalment arrangement when they are unable to meet their tax obligations in full, and entering into an instalment arrangement is likely to assist in maximising tax debt collection. The advantage, for the IRD, of entering into instalment arrangements is that it provides some certainty of timing of revenue collection. Moreover, the earlier the collection process commences, the more likely it is that the debt will be collected, as additional penalties will not accrue while the instalment arrangement is being adhered to.²⁶ However, interest will continue to be charged throughout the duration of the instalment arrangement. The IRD will negotiate with the taxpayer to determine what method of payment best suits the tax debtor's financial circumstances.²⁷

The value of debt in instalment arrangements is currently NZ\$1.2 billion, or approximately 20 per cent of total current debt. As at June 2012, 53,187 taxpayers were paying their tax debt by instalment arrangement.²⁸

B Deduction Notices

Deduction notices may be used by the IRD under certain circumstances. A deduction notice requires a third party to make deductions from amounts that are '*payable or will become payable by that third party to a taxpayer who has tax arrears*'.²⁹ Deduction

²² IRD, above, n 9, 24.

²³ IRD, above, n 9, 24.

²⁴ IRD, above, n 9, 24. The potential for inherent bias to exist in figures reported in annual reports is acknowledged. Inherent bias exists when assumptions or other factors may distort results presented.

²⁵ IRD, above, n 9, 25.

²⁶ Inland Revenue Department, 2011, Standard Practice Statement SPS 11/01 *Instalment arrangements for payment of tax* [22].

²⁷ IRD, above, n 26 [11]. This will also include frequency and method of payment [74].

²⁸ Data received under the *Official Information Act 1982*, 9 May 2013.

²⁹ Inland Revenue Department, 2011, Standard Practice Statement SPS 11/04 *Compulsory Deductions from Bank Accounts* [5].

notices can ‘*require any person*’ to deduct the amount owed in full or in part, and can require the deduction to be paid to the IRD.³⁰ Deduction notices may be used where taxpayers have defaulted on payment of income tax, interest, or civil penalties. The TAA places some limits on the amounts permitted to be deducted. For example, employer deductions must be the greater of (a) an amount which is the lower of 10 per cent per week of the income tax due or 20 per cent of the wages or salary payable; or (b) \$10 per week.³¹ Deduction notices are usually issued to banks or employers. The IRD can prosecute banks for non-compliance with a deduction notice.³²

An *Official information Act 1982* request was made to the IRD, asking for information about the number of deduction notices issued over the past three years. The IRD advised that it was unable to extract information from its systems to isolate only outstanding tax. For the purposes of this research, only deduction notices relating to outstanding tax were relevant—rather than, say, deduction notices issued in relation to child support or student loan debt. Therefore it has not been possible to ascertain how frequently deduction notices are used for the purposes of assisting with tax collection in New Zealand.

C Writing Off Penalties and Interest

Use-of-money interest is charged at 8.4 per cent on underpayments or non-payments of tax in New Zealand.³³ However, in a range of circumstances the IRD may write off penalties and interest. These remission provisions exist to allow the IRD to ‘*accommodate circumstances in which charging a penalty of interest is inappropriate*’.³⁴ Penalties and interest may be remitted where the events leading to their existence can be reasonably justified or where a ‘qualifying event’ exists.³⁵

The IRD will consider certain factors in deciding whether remission is appropriate. These include whether the penalty or interest was charged correctly. Situations where the IRD somehow contributed to the problem, such as by providing incorrect advice to the taxpayer or through a delay in processing, will also be taken into account.³⁶ In addition, consideration will be given to whether the penalty was the result of genuine oversight or a one-off situation. Certain shortfall penalties may be reduced by 50 per cent where the taxpayer has not been liable for certain other shortfall penalties in the previous two years.³⁷

³⁰ TAA, s 157

³¹ TAA, s 157(3)(a)(i).

³² TAA, s 157(A)(1)(b).

³³ Rate applicable as at July 2014.

³⁴ Inland Revenue Department, 2005, Standard Practice Statement SPS 05/10 *Remission of penalties and interest* [13].

³⁵ IRD, above, n 34 [6]-[7]. There are a number of events that meet the criteria of a qualifying event, including where records have been destroyed or are unable to be accessed; or when other priorities created by a qualifying event result in taxpayers being unable to make payments or file returns, such as an earthquake or flood.

³⁶ IRD, above, n 34 [46].

³⁷ TAA, s 141FB.

Table 4: Penalties and Interest Applied, Collected and Written off in New Zealand (2009/10 to 2011/12)³⁸

	2009/10	2010/11	2011/12
	\$NZ million	\$NZ million	\$NZ million
Penalties applied	\$343.0	\$346.2	\$451.6
Penalties collected	\$110.0	\$121.9	\$146.1
Penalties written off	\$198.6	\$193.0	\$244.3
Interest applied	\$500.7	\$263.2	\$280.9
Interest collected	\$412.1	\$147.2	\$158.1
Interest written off	\$104.4	\$120.1	\$130.5
% Penalties collected	32.1%	35.2%	32.4%
% Penalties written off	57.9%	55.7%	54.1%
% Interest collected	82.3%	55.9%	56.3%
% interest written off ³⁹	20.9%	45.6%	46.5%

The amounts of penalties and interest that were applied, collected and written-off in New Zealand over the three most recently reported periods are outlined in Table 4. What is apparent from the highlighted rows is that in each of the three years, over half of the penalties applied were written off. Moreover, in the two most recent periods, nearly half of the interest applied was also written off.

