PiperAlderman

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Dangers of ATO Payment Plans for Lenders

When lenders provide loans to borrowers, it is critical that they are aware of all of the borrower's debt obligations including payment plans with the Australian Tax Office (ATO). The absence of an official search which identifies these payment plans means that lenders must manually review account statements. This article explains the risks associated with payment plans and provides recommendations to lenders to effectively manage them.

What is an ATO payment plan?

A payment plan is a formal agreement between the ATO and an individual or business with tax debts. Rather than paying a lump sum, a payment plan allows individuals and businesses to meet their tax obligations through instalments. Individuals and businesses can choose (to a degree):

1. the payment frequency (i.e. weekly, fortnightly or monthly);
2. the agreed sum per instalment; and
3. the duration of the plan, until the balance is cleared.

What are the risks of payment plans for lenders?

Prior to entering into lending arrangements with borrowers, it is essential for lenders to conduct proper due diligence to determine whether a borrower has any outstanding debt obligations including ATO payment plans. While common searches such as title searches and personal property searches provide lenders with a clear understanding of an obligor's secured liabilities, there is no official search that can be obtained to determine whether a borrower has entered into an ATO payment plan.

It is good practice for lenders to ask borrowers at the early stages of completing initial due diligence for the credit assessment of a borrower and whether they have entered into an ATO payment plan. However, the only practical method of identifying and verifying that a borrower has entered into an ATO payment plan is to review an audited financial statement provided by their accountant. When reviewing these statements, lenders must pay close attention to whether a payment plan exists. This due diligence is particularly important where a lender does not take a registered mortgage over real property as part of its security package.

Recommendations for lenders

When lending to borrowers with ATO payment plans, we recommend that the lender:

1. requests that the entire tax debt be paid at drawdown (from the initial advance); or
2. register a mortgage.

Key Takeaways:

- ATO payment plans allows parties to pay tax debt in instalments;
- There is no official search identifying ATO payment plans; and
- Lenders should request that the entire tax debt be paid at drawdown and / or register a mortgage.

For further information relation to ATO payment plans and its risks associated with lending, please contact Banking and Finance partner, Greg Conomos.