



Administrative
Appeals Tribunal

Guide to the Small Business Taxation Division

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1. About this Guide

This Guide applies on and from 1 March 2019 and provides information on the procedures the Administrative Appeals Tribunal ('AAT' / 'Tribunal') will usually adopt in managing applications for review of decisions in the Small Business Taxation Division.

It complements the AAT's [Practice Direction Review of Small Business Taxation Decisions](#) and the [General Practice Direction](#).

When this Guide refers to 'we', 'our' or 'us', it means the AAT. When it refers to 'you' it means the person who applied for the review, any other party who is not a decision-maker and any representative. The Commissioner of Taxation and their representatives are referred to as 'the Commissioner'.

2. The Small Business Taxation Division

The AAT can review decisions if an Act or regulation says we can. The *Taxation Administration Act 1953* enables the AAT to review most taxation objection decisions. We can also review certain other decisions made by the Commissioner of Taxation, including decisions about ABNs¹.

All small business taxation decisions are handled in the AAT's Small Business Taxation Division (**SBT Division**), except decisions made under the *Tax Agent Services Act 2009*². The SBT Division has been established to provide a cost effective review process that is accessible to small businesses and tailored to achieve resolution at the earliest opportunity in an individual case.

The SBT Division uses an early case assessment conferencing process to identify the most effective way to resolve each application. This approach relies on parties giving us all relevant information at the earliest opportunity.

2.1 Who can apply?

Any person affected by a small business taxation decision can apply for review of that decision by the AAT³.

2.2 What is a small business taxation decision?

A small business taxation decision is a decision made under a taxation law administered by the Commissioner, in relation to a small business entity.

¹ Australian Business Numbers.

² Decisions under the *Tax Agent Services Act 2009*, and legislative instruments made under that Act, can be reviewed in the Taxation and Commercial Division. Applicants are still eligible for the fee of \$517.

³ The *Taxation Administration Act 1953* provides for taxation objection decisions to be reviewable by the AAT.

2.3 What is a small business entity?

Under the *Income Tax Assessment Act 1997*, you are a 'small business entity' if you carry on a business in the current income year with an aggregated turnover⁴ of less than \$10 million⁵.

You are still a 'small business entity' for the relevant income year even if you were winding up a business you previously carried on.

In most cases the letter from the Australian Taxation Office (**ATO**) telling you of its decision will identify whether or not it considers that you are a small business entity.

If the ATO has decided that you are not a small business entity and you disagree with that decision, you should tell us that when you apply for review (in the section of the [AAT application form](#) titled 'Reasons for the Application'), and when we contact you.

If you wish to proceed with the review in the SBT Division and the AAT finds that you are not a small business entity, you will be required to pay the difference between the fee for review of small business taxation decisions and the fee payable for other tax applications handled in the AAT's [Taxation and Commercial Division](#).

If you are not a small business entity, you can still apply for review of most taxation decisions. However, your review will be handled in the AAT's Taxation and Commercial Division and a different standard fee will apply.

2.4 Application fee

2.4.1 Standard application fee

A standard application fee of \$517 is payable by an individual or organisation to lodge an application for review of a small business taxation decision.

The AAT may dismiss your application if you do not pay the application fee within six weeks after lodging your application. While your application fee remains unpaid, the AAT may not process your application.

2.4.2 Reduced application fee

You may pay a reduced fee of \$100 in any of the following concessional circumstances:

- you have been granted legal aid for your application;
- you hold a health care card, a pensioner concession card, a Commonwealth seniors health card or any other card issued by the Commonwealth that certifies entitlement to Commonwealth health concessions;
- you are in prison or lawfully detained in a public institution;
- you are under 18 years of age;
- you are receiving youth allowance, Austudy or ABSTUDY; or

⁴ 'Aggregated turnover' is defined in the *Income Tax Assessment Act 1997*.

⁵ 'Small business entity' is defined in the *Income Tax Assessment Act 1997*.

- having regard to your income, assets, expenses and liabilities, the Registrar decides that payment of the fee has caused or would cause you financial hardship.

