

Review of evidence

2.1 The following issues are considered in this chapter:

- New technology projects
 - ⇒ *myTax*
 - ⇒ myGov
 - ⇒ Prefilling
 - ⇒ Standard Business Reporting and single touch payroll
 - ⇒ Very small businesses
 - ⇒ Tax Agent Portal
 - ⇒ Client correspondence
- Relationships with tax practitioners
 - ⇒ Importance of tax agents
 - ⇒ Consultation
 - ⇒ The lodgement system
 - ⇒ Costs to agents of actions by the ATO
 - ⇒ Non-issuing of notices of assessment
- The ATO correspondence program
- Disputes
- Debt recovery
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 - ⇒ Insolvencies
- The tax gap
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New technology projects

Introduction

- 2.2 The ATO's technology environment is complex. The brief description here is aimed at making this report more intelligible to a reader. It does not purport to be exhaustive or expert. The introduction refers to a number of systems, programs and functions which are discussed in more detail later in the report.
- 2.3 The ATO receives a large amount of data from various sources. Taxpayers provide their tax file numbers to various sources of income, including employers paying wages, banks paying interest, and share registries and companies paying dividends, as well as to superannuation funds who report on deductible contributions. These organisations then report the income and any tax withheld to the ATO.
- 2.4 Companies provide regular activity statements, and reports on pay-as-you-go tax withheld from income and wages paid, usually through a tax agent. In future they will supply more information directly to the ATO with the development of single touch payroll, by which employers' accounting software will automatically report payroll information to the ATO when employees are paid.
- 2.5 Further information will be automatically supplied by way of Standard Business Reporting (SBR), which is a standard approach to online or digital record-keeping. It is used across government, not just by the ATO. So, for example, a business that supplies information to the Australian Securities and Investments Commission or Fair Work Australia should not have to supply the information separately to the ATO.
- 2.6 All of this information has to be available for the completion of tax returns. Most returns are lodged electronically.
- 2.7 *myTax* is the ATO's web-based lodgement system for eligible individuals' tax returns. Much of the data is prefilled from the information supplied by employers, superannuation funds and banks. *myTax* is accessed through myGov, which is a portal giving access to a range of government services.¹
- 2.8 Most tax returns, for individuals and businesses, are in fact prepared by tax agents. Agents notify the ATO of the tax file numbers of their clients, and are then able to access information about them held by the ATO, including past returns, activity statements, correspondence between the

1 ATO, *Lodging your tax return*, <https://www.ato.gov.au/Individuals/Lodging-your-tax-return/>, accessed 29 February 2016.

taxpayer and the ATO, and all the information collected as described above.

- 2.9 The agent gets access to this information through the Tax Agent Portal. The agent is also able to lodge some new information, such as activity statements, through the Portal. The Portal is to be replaced by a new platform on ATO Online, which will perform a wider range of functions.
- 2.10 Agents lodge individual tax returns through the Electronic Lodgement System; non-individual returns are lodged through the Electronic Lodgement System or through SBR. The Electronic Lodgement System will be replaced by a new Practitioner Lodgement Service using SBR methods.²

myTax

- 2.11 In the past *myTax* has been confined to simple tax returns, but the ATO is gradually building its functionality. For 2015 it will be available for taxpayers with rental income and capital gains and for sole traders with business income. For 2016 returns *myTax* will supersede the earlier e-Tax electronic lodgement system for individuals.³
- 2.12 To 20 November 2015, about 1.8 million taxpayers had used *myTax* for their 2014–15 tax returns, an increase of 40 per cent on the previous year.⁴ The ATO reports positive feedback from users.⁵
- 2.13 Access has been facilitated by voice authentication software, which so far has been taken up by 1.6 million taxpayers.⁶ The ATO has also released applications which allow taxpayers to track their deductions through the year, and provides online support tools and calculators.⁷

myGov

- 2.14 *myGov* allows for personalised messaging. Sometimes taxpayers who employ an agent (rather than using *myTax*) link their tax transactions with their *myGov* account without understanding the implications. This has caused problems where messages from the ATO have gone to individual taxpayers and have not been conveyed to tax agents. In some cases clients

2 More detail on these functions is available at ATO, *Tax agent online services guide*, ATO website <https://www.ato.gov.au/tax-professionals/services-and-support/working-online/online-services-guides/tax-agent-online-services-guide/#Lodgment>, accessed 6 April 2016.

3 ATO, *Submission No. 3*, p. 11.

4 ATO, *Submission No. 3*, p. 11.

5 ATO, *Annual Report 2014–15*, p. 11.

6 Mr Chris Jordan, Commissioner of Taxation, *Committee Hansard*, Canberra, Wednesday 24 February 2016, p. 1.

7 ATO, *Submission No. 3*, p. 11.

did not act on the correspondence because they assumed their agent would look after it – which did not happen because the agent did not see the correspondence.⁸ This could undermine the confidence clients had in their agents. This issue was discussed in the second report of the previous inquiry into the ATO Annual Report.⁹

- 2.15 The ATO has worked with tax agents to address this by way of the client correspondence list, which tax agents can consult to see if correspondence had been sent to their clients.¹⁰ But at the hearing on 10 February Mr Paul Drum of CPA Australia said that tax professionals were ‘still in a bit of a holding pattern’ on the issue.¹¹
- 2.16 It is also possible that an individual who has lodged a tax return will not monitor correspondence in their myGov account. The ATO says that it has addressed this issue by ensuring that an email is sent to taxpayers alerting them to new material in their myGov account. It is not able to send the material direct to their email address because of the possibility of scams, and myGov provides a secure way of communicating.¹²

