

Small business given 'breathing space' from debt recovery

Small businesses are set to be given breathing space over disputed tax debts. Handing down this year's Budget, Treasurer Josh Frydenberg announced that the Administrative Appeals Tribunal (AAT) will become an 'independent umpire' to stop the ATO from pursuing small businesses until a disputed assessment has been resolved.

Under the Government's proposal, the AAT will become an intermediary between the ATO and companies, with the power to pause or modify ATO debt recovery actions where the debt is being disputed by a small business – including sole traders – with a turnover of less than \$10 million. The proposed change will bring Australia more in line with the tax systems of the UK and US.

Currently, small businesses are only able to pause or modify ATO debt recovery actions through the Courts, which is time-consuming and expensive. Mr Frydenberg said the change would give small and family businesses peace of mind in debt-recovery situations, helping ensure the tax system worked for, not against, them.

"Applying to the AAT instead of the courts will save small businesses at least several thousands of dollars in court and legal fees and as much as 60 days of waiting for a decision," he said. "We will put the AAT in the middle and give it the power to stop the tax office issuing garnishee orders. Taking these disputes out of the courts will let small businesses get on with what they do best."

Australian Small Business and Family Enterprise Ombudsman Bruce Billson has called the move "a positive step". "Small businesses disputing an ATO debt in the AAT will get a fairer go by stopping the ATO from relentlessly pushing on with debt recovery actions against a small business, while the case is being heard."

Bigger picture



Andrew Spring, Jirsch Sutherland Partner

Jirsch Sutherland Partner [Andrew Spring](#) says any process that streamlines genuine dispute resolution “can only assist small businesses”. However, he says business owners, directors and their advisers should also think about the “bigger picture”.

“If a business has a genuine dispute that will reduce its tax liability by, say, 30 per cent but is still unable to pay the remaining 70 per cent of the debt, they should really take a broader consideration of their options,” Spring says. “Historically, we have noted that businesses are reluctant to consider a formal restructure without some form of external pressure. The breathing space provided by these changes may not be the catalyst for effective change for an underperforming business.”

Spring suggests another solution could be for a ‘stay on enforcement’ to only be provided when the dispute in question accounts for a large percentage of the business debt.

“There is a risk that in some circumstances, some businesses will dig an even deeper hole for themselves,” he says. “Like an amateur chess player backing away their King, the survival instinct sometimes overrides the logic of the situation. Sometimes the best thing to do is ‘tip your King’ and reset the board.”

Spring adds that there is also a risk some unscrupulous parties may use this as way of further tax evasion, by delaying the enforcement of a claim while further liabilities are incurred.

The changes will start after Royal Assent of the legislation.