Values of penalties and interest written off as a proportion of total tax collected are low at less than two per cent of total tax collected in each year. However, these values as a proportion of outstanding debt are reasonably high: penalties and interest are 16.4 per cent, 11 per cent and 12.4 per cent in 2009/10, 2010/11 and 2011/12 respectively.

In order for remission requests to be actioned, the tax that the penalty or interest applies to must have been paid.⁴⁰ In addition, there are some penalties where remission will not be considered, such as for shortfall penalties, except for those imposed under s 141AA of the TAA.⁴¹

³⁸ Data received under the *Official Information Act 1982*, 22 February 2013.

³⁹ Penalties and interest written off and collected will not total 100 per cent as there are timing differences in the year that the penalty is applied and the year that it is collected or written off.

⁴⁰ IRD, above, n 34 [10].

⁴¹ Section 141AA of the TAA relates to non-resident contractors.

D Writing Off Outstanding Debt

A further remission option for the IRD is to write off outstanding tax debt. While the duty remains to collect the maximum amount of tax revenue over time, in some situations the only cost-effective outcome is to write off all or some of the unpaid amounts—for example, in situations where it may use significant resources to pursue the tax debt. However, the IRD has a duty to protect the integrity of the tax system, and the Commissioner of Inland Revenue must have regard to the deterrence effect of the penalty and interest regime in promoting compliance by other taxpayers.⁴² Where tax has been remitted, interest will also be remitted.⁴³

Taxpayers may apply for financial relief when recovery of outstanding tax will place them in a position of serious hardship.⁴⁴ Similar to the criteria for remission of penalties and interest, outstanding tax cannot be written off where the taxpayer has been liable for a shortfall penalty for taking an abusive tax position under s 141D(2), or for tax evasion under s 141E(1), or a similar act, even where this will place the taxpayer in a position of serious hardship.⁴⁵

While all cases are decided on their own merit, some circumstances provide for the IRD to write off outstanding amounts. These circumstances are outlined in the TAA. In the first instance, the Commissioner may write off outstanding tax that cannot be recovered.⁴⁶ Specific circumstances include bankruptcy, liquidation, or when a taxpayer's estate has been distributed.⁴⁷ However, it is possible for tax debt to be reinstated after it has been written off if a taxpayer's financial circumstances change.⁴⁸

The IRD Standard Practice Statement relating to writing off outstanding tax outlines a number of factors established by case law as relevant to the decision. These include the circumstances that led to the tax debt; the nature and extent of co-operation and negotiation entered into by the taxpayer; the speed and extent of information provided by the taxpayer; and IRD duties under the TAA.⁴⁹

Tax debt written off over the past three years in New Zealand, and tax debt written off as a proportion of collectable debt, are shown in Table 5. Typically, around 10 per cent of collectable debt is written off in each year.

⁴² TAA, s 183D(2).

⁴³ TAA, s 183E(a).

⁴⁴ TAA, s 177. Serious hardship is defined in section 177A of the TAA as including significant financial difficulties that arise due to the taxpayer's inability to meet minimum living expenses according to normal community standards; the costs of medical treatment; serious illness suffered by the taxpayer or the taxpayer's dependants; or the cost of education for the taxpayer's dependants.

⁴⁵ Inland Revenue Department, 2006, Standard Practice Statement SPS 06/02 *Writing off outstanding tax* [11] [75].

⁴⁶ TAA, 1994, s 177C(1). Small amounts, not exceeding \$100 will be written off (s 177C(1C)).

⁴⁷ TAA, s 177C(2)(a)-(c).

⁴⁸ TAA, s 177C(4)

⁴⁹ IRD, above, n 45 [42]. See also *Clarke & Money v Commissioner of Inland Revenue* (2005) 22 NZTC 19,165; *Raynel v CIR* (2004) 21 NZTC 18, 583.

Table 5: Tax Debt Written off in New Zealand (2009/10 to 2011/12)⁵⁰

	2009/10	2010/11	2011/12
Debt written off	\$316 million	\$424 million	\$435 million
Debt written off as a proportion of collectable debt	9%	11.1%	11.6%

E Other Options

Prosecution is a measure of last resort for the IRD. However, it may occur where *'flagrant and on-going failure to comply with the taxpayers' obligations and where recovery is dubious or is likely to result only in a relatively minor proportion of the overall outstanding debt being recovered'*.⁵¹ The IRD take only a small number of criminal prosecutions each year, generally averaging 60–70 cases per annum.

A further option for those who cannot meet their tax debts in New Zealand is to apply for bankruptcy or a 'no asset procedure'.⁵² Filing for bankruptcy or entering into a no asset procedure will prevent the IRD from seeking further payments from the taxpayer, and outstanding debts will be written off.⁵³ In the year ending June 2012, 578 taxpayers declared bankruptcy and had tax debts written off.⁵⁴

IV THE AUSTRALIAN APPROACH TO DEBT MANAGEMENT

Similar to New Zealand's approach, the approach of the ATO is to attempt to collect debt in its early stages, before it becomes unmanageable as a result of accumulated interest and penalties. The individual circumstances of each taxpayer will be taken into account when determining the options available to that taxpayer, including their historical patterns of payment and filing. A range of options is available to individual taxpayers and small businesses experiencing short-term financial difficulty. A key focus of debt management in Australia is small business, as debts in that sector account for some two-thirds of collectable debt.⁵⁵

Debt collection activity will normally commence with the issuance of a notice calling for payment of the outstanding amount.⁵⁶ This occurs prior to the debt being referred for collection activity. Three primary stages in the debt collection process follow. The first is

⁵⁰ Data received under the *Official Information Act 1982*, 3 May 2013.