Prefilling

- 2.17 Much of the data in *myTax* returns (and also returns prepared by tax agents) is prefilled with information from external bodies such as employers, superannuation funds and banks. Concerns have been expressed as to the timeliness of such data, and whether taxpayers are protected if the data are wrong or if they have submitted incomplete data.
- 2.18 The ATO reported that it has worked with organisations who supply data, including private health insurers and share registries, on getting information efficiently, for example by fixing errors and standardising formatting. The result has been that much information is now supplied earlier:

For example, for private health insurance, we had all of the information from the 35 private health insurers that we need for prefill by 16 July 2015 – for last tax time. That was 31 days earlier than the year before and 84 days earlier than in 2013 ... even

8 Mr Arthur Athanasiou, President, The Tax Institute, *Committee Hansard*, Canberra, Wednesday 10 February 2016, p. 3.

9 House of Representatives Standing Committee on Tax and Revenue, *2014 Annual Report of the Australian Taxation Office: Second Report*, Canberra, November 2015, p. 6–9.

10 Mr Neil Olesen, Second Commissioner, Client Engagement, *Committee Hansard*, Canberra, Wednesday 24 February 2016, p. 3.

11 Mr Paul Drum, Head of Policy, CPA Australia, *Committee Hansard*, Canberra, Wednesday 10 February 2016, p. 2.

12 Mr Chris Jordan, *Committee Hansard*, Canberra, Wednesday 24 February 2016, p. 5.

though there is a statutory date at the end of October ... There is a similar story for dividend data that we get as well. Dividend reporting in fact started in May 2015 – before the end of the year – and we had all that data available by 17 July.¹³

- 2.19 The ATO noted that 95 per cent of the 2014–15 data was available by mid-August 2015.¹⁴ This is evidence of success in building good relationships with suppliers.
- 2.20 The ATO's data matching found discrepancies in approximately 1.6 per cent of returns lodged in July 2015 where the prefilled information was not complete at time of lodgement. Most of the discrepancies related to underreporting of income.
- 2.21 Where discrepancies are found, the taxpayer is given an opportunity to respond. The ATO says that 'Generally no penalties are applied to cases where taxpayers have lodged their return but are later found to have a discrepant amount.'¹⁵
- 2.22 The Commissioner of Taxation, Mr Chris Jordan, observed that the prefilling service is simply a convenient way of processing information. If a taxpayer wants an early return or does not want to rely on the prefilled data they can use their own records and submit them through an agent or through *myTax*.¹⁶ The ATO also stated that:
- The requirement in Australia is for taxpayers to take reasonable care when they complete their returns.¹⁷

Standard Business Reporting and single touch payroll

- 2.23 Standard Business Reporting or SBR is a standard approach to online or digital record-keeping. It is used across government, not just by the ATO. It has been available since 2010 and is intended to simplify business reporting to government. It is built into business and accounting software.
- 2.24 SBR incorporates standard terms that are used in government legislation and reporting. These terms are then linked to terms that are used in the business or accounting software so that filling in reports to government

13 Mr Neil Olesen, *Committee Hansard*, Canberra, Wednesday 24 February 2016, p. 3–4.

14 Mr Geoff Leeper, Second Commissioner, People, Systems and Engagement Group, ATO, *Committee Hansard*, Canberra, Wednesday 24 February 2016, p. 4.

15 ATO, *Supplementary Submission No. 3.1*, answers to questions on notice.

16 Mr Chris Jordan, *Committee Hansard*, Canberra, Wednesday 24 February 2016, p. 3.

17 Mr Neil Olesen, *Committee Hansard*, Canberra, Wednesday 24 February 2016, p. 5.

- becomes a by-product of accounting processes. This ensures consistency for business and government and reduces double handling.¹⁸
- 2.25 The ATO is working with software developers to ensure that the software they supply to businesses and tax agents incorporates SBR.¹⁹ The software is not expensive, and using SBR is similar to using the electronic lodgement system. Further, SBR presents the possibility that all of a business's software will be interoperable. So the potential advantages for businesses are significant.²⁰
- 2.26 SBR is scheduled to become the default lodgement program from 1 July 2016. Some elements of the system are in use now, and early users of the system have reported that when demand is high the system is slow.²¹ There is therefore concern that the system will not cope with peak demand at tax time.²² The ATO has endeavoured to guard against overload by keeping the existing electronic lodgement system operating in parallel until March 2017, and tax practitioners are hopeful that there will be a seamless switching between the two systems.²³
- 2.27 Similarly, single touch payroll is a mechanism for simplifying reporting of tax and superannuation payments. Under single touch payroll, employers' accounting software will automatically report payroll information to the ATO when employees are paid. It too offers considerable efficiencies for both business and the ATO.²⁴ After feedback from business the Government delayed its introduction, and the ATO has begun trials of several aspects of the scheme.²⁵ The trials did not seem to have generated interest or concern among tax practitioners.²⁶ However, the flexible and consultative approach was supported.²⁷

18 Australian Government, *Standard Business Reporting* website, <http://www.sbr.gov.au/about-sbr/what-is-sbr>, accessed 3 March 2016.

19 ATO, *Submission No. 3*, p. 4-5.

20 Mr Peter Strong, Chief Executive Officer, COSBOA, *Committee Hansard*, Canberra, Wednesday 10 February 2016, p. 9.

21 The Tax Institute, *Submission 2*, p. 4; Ms Thilini Wickramasuriya, Tax Counsel, The Tax Institute, *Committee Hansard*, Canberra, Wednesday 10 February 2016, p. 9.

22 Mr Paul Drum, *Committee Hansard*, Canberra, Wednesday 10 February 2016, p. 9.

23 Mr Tony Greco, General Manager, Technical policy, Institute of Public Accountants and Mr Peter Strong, *Committee Hansard*, Canberra, Wednesday 10 February 2016, p. 9.

