

EXPLANATORY STATEMENT

Issued by the Authority of the Attorney-General

Administrative Appeals Tribunal Act 1975

Administrative Appeals Tribunal Amendment (Small Business Taxation Division) Regulations 2019

Authority

The *Administrative Appeals Tribunal Act 1975* (the Act) provides for the creation of and exercise of powers by the Administrative Appeals Tribunal (the Tribunal). It outlines the jurisdiction and procedure of the Tribunal. Section 70 of the Act provides that the Governor-General may make regulations, not inconsistent with the Act, prescribing all matters required or permitted by the Act to be prescribed or necessary or convenient to be prescribed for carrying out or giving effect to the Act. Section 70 of the Act also provides the power for the Governor-General to make regulations prescribing fees to be payable in respect of applications in the Tribunal. Pursuant to section 17A(g) of the Act, new divisions in the Tribunal may be prescribed.

Purpose

To ensure that small businesses are not disadvantaged in disputes with the Australian Taxation Office (ATO), a dedicated Small Business Taxation Division will be created within the Tribunal. The new division will include a reduced application fee, procedural support, assistance through an expanded Outreach program, and a faster decision timeframe to ensure that the cost, time, or lack of understanding of the process does not prevent a small business from challenging an ATO decision. These features will help level the playing field and make it easier, cheaper, and quicker for small businesses to resolve tax disputes with the ATO.

Operation

The *Administrative Appeals Tribunal Amendment (Small Business Taxation Division) Regulations 2019* (the Regulations) amends the *Administrative Appeals Tribunal Regulation 2015* (principal Regulations), making the following changes:

- define a ‘small business taxation decision’
- create a new Division at the Tribunal to be referred as the Small Business Taxation Division, which hears matters defined as a ‘small business taxation decision’
- prescribe a reduced application fee of \$500 in respect of an application for review of a small business taxation decision, or for multiple applications where at least one of the applications are for review of a small business taxation decision
- provide consequences if an applicant has paid an application fee for review of a small business taxation decision on the basis that the decision related to a small business entity, and the Tribunal considers that an applicant is not a small business entity
- ensure that indexation of the new reduced fee does not occur until 1 July 2020 , and
- make consequential technical amendments.

Details of the Regulations are set out in **Attachment A**.

Part 1 of the Regulations commences on 1 March 2019, and Part 2 of the Regulations (relating to indexation of the new reduced fee) commences on 2 July 2019.

Consultation

Consultation occurred between the Tribunal, the Department of Treasury, the ATO and the Australian Small Business and Family Enterprise Ombudsman.

Statement of Compatibility with Human Rights

The Regulations are compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. A Statement of Compatibility with Human Rights is set out in **Attachment B**.

Details of the proposed *Administrative Appeals Tribunal (Small Business Taxation Division) Amendment Regulation 2019*

Section 1 – Name

This section provides that the title of the Regulations is the *Administrative Appeals Tribunal (Small Business Taxation Division) Amendment Regulation 2019*.

Section 2 – Commencement

This section provides that Part 1 of the Regulations commences on 1 March 2019 and Part 2 commences on 2 July 2019.

Section 3 – Authority

This section provides that the Regulations are made under the *Administrative Appeals Tribunal Act 1975* (the Act).

Section 4 – Schedule(s)

This section provides that each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Schedule 1 – Amendments

Part 1 – Small business taxation decisions

Item [1] – Section 5

The definition of a ‘small business taxation decision’ is defined as meaning a decision made:

- (a) under a taxation law (within the meaning of the *Income Tax Assessment Act 1997*);
and
- (b) in relation to a small business entity (within the meaning of the *Income Tax Assessment Act*).

This amendment is made to assist the Tribunal to determine which applications are eligible for allocation to the Small Business Taxation Division.

Item [2] – At the end of Part 2

A new section has been inserted to provide for the creation of the new Small Business Taxation Division pursuant to the power in paragraph 17A(g) of the Act.

Item [3] – Paragraph 20(1)(a)

This item ensures that the application fee for review of small business taxation decisions is not the standard application fee of \$920. The applicable fee is instead the lower fee prescribed by item [4].

Item [4] – After subsection 20(1)

This item inserts a new subsection 20(1A) to provide the application fee which would be payable for review of small business taxation decisions is \$500, instead of the standard application fee of \$920 which currently applies.

Item [5] – Subsection 20(2) (heading)

This item maintains an existing reduced fee by ensuring that the applicant seeking review of a small business taxation decision would be entitled to the reduced fee of \$91 if the amount of tax in dispute is less than \$5,000.

Item [6] – Subsection 20(3)

This item maintains an existing reduced fee by ensuring that the applicant seeking review of a small business taxation decision would be entitled to the reduced fee of \$100 if the concessional circumstances set out in section 21 apply.