⁵¹ IRD, above, n 45 [43].

⁵² A 'no asset procedure' is an alternative to bankruptcy for individuals who are insolvent.

⁵³ Inland Revenue Department, 2013, *Bankruptcy — Your tax obligations*, Available at www.ird.govt.nz, Retrieved March 2013.

⁵⁴ Data received under the *Official Information Act 1982*, 3 May 2013.

⁵⁵ ATO, above, n 12, 58.

⁵⁶ Australian Taxation Office, 2011, *Practice Statement Law Administration PS LA 2011/18: Enforcement measures used for the collection and recovery of tax-related liabilities and other amounts* [18].

early intervention, which includes telephone, written or text message contact with the taxpayer; entering into instalment arrangements; and may involve the engagement of an external debt collection agency. The second stage is firmer action, including garnishee notices, director penalty notices and statutory demands. The third and most serious stage is where legal action may be taken, including bankruptcy proceedings or liquidation. These, together with other options, are discussed below.

A Instalment Arrangements

Under s 255-15 of Schedule 2 to the *Tax Administration Act 1953*, the Commissioner of Taxation may '*permit you to pay an amount of tax-related liability by instalments under an arrangement between you and the Commissioner*'. Instalment arrangements are often referred to as 'tailored payment arrangements' by the ATO. As at 30 June 2012 there were 280,000 payment arrangements in place, with a total value of A\$3.8 billion.⁵⁷ Of these, 35,900 were interest-free arrangements worth A\$688 million.⁵⁸ Interest-free arrangements are discussed under heading C below.

When deciding whether to enter into an instalment arrangement with a taxpayer, the Commissioner of Taxation will make this decision in accordance with risk management guidelines established for the ATO.⁵⁹ A range of factors will be taken into account in making the decision, including the circumstances that led to the creation of the debt, the taxpayer's financial situation, the stage that legal recovery action has reached, ability to make payment, risk to the tax authority in accepting an instalment payment arrangement, solvency of the taxpayer, the historical pattern of compliance of the taxpayer, alternative collection options, and willingness of the taxpayer to enter into repayment arrangements.⁶⁰

For taxpayers with debts of less than A\$25,000 there is no need to speak to a tax officer to commence an instalment arrangement. This may be done online, with the use of online calculators to assist in calculating suitable payment arrangements. Where the taxpayer is a business, the ATO may require demonstration of business viability. This requires the provision of information on the financial performance and position of the entity to the ATO within an agreed timeframe. Additional information may be sought on how the debt arose and steps taken to mitigate the debt. For taxpayers with debts in excess of A\$25,000 it is necessary to talk to an ATO tax officer and provide information in relation to the debt, how it arose, details relating to capacity to pay instalments, income, expenses, assets and liabilities, other financing options, and details of debtors and other creditors where applicable.

B Deduction Notices

Section 260-5 of Schedule 2 to the *Tax Administration Act 1953* provides the Commissioner of Taxation with the authority to require a third party to pay money to

⁵⁷ ATO, above, n 12, 44.

⁵⁸ ATO, above, n 12, 44.

⁵⁹ Australian Taxation Office, 2011, *Practice Statement Law Administration PS LA 2011/14: General debt collection powers and principles*.

⁶⁰ ATO, above, n 59.

the Commissioner of Taxation rather than paying it to the tax debtor. This is known as a ‘garnishee power’, and it is actioned by a garnishee notice. The garnishee notice will specify the timing and value of payments. The garnishee notice may be issued to an employer for deduction of a proportion of the taxpayer’s wages or salary, or it may be issued to a financial institution for a lump sum amount. Garnishee notices may also be issued to parties such as solicitors.

Where the garnishee notice relates to wages or salaries, the ATO will not usually seek to garnish more than 30 cents in the dollar of the salary or wages payable.⁶¹ However, a higher proportion may be sought where the tax debtor has alternative sources of income or where it would be fair and equitable to do so.⁶²

A garnishee notice may also be served on a superannuation fund. However, this will not become effective until the tax debtor’s benefits are payable under the rules of the fund, i.e. when the debtor reaches the age of retirement or dies. Similarly, a notice may be served in respect of the proceeds of life insurance policies⁶³ or a company in which the tax debtor holds shares.⁶⁴

Garnishee notices appear to be used reasonably frequently by the ATO. Table 6 shows the number of garnishee notices issued in 2007/08 and the two subsequent periods.⁶⁵

Table 6: Garnishee Notices Issued by the ATO

	2007/08	2008/09	2009/10
Garnishee Notices	10,356	10,761	9,428

⁶¹ ATO, above, n 56 [108].

⁶² ATO, above, n 56 [108].

⁶³ ATO, above, n 56 [118]-[119].

⁶⁴ ATO, above, n 56 [122].

⁶⁵ The data shown in Table 6 is the most recent data currently available for this measure.

