

Readiness to engage

The importance of early engagement

- 4.1 During the inquiry, the Committee often heard comments that the other side did not properly engage during a dispute, leading to increased cost and stress. Ms Judy Sullivan from PricewaterhouseCoopers (PwC) summarised this general position as follows:

The relationship between taxpayers, the ATO and their advisors is the key to early resolution of tax disputes. That involves two-way transparency and early engagement on what the dispute is about and what the ATO's concerns actually are... It is in everyone's interests for the ATO to put the cards on the table as to what the dispute is about so both sides can agree what additional information is both relevant and required and how to approach any areas of uncertainty.¹

- 4.2 The Committee received evidence on how previously intractable disputes were resolved quickly through direct discussion, especially when a taxpayer has access to the right people in the ATO:

I think the senior people at the ATO are very good, very easy to talk to and can be quite sensible. The question is getting to them... Maybe they are too busy; maybe it is somebody else blocking the way, saying, 'We don't regard this as sufficiently important to escalate it to that level.' I have had a matter where the audit was very protracted, it went on for many years, then an assistant commissioner became involved and in one meeting we got it

¹ Ms Judy Sullivan, PwC, *Transcript of Evidence*, 18 August 2014, p. 20.

resolved – one meeting. How much expense would have been saved for the revenue and the taxpayer if that assistant commissioner had been brought in 12 months or two years beforehand?²

4.3 Early engagement also allows the ATO and taxpayers to work through issues before a dispute escalates and becomes more formal, time consuming and expensive. Mr Christopher Budd stated that his recent experience of a dispute was more preferable than previous occasions because he was able to work through the issues with the ATO, rather than progressing to the Administrative Appeals Tribunal (AAT).³

4.4 The ATO advised the Committee that it is moving towards earlier engagement with taxpayers, including a ‘pick up the phone’ theme.⁴ The ATO stated:

We are working to implement the strategies in our Dispute Management Plan. The aim of early assessment and resolution is to achieve resolution of disputes as early as practicable, reducing the costs of managing disputes to taxpayers, the community and the ATO. The early assessment and resolution initiative encourages case officers to make direct communication with taxpayers and their advisers at the earliest possible stage of the dispute, and to change from a ‘letter writing’ approach to simple and direct communication. We also recognise that earlier engagement with taxpayers, preferably in person, provides the best opportunity to resolve disputes at the earliest possible stage. We recognise that listening to taxpayers directly and hearing their version of events can be very useful in clarifying issues in dispute and evidentiary issues.⁵

4.5 As discussed in chapter 2, the ATO has adopted 12 strategic indicators. One of these is that disputes are resolved earlier.⁶ ATO settlement statistics support this shift, reproduced in the following table. In 2010-11, 52 per cent of settlements occurred at the objection stage or earlier. This has now increased to 76 per cent. Conversely, there has been a marked decrease in settlements during litigation, from 47 per cent in 2010-11 down to 23 per cent in 2013-14. Recent change is evident, but it is also clear that change has been ongoing, with 2011-12 an improvement over 2010-11.

2 Mr Graeme Halperin, *Transcript of Evidence*, 14 August 2014, p. 24.

3 Mr Christopher Budd, *Submission No. 29*, pp. 1-2.

4 ATO, *Submission No. 10*, p. 29.

5 ATO, *Submission No. 10*, p. 13.

6 ATO, *ATO strategic intent: Reinventing the ATO*, July 2014, p. 13.

Table 4.1 Stage at which settlement occurred (%)

Stage	2010-11	2011-12	2012-13	2013-14
Pre-audit	3	6	7	5
Audit	28	33	42	42
Objection	21	24	23	29
AAT	43	21	24	18
Federal Court	4	15	4	5
Other	0	1	0	0

Source IGT, *The Management of Tax Disputes: A report to the Assistant Treasurer, January 2015*, p. 59. AAT refers to the Administrative Appeals Tribunal.

