



31 OCTOBER 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,

The Australian Taxation Office’s (ATO) Administration and Management of Objections

Thank you for the opportunity to provide further input to the investigation into the ATO’s objections process. Our office is committed to working collaboratively with the IGTO and the ATO to ensure fair treatment and access to justice for small businesses and family enterprises.

The Small Business Tax Concierge Service (the Service) is a key element of this work, helping small businesses to decide if an application to the Administrative Appeals Tribunal for review of an ATO decision is an appropriate pathway to resolution. As a result of COVID-19 economic response measures, the Service received a large increase in inquiries from small businesses seeking assistance with negative decision letters received from the ATO. Many of the requests for assistance were from small businesses deemed ineligible for JobKeeper, or the Cash Flow Boost, and some with concerns relating to Superannuation Guarantee arrangements. *Figure 1* highlights the spike in requests for assistance relating to these measures and demonstrates the impact that the uncertainty surrounding the introduction of new measures has on small business.

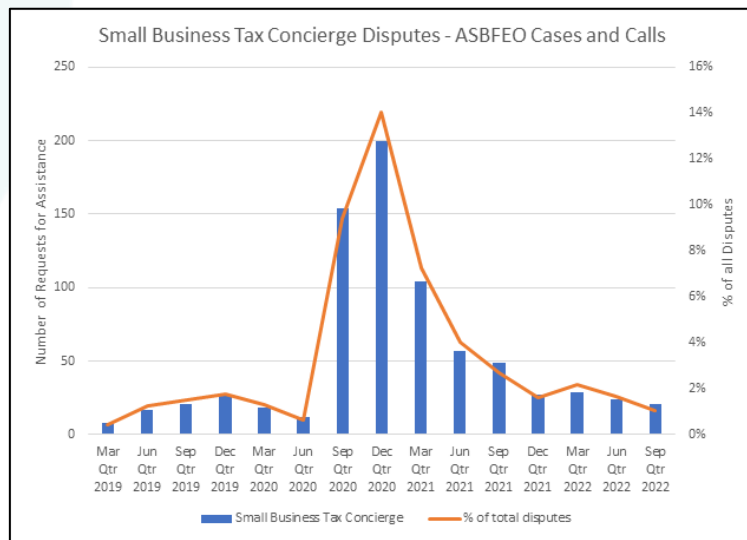


Figure 1: Small Business Tax Concierge Services requests for assistance.

These recommendations are based on the work of the Service and stakeholder consultation. Small businesses often lack the expertise to navigate the objection process and must rely on costly advice from external accountants and lawyers. Further, navigating an objection to an assessment by the ATO imposes a time burden on small business operators and can have a significant impact on their personal wellbeing. There is also often a fear of how the ATO may respond in the future should a small business object.



To improve the objections process, consideration should be given to:

- 1. Increase the independence of the objections process.** We recommend the ATO develop a procedure that requires the taxpayer to be included in all communication between the original decision maker and the objection case manager, including all documents that are shared with the objection case manager. Alongside this approach, the ATO should implement a policy where internal communication with the objection case manager is limited and restricted to documents necessary to the review of the decision. Documents that relate to a decision such as working drafts, mid case analysis, the opinions of previous staff, or any documents that may bias the objection case manager should not be shared. This would allow for a fairer review of the case and limit the influence of the original decision maker on the objection decision.
- 2. Limit the same personnel advising the objections process.** To supplement the fairness of the above approach, senior officials who provided substantive input into the original decision should not be consulted during the objections process. Objection case managers should access support from alternative senior officials, with any differences of view appropriately escalated within the ATO.
- 3. The ATO should consider the challenges for small business owners to meet unjustified timeframes.** 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. These timeframes provide significant challenges for small businesses with little administrative or legal support and greater consideration should be given, particularly if the ATO lacks incentive to make a prompt assessment.
- 4. The ATO should amend its disputed debt policies so small businesses are able to seek a stay order of any ATO debt recovery action whilst undergoing the objection process.** Section 14ZZM and 14ZZR of the *Taxation Administration Act 1953 (Cwlth)* provide that the ATO has the power to collect a disputed debt before objections have been heard or decided. The ATO should amend its disputed debt policies so small businesses are able to seek a stay order of any ATO debt recovery action whilst undergoing the objection process.
- 5. The IGTO should have unrestricted access to ATO systems without the need to notify the Commissioner.** Currently the IGTO must notify the Commissioner before commencing an investigation and can then only access information which the Commissioner has approved. We also understand that the Commissioner may withhold relevant information on appropriate grounds without notifying the IGTO that this has been done. To support the IGTO's independent review of ATO approaches, unrestricted access to ATO systems would help ensure that all relevant information is considered.
- 6. Objection alternatives should be further highlighted to taxpayers.** Objection case managers should emphasise alternate dispute resolution processes to taxpayers and the ATO should further promote other resolution options. The ATO has an in-house facilitation process for small business taxpayers, however this is not consistently offered in all cases. Alternatives such as the Inspector General of Taxation and our office are listed on the ATO's web page, however, are not widely recommended to small businesses and notification of these options is dependent on how the ATO website is searched.

Thank you for the opportunity to comment. If you would like to discuss this matter further, please contact Miss Bridget Tracy on 02 5114 6112 or at bridget.tracy@asbfeo.gov.au.

Yours sincerely,

The Hon. Bruce Billson

Australian Small Business and Family Enterprise Ombudsman