24 Mr Tony Greco, *Committee Hansard*, Canberra, Wednesday 10 February 2016, p. 8.

25 Hon Bruce Billson, Minister for Small Business, 'Government moves to get Single Touch Payroll right', media release, 10 June 2015.

26 Mr Peter Strong, Mr Arthur Athanasiou, and Ms Thilini Wickramasuriya, *Committee Hansard*, Canberra, Wednesday 10 February 2016, p. 9.

27 The Tax Institute, *Submission 2*, Attachment (Submission to the Committee dated 18 August 2015).

Very small businesses

- 2.28 It seems inevitable that the ATO will do more and more of its business online. Its discussion paper, *Digital by default*, suggests that ‘most people’ will eventually be required to submit information electronically.²⁸ In particular, Mr Tony Greco of the Institute of Public Accountants observes that single touch payroll will force ‘the remaining 30 per cent of small businesses which have not computerised’ to do so. This could involve costs because at present they ‘do it on the back of an envelope’, and it is not clear that the benefits to them will outweigh the costs.²⁹
- 2.29 In its response to *Digital by default* (tendered as an exhibit to this inquiry), Chartered Accountants ANZ noted that operating digitally would be difficult for those who are unfamiliar with digital devices or lack the skills or confidence to use them without support. It calls on the ATO to devote more resources to assisting taxpayers to use the digital services.³⁰
- 2.30 The CEO of COSBOA, Mr Peter Strong, mentioned that his organisation was working with the Australian Chamber of Commerce and Industry on an e-invoicing project, one objective of which was interoperability with other software. He noted that many transactions are very small and may not generate documentation that lends itself to electronic reporting, but that operating digitally would become the norm over time as people got used to the idea.³¹

Tax Agent Portal

- 2.31 The Tax Agent Portal is a website through which tax practitioners access various ATO systems and client records. Technical issues with the Portal have been the subject of many complaints from tax professionals and previous scrutiny by this Committee, and the ATO intends to transition to a new platform on ATO Online.³² But the poor functioning of the existing Portal in past years and possibly into the future is a continuing source of inefficiency and irritation for tax agents.³³

28 ATO, *Digital by default*, consultation paper, November 2015, available at <http://lets-talk.ato.gov.au/Digitalbydefault>, accessed 17 March 2016.

29 *Committee Hansard*, 10 February 2016, p. 6, p. 8.

30 Chartered Accountants ANZ, Submission on ATO Digital by Default consultation paper, January 2016, available at <http://www.charteredaccountants.com.au/Industry-Topics/Tax/Exposure-drafts-and-submissions/Submissions/ATO/Consultation/160116-CA-ANZ-submission-on-ATO-Digital-by-Default-consultation-paper.aspx>, accessed 17 March 2016, p. 12.

31 *Committee Hansard*, 10 February 2016, p. 1, p. 8.

32 ATO, *Submission No. 3*, p. 8.

33 House of Representatives Standing Committee on Tax and Revenue, *2014 Annual Report of the Australian Taxation Office: Second Report*, Canberra, November 2015, p. 4–6.

- 2.32 In its submission the ATO recognised the importance of the Portal. It committed itself to working with tax professionals to address issues that arise, and to keeping them informed about updates and changes to the Portal. It pointed to the new 'Portal dashboard', which is intended to give users a real-time picture of how the Portal is functioning. It noted that complaint volumes have fallen since July 2015 and are tracking below the long term average. However, it conceded that there have been problems with access to the portal, slow response times in peak periods, client details which are not current, and poor accessibility of reports, correspondence lists and messages.³⁴
- 2.33 Mr Jordan told the Committee that the ATO had devised a program of actions to 'fix irritants' with the Portal based on a series of visits to 50 tax agents' offices.³⁵ In a pilot program beginning in March 2016, ATO staff will visit tax agents who are experiencing difficulty to demonstrate the best ways of using the Portal.³⁶
- 2.34 The Tax Institute's submission recognised that the dashboard could in theory increase transparency and accountability, and 'inform discussion between the ATO and the tax practitioner community on the availability of the Portal'. It noted, however, that members had found instances where functions such as correspondence were not working even though the dashboard said that they were available. Further, when a member of the Tax Institute contacted the ATO it conceded that there were known issues – which had not been registered on the dashboard. It also noted that many of the problems which the ATO identified in its visits to agents had been reported previously.³⁷
- 2.35 In the hearing, tax practitioners conveyed a degree of resignation to the state of the existing portal:
- ... [W]e have discussed the portal at length previously. It is not best practice, we know that. We are in this transition phase. The ATO have acknowledged that. We are moving towards better platforms, but it is just taking an extraordinary length of time. The portal is being asked to do things which it was never intended to do, and that has created a lot of hiccups.³⁸

34 ATO, *Submission No. 3*, p. 6.

35 *Committee Hansard*, 24 February 2016, p. 2.