4.6 Stakeholders in the inquiry agreed that the ATO had started to change the way it engaged with taxpayers and their advisers and was more prepared to negotiate and to look at settlements on a commercial basis.⁷ However, there was less evidence that this had filtered down to the SME sector.⁸ It appears that ATO resources and innovations in general tend to be focussed on large corporates and that SMEs need to wait before the new practices filter down to them.⁹

4.7 From February 2014, the ATO conducted a pilot for early engagement with small business. The key features are:

- telephoning a taxpayer before the audit letter is issued
- a face to face meeting to discuss the audit.¹⁰

4.8 In the 2012 report on alternative dispute resolution (ADR), the Inspector-General of Taxation (IGT) recommended that the ATO should consider having direct conferences with taxpayers at various stages in a dispute. Recommendation 3.5.2 stated that the ATO should:

... amend its compliance procedures to require ATO officers to consider, and if appropriate engage in, direct conferences with taxpayers at each of the following points in time:

- when the parties have reached agreement as to the facts, or agreement to disagree on contentious factual matters;
- prior to issuing a position paper or reasons for decision;

7 Mr Philip Hack SC, AAT, *Transcript of Evidence*, 16 October 2014, p. 2; Mr Michael Flynn, The Tax Institute, *Transcript of Evidence*, 14 August 2014, p. 9; CPA Australia, *Submission No. 7*, p. 2.

8 The Tax Institute, *Submission No. 11*, p. 4; Law Council of Australia, *Exhibit No. 2*, p. 2.

9 Mr Michael Croker, CAANZ, *Transcript of Evidence*, 18 August 2014, p. 10; Mr Lance Cunningham, BDO, *Transcript of Evidence*, 18 August 2014, p. 6.

10 ATO, *Submission No. 10.2*, p. 6.

- following the lodgement of an objection; and
- at any other point in time at which the parties agree that a case conference would be beneficial.¹¹

4.9 CPA Australia made a similar suggestion to the Committee.¹²

4.10 In its response to the IGT's report, the ATO stated that it agreed 'to ongoing engagement with taxpayers during our large and more complex compliance activities'.¹³

Committee comment

4.11 The Committee is pleased the ATO has agreed to the IGT's recommendation on direct conferences and ongoing engagement at various stages of a dispute. However, the Committee notes that the ATO did not commit to improve engagement with SMEs.

4.12 Given the direction in which the ATO is now moving, the Committee anticipates that the Inspector-General's recommendation will be implemented for the SME sector as well. The Committee recommends direct conferences and engagement at various stages of a dispute be considered for all taxpayers.

Recommendation 12

4.13 **The Committee recommends that the Australian Taxation Office implement recommendation 3.5.2 from the Inspector-General's report on alternative dispute resolution for all taxpayers (i.e. considering whether to engage in direct conferences with taxpayers at multiple points in a dispute).**

Listening to taxpayers

4.14 A common complaint raised during the inquiry is that the ATO does not listen or respond to taxpayer arguments, or that it only does so once ATO

11 IGT, *Review into the Australian Taxation Office's use of early and Alternative Dispute Resolution: A report to the Assistant Treasurer*, May 2012, p. 42.

12 CPA Australia, *Submission No. 7*, p. 2.

13 IGT, *Review into the Australian Taxation Office's use of early and Alternative Dispute Resolution: A report to the Assistant Treasurer*, May 2012, p. 42.

legal personnel become involved.¹⁴ Mr David Hughes from Small Myers Hughes stated to the Committee:

My concern and that of the many SME owners that I represent is that there are still too many ATO officers whom I would describe as zealots and who seem to approach their duties as auditors or objection officers or debt collectors as though all self-employed people or business owners are tax cheats and should not be believed.

