



Mr Jason Falinski MP (Chairperson)
Standing Committee on Tax and Revenue
House of Representatives
Parliament House
Canberra ACT 2600

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

Dear Mr Falinski,

[Inquiry into the Annual Report of the Australian Taxation Office 2018-19](#)

Following my attendance on Friday, 19 March 2021 at the public hearing for the Standing Committee on Tax and Revenue in relation to its *Inquiry into the Annual Report of the Australian Taxation Office 2018-19*, I am providing a **supplementary submission** in consideration of the issues discussed with the Committee members at that hearing, and in relation to an announcement made by the ATO since the public hearing.

Please find my **supplementary submission** enclosed with this letter.

Regards
Ashley King
Managing Partner
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31 March 2021

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Supplementary Submission

Issues arising from discussion during public hearing

During my attendance as a witness at the public hearing of the inquiry into the Commissioner of Taxation Annual Report for 2018-19, the following points arose:

1. A Committee member raised the point that another government regulatory agency (ASIC) has a panel process in place to assist with making administrative decisions on certain matters affecting external licenced advisors. The Committee member considered that panel process to be a fair and effective process. The Guide for that panel sets out the principles and processes under which it operates.

Features of the ASIC panel are relevant for the purposes of the recommendations contained in this submission, including:

- a. The affected person should be provided with a copy of the ATO's arguments and evidence prior to the Panel meeting.
- b. The affected person should be provided with the details of how the Panel will conduct its meeting, including the purpose of the meeting, the names of the attendees, and the time and place of the meeting.
- c. The Panel should include ATO members and independent tax professionals as well.
- d. The affected person should be invited to appear at the Panel meeting and make a written submission (regardless of whether they choose to appear).

None of these features give rise to the need to change my earlier recommendations in relation to the ATO panel because they were all addressed in the earlier recommendations.

2. A Committee member raised the proposition that the Commissioner should be provided with the ability to extend the statutory period of amendment for evasion cases beyond the proposed 10 year period where circumstances provide that to be a reasonable outcome.

It is noted that the provision for this **already exists** in subsection 170(7) of *the Income Tax Assessment Act 1936*. That sub-section provides that the Federal Court of Australia may order an extension to the period of review for a specified period where the Commissioner has started a review of the tax affairs, has not yet finished the review, and applies to the Federal Court for an order extending the period. The Court may order an extension of time to amend **if it satisfied that** it was not reasonably practicable for the Commissioner to finish his review within the limited amendment period, either due to of any action by the taxpayer, or of any failure of the taxpayer to take action that would have been reasonable to take.

That provision appears to be both applicable and suitable to address the issue raised by the Committee member.

This issue does not give rise to the need to change my earlier recommendations in relation to the change of law for cases involving fraud and evasion.

3. Committee members raised the question and commented that it would be more transparent and lead to better outcomes if the Commissioner published the number of cases involving fraud and evasion findings

that were dealt with each year. It was noted that this issue has been raised in previous inquiries of this Committee.

It is noted that the Recommendation 8 of the Committee's 2019 review of the "2017 Annual Report of the Australian Taxation Office - Fairness, functions and frameworks – performance review" said: *The ATO should publish in its annual report the number of taxpayers by taxpayer segment who are deemed to have engaged in fraud or evasion as a figure and as a percentage of the total audited, and how many of these receive additional penalties.*

Therefore, it is recommended that the same recommendation be made again as part of the current inquiry:

The ATO should publish in its annual report the number of taxpayers, by taxpayer segment, who are deemed to have engaged in fraud or evasion as a figure and as a percentage of the total audited, and how many of these receive additional penalties.

4. Committee members recognised that ATO cases involving allegations or findings of **tax fraud** can be different to those involving **tax evasion**. It was noted that cases involving tax fraud are more serious and less frequent than cases involving tax evasion. The discussion suggested that there is no need to amend the law in the cases of **tax fraud** to reduce the unlimited period for amendments to 10 years.