To apply for a reduced fee, complete the Request for Fee Reduction form found on the [AAT website](#). The AAT will require proof of your circumstances. We can advise you on the type of proof you should provide.

2.4.3 Lower fee where amount of tax in dispute is less than \$5,000 and other circumstances

An application fee of \$95 is payable for review of certain small business taxation decisions if:

- you state in writing that the amount of tax in dispute is less than \$5,000; or
- the ATO has refused your request to be released from paying a tax debt (regardless of the amount involved); or
- the ATO has refused to extend the time for you to lodge a taxation objection.

2.4.4 Multiple applications

If you have made more than one application for review of a taxation objection decision and at least one of those applications for review relates to a small business taxation decision, the Registrar may decide that the applications can be heard together and that a single fee is payable for all of the applications. Where this happens, the relevant fee will be no more than the standard application fee for the review of a small business taxation decision (see 2.4.1).

2.4.5 Further fee information

If you have paid the application fee and the AAT decides that you are entitled to a different and lower fee, the AAT will refund the difference in the amount paid.

If the AAT decides that you are not a small business entity or, if relevant, that the amount in dispute concerned \$5,000 or more, you may be asked to pay the application fee that normally applies to that type of application.

Further information about application fees, including refund for a decision resolved in your favour, can be found on the [AAT website](#).

2.5 Representation and legal advice

A person does not require legal representation to have their case reviewed by the AAT.

At hearings, a party may appear in person or be represented by another person.

2.5.1 Access to legal / taxation advice

Australian Small Business and Family Enterprise Ombudsman (ASBFEO)

The ASBFEO is a Commonwealth Government agency that provides independent assistance to small businesses and family enterprises in resolving various disputes with other businesses or Commonwealth Government agencies.

The ASBFEO concierge service assists small businesses with the review process, including general and legal advice about whether or not it is advisable to seek review of the Commissioner's decision at the AAT, as well as advice during the review process.

Further information about the ASBFEO concierge service can be found on the [ASBFEO website](#).

Commissioner's payment of costs of legal representative in some circumstances

The Commissioner sometimes engages an external legal service provider to act for the Commissioner in the SBT Division. The Commissioner has policies which explain when they will consider engaging an external lawyer, for example, where the outcome of a matter may affect many people or businesses, or it has a high level of technical or factual complexity. The Commissioner has indicated that, where they decide to use external legal services, they will meet the costs of legal representation for small businesses with no legal representation up to a certain amount. The Commissioner must tell you and the AAT if it engages an external legal service provider.

Further information about when legal representation for small business applicants is funded by the Commissioner can be found on the [ATO website](#).

2.6 Other matters relating to costs

Unlike a court, the AAT does not have a power to award costs to any party in taxation cases. It is usual for each party to pay their own costs of running the case. This means that, unless your legal representation is covered by an assistance scheme or service, or the Commissioner's policy (above), you must pay for your own representation.

3. Lodging an Application

3.1 How to apply

Applications to the AAT must be made in writing and give brief reasons for the application. An easy way to do this is through the [Application for Review of Decision form](#) on our website. You can also download an application form from our website, write us a letter or send us an email. You can submit your application by:

- using our online application form;
- coming into one of our offices;
- posting it to us;
- emailing it to us; or
- faxing it to us.

Our contact details are on the [Contact us page](#) on our website.

3.2 Time limit to apply

If you are seeking review of an objection decision, your application must be lodged

with us **within 60 days** after you receive notice of the Commissioner's decision⁶.

You can apply to us for an extension of the time limit, but it is up to a Tribunal member to decide whether or not they will grant the extension in the circumstances. An extension of time application should include the reasons why the application was not made in time.

More information about applying for a review or requesting an extension of time to apply for a review is available from our registries and on our [website](#).

3.3 What happens to the Commissioner's decision in the meantime?

The Commissioner may still implement a decision while the review is being decided (for example, by commencing recovery of a debt). While the Commissioner may agree to suspend implementation of its decision until the review is decided, the AAT cannot require the Commissioner to do so.