C Writing-Off Penalties and Interest

The General Interest Charge, currently set at 9.69 per cent,⁶⁶ will accrue from the date the tax obligation is due until the amount is settled in full. However, s 8AAG of the *Tax Administration Act 1953* provides for remission of the General Interest Charge. The Commissioner of Taxation may only remit this under three circumstances:

- Where the circumstances that contributed to the delay in payment were not caused by an act or omission of the taxpayer, and the taxpayer took reasonable action to mitigate the effects of the circumstance.
- Where it would be fair and reasonable to remit all or part of the charge, having regard to the circumstances of the case.
- Where special circumstances exist that mean that it is fair and reasonable to remit the charge, or it is otherwise appropriate to do so.⁶⁷

Taxpayers must generate a request for all or part of the General Interest Charge to be remitted, and the onus is generally on the taxpayer to demonstrate that remission is warranted.⁶⁸ Factors that will be taken into account in the outcome are the individual circumstances of the taxpayer and the factors that generated the late payment.

Where the circumstances of the taxpayer do not qualify to have the General Interest Charge written off, interest will continue to accrue on outstanding amounts in most cases. However, small businesses may qualify for an interest-free repayment arrangement if they meet certain criteria. These criteria include having annual turnover under A\$2 million; tax debt of less than A\$50,000, which has been outstanding for less than 12 months; a good payment and filing record; inability to obtain short-term financing from other sources; ability to show that the business is a viable entity; and ability to enter into a repayment arrangement that will result in the outstanding debt being repaid within 12 months. The maximum time the taxpayer will qualify for the interest-free period is 12 months.

The value of penalties and interest written off in the most recently reported period was A\$2.0 billion.⁶⁹ The breakdown of penalties and interest applied, remitted and collected in Australia over the three most recent periods is outlined in Table 7. The results in Table 7 may be compared with the New Zealand equivalents in Table 4. Table 4 shows that some 30 per cent of penalties are collected in New Zealand, while just over 50 per cent, on average, are written off. A similar amount of penalties are collected in Australia, at about 30 per cent. However, penalties written off average about 30 per cent in Australia, as compared with 50 per cent in New Zealand. Proportions of interest collected in New Zealand and Australia are similar. However, interest written off in New Zealand is increasing (47 per cent in 2011/12), while it is reducing in Australia (34 per cent in 2011/12).

⁶⁶ The General Interest Charge is updated quarterly. This is the rate for the July – September 2014 quarter.

⁶⁷ *Tax Administration Act 1953*, s 8AAG(1)–(5).

⁶⁸ Australian Taxation Office, 2011, *Practice Statement Law Administration PS LA 2011/12: Administration of general interest charge (GIC) imposed for late payment or under estimation of liability*.

⁶⁹ ATO, above, n 12, 62.

Table 7: Penalties and Interest Applied, Remitted and Collected in Australia (2009/12)⁷⁰

	2009/10	2010/11	2011/12
	A\$ million	A\$ million	A\$ million
Penalties applied	\$1,444.0	\$1,221.0	\$1,729.0
Interest applied	\$2,639.0	\$3,331.0	\$4,782.0
Penalties collected	\$440.0	\$270.0	\$564.0
Penalties written off	\$439.0	\$544.0	\$391.0
Interest collected	\$2,202.0	\$2,935.0	\$2,402.0
Interest written off	\$1,681.0	\$1,889.0	\$1,643.0
% Penalties collected	30.5%	22.1%	32.6%
% Penalties written off	30.4%	44.6%	22.6%
% Interest collected	83.4%	88.1%	50.2%
% interest written off	63.7%	56.7%	34.4%

D Writing Off Outstanding Debt

The Minister for Finance has the power to waive a tax debt. However, the Commissioner of Taxation can approve release from payment of some tax debts where 'serious hardship' exists. Taxpayers who are experiencing serious hardship have the right to apply for some relief of their tax liabilities. Serious hardship exists when '*you are unable to provide food, accommodation, clothing, medical treatment, education or other necessities for you or your family or other people for whom you are responsible*'.⁷¹ The most common condition under which debt relief is provided is where there is a moral obligation, rather than a legal obligation, to do so.⁷² Information on expenses, assets, income, and other supporting evidence is required to demonstrate that serious hardship exists for a taxpayer.

⁷⁰ ATO, above, n 12; and Australian Tax Office, 2011, *Annual Report 2010/11*, Retrieved from www.ato.gov.au. Due to the sampling approach used, and the differences in timing between the period penalties were applied, collected and/or remitted, the figures will not add up to 100% in any year.

⁷¹ Australian Taxation Office, 2009, *Application for release from payment of some taxation liabilities. Fact Sheet for Taxpayers NAT 15080-12*.

⁷² Australian Taxation Office, 2011, *Practice Statement Law Administration PS LA 2011/17: Debt relief*.

