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Phoenix plan 'not tough enough'

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The Australian Taxation Office has drawn fire from the chief of a leading debt collection agency for proposing a solution to the harm done by phoenix companies that protects the ATO at the expense of small to medium-sized businesses.

Assistant Treasurer Nick Sherry said that the ATO would expand and reform the use of security deposits, which are like a bond to cover an existing or future tax bill.

They can be used for attacking phoenix activity, which is the "deliberate, and often systematic, liquidation of a company to avoid the payment of liabilities, including wages and superannuation, business creditors and outstanding taxes".

The business then "rises" and continues through another company free of those debts.

Senator Sherry said that latest estimates show phoenix activity may be ripping up to $600 million from the national revenue base.

Despite the government's attempts to tackle phoenix activity, which most legitimate SMEs have faced at some time in their existence, not all businesses in the SME market believe the latest proposal goes far enough.

Businesses are still vulnerable . . . Roger Mendelson has slammed the Tax Office's proposal. Photo: ANDREW DE LA RUE

The chief executive of Prushka debt collection agency, Roger Mendelson, said the new plan, requiring bonds from business operators with a bad compliance record, would protect the ATO from phoenix operators not business creditors.

"While the ATO's plan will protect the revenue from losses resulting from phoenix activity, it essentially leaves other creditors such as small businesses out in the cold and unprotected from companies that become liquidated without paying their debts," Mr Mendelson said.

"This is yet another example of the government's lack of understanding about small business.

"For every $1 [of tax] lost from phoenix activity, at least $5 is lost by businesses, resulting in billions of dollars lost by SMEs to phoenixing every year."

Directors of phoenix companies allow them to trade while insolvent. They pay excessive salaries to directors and associates, have no intention of paying tax, and incur debts with other businesses that will never be paid.

Mr Mendelson said that the government should make company directors liable for failing to keep all intending creditors informed about the solvency situation of their company by requiring them to provide a solvency statement to any creditors that request one.

He argued that such statements would allow creditors to make informed decisions about providing credit.

If directors refuse to provide a statement, or if the statement is subsequently shown to be inaccurate or misleading and results in losses by the creditor, the creditor would be entitled to sue the directors personally to recoup their debt.