...In too many cases that I see, an ATO auditor will form a very early conclusion about the bona fides of a taxpayer. After that view is formed, no amount of evidence or legal submissions can convince some auditors that amended assessments should not issue to increase the amount of tax payable.¹⁵

4.15 Some of the other claims made during the inquiry about the ATO were:

- 'digging-in' or intransigence
- auditors becoming emotionally invested
- not being prepared to accept that a taxpayer could be right on a matter of fact
- bringing up trivial issues late in an audit after the taxpayer rebuts the initial ATO position.¹⁶

4.16 Mr Matthew Wallace from BDO advised the Committee that one of the reasons this conduct occurs is that there is no incentive in the legislation or ATO systems for ATO staff to engage earlier.¹⁷

4.17 Notwithstanding this, the Committee endorses the comments of Mr Mark West, McCullough Robertson, that the ATO should operate 'with respect for everyone rather than assuming that there is something that they are not dealing with.'¹⁸

14 Mr Chris Wallis, *Submission No. 28*, p. 10.

15 Mr David Hughes, Small Myers Hughes, *Transcript of Evidence*, 16 October 2014, p. 15.

16 Mr Chris Wallis, *Transcript of Evidence*, 14 August 2014, p. 35; Mr Ian Hashman, *Transcript of Evidence*, 24 September 2014, p. 3; Mr Matthew Wallace, BDO, *Transcript of Evidence*, 18 August 2014, p. 2; Mr Rob Salisbury, *Submission No. 21*, p. 4; Mr Tony Fittler, HLB Mann Judd, *Transcript of Evidence*, 14 August 2014, p. 3; Mr Stephen Madz, *Transcript of Evidence*, 14 August 2014, p. 18; Mr Alan Bentwitch, Bentwitch & Co., *Transcript of Evidence*, 18 August 2014, p. 40. Mr Chris Wallis, *Submission No. 28*, p. 22.

17 Mr Matthew Wallace, BDO, *Transcript of Evidence*, 14 August 2014, p. 4.

18 Mr Mark West, McCullough Robertson, *Transcript of Evidence*, 16 October 2014, p. 7.

- 4.18 It is clear that, from time to time, a taxpayer will be providing the ATO with full, accurate information, even though this may not be apparent to the ATO. The Committee is of the view that the ATO needs to ensure that its actions stand up to scrutiny and that it listens to taxpayers, regardless of whose position is technically correct.

Taxpayers withholding information

- 4.19 The ATO made a counter claim in relation to the engagement issue, namely that taxpayers often withhold information from the ATO, making the ATO's job more difficult, as well as incurring greater costs for all parties. The Commissioner stated:

... I have had articles pointed out to me where there have been tax conferences or seminars where people write papers or get up and actually say, 'Don't worry about the audit stage; just humour them; hold back.' ... 'Wait until you get to the objection stage, and then you will get the law people, you'll get the smarter ones.' That is just not the right process. That is what we are actually actively trying not to do. Hence, it is reflected that we go, 'Okay; here's a whole lot more information.' Some people think, 'I hope they go away.' Then they get an assessment and then they will go to their adviser at that point, and it is only at that point that the adviser says, 'Actually, you should have told them this, this and this' ... When I first saw this, I said, 'How come we've got so many objections being allowed? That is not good.' But actually we can show that, with a lot of those, we are hearing information for the first time, people are engaging advisers for the first time.¹⁹

- 4.20 This comment provoked a strong response from tax practitioners, who argued that they would never provide such advice to a client. Doing so would increase the risk that a taxpayer might not be viewed as compliant and it would reduce the chances of the ATO exercising discretion in favour of the taxpayer.²⁰
- 4.21 The Committee heard it is possible that advisers provide too much information to the ATO in an effort to be seen to be compliant. Further, a

19 Mr Chris Jordan, Commissioner of Taxation, *Transcript of Evidence*, 16 July 2014, p. 10.

20 For example, Mr Michael Flynn, The Tax Institute, *Transcript of Evidence*, 14 August 2014, p. 15; Mr Michael Bersten, PwC, *Transcript of Evidence*, 18 August 2014, p. 20; Mr Alan Bentwitch, Bentwitch & Co., and Mr Peter Sullivan, LCD & Co. Accounting Services, *Transcript of Evidence*, 18 August 2014, p. 42.

