

## Small Taxation Claims Tribunal

The last edition of *Admin Review* reported the passage of the *Law and Justice Legislation Amendment Act 1997* (Act No. 34 of 1997). Provisions of that Act relating to the establishment of the Small Taxation Claims Tribunal were to commence on Proclamation.

The Act establishes a Small Taxation Claims Tribunal within the Administrative Appeals Tribunal. In July 1997, the Small Taxation Claims Tribunal commenced operations.

It is intended that the Small Taxation Claims Tribunal provide a cheaper and more informal means of resolving disputes between the small taxpayer and the Commissioner of Taxation. There is an emphasis on mediation as a form of dispute resolution. As part of the current AAT structure, the Small Taxation Claims Tribunal will be able to draw on the resources and expertise of the Taxation Appeals Division. All of the powers of the AAT and the Taxation Appeals Division will be able to be exercised by the Small Taxation Claims Tribunal.

In July 1997, the AAT issued the following information note for clients who had applications before the Taxation Division where the amount of tax in dispute was less than \$5000 and thus within the jurisdiction of the Small Taxation Claims Tribunal.

### GENERAL PROCEDURES FOR THE SMALL TAXATION CLAIMS TRIBUNAL

You have made an application for review of a decision made by the Australian Taxation Office (ATO).

On your application form you stated that the amount of tax in dispute is less than \$5,000. Your application therefore will be heard by the Small Taxation Claims Tribunal (STCT) (a subdivision of the Taxation Appeals Division of the Administrative Appeals Tribunal).

It is hoped that the information contained in this document will be helpful to you in deciding how to handle your application and in understanding the procedures of the STCT. The procedures of the STCT are similar to those of

the Administrative Appeals Tribunal and the enclosed pamphlets may be of assistance to you.

### HOW DOES THE STCT WORK?

The STCT aims to provide taxpayers like yourself with a quick and inexpensive means of resolving disputes with the ATO, with as little formality as possible.

After we have received your application, it is listed for a conference (see below). If the dispute is not settled at the conference it will usually be listed for mediation or a hearing within four weeks of the conference. Occasionally, further conferences may be necessary. In a straight forward case the hearing is unlikely to take more than two hours.

At the hearing a Member of the Tribunal will listen to what you and the representative of the ATO have to say and give a decision as soon as possible. In some cases this will be an oral decision at the end of the hearing. In other cases the Member may have to give further thought to the evidence or research the law and will make a decision at a later date.

### WILL I NEED A LAWYER?

You do not need to be represented by a lawyer or a tax agent at the STCT. You can represent yourself. If you are going to represent yourself the Tribunal will assist you in understanding procedural matters but the Tribunal will not be able to conduct your case for you.

### WHAT HAPPENS NEXT?

In about two weeks you will receive in the mail a set of papers which will be put together by the ATO. These papers are referred to as the "Section 37 documents" or the "T (for Tribunal) documents". They are a copy of all the papers the ATO used when it made the decision. You should read these documents.

### WHAT IS A CONFERENCE?

In small tax cases a conference between you and a representative of the ATO will be held approximately four weeks after the lodgment of an application.

Conferences give you a chance to:

- talk to someone from the ATO about why you think the decision is wrong;
- talk about whether you and the ATO can agree on what the decision should be; and
- get more evidence to support your case.

A Tribunal Member or Conference Registrar organises and conducts the conference. You and a friend or family member or a professional person (such as a lawyer) may attend, if you want them to be there to support you. The ATO will also have somebody at the conference. You may also have an interpreter present.

#### WHAT SHOULD I BRING TO THE CONFERENCE?

- any papers sent to you from the Tribunal;
- the “T documents”;
- any other papers that have been sent to you by the ATO;
- any letters you have written to the ATO or this Tribunal; and
- anything else you think is important for the Tribunal to see, for example, account books or receipts.

For more information on conferences, see the pamphlet “*What is a conference, what is it for?*”.

#### WHAT IF I NEED AN INTERPRETER?

If you think you need an interpreter, contact the Tribunal’s office before the conference and the Tribunal will arrange for an interpreter to be present. The interpreter cannot be a member of your family or a close friend.

#### WHAT IS MEDIATION?

Mediation is an opportunity for people to try to negotiate a settlement of their case with the help of a neutral third party (the Mediator).