36 ATO, *Submission No. 3*, p. 8.

37 The Tax Institute, *Submission 2*, p. 3.

38 Mr Tony Greco, *Committee Hansard*, Canberra, Wednesday 10 February 2016, p. 3.

Client correspondence

- 2.36 Practitioners were more critical of the client correspondence system. Agents are supposed to be able to access correspondence between the ATO and their clients through the Client Correspondence List. As mentioned above, there had been concern about correspondence being sent directly to personal myGov accounts rather than to agents. This was to have been addressed by way of the Client Correspondence List, and this has increased the importance of the Client Correspondence List.
- 2.37 In its submission, the ATO says that it has addressed some issues, including the difficulty of sorting through the list to find recent correspondence and cases where the same piece of correspondence had different dates attached to it. The improvements are scheduled for March and April 2016.³⁹
- 2.38 However, not all correspondence appears on the list, because some relates to earlier programs and arrangements. For example, important notices such as decisions about objections are not available there.⁴⁰ In fact, the system is designed to deal only with correspondence that would normally go through a myGov account.⁴¹ The ATO, in consultation with the profession, is developing improvements to include all correspondence and hopes that they will be available early in 2017.⁴²
- 2.39 Some of the issues to do with the correspondence system could be met by a notice from the ATO to the tax agent whenever correspondence is sent to a client – a ‘push notification’. In the Inquiry into the 2013–14 Annual Report, Mr Jordan undertook to look into the development of a push notification as a priority.⁴³ In its report the Committee requested that
- ... [an] update on the status of consideration and implementation of a push notification or other solution to inform tax practitioners when client correspondence has been sent to clients ...
- be provided in early 2016, but so far this has not been forthcoming.
- 2.40 Tax practitioners were also concerned about progress in the development of the new online system. The new Tax Agent Portal will apparently be a site on ATO Online, but the new site will do more, so that agents can go to

39 ATO, *Submission No. 3*, p. 7.

40 The Tax Institute, *Submission 2*, p. 4.

41 Mr Neil Olesen, *Committee Hansard*, Canberra, Wednesday 24 February 2016, p. 5.

42 ATO, *Submission No. 3.1*, (answers to questions on notice), question 4.

43 House of Representatives Standing Committee on Tax and Revenue, *2014 Annual Report of the Australian Taxation Office: Second Report*, Canberra, November 2015, p. 9.

one source instead of having to use several tools.⁴⁴ The Tax Institute noted that progress on the new portal appeared to be slower than on other digital projects, and that it was still in a diagnostic phase, with the ATO still working out what the issues were and what it would need to do to address them.⁴⁵

2.41 The ATO, in its submission, set out the services that tax agents have told it they would like to see in the new platform. There will be further consultation about which services will be transitioned and possible new services. However, it is not clear what progress has actually been made on development of the new package. The ATO has said only that the new platform is intended to 'provide improved navigation, consistent look and feel', and that the ATO will make it available to software developers for inclusion in practice management software.⁴⁶

2.42 While security of ATO systems was not discussed in detail in the evidence, there were some issues. Mr Tony Greco referred in the hearing to the possibility of a contractor's failing to meet their tax obligations and using someone else's ABN so that it is difficult for the ATO to pursue them.⁴⁷ And the possibility of identity theft through myGov was raised in the hearings.⁴⁸

2.43 Mr Leeper outlined the ATO's security precautions, but conceded:

... any online identity involves some risk of theft. So does any paper based identity.

Mr Jordan noted that 1.6 million taxpayers have registered their voiceprints for authentication purposes, and that these had a 'high biometric value'. Mr Leeper also said that the risk of fraud was the ATO's risk, not the taxpayer's risk. If, for example, a refund was sent to the wrong person, a new refund would be issued to the person for whom it was intended.⁴⁹

44 ATO, *Submission No. 3*, p. 8; Mr Neil Olesen, *Committee Hansard*, Canberra, Wednesday 24 February 2016, p. 9.

45 The Tax Institute, *Submission 2*, p. 3.

46 ATO, *Submission No. 3*, p. 8.

47 Mr Tony Greco, *Committee Hansard*, Canberra, Wednesday 10 February 2016, p. 13.

48 Mrs Bronwyn Bishop, *Committee Hansard*, Canberra, Wednesday 24 February 2016, p. 15.

49 Mr Geoff Leeper, Mr Chris Jordan, *Committee Hansard*, Canberra, Wednesday 24 February 2016, p. 15-16.

Relationships with tax practitioners

Importance of tax agents

- 2.44 While Mr Jordan emphasised in his evidence that the focus of the ATO was primarily ‘the client experience, where willing participation is our ultimate and important goal’, he was also at pains to describe the ATO’s work with its ‘key stakeholders and partners in the system – tax agents ...’ The ATO had visited 50 tax agent practices to understand how they work with the ATO and what their complaints were. He undertook to continue to develop a direct relationship with taxpayers and the tax profession in order to improve administration of the tax system.⁵⁰
- 2.45 Later in the hearings, in a discussion of the client correspondence list, Mr Jordan repeated his acknowledgement that the problems with correspondence going to clients and bypassing agents were due to a failure to consult better with agents.
- 2.46 However, stakeholders had concerns. Some were related to the digital disruption of the industry:
- One of the things that agents need to hear as a form of comfort going forward is that the tax office does want them as part of the process of dealing with tax payers. ... maybe tax agents do not feel as though they are a part of the future. ... If they can get that assurance that they will be part of the transactions between government and the taxpayer, I think it will bode better for all concerned, including the future of tax collections in Australia.⁵¹
- 2.47 Mr Jordan insisted that there was no intention to dissuade people from using a tax agent.⁵² He said:
- I agree that tax agents are fundamentally important to the working of the system. We do have a complex tax system – there is no getting around that.⁵³
- 2.48 There was also some concern that the ATO’s improved relationships were with the industry associations rather than with individual tax agents. Mr Paul Drum conceded that the ATO saw tax agents in general as critical to the working of a tax administration based on voluntary compliance, so they were willing to consult with professional associations. But he

50 Mr Chris Jordan, *Committee Hansard*, Canberra, Wednesday 24 February 2016, p. 1–2.

51 Mr Arthur Athanasiou, *Committee Hansard*, Canberra, Wednesday 10 February 2016, p. 3.

52 Mrs Bronwyn Bishop, *Committee Hansard*, Canberra, Wednesday 24 February 2016, p. 6.

53 Mr Chris Jordan, *Committee Hansard*, Canberra, Wednesday 24 February 2016, p. 5.

remarked that the industry associations still had to ensure that ordinary tax agents were protected, as they still felt threatened by the ATO.⁵⁴

