

Committee Secretary  
Senate Standing Committee on Economics  
PO Box 6100  
Parliament House  
Canberra ACT 2600

Dear Committee Secretary,

This letter is to provide corrections to information provided at the ATO's appearance before the Economics Legislation Committee on 30 May 2018.

In reference to information provided on pages 14-15, 37, 38 and 43 of the Hansard, the ATO would like to make the following corrections:

1. In response to Senator Leyonhjelm asking about taxpayers' available options when disputing a tax debt that has potentially progressed into litigation, the ATO would like to note a correction. The steps involved are not linear but are tailored to the risk profile and compliance history of each client. For example, the process could involve increased opportunities for resolution prior to a garnishee for those who are engaging with us, or alternately could result in fewer steps for those with poor compliance history.

2. In response to Senator Leyonhjelm's statement regarding disputed tax, the ATO would like to clarify for the record that our comments were specifically in the context of small business tax debts.

*Further details on ATO disputed debt processes are included at **Attachment A**. The ATO is available to further brief Committee members on this issue if required.*

3. In response to Senator Williams asking if Commissioner Jordan had been offered an interview with that story (ABC - Fairfax Four Corners) the ATO have reviewed ATO records and would like to note a correction. A formal request for an interview with Commissioner Jordan was received by the Office.

4. In response to Senator Williams asking if the appeals process for individuals and small business are separate, the ATO would like to note a correction that they are not separate; all objections are managed by Review and Dispute Resolution which is an area of the ATO. This area, led by the Second Commissioner Law Design and Practice, is separate from the original decision maker.

5. In response to Senator Patrick asking how many ATO staff have accepted an invitation to the Qantas and or Virgin Chairman's Lounge during official air travel, the ATO responded 'there are seven, who have both'. The ATO would like to clarify that there are only 6 members with access to both, and 1 member that has access to Qantas.

Yours sincerely



Andrew Mills  
Acting Commissioner of Taxation  
05 July 2018

## **Attachment A – ATO Processes for the collection and recovery of disputed debts**

ATO Practice Statement Law Administration 2011/4: Collection and Recovery of disputed debts, sets out our ATO practice in related to recovery of debts where there is a dispute.

The decision whether to take recovery action in respect of a disputed debt is made based on an analysis of the risks associated with the case. When a formal review or objection is lodged the debt is referred to a dedicated team to ensure any debt action is based on a full review of the particulars of the case and the taxpayer.

In line with the Taxpayers' Charter, the Commissioner is committed to the early resolution of disputes and will utilise an Alternative Dispute Resolution process wherever possible to achieve that end. Where tax is paid and the dispute is resolved in favour of the taxpayer, the ATO will pay interest on overpayments.

### **Small Business disputed debts**

The Commissioner can initiate recovery action for collection of unpaid disputed debts at any time before determining an objection. However in most small business disputed debt cases the Commissioner takes no debt recovery action while the dispute is unresolved.

Subject to a risk assessment, the Commissioner may offer a taxpayer a 50/50 arrangement which minimises their exposure to the General Interest Charge (GIC). This requires the taxpayer to pay all undisputed debts and a minimum of 50% of the disputed principle tax debt and co-operate fully in providing requested information to determine the objection. The Commissioner will defer recovery action for the balance of the disputed debt and other related components.

The Commissioner may also defer recovery action if the underlying debt is secured, for example via a bank guarantee or a mortgage over real property. A taxpayer may offer such security, and in some cases, based on a risk assessment, the Commissioner may require security over a debt as an alternative to other recovery actions including legal action.

Where the taxpayer has not entered into an acceptable agreement and the risk associated with the case is assessed as unacceptable, collection action may be commenced prior to the determination of the objection.

The risk is assessed on a range of factors including the circumstances leading to the debt (for example aggressive tax planning, fraud, phoenix activity or other criminality), the taxpayer's level of compliance, the amount of debt and the taxpayer's capacity to pay their debt in full or where there is a concern of dissipation of assets or transfer of funds beyond the reach of the Commissioner.

### **Large Business**

The complexity of large business taxation arrangements often requires the Commissioner to take additional steps to protect the revenue.

In most instances where there is a dispute in relation to a large business taxpayer, and in response to the increased risk to the revenue, the ATO would seek to establish a 50/50 arrangement.