Where serious hardship is established, it is possible for taxpayers to apply for relief from payment of income tax, fringe benefit tax, pay-as-you-go instalments, and some of the penalties and interest associated with these taxes. This option is only available to individual taxpayers and taxpayers operating as sole traders; it is not available to companies, trusts and partnerships.⁷³ The tax release provisions do not apply to: amounts of pay-as-you-go deductions that have not been remitted or paid to the ATO; interest on judgment costs; legal costs; sales tax; company tax instalments; indirect taxes; higher education contributions; child support payments; and court imposed fines and costs, among others.⁷⁴

Where core tax debt is written off by the ATO, it may be because it has become irrecoverable (e.g. due to insolvency or bankruptcy) or uneconomical to collect (e.g. where the taxpayer has no assets and there is little chance of collection).⁷⁵ Factors that are taken into account in determining whether a debt is uneconomical to pursue include: the amount of revenue involved; the length of time the debt has been outstanding, including steps taken to recover the debt; the likely costs of continuing action to recover the debt, including likely recovery of any costs awarded; advice provided by the ATO solicitor; and the type of revenue involved.⁷⁶ Debts may be considered uneconomical to pursue where the debtor has no assets, where notification has been received from a trustee or administrator that the debtor's estate has insufficient assets to settle the debt; or where a company has ceased operating and no assets remain.⁷⁷

In 2011/12 the ATO wrote off A\$2.6 billion in tax debt.⁷⁸ In the previous period, 2010/11, A\$3.8 billion was written off. However, while debts may be written off, the Commissioner of Taxation retains the ability to reinstate debts where it becomes likely that recovery action may be successful.⁷⁹

E Other Options

The ATO uses external debt collection agencies to collect low-value debts. Debts are only referred to debt collection agencies where taxpayers have failed to work with the ATO to arrange settlement of the outstanding debt. In 2011/12, 300,020 cases, with a total value of A\$1.6 billion, were referred to debt collection agencies.⁸⁰ This resulted in collections of A\$1.3 billion.⁸¹

A further option that may be facilitated by the ATO where some or all of the tax debt is under dispute is known as a '50/50 arrangement'. The expectation is that the taxpayer will pay at least 50 per cent of any disputed amounts, in addition to other outstanding

⁷³ Australian Taxation Office, 2013, *Guide to Managing your Tax Debt*, Available at <http://www.ato.gov.au>, retrieved July 2013.

⁷⁴ ATO, above, n 72.

⁷⁵ ATO, above, n 12, 59.

⁷⁶ ATO, above, n 72.

⁷⁷ ATO, above, n 72.

⁷⁸ ATO, above, n 12, 59.

⁷⁹ ATO, above, n 12, 238.

⁸⁰ ATO, above, n 12, 59.

⁸¹ ATO, above, n 12, 59

tax debts. The balance of payment may be deferred until the dispute is settled.⁸² Where the taxpayer's objection is unsuccessful, only 50 per cent of the General Interest Charge will be charged from the date that the 50 per cent payment was made. In situations where taxpayers have been selected as a test case and a 50/50 arrangement is entered into, the General Interest Charge remission is 75 per cent.

Legal action may also be taken by the ATO where tax debt remains outstanding despite attempts by the ATO to collect the amount. This may involve the ATO filing a claim or summons with the relevant court in the state of the taxpayer. This will result in the court recognising the debt, which allows the ATO to execute the judgment debt. One of the options that may result from this process is the ATO filing a bankruptcy notice. This requires the taxpayer to settle the obligation within 21 days. If that is not achieved, a creditor's petition may follow, which will result in the taxpayer being made bankrupt. Alternatively, the taxpayer may voluntarily declare bankruptcy.

The ATO may also issue a statutory demand where a company has not met its tax debts. This will require a company to settle its tax debt within 21 days; otherwise the ATO may use the act of non-payment as evidence that the entity is insolvent. In these situations, the ATO has three months from the compliance date specified in the statutory demand to file an application in the Federal Court to liquidate the company. The ATO will usually issue director penalty notices (discussed below) before seeking to have a company liquidated, where the debts are due to withholding tax provisions.⁸³

Table 8: ATO-Initiated Bankruptcy and Winding ups in Australia⁸⁴

	2009/10	2010/11	2011/12
ATO-initiated bankruptcies	397	462	519
Total bankruptcies	27,507	23,102	22,176
ATO-initiated bankruptcies as a percentage of total bankruptcies	1.4%	2.0%	2.34%
ATO-initiated liquidations	493	1,066	1,555
Total liquidations	9,365	9,780	10,818
ATO-initiated liquidations as a percentage of total winding-up	5.26%	10.9%	14.4%

Table 8 outlines the figures on ATO-initiated bankruptcy and liquidations in Australia. The figures indicate significant increases in the numbers of both ATO-initiated

⁸² ATO, above, n 59. Not all debts may be eligible for inclusion in a 50/50 arrangement. For example, debts arising under the *Superannuation Guarantee (Administration) Act 1992*.

⁸³ Australian Taxation Office, 2011, *Practice Statement Law Administration PS LA 2011/16 Insolvency — collection, recovery and enforcement issues for entities under external administration*.

⁸⁴ ATO, above, n 12, 45 and Australian Tax Office (2011) above, n 70, 85.

bankruptcies and company liquidations in Australia over the three-year period investigated. This pattern may reflect the harsher economic conditions over this period.

The ATO may issue 'director penalty notices' to company directors when a company fails to meet its pay-as-you-go and superannuation guarantee charge withholding obligations. In these situations, the director becomes personally liable for a penalty equal to the unpaid amount. The issuing of a director penalty notice allows the ATO to commence legal action to recover the penalty.