taxpayer or adviser who is inexperienced may not understand what the ATO is really after. A tax barrister, Mr Graeme Halperin, stated:

What there is not – and, unfortunately, this is probably something you only get from experience – is an understanding of the significance of what you need to gather up and provide when you are complying with an obligation. I do not think it is because people are deliberately withholding information. My experience has been that tax agents are generally trying to find every opportunity to comply, hoping not to get the ATO angry. Sometimes they provide information that is completely irrelevant, only because they are desperately trying to placate the ATO for their client.²¹

- 4.22 However, tax practitioners acknowledged that, on occasion, information is not provided early enough to the ATO and that a significant proportion of objections are allowed because information was provided after an assessment was issued. Witnesses put this down to various factors, such as human nature, a lack of conflict management experience by the taxpayer or adviser, and that the ATO does not engage earlier or appropriately.²²
- 4.23 The Committee accepts that there will always be some taxpayers who are tardy in providing information. This issue was also referred to by Mr Philip Hack SC, a Deputy President of the AAT.²³ Nonetheless, the Committee is of the view that the ATO has some strategies available to it to reduce the late provision of information. These are discussed throughout this chapter.
- 4.24 The Committee would also note that the ATO has a great deal of experience of taxpayer behaviour and is in a position to learn from this to develop strategies that help improve the flow of information. For example, the ATO advised the Committee that it learnt from its cash economy audits that a key characteristic is that taxpayers provide material information late in the process. The ATO stated that it changed the way it gathers information to prevent this occurring.²⁴ The Committee welcomes this development and notes that there are other examples where it can

21 Mr Graeme Halperin, *Transcript of Evidence*, 14 August 2014, p. 19.

22 Dr Niv Tadmor, The Tax Institute, *Transcript of Evidence*, 14 August 2014, p. 15; Mr Graeme Halperin, *Transcript of Evidence*, 14 August 2014, p. 19; Ms Judy Sullivan, PwC, *Transcript of Evidence*, 18 August 2014, p. 24.

23 Mr Philip Hack SC, AAT, *Transcript of Evidence*, 16 October 2014, p. 2.

24 ATO, *Submission No. 10*, p. 28.

change its procedures to encourage the earlier provision of information, which would benefit both the ATO and taxpayers.

Centralisation of ATO expertise

- 4.25 The Committee asked witnesses whether centralising expertise at the ATO had adversely affected dispute resolution. Michael Croker of Chartered Accountants Australia and New Zealand (CAANZ) replied that centralising tax officers had led to a 'great sense of loss' about losing local expertise and the ability to quickly resolve issues through a local 'go-to' person. He observed that the staffing model now consisted of centralised expertise within certain offices or groups, and that the ATO was now increasingly reliant on the Tax Counsel Network for technical advice.²⁵
- 4.26 Bernard Marks of the Law Institute of Victoria noted one case in which the centralisation of expertise, and the removal of local staff, had led to dealing with many different, geographically dispersed ATO teams.
- 4.27 Mr Marks recounted the tale of a recent dispute where a taxpayer had already made a settlement offer that was rejected by the ATO. The taxpayer was located in Victoria, and the original decision makers were in Tasmania. Expert advice was provided by officers from South Australia and New South Wales, and the objection was reviewed in Queensland. Mr Marks sought to meet with the reviewer in Queensland to discuss the case and was prepared to finance his own travel. This approach was rebuffed, because there would also be the need to bring in the technical advisors from South Australia and New South Wales at taxpayer expense.
- 4.28 Mr Marks then succeeded in entering into ADR in Victoria, which involved an Assistant Commissioner. The matter was resolved on the day in favour of the taxpayer. Mr Marks believed that the reviewer had been 'nobbled by someone else, who had been involved with the original decision, who clearly wanted to protect the original decision.'²⁶
- 4.29 The Tax Institute supported the point that centralisation lengthened disputes, observing that it was difficult to arrange face-to-face meetings, which have generally been shown to resolve disputes more quickly.²⁷

