



Unpacking statute-barred debts

Various tax implications can arise when a debt becomes statute-barred. So what is statute barring and when can it be a problem?

In simple terms, a debt is statute-barred when it has reached a statutory limitation period where it can no longer be legally recovered by creditors.

Specifically, each state and territory in Australia contains its own “statute of limitation” provisions that provide a procedural basis for a lawsuit for non-payment of a debt, including a time limit, which can be used as a defence against the claim from creditors.

For debts that arise from “simple contracts”, the limitation period is six years, with the exception of the Northern Territory where it is three years.

Very broadly, a “simple contract” in respect of a debt typically includes unsecured personal loans, credit card debts or debts sold or referred to a collection agency. The limitation period will be different for secured debts and debts arising “out of deed”.

As the laws vary from state to state, to ensure that the debt is deemed “statute-barred”, it would be prudent to seek legal advice as these laws can be complex. Once this is determined, the application of the relevant tax laws will follow. The table below summarises the broad application of the statute of limitations in each Australian state and territory.

State by State: Statute of Limitations in a nutshell

State or territory	ACT	NSW	QLD	SA	Tas	Vic	WA	NT
Limitation period	6 years	6 years	6 years	6 years	6 years	6 years	6 years	3 years
Extinction of right and/or title	Title	Title & right	N/A	N/A	N/A	N/A	N/A	N/A
Limited period extended by confirmation?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Can period restart if there is a confirmation after initial period expires?	No	No	Yes	Yes	Yes	Yes	No	No

What should you consider?

Some general points to consider when dealing with statute barred debts include:

1. Identify the governing jurisdiction

Generally, the place of the debtor's residence at the time of entering into the contract is relevant in determining the governing jurisdiction (although this can be varied in the contract itself).

2. Determine the start time for the debt

For most debts, a creditor must begin court action to recover the debt within six years (or three years in the NT) of the date:

- on which the debt became due and payable
- the last time that a payment was made, or
- that there is acknowledgement in writing that the debt is owed.

The limitation period starts from the latest event as shown in the table. As a general principle, a loan arrangement that does not expressly include repayment terms is taken to be repayable on demand. Such a loan creates an immediate debt, with the clock ticking for statute of limitations purposes from that time.

3. Confirmation of debt and renewal of limitation period

The limitation period is renewed and recommences upon confirmation of the debt. However, the relevant state legislation should be considered for correct application of the renewal period. In the ACT, NSW, WA and the NT, renewal does not occur if the confirmation happens after the initial limitation period expires. In all other states, the limitation period is renewed on confirmation irrespective of whether the limitation period has expired.

4. Acknowledgement of the debt

As noted, confirmation can be through acknowledgement in a written form and signed by the debtor or an agent. There is a body of case law that considers the issue of whether a debt has been acknowledged. For example, a debtor's signed balance sheet was held by one court to be sufficient acknowledgment of a debt. Alternatively, a payment of interest on principal or part payment of principal can also be treated as an acknowledgement.

5. Defence against creditor claims

The expiration of a limitation period precludes a remedy from being available, such that if a lawsuit is brought against the debtor then they can claim the statute as an absolute defence.

Note that the expiration of a limitation period for the debt does not mean, in most cases, that the debt ceased to exist. There may have been acknowledgement at some stage during the period, which would typically restart the limitation period.

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