It is entirely voluntary. If the Tribunal considers that mediation may assist in reaching a settlement of your dispute the Tribunal will recommend that you and the ATO agree to a mediation. You can ask the Tribunal about

whether mediation would be suitable in your case.

Further information on mediation is contained in the pamphlet “*Have you considered mediation?*”. A copy of this pamphlet is enclosed.

#### HEARING

If your application does not settle at a conference or a mediation, it will be listed for a hearing usually within four weeks of the conference. The hearing will be before a Tribunal Member. The Tribunal will hear the evidence and make a decision on the merits of your application. After all the evidence has been heard, the Tribunal Member will, in most cases, give his or her decision and reasons. Hearings are usually listed to start at 10am or 2pm.

Tribunal hearings are informal. You and the representative from the ATO will have an opportunity to tell the Tribunal what the case is about and the evidence that you have. If there are any witnesses they will give their evidence and may be asked questions by the ATO and by the Tribunal. After all the evidence has been given, you and the representative from the ATO will have an opportunity to give a summary of your case. After the hearing the Tribunal will tell you if it is going to make a decision immediately or later after it has had time to consider the evidence further.

The Member hearing your case may assist you by asking necessary questions which will help him or her understand your case.

The pamphlet called “*What is a hearing?*” contains more detail on hearings. You can get a copy of this leaflet from the Tribunal’s office.

#### FURTHER INFORMATION

If you require further information about any aspect of the Tribunal’s procedures or if you have a question arising from the information contained here, visit, telephone or write to the STCT. The postal address is GPO Box 9955 in your capital city.

The telephone number for the STCT is:

1300 366 700

If you require hearing assistance the Tribunal has a TTY service available on:

1800 650 662

### **National Liaison Meeting – Compensation Issues**

On 30 October 1997 the President of the AAT convened a national liaison meeting in Melbourne which specifically examined the compensation jurisdiction. The meeting was timed to coincide with the conference of the Employment and Compensation Law Committee, a Committee of the Law Council of Australia which was held in Melbourne on 31 October 1997.

Compensation is the AAT's second largest jurisdiction. Lately it has exhibited signs that it is becoming increasingly, inappropriately adversarial in nature. Manifestations of this tendency include the largest number of matters, when compared to other Tribunal jurisdictions, which settle either immediately prior to hearing or on the day of the hearing. This causes significant cost and inconvenience to both the parties and the Tribunal. It is the Tribunal's aim to ensure that matters settle as early as appropriate in its pre-hearing stages. This is not occurring in the compensation jurisdiction.

Another indicator of an increasingly adversarial stance is the dramatic increase in the number of summonses issued in the jurisdiction. Whilst applications in the jurisdiction have increased by 11% over a three year period, in the same period the number of requests for summonses have increased by 1100%.

The meeting was also convened to discuss the issue of settlement generally and hearing procedure.

Respondents, respondent representatives and applicant representatives were invited to attend the meeting.

As the President wished to encourage full and frank discussion the meeting was organised in a different manner from previous years. The day was divided into a series of three parallel workshops comprised of three groups of fifteen. Each group was facilitated by the Tribunal member and a reporter was appointed to take down the proceedings. The workshops examined the issues of summonses, settlement and hearings.

At the end of the day the President briefly summarised the main outcomes from each group in relation to each workshop topic.

The meeting provided the opportunity to openly discuss the Tribunal's concerns and the external participants' concerns with a view to developing options for the alleviation or elimination of all problems which were identified.

The Tribunal is now considering the outcomes of the meeting.

### **Tribunal Charter**

The Tribunal will soon publish a Charter. The Charter will set out the Tribunal's commitments about the service it will provide. It will also set out the responsibilities of people dealing with the Tribunal.

The Tribunal is committed to maintaining and improving the quality of its services. It will therefore monitor its performance in meeting the commitments set out in the Charter. The Tribunal intends to report on its performance against the Charter commitments in its Annual Report.

At the same time as the Charter is published, the Tribunal will release a pamphlet setting out its complaint-handling policy and procedures.

### **Interpreting Policy**

The Tribunal has recently renewed its policy as to the circumstances in which it will book and pay for interpreters. Under the previous policy, the Tribunal routinely used to book and