Item [7] – Paragraph 20(3)(a)

As with item [6], this item ensures that the applicant seeking review of a small business taxation decision would be entitled to the reduced fee of \$100 if the concessional circumstances set out in section 21 apply.

Item [8] – Subsection 23(3)

After “under subsection (2)”, new subsections have been inserted to reflect that in the case of multiple applications submitted by a single applicant, if one of the applications for review is of a small business taxation decision, then the fee payable would be equal to the prescribed fee for an application for review of a small business taxation decision.

Item [9] – After paragraph 25(1)(c)

New paragraph (ca) is inserted to reflect that the \$500 application fee for review of small business taxation decisions as prescribed in subsection 20(1A) shall apply if the Tribunal considers that the amount in dispute is not less than \$5,000.

Item [10] – After section 25

A new section 25A has been inserted to provide that if an applicant paid an application fee for review of a small business taxation decision on the basis that the decision related to a small business entity, and the Tribunal considers that the decision did not relate to a small business entity, then the relevant application fee that normally applies will be payable.

Item [11] – Section 26 (table items 6 and 7, column headed “Fee”)

The table in section 26 provides arrangements for fee refunds. Table items 6 and 7 have been amended to include a reference to the application fee for review of small business taxation decisions as provided for in subsection 20(1A), to ensure there is clarity on fee refunds for these matters.

Part 2 – Indexation of application fees

Administrative Appeals Tribunal Regulation 2015

Item [1] – At the end of subsection 20(1A)

A note has been added to indicate that the prescribed fee is indexed under section 27 of the *Administrative Appeals Tribunal Regulation 2015*.

Item [2] – Subsection 27(1)

The words “1 July 2019 and” have been omitted to reflect that indexation of fees occurs annually on 1 July of every year, which is consistent with indexation of all other Tribunal fees. However, the effect of the commencement provision of the Regulations is that indexation of the \$500 application fee for small business taxation matters will be delayed until 1 July 2020.

Item [3] – Subsection 27(1)

The words “following that day” have been omitted to reflect that indexation of fees will occur annually on 1 July of every year.

Item [4] – Subsection 27(1)

This item amends “and (2) (a *fee provision*)” to “, (1A) and (2)” to reflect the application fee for review of small business taxation decisions would also be increased annually in accordance with section 27. The commencement provision of the Regulations ensures that the \$500 application fee provided for in new subsection 20(1A) will not be increased by indexation before 1 July 2020.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Administrative Appeals Tribunal Amendment (Small Business Taxation Division) Regulations 2019

1. This Disallowable Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Regulations

2. The *Administrative Appeals Tribunal Amendment (Small Business Taxation Division) Regulations 2019* (the Regulations) provide moderate changes to the *Administrative Appeals Tribunal Regulation 2015* (principal Regulation), to amend the Administrative Appeals Tribunal (the Tribunal)'s structure and procedure when dealing with applications regarding small business taxation decisions. These amendments are procedural in nature and do not have a regulatory impact.
3. The Regulations are made under section 70 of the *Administrative Appeals Tribunal Act 1975* (the Act), which provides, in part, that the Governor-General may make regulations, not inconsistent with the Act, prescribing all matters required or permitted by the Act to be necessary or convenient for carrying out or giving effect to the Act.
4. Section 70 of the Act also provides the power for the Governor-General to make regulations prescribing fees to be payable in respect of different classes of applications in the Tribunal.
5. The purpose of the Regulations is to provide for a new Division for application for review of small business taxation decisions and a reduced application fee for small business taxation entities making applications at the Tribunal, following an entity having lodged an objection to a taxation decision made by the Australian Taxation Office (ATO).

Human right implications

The Disallowable Legislative Instrument engages the right to fair trial and a fair hearing in Article 14 of the International Covenant on Civil and Political Rights (ICCPR)

Right to a fair trial and a fair hearing - Article 14 of the ICCPR

6. Article 14 of the International Convention on Civil and Political Rights (ICCPR) provides that all persons shall be equal before the courts and tribunals. It is the Government's understanding that equality before courts and tribunals refers to 'equality of arms' which requires that all parties to a proceeding must have a reasonable opportunity of presenting their case under conditions that do not disadvantage them as against other parties to the related proceedings.
7. The measures in the Regulations promote Article 14 of the ICCPR. Providing a reduced application fee for small business entities appealing ATO decisions increases these applicants' access to a fair hearing at the Tribunal, which may have otherwise been

unavailable to them due to financial constraints. These measures do not impact existing further reduced application fees available in concessional circumstances to this cohort or other Tribunal applicants.

8. Therefore, the amendments promote article 14.

Conclusion

9. The Regulations are compatible with human rights because they promote and advance the right to a fair hearing, and do not otherwise engage any human rights.