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PO Box 135 Ashgrove 4060
7th December 23

ATO Complaints, PO Box 1271, Albury NSW 2640

Cc

Andrew.Leigh.MP@aph.gov.au

Assistant Minister for Competition, Charities and Treasury

Dear ATO Complaints,

RE – ATO red/bad tape significantly impacting small not-for-profit associations

Since November 13th 2023, the ATO no longer permits tax agents to assign themselves as the tax agent for an organisation. The tax agent can only become the organisation's agent after an authorised person of the association has nominated the tax agent in the ATO online portal. Refer -

https://www.ato.gov.au/Tax-professionals/Digital-services/Online-services-for-agents/Client-to-agent-linking-in-online-services/?=redirected_atoo_AgentnominationsOSFA

Small not-for-profit associations are not like companies. The continuity of ATO public officers (and other authorised persons) in a not-for-profit can often have discontinuities. Any of the following scenarios can and do regularly occur and if an organisation does not have (or chooses not to have) a current tax agent, then the implications for communicating with the ATO are dire when –

- Authorised contacts (as recorded in the ATO system) are unknown because records are lost.
- Authorised contacts (as recorded in the ATO system) are uncontactable.
- Authorised contacts (as recorded in the ATO system) are uncooperative.

When an organisation does have a current tax agent, the tax agent is able to change the details of office bearers in the ATO portal (presumably after sighting minutes authorising those changes).

But if there is no current tax agent, the organisation must deal with the ATO to effect any changes. The ATO does not have a procedure to process a 'change of registration' details form (NAT 2943) if the person signing the declaration is not currently on the ATO system as having authority to update registration details. Any form sent to the ATO which fails to meet the criteria will be discarded. The applicant will not be informed that the form has been rejected.

In a previous complaint, 1-9864610783 (refer attached) – the ATO did advise a way to submit a 'change of registration' details when prior authorized contacts as recorded in the ATO system were unknown. However, when subsequently this process was followed – it was not successful – (verbally I was told that there was no such process). The issue was not pursued further at that time because it was simpler to pay a tax agent to affect the once off changes needed in order to gain access to the ATO. That avenue has now been cutoff unless there is a current tax agent for the organisation.

The consequence is that the not-for-profit entity will be stuck in no man's land with no way to appoint a tax agent and no way to get individuals authorised with the ATO.

My complaint will be resolved when the ATO implements a robust process to support the recording of the current public officer of an organisation for instances where an organisation is unable to submit a NAT 2943 with a completed declaration through lack of knowledge of a prior authorised person and/or lack of a signature of a prior authorised person.

I also question the existing ATO process in regard to –

The name 'Public Officer' suggests that the person's role should be made public. Why isn't the public officer listed on the ABN lookup with contact details or generally publicly accessible in some other way? This could be a partial solution to the issue described.

Why do your officers consider that the NAT 2943-8.2021 is incomplete when all relevant fields have been filled out? In a recent submission to ATO of a NAT 2943 for 'Serenella Apartments CTS 26629' – I was contacted by the ATO (reference 1052201850782) requesting my date of birth and TFN. It would seem that the DOB and TFN fields are missing from section 11 of that form. Perhaps your form needs updating. Surely you should be requesting an email address and dropping the fax field.

Isn't it totally inappropriate for the ATO to accept a NAT 2943 declaration if the signee is not a current office bearer of the organisation? Yet this is what the ATO are encouraging.

My suggestion to you to solve this problem is to follow a similar process used by other statutory bodies such as 'Titles Queensland' –

A suitable office-bearer (e.g. Chair/Sec/Treas but someone other than the public officer) signs and dates the minutes of a meeting underneath an attestation that states that the minutes are a true and correct record of meeting. One of the resolutions of the meeting identifies a new public officer. The newly identified public officer is able to sign and declare the NAT2943 (irrespective of whether they are recorded in the ATO system as an authorised contact person) provided that they submit the form to the ATO together with the attested minutes. Presumably, an offence would be committed if either or both individuals gave false or misleading information.

Additionally, to improve security, when individuals are added or removed as authorised contacts or associates – they should receive an email or txt advising of the change. That way, any inappropriate submissions may be detected.

I await the resolution of this complaint.

Regards,

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Public Officer for an awful lot of small bodies corporate in Queensland