25 Mr Michael Croker, CAANZ, *Transcript of Evidence*, 18 August 2014, p. 12.

26 Mr Bernard Marks, Law Institute of Victoria, *Transcript of Evidence*, 14 August 2014, p. 30.

27 The Tax Institute, *Submission No. 11*, p. 5.

Lack of transparency

4.30 A number of organisations expressed concern that the ATO does not inform them of its thinking during a dispute, especially in relation to technical matters. The Law Council of Australia described this as a ‘perennial concern.’²⁸ The law firm McCullough Robertson advised the Committee that this can act as a barrier to resolving a dispute because they are not able to respond to the issues:

The other difficulty which we often come across is that there will be a technical issue which we are wanting to raise with the ATO and there is a lack of transparency in how that technical issue is being dealt with. So as practitioners, we will raise the issue with the ATO officers concerned yet we have a real difficulty in understanding whether that issue actually has been escalated internally within the ATO and also in getting feedback as to whether that issue has been dealt with, by whom it has been dealt with or even any engagement with anyone who is of a high level of seniority in decision making. And that tends to constrain the actual dealing with issues, which means that this particular issue becomes the issue which ends up being litigated in the proceedings.²⁹

4.31 Mr Michael Croker from (CAANZ) gave the Committee a similar example where the ATO now places more reliance on data and analytics, stating that the ATO might conduct a great deal of research ‘on the quiet’ and then unexpectedly confront an adviser or taxpayer with its results, requesting an explanation. Mr Croker stated he would prefer a more collaborative approach where the ATO is confident enough to discuss a business’s commercial drivers and motivations.³⁰

4.32 The Committee is concerned that, in some circumstances, a lack of transparency can adversely affect a taxpayer’s perceptions of fairness. Mr Ian Hashman complained that he was subject to ‘audit by stealth’ and that the ATO refused to speak to his advisers. Mr Wayne Graham said that the ATO did not tell him what his audit was about or invite him to participate or provide information.³¹

28 Law Council of Australia, *Exhibit No. 2*, p. 9.

29 Mrs Sarah Blakelock, McCullough Robertson, *Transcript of Evidence*, 16 October 2014. See also PwC, *Submission No. 23*, p. 9.

30 Mr Michael Croker, CAANZ, *Transcript of Evidence*, 18 August 2014, p. 12.

31 Mr Ian Hashman, *Transcript of Evidence*, 24 September 2014, p. 1; Mr Wayne Graham, *Transcript of Evidence*, 1 October 2014, pp. 7, 8.

- 4.33 In a supplementary submission, the ATO noted that a lack of transparency is one of the key themes in the inquiry.³² The Committee appreciates that the ATO has picked up on this matter. Some recommendations follow in the next section.

Information requests

- 4.34 Taxpayers commonly complained of the ATO making large information requests with short deadlines, and then spending six to 12 months with the data before responding to the taxpayer. The Committee also heard that the ATO can request a response to a complex audit within a short time frame.³³ This lack of reciprocity is upsetting for taxpayers and does not promote engagement. In fact, the Law Council suggested that it caused or escalated disputes.³⁴

- 4.35 PwC explained the problem as follows:

We continue to observe ATO audit teams taking a ‘scattergun’ approach to information gathering, via extensive and multiple information requests, without transparency or engagement with the taxpayer as to why the particular requests are relevant to specific issues in dispute...

We continue to observe instances of ATO delays during the course of the audit, in circumstances where taxpayers are not afforded the same degree of leniency in ATO imposed timeframes for the provision of information. Nor are reasons for the delays adequately explained. This inconsistency between what the ATO expects and what it does breaches principles of reciprocity, which in turn jeopardises the ATO’s stated desire to foster genuine engagement with taxpayers.³⁵

- 4.36 The Committee heard of some variations on this theme. A claim was made of ‘drip questioning’ where questions are spread over an extended period without progressing the dispute. The other practice claimed was ‘ping pong’ where the ATO sends out a letter or minor request, or repeats an

32 ATO, *Submission No. 10.2*, p. 3.

33 For example, Matthew Wallace, BDO, *Transcript of Evidence*, 18 August 2014, p. 1; CPA Australia, *Submission No. 7*, p. 2; Mr Graeme Halperin, *Transcript of Evidence*, 14 August 2014, p. 20. Mr Richard Wytkin, *Transcript of Evidence*, 29 October 2014, p. 4.