- 2.49 Agents also queried why the ATO has devoted resources to facilitating individual tax returns when 70 per cent of taxpayers use tax agents, who use a separate tax portal. The Tax Institute, in its submission, noted:

Some members have expressed concerns that the ATO's 'reinvention' has to date focused on improving the ATO's direct interactions with taxpayers, targeting the relatively small subset of taxpayers not using a tax agent. Tax agents continue to express concern about their future level of involvement in their client's affairs given the ATO's strategy of dealing with taxpayers directly. The ATO needs to balance their intention by also promoting the ability of tax agents to be directly involved in the affairs of their clients, with their clients' consent.⁵⁵

- 2.50 The same point was made in the hearings:

The issue is that the ATO has a digital strategy, which we support. But there is a lack of transparency around why they made the investment in improving systems that deal directly with clients above systems that deal with tax agents, when 90 per cent of corporate tax returns and 70 per cent of individual tax returns are lodged by agents.⁵⁶

- 2.51 Mr Rob Ward, of Chartered Accountants Australia and New Zealand, observed that the ATO's digital strategy would necessarily alter the role of tax agents, but that the ATO had taken actions to address the tax practitioners' concerns. The ATO had working groups through which it could communicate with practitioners, making them a partner in its Digital by Default strategy.⁵⁷

Consultation

- 2.52 Reference has been made above to some aspects of the ATO's consultation with tax practitioners, including visits to 50 tax agents to learn about how they interact with the ATO, and efforts to keep agents informed about changes to the Tax Agent Portal. Mr Jordan mentioned in the hearing that

54 Mr Paul Drum, *Committee Hansard*, Canberra, Wednesday 10 February 2016, p. 5.

55 The Tax Institute, *Submission 2*, p. 2.

56 Ms Thilini Wickramasuriya, *Committee Hansard*, Canberra, Wednesday 10 February 2016, p. 5.

57 Mr Rob Ward, Head of Leadership and Advocacy, Chartered Accountants Australia and New Zealand, *Committee Hansard*, Canberra, Wednesday 10 February 2016, p. 3.

the ATO is consulting with tax agents on ‘... both the day-to-day issues and, importantly, the longer term future’.⁵⁸

- 2.53 Tax practitioners also spoke of improved relationships between their organisations and the ATO. Mr Paul Drum, of CPA Australia, said that the ATO had regularly kept the profession updated about improvements they were making. Mr Tony Greco, of the Institute of Public Accountants, observed that there had been changes:

To give you an example, it would not have happened previously that the ATO acknowledged that it made mistakes. That just would not happen under previous commissioners.

- 2.54 Mr Peter Strong, of COSBOA, said, ‘You do not see a lot of animosity between the industry and the tax office’; and Mr Arthur Athanasiou, of the Tax Institute, said there had been an attitudinal change that helped everyone.⁵⁹

- 2.55 Mr Paul Drum observed that the ATO was consulting with tax practitioners around the design and implementation of new systems ‘rather than just imposing a solution from on high’.⁶⁰ The Tax Institute, in its submission, commended the ATO for its broader consultations, for example on its Digital by Default strategy, and on making the results of consultation readily available:

Members have provided positive feedback on [the] usefulness of the plain language, high level consultation material available on [ATO’s Let’s Talk] website for themselves and their clients.⁶¹

- 2.56 In recent years the ATO has reduced the number of consultation committees. There are now around 30. Of these, eight are stewardship groups focused on particular market or product segments, including the Tax Practitioner Advisory Group. In addition, there are two technical and special purpose working groups of interest here, the Lodgement Working Group and the Future of the Tax Profession Working Group.⁶² According to the Annual Report, a review found the current consultation arrangements to be more effective than the previous ones. The Annual Report also refers to informal consultations with members of its forums. It

58 Mr Chris Jordan, *Committee Hansard*, Canberra, Wednesday 24 February 2016, p. 2.

59 *Committee Hansard*, Canberra, Wednesday 10 February 2016, p. 2, p. 7-8.

60 Mr Paul Drum, *Committee Hansard*, Canberra, Wednesday 10 February 2016, p. 2.

61 The Tax Institute, *Submission 2*, p. 2.

62 ATO, *List of all consultation groups*, at ATO website <https://www.ato.gov.au/General/Consultation/Consultation-groups/List-of-all-consultation-groups/>, accessed 23 March 2016.

notes that the changes to the tax agent portal were the result of consultations.⁶³

The lodgement system

- 2.57 The new lodgement system will use Standard Business Reporting, and is a major shift for tax practitioners. In developing the new system the ATO is working with software developers to incorporate SBR-enabled ATO services in their commercial software. It is consulting with tax practitioners through the Future of the Tax Profession Working Group to develop plans for transition to the new system, including communication and engagement activities. The new system is scheduled to be available for tax time 2016, but the old electronic lodgement service will remain available as a safety net until March 2017.⁶⁴
- 2.58 Tax practitioners were supportive of this approach, especially as the software package will be able to use either of the systems and the user interface will be the same. If one pathway does not function the program will default seamlessly to the other.⁶⁵
- 2.59 Some services which are to be available on the system had not been finalised at the time of the ATO's submission in February. Some defects had also to be resolved. It is not clear how many software developers have updated their packages to incorporate the new system.⁶⁶
- 2.60 An issue which was discussed in the hearings was the rule that tax agents should lodge 85 per cent of clients' returns on time. It was explained by Mr Tony Greco in the hearing with tax practitioners:
- Essentially, it is a good feature of the system. Accountants get a concession where they can delay the lodgement of a return and that is not available to an end user. That concession has to come with some strings attached and they have to meet the 85 per cent rule. It is a good example of the ATO and the tax practitioner community working together.
- 2.61 Mr Greco went on to note that the ATO treated the rule as best practice rather than an absolute standard. Mr Greco pointed out, however, that some circumstances were beyond an agent's control, and if a client did not

