



Australian
**Small Business and
Family Enterprise**
Ombudsman

27 May 2020

Standing Committee on Tax and Revenue
Parliament of Australia
PO Box 6021
CANBERRA ACT 2600

By email: TaxRev.reps@aph.gov.au

Dear Committee Secretary

Report on the 2018-19 Annual Report of the Australian Taxation Office

We welcome the Tax and Revenue Committee's review into the 2018-19 Annual Report of the Australian Taxation Office (ATO). We also appreciate this opportunity to share with the Committee our knowledge and experience of the impact of ATO administration on small business and family enterprises both during the 2018-19 year and currently, during the COVID-19 pandemic.

The last year has been a challenging year for small business and their interactions with the ATO. In June 2019, we published the advice that we provided to the Minister for Small and Family Business, Skills and Vocational Education on 8 April 2019 in a report entitled *Australian Taxation Office - Enforcement of disputed debts before the AAT*. Our report made specific recommendations for improvement in the procedures and processes surrounding management and collection of disputed debt by the ATO.

Following our disputed debts report, it was disappointing for us to then identify further harsh and uncompromising debt recovery action in respect of the Research and Development Tax Incentive (R&DTI) program. We found that many small businesses experienced untimely, inconsistent and in many cases targeted action by both the ATO and AusIndustry, often at the same time. We identified a "shift" in the way the R&DTI legislation has been interpreted over the last three to four years, particularly a narrowed interpretation resulting in rejections of claims, which in previous years had been regarded as low risk. Small business taxpayers need clarity and certainty in the application of tax laws; not retrospective and inconsistent treatment. Our report was released in December 2019.

We understand policy is determined within Treasury and the ATO is tasked with implementation. However, the recurring theme that we encounter is a punitive approach that results in negative outcomes for the taxpayer; whereas a nuanced and 'small business aware' approach would deliver better outcomes and improved ongoing compliance.

On a more positive note, we have worked closely with the ATO and other agencies to establish the Small Business Concierge Service. The Service commenced operation on 1 March 2019 to assist small business taxpayers who have received a negative decision from the ATO and who seek advice on options to appeal the decision to the Administrative Appeals Tribunal (AAT). Our Office has also liaised with a number of the free National Tax Clinics which commenced as a pilot in the 2019 year.

We are pleased to see that both the Tax Clinics and the Independent Review pilot program for small business taxpayers have been extended past their initial twelve months as these are crucial programs supporting vulnerable small businesses.

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While the ATO aspires to educate and support small business, we have needed to write directly to the Commissioner during the ATO's schedule of on-site visits to small businesses across Australia, as part of the Black Economy Taskforce measures. We voiced our concerns as to the lack of forward notice provided to business operators and the disruption such unannounced visits cause a small business. We acknowledge that our Deputy was then invited to observe one such taskforce visit in regional NSW and, following that visit, we are pleased that the ATO has accepted our feedback and has undertaken to improve its practices for any future visits undertaken.

There is no doubt that the ATO has made improvements in some areas of its management of the small business taxpayer community, many of whom carry the unpaid administrative burden of tax collector on behalf of the government. During the 2019-2020 bushfires and the current COVID-19 pandemic, the ATO has implemented a wide range of concessions and practical support measures to assist small businesses, such as automatic deferrals of lodgements, extended payment dates, remission of general interest charges and an overarching ability to negotiate further concessions on a case-by-case basis.

We are currently undertaking further work to identify which of those interim measures adopted by the ATO may be an appropriate permanent feature of the tax compliance and collection framework. The aim here is to support small business to make *getting it right* easy.

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Yours sincerely

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Kate Carnell AO

Australian Small Business and Family Enterprise Ombudsman