Since the recommendations in my submission are aimed primarily at **tax evasion** cases, distinct and separate from **tax fraud** cases, I propose that the following amendment **replace** my previous amendment for Parliament, which was to amend the tax law to reduce the applicable amendment period in Fraud and Evasion cases **to 10 years**:

Revised recommendation for Parliament:

Amend the tax law¹ to limit the applicable amendment period for cases where the Commissioner is of the opinion there has been evasion to 10 years (rather than the current unlimited time for amendment). The current unlimited period of amendment time frame for cases where the Commissioner is of the opinion there has been fraud remains unchanged.

Issues arising from recent ATO announcement

Subsequent to the public hearing, the ATO made an announcement that it was affirming the importance of its internal independent review service for small businesses to help resolve disputes by making a particular dispute resolution process a permanent feature of its administration.² The ATO announcement said:

“Following a successful multi-year pilot, the ATO’s small business independent review service will be offered permanently as a dispute resolution option for eligible small businesses.

The ATO’s service ensures eligible small businesses have an additional opportunity to resolve a dispute with the ATO in a cost-effective and time-efficient way.”

¹ Sub-section 170(1), Item 5, of the *Income Tax Assessment Act 1936*.

² The full text of the announcement is reproduced at **Appendix A** to this supplementary submission.

While this is very welcome news for small businesses and advisors such as me, the accompanying guidelines expressly state that disputes involving fraud and evasion findings are excluded from the independent review service.³

This means that under the revised ATO guidelines, the ATO will still not ordinarily provide this dispute resolution process for cases involving allegations of fraud or evasion.⁴

This further **reinforces the need** for an advisory panel process that is procedurally fair and provides taxpayers an opportunity to present their case prior to assessments being issued.

No other issues have arisen that require addressing in this supplementary submission.

Regards

Ashley King

Managing Partner

TaxResolve

31 March 2021

³ Disputes involving superannuation, fringe benefits tax, or interest imposed by the ATO are not also excluded. Reasons for their exclusion are not provided.

⁴ Such a process would only be able to be arranged through escalation to senior levels of the ATO. There is no certainty as the outcome of such escalation.

Appendix A

ATO affirms importance of independent review service for small businesses to help resolve disputes⁵

The Australian Taxation Office (ATO) has today affirmed its commitment to assisting small businesses resolve their taxation disputes. Following a successful multi-year pilot, the ATO's small business independent review service will be offered permanently as a dispute resolution option for eligible small businesses.

The ATO's service ensures eligible small businesses have an additional opportunity to resolve a dispute with the ATO in a cost-effective and time-efficient way.

Since the pilot program started in 2018, more than 1,200 small businesses have been offered the service and more than 180 small businesses have taken up the ATO's offer.

ATO Deputy Commissioner Jeremy Geale said the service is all about ensuring small businesses are given the opportunity to achieve an independent, fast, free, and fair resolution when they disagree with the ATO's audit position.

"Independence is critical when handling a dispute, so we ensure each and every independent review is done by an officer from a different part of the ATO who was not involved in the original audit", Mr Geale said.

"Small businesses who participated in our pilot told us they found the process to be fair and independent, irrespective of the independent review outcome, so this is a great result, and is a big part of why we are locking this service in permanently."

Mr Geale clarified that taxpayers can request in-house facilitation at any stage of a dispute with the ATO and that the independent review occurs prior to the ATO issuing an amended assessment and any resulting debt being raised.

Australia is the only jurisdiction that provides so many dispute resolution options to small business taxpayers, allowing them to be heard at audit, independent review, objection, Court or Tribunal (with appeal rights and Tribunal funding).

The ATO's decision to transition the pilot to business as usual is consistent with recent recommendations made by the Australian Small Business and Family Enterprise Ombudsman.

The ATO's small business independent review service is available to eligible small businesses in addition to other dispute options, for example, [lodging an objection](#), [in-house facilitation](#), or by taking the matter up with the [Inspector General of Taxation and Taxation Ombudsman](#) or the [Australian Small Business and Family Enterprise Ombudsman](#).

The service is available for eligible small businesses with an annual turnover of less than \$10 million in relation to disputes about income tax, GST, excise, luxury car tax, wine equalisation tax, and fuel tax credits. Disputes about employer obligations like superannuation and fringe benefits tax are not eligible for the independent review service.

More information about the [ATO's independent review](#) service including how to request a review and eligibility criteria is available on the ATO's website.

⁵ ATO Media Release (QC 65156) dated 26 March 2021.