34 Law Council of Australia, *Exhibit No. 2*, p. 7.

35 PwC, *Submission No. 23*, pp. 7, 13.

earlier request, within 28 days of a taxpayer action. It does not progress the dispute, but it allows the ATO to state that it met a performance indicator.³⁶

- 4.37 Other organisations commented that being seen to meet a performance indicator was a reason behind the problem with the timing of information requests.³⁷ Mr Tony Fittler from HLB Mann Judd stated that this was unfair on businesses:

One point that I can see on this ... is the issue of KPIs. Sometimes what we see is the situation that Lance described, where something has run for a fair period of time and then, all of a sudden, it has to be finished off in three days: 'If you have not provided this information, then I have to close my file on Friday'. Then the next minute you have an assessment, and you might take an assessment that is, actually, just completely wrong. But, unfortunately, you are already then into objection stage.

... So that is one of the things I see with the time thing – yes, we made a decision and, yes, assessment has gone, but there is no fairness because, all of a sudden, the taxpayer has a penalty. Typically, they have a 25 per cent penalty; they have seven per cent GIC. So they have a huge liability, but a KPI was met. I just think that is a huge burden on Australian business.³⁸

- 4.38 Mr Lance Cunningham from BDO suggested that the problem could also be due to workload demands and juggling staff.³⁹

- 4.39 In relation to the wide scope of information requests, Mr Matthew Wallace from BDO advised the Committee that it would be reasonable for the ATO to keep its eye out for additional issues during an audit.⁴⁰ The Committee agrees. However, there is a risk that a dispute can become a wide ranging audit. PwC noted that the ATO can make narrow, focussed inquiries while at the same time reserving the right to come back to other issues. It stated:

The problem stems from the fact that they are trying to make broad-ranging inquiries without actually trying to limit the potential areas of inquiry that they could have. The problem seems to stem from the fact that when they ask very broad-ranging, general inquiries in order to make sure that everything is still on

36 Mr Chris Wallis, *Submission No. 28*, pp. 21-22.

37 CPA Australia, *Submission No. 7*, p. 3; The Tax Institute, *Submission No. 11*, p. 2.

38 Mr Tony Fittler, HLB Mann Judd, *Transcript of Evidence*, 18 August 2014, pp. 4-5.

39 Mr Lance Cunningham, BDO, *Transcript of Evidence*, 18 August 2014, p. 4.

40 Mr Matthew Wallace, BDO, *Transcript of Evidence*, 18 August 2014, p. 4.

the table, the taxpayer is very reluctant to provide a lot of information without actually hearing, 'What is the problem?' There is no harm in saying, 'This is the area we are interested in and reserve the right to come back and look at other things.' In the absence of saying, 'Why is this required?' then that becomes a problem, and there is intransigence because taxpayers do not want to voluntarily give a wide raft of information which could potentially open up other areas of inquiry which makes the dispute widen. As tax advisers, we are trying to narrow it down to figure out what it is we are fighting about and have a very small channel to deal with that issue.⁴¹

- 4.40 PwC advised the Committee that, in some respects, the issue around the scope of information requests should not exist. The ATO, through its risk profiling, has already identified a risk and audit effort can be most usefully directed there. PwC stated that senior ATO management would much prefer that auditors focussed on the risks already identified.⁴²

Committee comment

- 4.41 The Committee regards information requests generally as one of the priority issues from the inquiry and is pleased that the ATO has come to this view as well.⁴³ The Committee received some common-sense suggestions from Mr Richard Wytkin, a Perth tax adviser, and PwC.⁴⁴ The Committee is pleased to endorse their comments, with some minor modifications, as recommendations to the ATO.