63 ATO, *Annual Report 2014-15*, p. 14.

64 ATO, *Submission No. 3*, p. 4.

65 Mr Tony Greco, Mr Peter Strong, *Committee Hansard*, Canberra, Wednesday 10 February 2016, p. 9.

66 ATO, *Submission No. 3*, p. 4.

provide records the 85 per cent rule created incentive for the agent to drop that client.⁶⁷

2.62 Mr Chris Jordan, too, described it as:

... a target we expect agents to meet over a period of time ... we have not ever taken very specific action to deregister them ... if they do not meet the target.

2.63 If agents have people on their books who do not provide information the ATO suggests that they 'get them off their books'.⁶⁸

2.64 Mr Ali Noroozi noted that he had recommended that the ATO take into account the particular circumstances of the agent and the client base. He thought that there had been an issue but that it was no longer so pressing.⁶⁹

2.65 In response to a question from the Committee the ATO undertook to provide information on how many such clients had been dropped, what action the ATO had taken to follow up, and the effect on tax revenue.⁷⁰ The ATO has not yet been able to provide this information.

Costs to agents of actions by the ATO

2.66 When the ATO introduces new systems it imposes a cost on tax agents. Sometimes they have to buy new software; at the least they have to learn to use the new systems and explain them to their customers, and there is the risk of damage to their relationships.⁷¹ Mr Tony Greco recalled the change program, which took place over seven years from 2003 and was subject to continual change with components being removed or added:⁷²

That was very unfortunate. Accountants were the scapegoats. Something was deployed that was not ready, so [practitioners] suffered an enormous amount of reputational damage.⁷³

2.67 Any time when systems are not running effectively also results in down time, which is a cost to the agent.⁷⁴ 'Defective administration', such as

67 Mr Tony Greco, *Committee Hansard*, Canberra, Wednesday 10 February 2016, p. 6–7.

68 Mr Chris Jordan, *Committee Hansard*, Canberra, Wednesday 24 February 2016, p. 13.

69 Mr Ali Noroozi, Inspector-General of Taxation, *Committee Hansard*, Canberra, Wednesday 24 February 2016, p. 13, p. 14.

70 Mr Neil Olesen, *Committee Hansard*, Canberra, Wednesday 24 February 2016, p. 13.

71 Mr Paul Drum, *Committee Hansard*, Canberra, Wednesday 10 February 2016, p. 2.

72 Inspector-General of Taxation, *Review into the Australian Taxation Office's Change Program: Report to the Assistant Treasurer*, December 2010

73 Mr Tony Greco, *Committee Hansard*, Canberra, Wednesday 10 February 2016, p. 4.

74 Mr Arthur Athanasiou, *Committee Hansard*, Canberra, Wednesday 10 February 2016, p. 3.

issuing incorrect debt notices or failure to explain fully the actions it has taken, also imposes a cost on the agent in terms of time and effort.⁷⁵

- 2.68 Mr Rob Ward suggested that the ATO develop 'two or three proxy indicators' of costs – to show that costs are coming down.⁷⁶ Mr Drum suggested the creation of a contingency fund so that people who had incurred losses could claim more easily, rather than relying on act of grace provisions and risking finding that there were no funds to cover such payments, as had happened with the change program.⁷⁷

Failure to issue notices of assessment

- 2.69 The question was raised in the hearings of the non-issuance of assessment notices to certain classes of taxpayers, in particular non-residents with a nil taxable income (or loss). The ATO clarified the position in a written answer. Notices of assessment are routinely not issued for non-residents who have a nil taxable income. Any review period is dated only from the date of issue of an assessment. However, the ATO will issue a notice of assessment to an individual with a nil taxable income, upon request.⁷⁸ This seems to leave open the possibility of a change in the taxpayer's liability until a notice of assessment is issued.

ATO correspondence program

- 2.70 The ATO is rationalising its 'correspondence products', the standard letters and notices it sends to taxpayers, to 'ensure they contain clear, concise and consistent information which is easier to follow ...'. It has reduced the number of standardised system-generated letters by one-third, and expects to reduce it further as the review continues.⁷⁹ Tax practitioners appreciated that they had been consulted in the review of correspondence.⁸⁰
- 2.71 In the hearing a Committee member asked about a letter which was sent to certain categories of taxpayers telling them that they had a tax debt which would not be pursued at that time. The query was why the ATO did not ask for the tax to be paid.⁸¹ The ATO took this as feedback on their

75 Mr Ali Noroozi, *Committee Hansard*, Canberra, Wednesday 24 February 2016, p. 2.

76 Mr Rob Ward, *Committee Hansard*, Canberra, Wednesday 10 February 2016, p. 4.

77 Mr Paul Drum, *Committee Hansard*, Canberra, Wednesday 10 February 2016, p. 2.

78 ATO, *Submission 3.1*, Question: PQ16-000009

79 ATO, *Submission 3*, p. 9.

80 Mr Tony Greco, *Committee Hansard*, Canberra, Wednesday 10 February 2016, p. 6.

81 Mrs Bronwyn Bishop, *Committee Hansard*, Canberra, Wednesday 24 February 2016, p. 6-7.

correspondence. It later furnished an early draft of a replacement for the 'non-pursuit' letter, which had been considered in the correspondence program. The new letter does invite the taxpayer to pay the amount owing immediately and highlights the interest accruing on the outstanding debt.⁸²

