

**Submission to The Senate Economics References Committee
Inquiry Into Australia's Taxation System
From
The Business Union
17 October 2024**

The Business Union is backed by the [Red Union Group](#).

1. Premise

The Terms of Reference for this Inquiry cover a range of issues that have an impact on all business activity. This includes specific references to:

- The treatment of onshore and offshore profits – references (c) and (d)
- Tax 'loopholes' – reference (e)
- Franking credits – references (f) and (g)
- Capital gains tax – reference (h)

Our 'sense' of the Inquiry is that its focus is directed towards the activities of large businesses in Australia, particularly multi-nationals.

Our submission seeks to ensure that there is also an understanding that small businesses (including businesses of one individual) and medium-sized businesses are also affected by the issues being investigated.

That is as examples:

- Even people who are a 'business of one' quite commonly engage in business transactions across national borders (consultants, for example). Their business income is, by definition, 'profit'.
- What some people may consider to be tax 'loopholes' may in fact be legitimate tax deductions from a business perspective, particularly for small business people engaging in business transactions internationally.
- Franking credits can have an impact on any person engaged in business.
- Capital gains concessions can have an impact on any individual person who may own a single, small investment rental property. When running a 'business' which involves renting out a property the question is, is that individual entitled to claim the costs of operating that business (the rental property) and offsetting any losses against other income? As a comparison, does the parliament consider it legitimate to claim the expenses of running, say, a coffee shop, and claiming any losses against other business income?

The reason we ask the Committee to consider businesses of one individual, small businesses and medium-sized businesses within the context of the Inquiry is that business laws are often framed on the assumption that 'business' means 'big business'. Laws which target big business can adversely affect micro, small and medium-sized businesses. All too often this damages and hinders the development of the economy at its core. This applies to tax law in particular. Get tax law wrong and the practical ability of individuals to create, build and sustain a business from their own effort, enterprise and imagination can be thwarted.

2. Focus of this submission

Within the context of our premise (above) our submission is not focused specifically on these tax issues and law, but rather on how the Australian Taxation Office (ATO) administers and interprets tax law, particularly in relation to micro, small and medium-sized businesspeople. That is, Australia's taxation system is as much a product of the application of the system by the Australian Taxation Office, as it is of the taxation laws themselves.

Normally, Australian tax law is written in a way where the objective of the tax outcome is specified. How that is to be administered and applied is then generally left to the discretion of the ATO, with few, if any, specific requirements placed on the ATO as to how the law is to be applied. It is our contention that the ATO frequently misinterprets tax law, and that the resulting maladministration of tax law is so great that it inflicts enormous harm upon individuals who are engaged in business. We are not in this respect supporting big business as such. They can ordinarily engage armies of lawyers and tax specialists to fight their cause. It is the micro, small and medium-sized businesspeople to which we direct our focus.

3. The Australian Taxation Office and abuse

The Committee will be well aware of the [Robodebt scandal](#). The scandal essentially applied incorrect interpretations of income data of welfare recipients. This resulted in assessments being made that welfare recipients had been overpaid. These alleged overpayments were then treated as debt owed to the Commonwealth with debt collection actions taken against the welfare recipients. Assessments proved to be wrong with great harm done to large numbers of people.

What should always be remembered is that the income data upon which the false assessment were based were supplied by the Australian Taxation Office. We contend that the erroneous treatment of that data by Services Australia was consistent with the way the ATO too frequently applies, interprets and acts upon the business data of individual micro, small and medium-sized businesspeople in particular. Because the ATO acts within a legal regime where it is effectively a law unto itself in relation to interpretation of tax law, it too often operates as an institution of abuse. That is abuse of taxpayers is a regular feature of the activities and behaviour of the ATO.

This ATO abuse was highlighted in a 2018 exposé by the [ABC Four Corners' Mongrel Bunch of Bastards](#). The focus of the report was on the ATO's abuse of micro and small business people. This [drew on and expanded upon evidence over the previous decade](#) or so.

4. Request for inclusion in the Committee's deliberations

In 2020, the Australian House of Representatives Standing Committee on Tax and Revenue undertook an investigation into the comparative administrative and interpretative powers of the ATO and the USA's Internal Revenue Service.

By way of background, in 1996, the US Congress conducted a significant review of how the IRS administered tax law. This resulted in a package of reforms to balance the powers of taxpayers with the powers of the IRS. A key was/is the creation of the **US Taxpayer Advocate (a Tax**

Ombudsman) with significant powers to ensure that the IRS administers tax law fairly and correctly.

In October 2021, the Australian House of Representatives Standing Committee on Tax and Revenue [issued a report recommending substantial adoption of critical aspects](#) of the US/IRS system. The report stated:

This report highlights a number of legislative frameworks that the government should change in order to provide taxpayers with better service. Key recommendations in this report are borrowed from observations out of the United States. These include;

- 1) upgrading the Inspector General of Taxation to an office modelled on the Taxpayer Advocate developed in the United States.*
 - 2) Secondly, changes be made to legislation that gives taxpayers the same protections enjoyed by all other citizens when dealing with debts, namely it is not payable until it has been proved and cannot be collected until that time.*
 - 3) Further, the onus of proof should lie not with the taxpayer but with the ATO.*
- (Pages iii & iv)*

The report enjoyed cross-party-political support. [Chair Jason Falinski MP (Liberal) Deputy-Chair Julie Owens MP (Labor)]

It is our contention that were the Australian Parliament to implement the recommendations of the Standing Committee on Tax and Revenue that potential and actual abuse of micro, small and medium-sized business people by the ATO would be considerably limited. A better balance would exist, with a singular focus on ensuring that taxpayers pay the correct amount of tax.

5. Recommendation to the Senate Committee

We recommend the following:

- A) That the Committee take care to ensure that the perspectives of micro, small and medium-sized businesses be taken into account when considering the terms of reference from (c) to (h).
- B) In relation to terms of reference (i) 'related matters', that the Committee visit and adopt the October 2021 recommendations of the Australian House of Representatives Standing Committee on Tax and Revenue—specifically that:
 1. The legislative powers the Inspector-General of Taxation (Ombudsman) be upgraded. This to include, for example, that the IGT has automatic and unrestricted access to all ATO files for individual and business taxpayers.
 2. An alleged tax debt cannot be collected until the debt is proven.
 3. The onus of proof of a tax debt is with the ATO.
- C) That the budget of the Inspector-General of Taxation be substantially increased to equate to a set percentage of the ATO's budget, so that the IGT has sufficient funds to perform its statutory functions.