4. Acknowledgement, Information Gathering and Early Case Assessment Conferencing

After you apply for a review, we will send you an acknowledgement letter. The letter includes information about the next steps in the application process, and information about legal assistance (where applicable). The letter will also contain contact details of the SBT Division case management team, who you can contact for information relating to your case.

If the AAT has the power to review the decision, we will tell the Commissioner that the application has been received. We will send the Commissioner a letter requiring them to provide documents relevant to your review, and to complete a Preliminary Information Form including summary information about your case and what has been done to resolve the dispute since the date of the taxation decision.

If you are not legally represented, we will contact you by telephone within 7 days after you lodge your application to discuss your case. We may:

- advise you if we do not consider that the AAT has power to review the decision;
- confirm your contact details and your preferred method of being contacted by the AAT;
- discuss whether you will need any particular assistance, such as an interpreter, in accessing the AAT;
- explain our review processes;
- discuss whether there are any additional applications you or other people may need to make e.g. extension of time, joining parties or for expedition; and
- provide information about other resources, including contact details for organisations that might be able to provide legal or other assistance.

If any part of the dispute concerns whether or not you are a small business entity, you should tell the case manager.

⁶ Some other types of decision may have a shorter time frame. This is usually stated in the decision letter.

4.1 Commissioner to provide documents to the AAT

Within 14 days of receipt of the AAT's letter, or as soon as practical, the Commissioner must provide to the AAT:

- a completed Preliminary Information Form;
- contact details for the person within the ATO who is representing the Commissioner, and whether the Commissioner intends to be represented by an external lawyer (if known at that time);
- any other information that would assist the AAT in determining whether early resolution is possible between you and the Commissioner.

4.1.1 T documents

Within 28 days after receiving notice of an application, the Commissioner must provide the AAT with a copy of the documents required under section 37 of the *Administrative Appeals Tribunal Act 1975 (AAT Act)*. For review of an objection decision, these documents are:

- a statement of the reasons for the taxation objection decision;
- the notice of the taxation decision;
- the relevant taxation objection;
- the notice of the objection decision; and
- all other documents under the Commissioner's control that the Commissioner considers relevant to the review together with a list of these documents.

These documents are referred to as the 'Section 37 documents' or the 'T' (for Tribunal) documents.

The Commissioner must also send a copy of the T documents to you and any other party (unless we make a confidentiality order about a document).

Further information about T documents can be found on the [AAT website](#) in the:

- General Practice Direction
- Lodgement of Documents under sections 37 and 38AA of the AAT Act Practice Direction.

4.2 Early Case Assessment Conferencing

If we can review your decision, your matter will be allocated to an Assistant Case Assessment Registrar for early case assessment conferencing.

The purpose of early case assessment conferencing is to:

- identify the issues in dispute;
- encourage and facilitate early negotiation between the parties;
- ensure that all relevant information is exchanged between the parties and provided to us;
- identify any procedural matters that need to be addressed, such as confidentiality orders; and
- direct the way we handle the review.

An Assistant Case Assessment Registrar will contact you to discuss why you think the decision is incorrect, the outcome you are seeking, and what steps you have already taken

to resolve the matter. They may ask you to provide further information. If you have received the T documents and think there are relevant documents that have not been included, you should tell the Assistant Case Assessment Registrar.

If your case can be resolved informally, for example by an exchange of information or early negotiation between you and the Commissioner, the Assistant Case Assessment Registrar will facilitate this. Otherwise the Assistant Case Assessment Registrar will discuss with you and the Commissioner other ways to resolve your case. The Assistant Case Assessment Registrar will make recommendations about how your case will be handled to the Division Head, a Conference Registrar, or a managing Tribunal member who will decide the next steps in handling your review. The next steps may include the AAT's other Alternative Dispute Resolution (ADR) processes, a directions hearing or a hearing. Information about these processes is below.

