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Director
Tax Administration Unit
Individuals and Indirect Tax Unit
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Via email: taxdebtconsultation@treasury.gov.au

Dear Sir/Madam,

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

The Australian Chamber welcomes the opportunity to provide feedback on the Government's exposure draft legislation to allow small business to apply to pause the Australian Tax Office's (ATO) collection of disputed tax credits. We note that a number of members with an interest in this area will make submissions in response to your call for comments on the proposed legislation. As a complement to those submissions, we take the opportunity to highlight a few key issues.

We strongly support the objective to pause ATO debt recovery action while an appeal process is underway. However, we have concerns in relation to the proposed *Treasury Laws Amendment (Measures for Consultation) Bill 2022: Increased Tribunal powers for small business taxation decision* as it does not go far enough.

Over the past two years Ministerial announcements gave the business community the expectation that the ATO would no longer be able to garnishee a business while a dispute is underway, but the draft legislation does not fulfil this commitment.

Currently the ATO is able to issue garnishee notices to allow them to immediately recover taxpayer debts from third parties such as banks or trade debtors. In other instances where financial penalties have been imposed such as a civil case, if a business seeks to appeal the decision, repayment does not begin until after the appeals process has been completed.

The proposed amendments seek to allow the Administrative Appeals Tribunal (AAT), the ability to make an order to prevent the ATO from undertaking debt recovery actions until the appeals process has been completed. However, the process that would need to be undertaken for this order to be made would be a costly and time-consuming burden for the small business owner. They would need to lodge a case with the AAT, potentially hire a lawyer, wait from their case to be heard and then for the order to be handed down.

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This process is neither cost effective nor efficient, and there needs to be a better approach to pausing the ATO debt recovery action, particularly because under the proposed legislation small businesses will be garnisheed until the AAT hands down its ruling.

Under the draft legislation a decision made by the AAT will be limited in what it can hand down as any order must not restrict nor undermine the Commissioner's administration of taxation law or the integrity of the taxation system. It makes it difficult to see how the AAT will be able to meet this criteria and issue orders to pause or modify the ATO actions.

The draft legislation introduces a clause that the AAT will also be required to ensure the application is not frivolous or vexatious, an unreasonably high onus of proof on the taxpayer. There is already a clause under section 29AB of the AAT Act which allows the Tribunal to throw out an application if it contains an 'insufficient statement of reasons for application'. Therefore we recommend that you delete paragraphs (3A)(b)(i) & (ii), as 42B should be sufficient.

As an alternative to the approach to what is proposed in the draft legislation, ACCI would recommend the introduction of a period where garnishment orders are not enforced in order to give businesses the opportunity to appeal. The ATO should be prohibited from charging penalties and interest, issuing notices or any other form of debt recovery from a decision that is disputed until all avenues of appeal have been undertaken by the business owner.

This recommendation would be more in line with the expectations created by the Ministerial announcements in this area.

Although the current draft may have been framed due to concerns about potential abuses of the system by rogue operators who may appeal simply to avoid tax debt payment, we would urge the behaviours of good business owners to not be tarnished by the potential behaviours of a few. Alternative approaches should be identified that address those operators with a pattern of recalcitrant behaviour while allowing businesses with genuine objections to ATO decisions to pursue their appeal without further cost burdens.



Small businesses across Australia are now entering their third year of financial impacts from COVID19. They are seeking government support to reduce barriers to justice and assistance in managing disputes efficiently, not for costly additional red tape. The draft legislation does not go far enough for Australia's small businesses during a time when sound approaches are needed.

Yours faithfully



JENNY LAMBERT
Director, Economics, Employment & Skills