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Office of the Inspector-General of Tax and Tax Ombudsman
Sydney NSW 2001

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Tax Ombudsman's Consultation on 'Systemic reviews: refresh of our FY26 work plan' – Feedback of UNSW Tax and Business Advisory Clinic

Thank you for the opportunity to provide feedback in relation to the Tax Ombudsman's review of its FY26 Work Plan.

Background

Our feedback will be focussed on the issues that arise at the intersection of the ATO's administration of the tax system and financial abuse affecting taxpayers. Financial abuse occurs in nearly all domestic violence cases, disproportionately affects women, and impacts over 2.4 million Australians. Financial abuse costs victim-survivors and the national economy over \$10.9 billion annually, undermines child support and family tax benefit, and puts victim-survivors at critical risk of bankruptcy, homelessness and loss of child custody.

Endorsements

We support the feedback outlined in the Economic Abuse Reference Group's response which is particularly significant given their deep expertise in identifying and supporting individuals experiencing financial abuse.

Issues review: The ATO's use of Director Penalty Notices

We would strongly support the Tax Ombudsman conducting a detailed review of the ATO's use of Director Penalty Notices ('DPNs'), with a particular focus on its adverse impact on victim-survivors of financial abuse. The ATO has issued over 110,000 DPNs since 2021, which require payment of the full amount of the tax debt within 21 days of posting the DPN to avoid personal liability.

This is particularly problematic for the following reasons:

1. There is no administrative guidance (or case law) regarding the fact that the good reasons defence applies to victim-survivors of financial abuse.
2. It is unclear what evidence the ATO requires to establish a good reasons defence.
3. There is an assumption that directors listed on the ASIC register have been validly appointed (including having provided informed consent to become a director).
4. The strict time periods that are currently in place to lodge a defence to a DPN are almost impossible for victim-survivors of financial abuse to meet. Victim-survivors often do not have access to financial and tax records and as such need to go through extensive processes to prepare a defence to a DPN. This is because victim-survivors are often in the process of rebuilding their lives following their escape from their former partner when they receive a DPN.
5. DPNs are often sent to incorrect addresses, particularly in the case of victim-survivors of financial abuse whose residential address is likely to be subject to change at short notice (or is under the control of their abuser). As DPNs are deemed to be served on the day

that they are posted (such that the 21-day period commences from the posting date) incorrect addresses are particularly concerning.

6. Many victim-survivors of financial abuse lack access to specialist advice and do not have the financial resources required to understand the implications of a DPN or prepare an appropriate defence in response to receiving a DPN.

7. Abusive partners often exploit corporate structures by appointing their partner as a company director (often without their knowledge or consent). When the ATO issues DPNs to directors appointed under these coercive circumstances, it inadvertently enables the weaponisation of the Australian tax system.

8. Issuing DPNs to victim-survivors of financial abuse is likely to conflict with national strategies (including the National Plan to End Violence Against Women and Children) on financial abuse which emphasise economic empowerment and recovery.

We are of the view that there are further steps that the ATO can take to prevent victim-survivors of financial abuse experiencing the trauma of receiving a DPN. For example, an investigation into the ATO's use of DPNs may assist to better understand what processes (if any) are in place to check the validity of tax debts prior to DPNs being issued. It could also lead to the development of criteria for an ATO published checklist of the steps it will take to identify if there is potentially a victim-survivor (eg a restraining order is in place) and publish the steps it will take including communication protocols for engaging with victim survivors and their advisors to determine if in the circumstances the DPN should be issued.

It is imperative that care be taken to ensure that victim-survivors are not adversely affected by a DPN issued to them in relation to companies they played no part in managing. It is grossly unjust for victim-survivors to be potentially made bankrupt in these situations.

Sample of DPN Client Stories

The UNSW Tax and Business Advisory Clinic has assisted many victim-survivors of financial abuse who have received DPNs. Two recent client stories are summarised below.