Recommendation 13

- 4.42 **The Committee recommends that the Australian Taxation Office give more consideration to taxpayers when making information requests, with priority given to:**
- **setting timeframes in practice statements, with a minimum of 28 days for all requests;**
 - **giving taxpayers the opportunity to seek an extended**

41 Ms Judy Sullivan, PwC, *Transcript of Evidence*, 18 August 2014, pp. 20-21.

42 Mr Michael Bersten, PwC, *Transcript of Evidence*, 18 August 2014, p. 21

43 ATO, *Submission No. 10.2*, p. 3.

44 Mr Richard Wytkin, *Transcript of Evidence*, 29 October 2014, p. 3; PwC, *Submission No. 23*, p. 11.

timeframe upon receipt of a request; and

- **giving reasons for an information request, typically based on a risk hypothesis.**

Escalating early

4.43 Another common complaint during the inquiry was that practitioners found it difficult to escalate issues within the ATO so that they could access either the right technical person or someone sufficiently senior. This often leads to delays, increasing costs for both sides.⁴⁵

4.44 This chapter has given examples of protracted audits being resolved with one meeting with sufficiently senior ATO people. The point put to the Committee was that senior people have more experience and are better able to make judgements about what is important in a dispute and put into perspective the revenue aspects of a dispute. This is less evident in junior staff, who were perceived as being less flexible or less able to focus on areas beyond the revenue. The Ombudsman explained it as follows:

It is experience with life. If you have very fine young people with terrific education and all the rest of it, but, unless they have seen both sides of the real world, they come up with a slant on something which is not particularly helpful for either party – the complainant or the institution.⁴⁶

4.45 A tax barrister, Mr Chris Wallis, summarised it as ‘Without experienced people (on both sides) disputes simply meander on.’⁴⁷

4.46 In the SME sector, it can be difficult to access the right people because junior staff can be reluctant to escalate a matter. At the accountants’ roundtable, the Committee heard that larger firms have better access:

If we request to speak to someone senior, the junior officers tend to get their noses out of joint, and it is very difficult to go up the line. I think the larger firms have an ability to go higher up rather than

45 Mr Mark West, McCullough Robertson, *Transcript of Evidence*, 16 October 2014, pp. 13-14; Mr Colin Neave, Commonwealth Ombudsman, *Transcript of Evidence*, 24 September 2014, p. 9; Mr Philip Hack SC, AAT, *Transcript of Evidence*, 16 October 2014, p. 5; Law Council of Australia, *Exhibit No. 2*, p. 15.

46 Mr Colin Neave, Commonwealth Ombudsman, *Transcript of Evidence*, 24 September 2014, p. 13.

47 Mr Chris Wallis, *Submission No. 28*, p. 18.

the smaller practitioners. It takes them a while to find their way up the line.⁴⁸

4.47 Tax practitioners argued that it was also important to be able to access the relevant technical people within the ATO early in a dispute. If they come into a dispute later on, there is a risk that they will introduce new technical issues, meaning that the matter has been focussing on the wrong points.⁴⁹

4.48 Advisers would also like to be able to speak directly to ATO technical experts because this can help clarify the technical issues and ensure that they are fully briefed. A tax barrister, Mr Graeme Halperin, stated to the Committee:

You often get a technical difference of opinion. Junior personnel will come back to you and say, 'That's what we've been told by TCN' – Tax Counsel Network. Well, I would like to speak to the person at the Tax Counsel Network and have a discussion with them..., but they say, 'Sorry, you can't speak to them, they're not part of the dialogue'... I have had matters where the ATO have clearly gone down the wrong track in the material that they are relying upon. It may be that I can alert the technical adviser to other material that they ought to be having regard to rather than the material that may have been referred to them by the junior auditor.⁵⁰

4.49 A variation on this is where an audit starts in relation to one tax, but then becomes an audit into a different tax, for example changing from GST to income tax. The difficulty is that the audit team can remain the same, meaning that the wrong team is conducting the audit. The Committee heard that this mismatch can be continued into the objection phase, where the indirect tax business line is the reviewer in this example.⁵¹ This is obviously unsatisfactory and indicates the importance of a fresh set of eyes being brought to objections.