Part IVA of the *Tax Administration Act 1953* provides the Commissioner of Taxation with the power to issue a departure prohibition order, which will stop the tax debtor from leaving Australia until the tax obligation is settled in full, or acceptable repayment arrangements are established.⁸⁵ Certain conditions must exist for the Commissioner of Taxation to exercise this power, including the belief that a departure prohibition order is necessary to ensure that the tax debtor does not depart from Australia without discharging the tax liability or making arrangements to settle the liability.

Finally, a freezing order may be used when a tax debtor's actions in disposing of assets are likely to result in an unacceptable level of risk to payment of a tax liability or enforcement of a judgement.⁸⁶ A freezing order is '*a form of injunction that is used to restrain the respondent or their agents from removing assets from the jurisdiction or otherwise disposing of or dealing with those assets pending further orders by the court*'.⁸⁷ It appears that freezing orders are used infrequently in Australia. The ATO reports that only one of these injunctions was sought in 2007/08, five were sought in 2008/09 and nine were sought in 2009/10.⁸⁸

V DISCUSSION

This part starts with an analysis of the different approaches to tax debt management in New Zealand and Australia, addressing measures of efficiency under heading A and general approaches to tax debt management under heading B. It raises some issues with the current approaches to debt management under heading C.

A Efficiency

IRD expenditure on management of debt and outstanding returns in 2011/12 was NZ\$109 million.⁸⁹ The proportion of expenditure on debt management to outstanding debt in IRD was 1.84 per cent. From an efficiency of collection perspective, the IRD is very efficient at collecting debt. At June 2012, the tax debt recovery cost was \$2.86 to collect \$100 of overdue revenue.⁹⁰ The average amount owed per IRD debtor as at June 2012 was \$14,479.

⁸⁵ ATO, above, n 56 [129].

⁸⁶ ATO, above, n 56 [171]. These are also known as *Mareva* injunctions or asset preservation orders.

⁸⁷ ATO, above, n 56 [172].

⁸⁸ These figures are the most recent that are currently available for this procedure.

⁸⁹ Vote Revenue, The Estimates of Appropriations 2012/13 B.5, 227.

⁹⁰ Data received under the *Official Information Act 1982*, 9 May 2013.

In 2011/12, IRD expenditure on taxpayer audit, which includes identifying risks to revenue and undertaking audit activities, was \$169 million.⁹¹ Expenditure on this category of expenditure as a percentage of total debt was 2.86 per cent for the IRD.

Collectable debt as a proportion of total tax revenue collected is higher in New Zealand than in Australia: 7.65 per cent in New Zealand and 5.5 per cent in Australia. While this measure may indicate that New Zealand is less efficient at debt collection than Australia, it is also influenced by other actions, such as the amounts of tax debt written off in each country. Moreover, the policy arrangements that influence overall tax compliance have a significant impact on the tax debt that is generated in the first instance, which similarly impacts on levels of tax debt. Collectable debt in New Zealand has remained similar over the past two periods, whereas it has increased by 18 per cent in Australia. The ATO suggests that this reflects the harsher economic conditions in recent periods.⁹² The IRD also report a stronger focus on collection of new debt and attempting to address debt as early as possible, which may impact on the level of new debt generated.

The total amount written off in New Zealand in 2011/12 was NZ\$809 million, and in Australia over the same period A\$4,634 million. These figures include interest and penalties written off, as well as core tax. The value written off in Australia was 5.7 times the amount written off in New Zealand, which appears to be reasonable, relative to the difference in population size. As a proportion of total tax collected, the New Zealand write-offs are slightly higher, at 1.65 per cent of total tax revenue collected, while Australia writes off 1.54 per cent of total tax revenue collected.

B General Approach to Debt Management

Both the IRD and the ATO have relatively straightforward systems to allow taxpayers to enter into instalment arrangements. In 2011/12, approximately 20 per cent of New Zealand's total outstanding debt was under an instalment arrangement. In Australia the proportion was lower, at around 12 per cent.

The IRD writes off higher proportions of penalties and interest than the ATO. In 2011/12, 54 per cent of penalties and 47 per cent of interest were written off in New Zealand. By way of comparison, 22 per cent and 34 per cent of penalties and interest, respectively, were written off in Australia in the same time period. This may, in part, be driven by the harsher penalty regime in New Zealand. As the combined annual late payment penalty and interest rate in New Zealand is 26.7 per cent in the first year that a debt is generated, debt related to penalties and interest accrues rapidly. This may be contrasted with the general interest charge of 9.69 per cent in Australia, where no additional late payment penalties apply. Thus, there may be greater willingness to write-off penalties and interest in recognition of the current harsh penalty scheme.

Similar proportions of core tax are written off in each country. In New Zealand, NZ\$435 million was written off in 2011/12, which is approximately 7.4 per cent of total debt. In Australia, a slightly higher proportion was written off, at 8.2 per cent of total debt.

⁹¹ Vote Revenue, The Estimates of Appropriations 2012/13 B.5, 227.

⁹² ATO, above, n 12, 8.

In New Zealand, 578 taxpayers declared bankruptcy in 2011/12 and had tax debts written off as a result. This number is higher than the total number of ATO-initiated bankruptcies in Australia—519 in the same period. As the population of Australia is approximately 5.2 times that of New Zealand, it was expected that tax-related bankruptcies in Australia would be about five times greater than that in New Zealand, rather than less. When ATO-initiated liquidations are included, this totals 2,074 in 2011/12, which is still relatively lower than New Zealand when adjusted for the differences in population size.

