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Australian Small Business and Family Enterprise Ombudsman
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CANBERRA ACT 2601

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UNSW Tax Clinic – Submission on Insolvency Practices Inquiry Discussion Paper

Dear Insolvency Practices Inquiry Reference Group,

By way of a brief introduction, as a more extensive profile follows immediately, the UNSW School of Taxation and Business Law, amongst other things, runs a Tax Clinic which engages with individuals who can be insolvent. In that case, we very much welcome ASBFEO's inquiry into insolvency and, in addition, appreciate the opportunity to provide feedback on the Insolvency Practices Inquiry Discussion Paper. This submission includes background on the profile of UNSW Tax Clinic in section 1, followed by our feedback on the Questions for Comment in section 2.

1 Profile of UNSW Tax Clinic

UNSW Tax Clinic is the first (and, to date, the only) tax clinic nation-wide to be integrated into the financial counselling profession. In that event we target the most vulnerable members of the community, and over a third of UNSW Tax Clinic's clients run small businesses. Our small business clients have substantial tax debts (averaging around \$115,000 and totalling \$1.2 million) arising

from multiple years of overdue tax returns and Business Activity Statements ('BAS'). On average, we see around 36 outstanding BAS returns per client (ranging from 1–80).

Our clients tend to have complex and historical tax issues (including unsustainable company structures set up by their former tax agents (see further below)) and, also, to be at risk of bankruptcy. This is in addition to other financial and mental health issues.

2 Feedback on the Questions for Comment

We strongly agree with the observation in the Discussion Paper that small businesses experiencing financial difficulty wait too long before seeking professional advice and assistance.

Our comments in relation to Questions 8, 11, 12 are below:

8. Should it be mandatory for individuals seeking to start a company or register an ABN to undertake core education on running a business and the potential risks of personal exposure to liabilities?

Yes, it would be advisable to have, at the very least, a checklist of likely tax and legal obligations as a company director for individuals seeking to start a company or register an ABN.

Further, to ensure ongoing tax compliance in the longer-term, we recommend that:

- 1. All subsequent ASIC business name renewals be contingent on the taxpayer being up-to-date on their tax returns. To achieve this, a mechanism which cross-references the ATO and ASIC databases should be developed – similar to the data currently being shared between the ATO and Centrelink.**
- 2. The same mechanism above can also be used for companies before payment of the annual company review fee.**

Our experience is that, often, our small business clients' former accountants have set up our client's business under a company structure. With the client's business becoming no longer profitable, they cannot afford to pay for an accountant to finalise their income tax returns and BAS. Further, compounding this is that the client often does not understand their tax and legal obligations as a company director. This is evident from our research into insolvent trading cases, which have

a disproportionate impact on directors of proprietary companies, compared to those of public companies, resulting in personal liability of the director for the corporate debts and which often ends in the director's bankruptcy.

In addition, our experience at UNSW Tax Clinic also shows that many small business clients cannot afford to pay their accountant to complete their tax returns and BAS and/or finalise their tax position before filing for bankruptcy. As a result, amongst other things, these clients have multiple years of unlodged BAS (and, consequently, have outstanding GST payment obligations) – indeed, we have seen several going back to when GST started in 2000 – and are thereby incurring penalties on these outstanding amounts.

Further, UNSW Tax Clinic would suggest, from what we have observed from our small business clients, that there is a need for some clear, unemotional advice on what the implications for directors are of becoming insolvent are in terms of costs, effect on personal and family assets, and opportunities for financial rehabilitation to mitigate this problem.

11. How can accountants and bookkeepers best support small businesses to seek help early?

As noted above, often problems arise once a small business is no longer profitable, which results in the small business no longer able to afford tax advice and support. **Our thinking for clients in situations where they can no longer afford tax advice and support, is that the tax profession would likely be willing to assist by providing pro bono tax advice through access to a Tax Clinic.**

Although the ATO's Tax Help provides a free service to help people complete their tax returns, small businesses (including sole traders) are specifically carved out as ineligible.

So, the only free and independent support services available for these small businesses is the newly established National Tax Clinics Program (including UNSW Tax Clinic). However, one of the key barriers for tax practitioners who wish to engage in pro bono tax advice is that they currently need to intermingle their non-clinic clients with their clinic clients. The profiles of these two groups are understandably very different and, in our experience, agents are apprehensive that their reputation with the ATO may be affected by the poorer compliance records of their tax clinic clients.

It is relatively straightforward to overcome this hurdle. Specifically, a separate tax agent registration for university-based clinics would remove the need for professional indemnity (PI) insurance to

cover pro bono tax agents for any civil claims arising from their pro bono tax advice. The insurance burden would shift to the clinic itself. UNSW Tax Clinic has already expressed this view to Federal Treasury in the form of a submission to its Review of the Tax Practitioners Board (August 2019).

In addition, Tax Agents would be asked to arrange referral of such clients to those clinics.

12. Should increased funding and resources be provided to the financial counselling sector to enable them to provide services to small businesses experiencing financial difficulty?

Put simply, our view is a resounding ‘Yes’ in response to this question.

Both the UNSW Tax Clinic and the UNSW Centre for Social Impact are presently conducting the first nationwide survey, asking financial counsellors whether there is, indeed, an unmet need for free tax advice referral services in those financial counsellor’s sector. **Our research shows there is, in fact, an overwhelming need for tax referral pathways and assistance, with all surveyed participants indicating they would benefit from such a service and that, on average, 37% of their clients would have benefited from tax advice.** Further, when asked whether the need for tax advice has been increasing or decreasing over time, only 1.4% of surveyed participants observed that the need for tax advice has been decreasing over time.

Again, we very much welcome this initiative and, also, participating in this aspect of ASBFEO’s review. Please let us know if you would like any further details or if you have any questions.

Yours faithfully



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