4.50 During the inquiry, the ATO stated that it had started to address these concerns. It has brought more senior case leaders into compliance cases

48 Mr Alan Bentwitch, Bentwitch & Co., *Transcript of Evidence*, 18 August 2014, p. 40. Mr Mark West, McCullough Robertson, made a similar comment, *Transcript of Evidence*, 16 October 2014, p. 8.

49 Mr Tony Greco, IPA, *Transcript of Evidence*, 14 August 2014, p. 6; PwC, *Submission No. 23*, p. 9.

50 Mr Graeme Halperin, *Transcript of Evidence*, 14 August 2014, p. 18.

51 Mrs Sarah Blakelock, McCullough Robertson, *Transcript of Evidence*, 16 October 2014, p. 18; Mr Matthew Wallace, BDO, *Transcript of Evidence*, 18 August 2014, p. 2.

from the start, as well as redeploying some legal personnel into the compliance teams.⁵²

- 4.51 CPA Australia made a useful suggestion, namely that a senior ATO decision maker should review a dispute prior to completing the audit, to make strategic decisions about how the matter will be conducted.⁵³ The law firm McCullough Robertson suggested a triaging system, as did the Ombudsman, who noted that one of the risk factors for a dispute is if senior people are not involved early.⁵⁴ Mr Neave stated:

Very early in the piece, the cases which should receive the most attention with the objective of getting them settled quickly should be identified, and those within an organisation having the power to make a decision should be involved in the decision about whether or not that particular case should be dealt with in a particular way. At one level it is a matter of internal organisation for an office such as the tax office or a large financial institution to make sure that cases are brought to the attention of those who have the power to make a decision and that that decision is made promptly. It is, as you quite rightly point out, a cost saving in the end, because the amount of time which is spent once one gets into the realm of the AAT or any court process is just enormous. Summarising the case takes some very skilled minds, and that can be a very lengthy process as well.⁵⁵

Committee comment

- 4.52 The Committee would like to see some better systems put in place to manage how SMEs can access valuable ATO resources. Not only would this improve the audit experience for SMEs, but it would demonstrate fairer treatment as well, given that, as the Law Council put it, a taxpayer's access to the right ATO people is currently a matter of insider knowledge, time and money.⁵⁶
- 4.53 The Committee is pleased to endorse the Ombudsman's suggestion as a way of implementing this. The Committee's observation is that ATO resources appear to be allocated, at least by default, to large corporates. In

52 ATO, *Submission No. 10*, p. 30; ATO, *Submission No. 10.2*, p. 8.

53 CPA Australia, *Submission No. 7*, p. 2.

54 Mrs Sarah Blakelock, McCullough Robertson, *Transcript of Evidence*, 16 October 2014, p. 9.

55 Mr Colin Neave, Commonwealth Ombudsman, *Transcript of Evidence*, 24 September 2014, pp. 10-11.

56 Law Council of Australia, *Exhibit No. 2*, p. 15.

relation to revenue risk, this is appropriate. However, the Committee believes that this reduces the fairness of the system for SME taxpayers.

- 4.54 Fairness to taxpayers should be a risk that the ATO specifically addresses in its operations. The ATO already takes fairness into account through its compliance model, whereby compliant taxpayers receive reduced penalties and so forth. However, the Committee would like to see the fair treatment of taxpayers elevated to being an ATO goal in its own right. Chapter 2 on KPIs discusses this and has made a recommendation to develop a KPI to measure fairness during tax disputes. Further, the Committee believes that it can be incorporated into other operational areas such as the triaging of disputes.

Recommendation 14

- 4.55 **The Committee recommends the Australian Taxation Office introduce a triage system for disputes so that, early in a dispute, matters can be escalated to ATO staff sufficiently senior or with the appropriate technical skills to resolve the dispute quickly and effectively. Such decisions should consider taxpayer fairness, among other criteria.**