



19 January 2022

Director

Tax Administration Unit

Individuals and Indirect Tax Unit

Treasury

Langton Cres

Parkes ACT 2600

By email to: taxdebtconsultation@treasury.gov.au

Dear Sir/Madam,

Extend the power of the AAT to pause or modify ATO debt recovery action

On behalf of the Institute of Public Accountants I submit our comments on the Exposure draft legislation to extend the power of the Administrative Appeals Tribunal (AAT) to pause or modify ATO debt recover action in relation to proceedings before the Small Business Taxation Division of the AAT.

This initiative was first communicated as part of the Government's 2020-21 budget. The Government announced that it would extend the power of the Administrative Appeals Tribunal (AAT) to pause or modify ATO debt recovery action in relation to disputed tax assessments under review by the Small Business Taxation Division (SBTD) of the AAT. We therefore welcome the opportunity to provide feedback and make the following comments for consideration.

In principle we support the Government's policy intention "Making it easier for small business to pause debt recovery action" initiative. Measures that increase 'the rights of small business' when dealing with the ATO are warranted given the power and resource imbalance that exists, particularly when disputes arise. Increasing the rights of small businesses to contest the ATO's collection of disputed tax debt is therefore supported. Pausing debt recovery action for a taxpayer seeking a review of the liability provides judicial fairness until the quantum of the tax debt can be determined.



Debt recovery can be quite debilitating on a small business. It gives the business owner the opportunity to continue running the business whilst the dispute is being addressed before the AAT.

The initiative builds on other measures recently introduced such as the tax concierge service provided by ASBFEO. The Small Business Concierge Service helps small businesses decide if an application to the AAT for review of an ATO decision is an appropriate pathway to resolution. Consideration should be given to ASBFEO assisting with seeking a debt recovery relief order if it is decided that an application to the AAT is recommended.

This initiative will bring Australia more in line with other tax jurisdictions namely the UK and US. Recently the House of Representatives 2018-19 Commissioner of Taxation Annual Report dated 20 October also supported this initiative - Recommendation 11 of the House of Representatives 2018-19 Commissioner of Taxation Annual Report dated 20 October 2021:

“3.75 The Committee recommends that the Australian Taxation Office ensure that debts are not payable by the taxpayer until a final determination is made by the relevant dispute body or court. If the Australian Taxation Office fears that funds will be removed during an enforcement action, it should apply as all other plaintiffs do for a court ordered injunction.”

We acknowledge that the ATO has a small business independent review process which can help with disputes. One would hope that this avenue has been used before the matter has been escalated to the AAT. The explanatory memorandum for the exposure draft makes an assertion (para 1.7) that there are very few cases in which the Commissioner pursues recovery action in relation to a disputed debt. We have no transparency on whether this is the case or not.

In 2019, the Australian Small Business and Family Enterprise Ombudsman (ASBFEO) found that, “ATO debt recovery action happens in a sizable number of cases which are before the AAT. The Commissioner has published guidance outlined in a series of Law Administration Practice Statements (LAPS) on debt recovery. In these LAPS, the Commissioner has published the factors that will be taken into account in exercising discretion to defer the time for payment of debts.

Whilst we are supportive of the measure in principle, as currently drafted the burden placed on the taxpayer to access this initiative does not accord with the policy intent, namely “Making it easier for small business to pause debt recovery action”. Whilst we appreciate that there needs to be preservation of the integrity of the tax system, the high threshold for the AAT to consider before making an order can be construed



as unreasonable for a small taxpayer. The additional requirements that must be met as detailed in the exposure explanatory memorandum are stated in S14ZZH(3A)(b) as follows:

The party satisfies the Tribunal of all the following matters in relation to the making of the order, when considered in the context of both the particular circumstances of the decision under review and the overall taxation system:

- (i) the order is unlikely to prejudice or unduly restrict the Commissioner's administration of a taxation law;
- (ii) the order is unlikely to undermine the objective or purpose of a taxation law or a provision of a taxation law, or the integrity of the taxation system as administered by the Commissioner;
- (iii) the application for review and the request for making the order is not frivolous, vexatious, misconceived, lacking in substance or otherwise intended to impede the proper administration of a taxation law."

The burden of some of these additional requirements, could be removed particularly (i) and (ii) above, as they are broad in nature and are matters that the Commissioner of Taxation can respond to. Alternatively, these requirements could be shifted to the Commissioner of Taxation to lessen the onus of proof on the taxpayer to give effect to the Government's stated policy intention for this initiative.

If you would like to discuss our comments, please do not hesitate to contact me.
Yours sincerely

A handwritten signature in black ink, appearing to read 'Tony Greco', is written over a light blue circular background.

Tony Greco
General Manager, Technical Policy
Institute of Public Accountants

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