You are expected to attend any meetings (by telephone, videoconference or in person) between you and the Commissioner that the AAT organises. If you are represented, the AAT may consider excusing you from attending a particular process.⁷

The AAT may give directions about steps that are to be taken to assist settlement of the dispute or to prepare your case. A direction is an order by the AAT requiring that something be done by the parties to a review. Ordinarily, if you do not comply with directions given by the AAT, a Tribunal member may decide to dismiss your case.

5. Other Alternative Dispute Resolution (ADR)

If your matter is not finalised during the early case assessment conferencing process, the Assistant Case Assessment Registrar will discuss your case with the Division Head, Conference Registrar, or a Tribunal member assigned to oversee your case, who will decide the next steps that will be taken in your review. The AAT may conduct a case management directions hearing to further discuss those options with the parties. In either event, the AAT may decide on an ADR method that is appropriate to assist in the resolution of your dispute.

You will be advised of any steps you must take to prepare for an ADR process and its timing. We may do this by making directions.

5.1 ADR methods

The AAT uses a range of dispute resolution methods set out in paragraphs 5.2 to 5.6 below. The method used in your case will depend on your individual circumstances. Further general information about ADR methods can be found on the [AAT website](#). Information in relation to each of the specific ADR methods listed below can be found by clicking on the hyperlinks.

ADR processes are informal, private meetings. For further information on confidentiality in ADR see the [Guidelines on Confidentiality in Alternative Dispute Resolution Processes](#) on the [AAT website](#).

⁷ Requests for adjournments are dealt with in Part 9 of this Guide.

All parties must act in good faith when participating in ADR processes and actively work with the AAT to identify the issues and seek an agreed outcome if one is possible. You must do all the things that the AAT requires you to do before the ADR process. You must come to the ADR process prepared to listen to and understand the other party's views and give serious consideration to a settlement agreement that reflects the circumstances of the case, the requirements of the law and the merits of each side's argument in a reasonable way. A willingness to act in good faith ensures that the fairness of the process is maintained so that both parties can have confidence in any agreement reached.

5.2 Conferences

A Conference is a confidential discussion facilitated by a Tribunal member or Conference Registrar with the parties and/or their representatives.

Conferences provide an opportunity for the AAT and the parties to:

- refine and discuss the issues in dispute;
- identify further evidence that needs to be gathered;
- explore whether the matter can be settled; and
- discuss the future conduct of the matter, including referral to further ADR processes or progress to a hearing, where settlement is not possible.

5.3 Conciliation

A Conciliation is a confidential process in which the parties to a dispute, with the assistance of a Tribunal member, Conference Registrar, or another person appointed by the AAT (the conciliator or co-conciliator), identify the disputed issues, develop options, consider alternatives and endeavour to reach an agreement.

We may ask a person with specialist skills and knowledge to co-conciliate to help you and the Commissioner to reach agreement. For example, we could ask a person who has specialist business accounting skills to co-conciliate.

The conciliator has no determinative role regarding the content of the dispute or its outcome. The conciliator may advise on, or determine, the process of conciliation; make suggestions for terms of settlement; and may actively encourage the participants to reach an agreement consistent with the relevant law.

5.4 Mediation

A Mediation is a confidential process in which the parties to a dispute, with the assistance of a Tribunal member, Conference Registrar or another person appointed by the AAT (the mediator), identify the disputed issues, develop options, consider alternatives and endeavour to reach an agreement. The mediator has no advisory or determinative role in regard to the content of the dispute or its outcome, but may advise on or determine the process of mediation whereby resolution is attempted.

5.5 [Case Appraisal](#)

Case Appraisal is an advisory process in which a Tribunal member, Conference Registrar, or another person appointed by the AAT (chosen on the basis of their knowledge of the subject matter) assists the parties to resolve the dispute by providing a non-binding opinion on the facts and the likely outcomes. The opinion is an assessment of facts in dispute. The opinion may be the subject of a written report which may be admissible at any hearing with the consent of the parties.