Disputes

- 2.72 The ATO advised that it is engaged in a transformation program that is changing the way it works with taxpayers.⁸³ With regard to managing disputes, its focus is on improving processes by training staff in communication and client centred approaches, a policy of direct and early contact with clients, and a triage system to identify cases that can be solved quickly. The ATO is also using surveys and other analytical work to understand the dynamics of disputes and to identify best practice in dispute resolution.⁸⁴
- 2.73 Mr Jordan referred to
- ... early engagement across the board – where picking up the phone early is resolving issues more quickly or identifying the material issues that need to be addressed – and all the different forms of dispute resolution that we now have, with in-house facilitation, independent external parties and the new settlement guidelines.⁸⁵
- 2.74 Tax practitioners noted that there are new ways of settling disputes:
- ... mediation is now available for all taxpayers. An independent person can review a particular dispute. That is available for the small end of town as well as the large end of town. That is part of the reinvention program that the ATO has introduced, and that has produced a lot of better outcomes.⁸⁶
- 2.75 But being in dispute with the ATO could still involve costs for legal representation or involving a tax agent to settle it. Fortunately, according to Mr Arthur Athanasiou of The Taxation Institute, such disputes are rare.⁸⁷ Mr Peter Strong, of COSBOA, observed that a business that was a

82 ATO, *Submission 3.2*.

83 ATO, *Submission 3*, p. 1; Mr Chris Jordan, *Committee Hansard*, Canberra, Wednesday 24 February 2016, p. 1.

84 ATO, *Submission 3*, p. 13–14.

85 Mr Chris Jordan, *Committee Hansard*, Canberra, Wednesday 24 February 2016, p. 2.

86 Mr Tony Greco, *Committee Hansard*, Canberra, Wednesday 10 February 2016, p. 13.

87 Mr Arthur Athanasiou, *Committee Hansard*, Canberra, Wednesday 10 February 2016, p. 14.

- member of an association was less likely to have trouble with a regulator, and more likely to resolve it quickly.⁸⁸
- 2.76 Taxpayers can also have their disputes investigated by the Inspector-General of Taxation, to whom the taxation work of the Commonwealth Ombudsman was transferred in 2015. The Inspector-General described much of his work as filtering out claims that had no prospect of success, and facilitating contact with the correct area of the ATO.⁸⁹ Tax practitioners valued the 'fresh set of eyes', saying that it had produced better outcomes.⁹⁰
- 2.77 The ATO has developed an indicator of perceptions of fairness in disputes. There have been improvements on some elements of the indicator: more individual taxpayers said that reasons for decisions were clear, that the process was conducted in an honest way, that individual circumstances were taken into account, and that the ATO had treated people courteously. There was also a large improvement (from 45 per cent to 64 percent over a year) in the number who felt the overall process was fair – an increase so large as to prompt the ATO to re-examine the previous year's results.⁹¹
- 2.78 In its response to the ATO discussion paper *Digital by default*, Chartered Accountants ANZ argued that the current interest and penalty regime is outmoded. It suggested that there should be a policy of leniency towards those who make honest mistakes, and new concepts such as bonds and points systems for first offenders should be investigated.⁹²

Debt recovery

Recovery activity

- 2.79 The ATO's submission emphasised a balance between firm insistence on taxpayer obligations and willingness to assist those having genuine difficulty in making payments to the ATO. In response to recommendations by the Inspector-General of Taxation, it has taken

88 Mr Peter Strong, *Committee Hansard*, Canberra, Wednesday 10 February 2016, p. 14.

89 Mr Ali Noroozi, *Committee Hansard*, Canberra, Wednesday 24 February 2016, p. 8.

90 Mr Tony Greco, *Committee Hansard*, Canberra, Wednesday 10 February 2016, p. 14.

91 ATO, *Submission 3*, p. 13.

92 Chartered Accountants ANZ, *Submission on ATO Digital by Default consultation paper*, January 2016, available at <http://www.charteredaccountants.com.au/Industry-Topics/Tax/Exposure-drafts-and-submissions/Submissions/ATO/Consultation/160116-CA-ANZ-submission-on-ATO-Digital-by-Default-consultation-paper.aspx>, accessed 30 March 2016, p. 16.

actions to prevent debt and to issue early reminders if payments are not made on time. It has also employed risk assessment when entering into payment arrangements. It has developed new analytical models which identify the next best debt recovery action.⁹³

- 2.80 In evidence to the hearing, Mr Leeper of the ATO noted that the ATO had complicated models which assess whether it is economic to pursue a debt, noting both the cost of collection and the need to be fair to the people and businesses who do pay on time.⁹⁴
- 2.81 The Inspector-General of Taxation noted in the hearing that debt collection activity by the ATO was still a major source of complaints.⁹⁵
- 2.82 In a discussion of the backlog of old disputes, it was put to the ATO that it was giving away too much in order to get a settlement.⁹⁶ The ATO disputed this, saying that the rate of settlements was much as it had always been.⁹⁷

Insolvencies

- 2.83 Mr Strong, of COSBOA, suggested that the ATO could work with other agencies such as the Australian Securities and Investments Commission in finding information on the causes of non-payment and of insolvency, so that earlier action could be taken. This would reduce debts to the ATO, but in the long run would also be easier for the business people involved because it would achieve earlier closure for a business in trouble.⁹⁸
- 2.84 The ATO's submission suggested a higher rate of initiating bankruptcies and windups for individuals and businesses for 2015–16 to 31 October.⁹⁹ However, Mr Leeper argued that the ATO was much more conservative than commercial creditors. It was more likely to be a party than an initiator.¹⁰⁰ Mr Jordan remarked that receiverships and bankruptcies are 'very much a last resort'.¹⁰¹

93 ATO, *Submission 3*, p. 21–22.

94 Mr Geoff Leeper, *Committee Hansard*, Canberra, Wednesday 24 February 2016, p. 7.

95 Mr Ali Noroozi, *Committee Hansard*, Canberra, Wednesday 24 February 2016, p. 2.

96 Mr Michael Sukkar, *Committee Hansard*, Canberra, Wednesday 24 February 2016, p. 10.

97 Mr Andrew Mills, Second Commissioner, Law Design and Practice Group, ATO, *Committee Hansard*, Canberra, Wednesday 24 February 2016, p. 10.