Both New Zealand and Australia hold large amounts of ‘non-collectable debt’ in their debt books. In New Zealand, non-collectable debt accounts for 36 per cent of total debt in 2011/12—a value of NZ\$2.2 billion. In Australia, debt classified as collectible is 52 per cent of total debt, leaving 48 per cent of debt likely to be non-collectable—a value of A\$15.1 billion. Both countries annually write off relatively high amounts of tax debt, including interest and penalties. The writing-off of these non-collectable debts would result in significantly higher values written off by the respective tax authority. Debt is retained in a range of circumstances, including when court decisions are pending. However, at least some debt relates to bankruptcies and liquidations, where there appears to be little reason for retaining it in the debt book. Following the practice adopted under accounting standards, it would appear that at least some of these impaired debts should be written off, to the extent that they have been established to be unrecoverable.⁹³

In summary, both the IRD and the ATO have high levels of tax debt. However, debt held as a proportion of total tax revenue is higher in New Zealand than in Australia. Both tax agencies have similar tools available to them to address debt management. However, these tools appear to be used differently. The IRD has a significantly higher proportion of debtors in instalment arrangements. However, the ATO has higher usage of some of the more punitive forms of debt collection, such as director penalty notices. The ATO also appears to use a wider range of tools, such as external debt collection agencies. This may, in part, be the result of additional resources within the ATO. Notwithstanding this, the IRD initiates higher proportions of tax-related bankruptcies than the ATO.

⁹³ Receivables are categorised for financial accounting as a financial asset. A financial asset is either cash or the contractual right to receive cash. Initial recognition of financial assets is established by IFRS 9 *Financial Instruments*. Under paragraph 9 of IFRS 36 *Impairment of Assets*, an entity should assess at the end of each reporting period whether an asset is impaired. When an asset is impaired, the recoverable amount should be estimated. IAS 39 *Financial Instruments: Recognition and Measurement* outlines factors that suggest a financial asset is impaired. One of these factors is default in payment. New Zealand Equivalent to International Financial Reporting Standard 9 *Financial Instruments (NZ IFRS 9)*. Issued November 2009 and incorporating amendments up to and including 30 June 2011. New Zealand Equivalent to International Accounting Standard 36, *Impairment of Assets (NZ IAS 36)* Issued November 2004 and incorporating amendments up to and including 30 June 2011. New Zealand Equivalent to International Financial Reporting standard 39 *Financial Instruments: Recognition and Measurement (NZ IFRS 39)*, Issued November 2004 and incorporating amendments up to and including 30 June 2011. Australian equivalents are AASB 9 *Financial Instruments*, AASB 136, *Impairment of Assets* and AASB 139 *Financial Instruments: Recognition and Measurement*.

C Debt Management Issues

What is apparent from the previous discussion in this article is that the tax authorities in both countries have a range of tools to assist with debt collection and debt management. Moreover, the legislation allows for what may be viewed as discretion to write off core tax debt along with penalties and interest. By way of illustration, in New Zealand a 50 per cent write-off of penalties is provided for in the legislation where taxpayers have not incurred previous penalties for similar certain activities over the past two years. Other allowances for remission of penalties and tax debt also exist. However, these tools and degrees of discretion, while provided for in the legislation, are not available to other debtors to the state. In particular, welfare debtors, who have incurred debts through legitimately incurred loans from the welfare agency in New Zealand, are not provided any opportunity to receive debt remission.⁹⁴ Conceptually the debts are similar: both are debts to the government, resulting in the state having fewer funds to provide services to society. Ideally, both forms of debt—tax debt and welfare debt—should be repaid to ensure systems are perceived as equitable. The article has outlined a number of mechanisms by which tax debtors may expect to receive assistance with their debts. In New Zealand, with the exception of instalment arrangements, none of these options are available to those with welfare debts.

Taxpayers in both New Zealand and Australia may apply for financial relief in certain circumstances when settling their tax debts may place them in a position of ‘serious hardship’. Serious hardship in New Zealand is defined as resulting in difficulties in the taxpayer’s ability to meet minimum living expenses according to normal community standards. A similar standard is evident in Australia. In these circumstances, establishing that repaying tax debt may place the taxpayer in a situation of serious hardship provides for the Commissioner of Taxation to release the taxpayer from part, or all, of the tax debt obligation. However, similar to the different treatments of remitting tax debt, this is not an option available to other debtors to the state. Again using welfare debtors by way of comparison, welfare debtors who are currently receiving beneficiaries will have repayments deducted from their currently paid benefits. Welfare debtors who are not receiving welfare benefits will be expected to repay the debt by instalment. Alternatively, the debt may be held until the debtor retires, at which point deductions will be taken from the universal pension.⁹⁵ The final option is that the welfare debt may remain until the debtor dies, when the debt will be recovered from the debtor’s estate. These final two, relatively punitive, options are not pursued for tax debtors.

In a final illustration of the preferential treatment of tax debtors in New Zealand, the *Social Security Act 1964* is in the process of amendment to allow for spouses and partners of those who engage in welfare fraud to be equally criminally liable for the fraud. In the explanatory note to the *Social Security (Fraud Measures and Debt Recovery) Amendment Bill*, it is claimed that ‘it will also ensure that the Ministry of Social

⁹⁴ Welfare customers in New Zealand may request assistance from the Ministry of Social Development in the form of a Recoverable Assistance Loan. These loans exist to fund one-off expenses, such as paying for school uniforms or dentist bills. The loans are expected to be repaid and repayment arrangements are usually established at the time the loan is provided.