5.6 [Neutral Evaluation](#)

Neutral Evaluation is used when the resolution of the dispute requires an evaluation of both the facts and the law. Neutral Evaluation will usually be conducted in the same way as Case Appraisal. In Neutral Evaluation, an evaluator seeks to identify and limit the issues of fact and law that are in dispute and, by that process, assist the parties to resolve the dispute. The evaluator offers a non-binding oral opinion of the issues in dispute, and will usually facilitate settlement negotiations after the oral opinion is given.

6. Hearing

6.1 Before the hearing

If your dispute is not successfully resolved through an ADR process or otherwise by agreement, the AAT will list a hearing before a Tribunal member. The Tribunal member will consider whether it is necessary to hold a case management directions hearing in advance of the hearing to discuss the case with the parties and make any further directions that are required for the delivery of documents and other evidence, the order in which the parties will present their case, and any other matters relating to the conduct of the hearing. The parties should expect to be required to produce documents in accordance with the AAT's [General Practice Direction](#).

If you require documents to be provided or evidence to be given by another person, you should ask the Conference Registrar or the SBT Division case management team about making a request to the AAT to issue a summons to that person.

6.2 Hearing information

Before we set a hearing date, we will ask you and the Commissioner for information about:

- any witnesses who will give evidence at the hearing;
- the availability of the parties, representatives, and any witnesses, including when expert witnesses may be able to give their evidence concurrently;
- the mode of the hearing, such as who can attend the hearing in person and whether part of the hearing is to be conducted by telephone or videoconference; and
- the likely length of the hearing.

If you have a representative, we will usually ask you and the Commissioner to provide this information to us in a [Hearing Certificate](#) and give a copy to the other party. If you are representing yourself, you may also be asked to lodge a [Hearing Certificate](#).

6.3 Telephone or video evidence

While hearings at the AAT are usually conducted in person, we can allow part of the hearing to be conducted by telephone or videoconference. This may be appropriate, for example, if parties or witnesses are located interstate or overseas and are unable to attend in person. If you or the Commissioner would like a witness to give evidence in this way, you must let us know as soon as practical so that we can consider if we should grant the request.

6.4 The Hearing

At the hearing both parties will be asked to explain what they think are the issues in dispute and can ask questions of any witnesses. The Tribunal member controls the process in the hearing and when each party presents their case. It is usual for documents to be received first and then the evidence of witnesses. Witnesses are ordinarily expected to give evidence in a written witness statement and to attend to answer questions. Before oral evidence is given, witnesses are required to give an oath or affirmation that they will tell the truth. The purpose of evidence is to help resolve any facts that are in dispute. After evidence is given the parties will have an opportunity to sum up their arguments about the decision. This may include legal, policy or other reasons why the decision should be changed.

We allocate a certain amount of time for the hearing following an assessment of the information provided by you and the Commissioner. We, you and the Commissioner must make every effort to ensure the hearing is completed within the allocated time.

On rare occasions, it may be necessary for further evidence to be lodged and/or written submissions to be made after the hearing. We will allow this only where it is strictly necessary. Any further evidence or submissions must be lodged in accordance with the timetable set by us. If this does not occur, we may make a decision without the material.

7. Decision

We may give our decision and reasons for decision orally at the end of the hearing. In most cases, we provide a decision and reasons for decision in writing within 28 days of:

- the last day of hearing; or
- if you or the Commissioner have been given permission to lodge further evidence or submissions – receipt of those documents.

8. Finalisation

After a decision has been handed down, we will send you a letter notifying you of the decision and provide you with a copy of the decision. The letter will contain information about your further review rights to the Federal Court of Australia if you are dissatisfied with the AAT's decision. Appeals from AAT decisions to the Federal Court of Australia in taxation matters must be on a question of law and time limits apply.

9. Other matters

9.1 Confidentiality

It is usual for the AAT to hold its hearings in public and publish its decisions on the AustLII website.

However, in taxation cases you have the right to ask for the hearing of your case to be in private⁸. If you ask for your case to be heard in private it means that, as far as practical, the AAT will write its reasons for its decision in a way that is unlikely to identify you.