Emily was a victim-survivor of severe domestic violence. She was asked by her former partner to sign some documentation at the beginning of their relationship without understanding that it would make her a director of his company. Emily never participated in running the business. Emily received three DPNs in relation to unpaid SGC, PAYGW and GST, totalling approximately \$180,000. Emily's ex-husband continued to operate the business and had better capacity to pay the outstanding tax debt. Prior to engaging the Clinic, Emily called the ATO on a number of occasions to explain that she was trying to get assistance and had spoken to numerous agencies who were unable to help. Emily advised the ATO that this process was taking longer than expected due to the complexity of her situation and the fact that she could not afford legal or tax advice. With the support of the Clinic and senior lawyers providing pro bono support, Emily's good reasons defence was successful. The process of drafting the defence and interacting with the ATO required significant time and specialist expertise; support that most people in her situation would not have access to. Without it, Emily may have been forced into bankruptcy for a debt she neither knew about nor was responsible for creating.

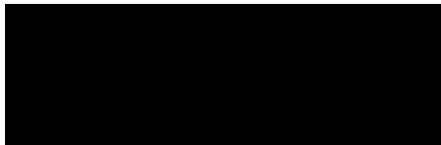
Greta was a victim-survivor of coercive control and financial abuse. She agreed to become a director of a company her husband controlled as she was fearful of the consequences that would arise from her husband if she refused. Greta received two DPNs in relation to unpaid SGC and PAYGW, totalling approximately \$150,000. Greta's good reasons defence was unsuccessful because the ATO had recordings of Greta calling the ATO to negotiate payment plans for the company's tax debt. The ATO never considered that this could have occurred due to coercive control undertaken by Greta's husband. The ATO reduced her debt to approximately \$40,000 due to the remainder being invalidly levied. Unfortunately, Greta considered the significant reduction in the debt a "win" and decided that she did not want to pursue this matter any further. Greta sought to enter into a payment plan with the ATO as she was unable to pay the outstanding balance as a lump sum without depleting all of her savings.

Concluding Remarks

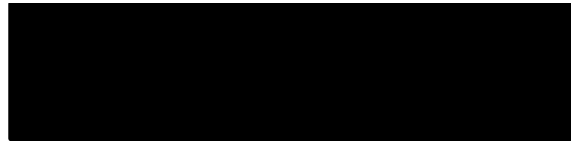
We recommend a comprehensive review of the ATO's use of DPNs should be prioritised in the next financial year to ensure alignment with the ATO's new Vulnerability Framework and to protect victim-survivors of financial abuse from being held liable for tax debts that they did not incur.

If you have any questions about this submission, please contact A/Professor Ann Kayis-Kumar at a.kayis@unsw.edu.au.

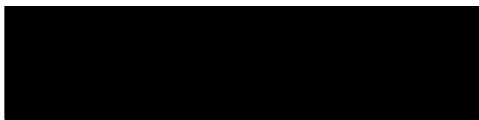
Yours faithfully,
UNSW Tax and Business Advisory Clinic



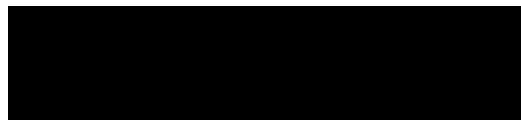
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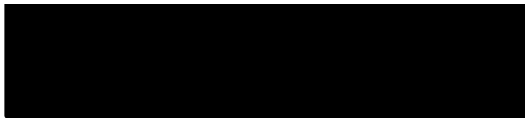
Jennie Granger
Professor of Practice



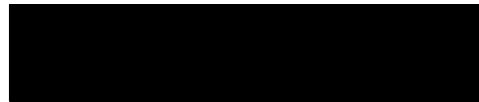
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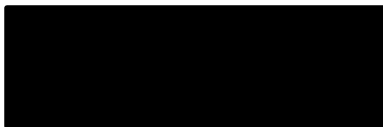
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