Tax Disputes and Small Business in Australia

International Conference on Taxpayer Rights

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Key information points

1. Administrative Appeals Tribunal Reviews
   - Small Business Entity has aggregated turnover under A$10 million a year
   - Small business taxation decisions are handled in the AAT's Small Business Taxation (SBT) Division
     - Fees are A$517 (can be A$100 in certain circumstances or A$95 (see below)) Normal fee is A$962 or A$95 for disputes under A$5,000
   - Australian Small Business and Family Enterprise Ombudsman - advice and support via a concierge service
   - ATO may contribute to costs of representation
AAT SBT Division Reviews cont.

• Assistant Case Assessment Registrar for early case assessment conferencing to:
  • identify the issues in dispute;
  • encourage and facilitate early negotiation between the parties;
  • ensure all relevant information is exchanged between the parties and provided to AAT
  • identify any procedural matters such as confidentiality orders; and
  • direct the way AAT will handle the review

• Early resolution and ADR encouraged
• Processes explained in easy to read & understand guide
Insolvency changes in Australia

• Section 588G of the Corporations Act 2001 holds directors personally liable for insolvent trading
  • Need to appoint administrator

• New s588GA - at a particular time after a person starts to suspect a company may become or be insolvent, he or she starts developing one or more courses of action that are reasonably likely to lead to a better outcome for the company; and
  • the debt is incurred directly or indirectly in connection with that course of action and during a specified time period

• To rely on this ‘safe harbour’ directors must:
  • Continue to meet employee entitlements (including superannuation) and tax reporting obligations
  • Be able to provide assistance and/or documentation if requested by an external administrator, and
  • Developing one or more courses of action reasonably likely to lead to a better outcome for the company than the immediate appointment of an administrator or liquidator
Director Penalty Notices

- Anecdotally were agreed to when the Tax Commissioner lost preferential creditor status (last century)
- Imposes personal liability for:
  - Pay As You Go (Withholding) – principally the tax on employee wages (but other withholdings)
  - Goods and Services Tax (our VAT)
  - Superannuation Guarantee Charge (where pension contributions not paid out to employees’ funds)
- Retrospective to date of appointment and persists beyond date of termination of director/s
- Survives deregistration of the company
- We find it in our Tax Clinic in respect of spouses coerced into directorships