98 Mr Peter Strong, *Committee Hansard*, Canberra, Wednesday 10 February 2016, p. 13.

99 ATO, *Submission 3*, p. 23.

100 Mr Geoff Leeper, *Committee Hansard*, Canberra, Wednesday 24 February 2016, p. 7.

101 Mr Chris Jordan, *Committee Hansard*, Canberra, Wednesday 24 February 2016, p. 8.

The tax gap

- 2.85 The ATO has a program of developing estimates of the tax gap for various taxes. It published several new estimates in the Annual Report. It did not add to them in its submission to this inquiry: it encountered methodological difficulties in generating reliable estimates for some taxes. In 2015–16 it plans to publish estimates of gaps for company tax by size of companies, individual income tax (with a separate estimate for high wealth individuals), tobacco excise and duty, and the superannuation guarantee.¹⁰²
- 2.86 In the hearing, Mr Olesen expanded on the purpose of deriving the estimates. The breakdown by type of tax and sometimes by size of taxpayer would show the ATO where to concentrate its resources.¹⁰³
- 2.87 The ATO submission reports that it is developing a methodology to measure total revenue impacts of non-compliance:
- This methodology will measure the impacts of our work on past non-compliance, preventing non-compliance now and promoting future compliance.
- 2.88 The ATO hopes to begin reporting on the broader impacts of some of these activities in its next *Annual Report*.¹⁰⁴

The cash economy

- 2.89 The ATO states in its submission that its strategy to address the cash and hidden economy is focused on protecting honest businesses from unfair competition. Its strategy is based on identifying industries where cash transactions are prevalent. Its audit program has resulted in extra collections of over \$220 million in taxes and penalties in 2014–15. Compliance levels have been maintained and ‘public confidence in the ATO’s ability to deal with people who do not declare all of their income’ has been trending up.¹⁰⁵
- 2.90 At the hearing, the Committee noted that the \$220 million figure could be regarded as disappointing, given that estimates of the size of the cash economy range from \$3 billion to \$30 billion.¹⁰⁶

102 ATO, *Submission 3*, p. 15.

103 Mr Neil Olesen, *Committee Hansard*, Canberra, Wednesday 24 February 2016, p. 11.

104 ATO, *Submission 3*, p. 18.

105 ATO, *Submission 3*, p. 17.

106 Mr Michael Sukkar, *Committee Hansard*, Canberra, Wednesday 24 February 2016, p. 12.

2.91 In response Mr Olesen explained that the ATO was continually examining its methods for dealing with the cash economy. Its current thinking was that auditing could never be a complete answer, and that it needed to 'look at the things that drive people to operate in the way they do'. This had resulted in some area-based compliance activity, especially around local markets, and in making sure that people knew that the ATO was active. Mr Olesen said:

All the evidence shows us that, by being much more visible in the way we do those kinds of activities, that is more likely to have a knock-on effect to how people operate than simply taking a narrow audit based focus. We are looking deliberately at the different drivers for the cash economy and trying to address those through our different strategies.¹⁰⁷

2.92 Mr Arthur Athanasiou of The Tax Institute observed that as electronic transactions become more pervasive, and transactions are therefore easier to trace, the cash economy is likely to shrink.¹⁰⁸

2.93 The Australian National Audit Office is carrying out a performance audit with the purpose of '[Assessing] the effectiveness of the Australian Taxation Office's strategies and activities to address the cash and hidden economy'. It is due to report in autumn 2016.¹⁰⁹

Draft public rulings

2.94 In answer to a question, Mr Andrew Mills of the ATO said that there were about 16 draft public rulings yet to be finalised. Some date back for years. They have not been finalised because of '... issues and tensions that arose, and clear differences of opinion'.¹¹⁰ Tax practitioners find that draft rulings may stay in that state for a long time and when they are only in draft form it is difficult to know what the legal position is and what the ATO will do.¹¹¹

2.95 The ATO has changed the way it deals with draft rulings. In the past it came to a view about the correct interpretation of the law, which it embodied in a draft ruling which might then become the subject of contention and be difficult to finalise. Now, instead of first making a

107 Mr Neil Olesen, *Committee Hansard*, Canberra, Wednesday 24 February 2016, p. 12.

108 Mr Arthur Athanasiou, *Committee Hansard*, Canberra, Wednesday 10 February 2016, p. 12.

109 Australian National Audit Office, *Audits in Progress*, at <http://www.anao.gov.au/Publications/Audits-in-Progress>, accessed 30 March 2016.

110 Mr Andrew Mills, *Committee Hansard*, Canberra, Wednesday 24 February 2016, p. 15.

111 Mr Arthur Athanasiou, *Committee Hansard*, Canberra, Wednesday 10 February 2016, p. 14.

ruling, the ATO engages in consultation on the issues and attempts to come to a common understanding before drafting a ruling. It is hoped that this process will enable faster finalisation of rulings.¹¹²

112 Mr Andrew Mills, *Committee Hansard*, Canberra, Wednesday 24 February 2016, p. 15.