If you want a certain piece of evidence or a witness's name kept confidential, you might consider applying for an order from the AAT under section 35 of the AAT Act which may further restrict what the AAT can publish in its decision.

9.2 Directions

Directions are orders given by an authorised officer or Tribunal member in relation to a review. They include requiring parties to the review to do things in order to progress the review, including setting the dates by which things need to be done or specifying the documents that need to be provided. It is important that you and the Commissioner follow any directions and comply with timetables given in those directions.

If you or the Commissioner do not comply with a direction, we will list the case for a non-compliance directions hearing. If an applicant has not complied with a direction by the time of the non-compliance directions hearing without a sufficient excuse, we may consider dismissing the application under subsection 42A(5) of the AAT Act.

Details about directions hearings and Tribunal directions, including the consequences of not complying with directions, are set out in full in the AAT's [General Practice Direction](#).

9.3 Requests for adjournments

9.3.1 Conferences and other ADR processes

If you or the Commissioner is unable to attend a conference, conciliation or other ADR process or think it should be postponed, you or they must make a request for an adjournment as early as possible. We will not grant an adjournment unless there are good reasons to do so.

Unless you are representing yourself, the request for an adjournment must be made in writing. The request must:

- explain the reasons for seeking the adjournment;
- tell us whether the other party agrees to the adjournment; and
- if you or the Commissioner wants a postponement, suggest when the conference or other ADR process should be re-listed and why.

⁸ See section 14ZZE of the *Taxation Administration Act 1953*.

If you are representing yourself, you can contact us by telephone to explain the reasons for requesting an adjournment. We might ask you to put the reasons in writing. We will ask the Commissioner whether they agree to the request and then decide whether or not to grant the request.

In relation to a request for an adjournment of a conciliation or another ADR process, the request should be made as early as possible and preferably at least 10 working days before the listing.

9.3.2 Hearings

Our policies and procedures about requests for adjournment of a hearing are set out in full in the AAT's [General Practice Direction](#). We will only grant an adjournment if there are good reasons to do so. Parties should not assume we will grant a request for an adjournment.

An application for an adjournment of a hearing must be made at the earliest opportunity. It must:

- be in writing addressed to the District Registrar;
- include the reasons for asking for an adjournment;
- be signed by you or the Commissioner; and
- be accompanied by any documents that support the application.

Unless you are representing yourself, any written request for an adjournment should also indicate whether the other party agrees to the adjournment.

Please note that we will usually hold a directions hearing in relation to the adjournment application, either in person or by telephone.

10. Resources

AAT Resources

Application for Review of Decision forms

Forms used in the AAT's General and Other Divisions, including the Small Business Taxation Division, are found on the Forms page on the [AAT website](#).

Representation

Information about finding representation at the AAT can be found on the Representation page on the [AAT website](#).

Information videos

AAT information videos aim to assist people to understand the AAT's role and processes. Please visit the information videos page on the [AAT website](#).

Practice Directions and Guide on the Small Business Taxation Division

Practice Directions and other policy guidelines, including those relating to the Small Business Taxation Division can be found on the [AAT website](#).

Act and Regulation

The *Administrative Appeals Tribunal Act 1975* and the *Administrative Appeals Tribunal Regulations 2015* can be found on the [Federal Register of Legislation](#). The legislation is subject to periodic review and amendments.

Contact Us

<http://www.aat.gov.au/contact-us>

Other Resources

Australian Tax Office

Dispute or object to an ATO decision

<https://www.ato.gov.au/General/Dispute-or-object-to-an-ATO-decision>

Australian Small Business and Family Enterprise Ombudsman (ASBFEO)

Information about the ASBFEO Small Business Concierge Service can be found on: <https://www.asbfeo.gov.au/assistance/concierge-service>

Contact details for the [ASBFEO](#) can be found on: <https://www.asbfeo.gov.au/contact-us>:

Telephone: 1300 650 460

Email: info@asbfeo.gov.au