⁹⁵ A universal retirement pension (New Zealand Superannuation) is paid in New Zealand. The pension is not income- or asset-tested, with only a residency test to establish eligibility.

Development (MSD) recovers debt more effectively, while also allowing it to exercise sensible discretion in managing recovery in individual cases'.⁹⁶ Further actions related to debt recovery include:

- Imposing a duty on the Ministry of Social Development to take all reasonably practicable steps to recover debt.
- Allowing for the Ministry of Social Development (MSD) to have discretion relating to the method and rate of recovery. In '*exceptional circumstances, MSD may defer temporarily recovery of debt*'.⁹⁷

The differences between the debt management approach to welfare debt and tax debt are evident. The Ministry of Social Development has discretion only in relation to the way debt is recovered. There is no discretion on whether a debt is pursued. By comparison, the tax authorities have discretion relating to remission of debt. In addition, MSD is expected to take all reasonable steps to recover debt, while the tax authority is expected only to collect the maximum amount of tax revenue that is practicable within the law, taking into account available resources. These approaches provide for different treatments of debtors to the state, with tax debtors receiving more lenient debt collection treatment than welfare debtors.

While the focus of this study has been on the management of debts that are legitimately generated, some insights may be gained with reference to the illegal behaviour of tax evasion and welfare fraud. Numerous studies have shown that individuals see tax evasion as a less serious offence than other financial offending, such as welfare fraud.⁹⁸ Research also suggests that the way offending is viewed also impacts on the level of seriousness attached to the crime. For example, Cook observes that '*it is far easier to represent tax evaders as merely keeping their own money, than it is to represent them as taking money from the state (and fellow taxpayers). It is also simple to represent those who are already seen as takers (benefit claimants) as taking money from the hard-pressed taxpayer*'.⁹⁹ Moreover, there are differences in the way offenders are viewed. Marston and Walsh suggest that those who participate in tax evasion are considered to be '*indulgent*' while those who participate in welfare fraud are viewed as '*scroungers or cheats*'.¹⁰⁰ Thus, the different societal views on tax payment (or non-payment) and receipt of welfare may extend into more punitive treatment of those on welfare, merely because they are on welfare.

There are few differences between tax debt and welfare debt. Both are debts to government that result in the same outcome: fewer resources available to invest in

⁹⁶ *Social Security (Fraud Measures and Debt Recovery) Amendment Bill*, Explanatory Note.

⁹⁷ Ibid.

⁹⁸ Australian Institute of Criminology, 'How the Public Sees Crime: An Australian survey' (1986) 2 *Trends & Issues in Crime and Criminal Justice* 1; Stewart Karlinsky, Hughlene Burton and Cindy Blanthorne, 'Perceptions of Tax Evasion as a Crime' (2004) 2(2) *eJournal of Tax Research* 226; Ranjana Gupta, 'Perceptions of Tax Evasion as a Crime: Evidence from New Zealand' (2006) 12 *New Zealand Journal of Taxation Law and Policy* 199.

⁹⁹ Dee Cook, *Rich Law, Poor Law: Differential response to tax and supplementary benefit fraud* (Open University Press, 1989) 14.

¹⁰⁰ Greg Marston and Tamara Walsh, 'A Case of Misrepresentation: Social security fraud and the criminal justice system in Australia' (2008) 17, 1 *Griffith Law Review* 285, 287.

goods and services for society. The majority of the debt held by each agency has been legitimately created, and there is no suggestion of fraud in relation to the majority of the debt held. However, as illustrated in this study, different processes exist for collection of this debt, with more punitive processes for those on welfare. There is no clear explanation for this situation. Despite the lack of evident explanation for the different treatments of those who hold tax debts and welfare debts, the practice would appear to warrant challenging and changing.

VI CONCLUSION

This study examines the mechanisms by which tax authorities in New Zealand and Australia manage and collect tax debt. The tax authorities have a range of tools available to assist with tax debt collection, and Australia appears to use a wider range of options than New Zealand. Despite having a range of collection methods, the New Zealand and Australian tax authorities both hold large amounts of tax receivables. Moreover, large values of non-collectable tax are held in their debt books. This suggests either that the current tools are not being utilised to achieve the best outcome or that the tools are insufficient to meet the objective of collecting the maximum amount of tax revenue taking into account available resources.

In comparing the treatments of tax debtors and other debtors to the state, the conclusion is reached in this study that tax debtors may expect to receive more lenient treatment than other debtors. Their debts and associated penalties are more likely to be written off, their partners and spouses will not be expected to take responsibility for the debts incurred, and where serious hardship is incurred, the legislation allows for taxpayer debts to be remitted. Conversely, welfare debtors in serious hardship may expect to have their debt deferred only under exceptional circumstances: remission of the debt is not an option.

As noted in the study, there are few differences between tax debt and welfare debt. Moreover there is no clear explanation for the more punitive treatment of welfare debtors than of tax debtors. Nonetheless, the practice of treating those with debts to the government differently, depending on whether the debt relates to tax or welfare, appears to warrant challenging and changing.