

1 April 2022

Ms Karen Payne
Inspector-General of Taxation and Taxation Ombudsman
GPO Box 551
SYDNEY NSW 2001

via email: objections@igt.gov.au

Dear Ms Payne

ATO's Administration and Management of Objections

Thank you for the opportunity to comment on the Objections process at the ATO.

A priority of our office is to help relieve the compliance burden on small business, and if disputes emerge, ensure small businesses are assured of fair treatment and have access to justice. Our Small Business Tax Concierge Service is a key component of this work, and our observations of the objections system are based on this work, as well as on extensive stakeholder consultation.

Stakeholder consultations have shown small businesses are often reluctant to object to a tax ruling due to perceived barriers to justice including time taken to resolve a dispute, costs involved, likely distress they will suffer during the dispute, and opaque outcomes if they object. These barriers suggest there is a limited access to justice for small businesses objecting to a tax ruling. In particular:

- **The system is opaque, and heavily weighted towards the ATO.** Stakeholders report long delays in the objections process driven by the ATO, followed by requests for information with short timelines, punctuated by extended silences creating uncertainty and increased time and cost burdens as respondents seek clarity.
- **Timeframes are difficult for small businesses to meet.** Taxpayers are provided 60 days to lodge an objection, with extensions not always granted and then a further 60 days to appeal to the Administrative Affairs Tribunal. These timeframes provide significant challenges for small businesses with little administrative or legal support.
- **Objection alternatives are not adequately communicated to taxpayers.** Alternatives to the objection process are not well known amongst the small business taxpayer cohort and availability of these alternatives should be further promoted to taxpayers. Stakeholders report a perception of a lack of independence in audit processes, and difficulties objecting if the assessment is already paid.
- **Additional supports for small business taxpayers are required.** Small business taxpayer representatives have no access to the ATO portal, and objections cannot be lodged by email. This adds process barriers for those wishing to lodge an objection. Further, where the respondent is known to the ATO or are from a culturally and linguistically diverse community, case conferencing may be a more effective than a formal process.

More positively, where a small business has approached us for assistance via our Small Business Tax Concierge service, the Review and Dispute Resolution Coronavirus Economic Response Package (RDR CERP) team have provided an escalated internal dispute resolution mechanism delivering timely and effective dispute resolution.

We suggest consideration be given to the following measures to address the highlighted barriers and improve small business taxpayer access to justice:

1. Further transparency around the objections process should be provided. The ATO should publish more detailed information on how the objection process is clearly separated from the audit process and the Inspector General of Taxation could give consideration to review of a sample of taxpayers who have received amended assessments to determine the extent of barriers to access to justice where they are dissatisfied with the amendment

2. Timeframes should be responsive to small business taxpayer needs. This Office recognises the importance of ensuring the integrity of the tax system, and not allowing taxpayers to use the objections process as a delaying tactic. However, consideration needs to be given to ensuring small business taxpayers have adequate opportunity to object to tax rulings.

To this end, the ATO should always engage with taxpayers on the objection process in a timely, predictable, and responsive manner, reflecting timeframes required of taxpayers. Further, consideration could be given to extension of the objection lodgement and AAT application lodgement windows to 90 days to provide additional flexibility to taxpayers.

3. Objection alternatives should be further highlighted to taxpayers. We recognise that the Inspector General of Taxation and our office are listed on the ATO's "Other dispute and resolution options" web page, but it is far from obvious and relies on the taxpayer know the ATO dispute nomenclature to optimise the search website function. The existence of the National Tax Clinics program and its utility in assisting aggrieved small business taxpayers is not apparent. It is difficult to find the Small Business Pilot Program and the Commonwealth Compensation for Detriment caused by Defective Administration Scheme (CCDA) and these could be made more accessible.

4. Consideration should be given to additional supports for small business taxpayers. Small business taxpayer's legal representatives should be provided access to the ATO portal if authorised by their client. Further, acceptance of objections by email should be facilitated to modernise business processes.

To better support small business taxpayers known to the ATO, and those in vulnerable positions or from culturally and linguistically diverse communities increased case conferencing opportunities should be provided to better facilitate information exchange.

Ongoing access to a dedicated and specialist ATO small business team along the lines of ATO's RDR CERP team should be provided to small business taxpayers objecting to a tax ruling. There is scope to expand the ASBFEO Tax Concierge function to provide navigational assistance through options for ATO engagement by an aggrieved small business taxpayer. Awareness of these options and dispute resolution support could be more prominently promoted on assessment notices.

5. Adopt IGoT recommendations. We note your October 2021 report, *An investigation into the effectiveness of taxpayers rights to complain, review and appeal*, and agree that that the Taxpayers' Charter should include a right to being informed of review, complaints and appeal opportunities; that ATO objections officers complete mandatory training, be clearly aware of their responsibilities and taxpayer objection opportunities; and that awareness should be raised of informal, cost effective and time efficient dispute resolution alternatives.

Thank you for the opportunity to comment. If you would like to discuss this matter further, please contact Ms Jan Walker on 02 5114 6114 or at jan.walker@asbfeo.gov.au.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Bruce Billson', written over the printed name and title.

The Hon. Bruce Billson
Australian Small Business and Family Enterprise Ombudsman