

Standing Committee on Tax and Revenue

ANSWERS TO QUESTIONS ON NOTICE

Australian Taxation Office

Inquiry into the Commissioner of Taxation Annual Report 2018-19

Department/Agency: ATO

Question: 1

Topic: Being a professional and productive organisation

Reference: Written – 23 June 2020

Member: Jason Falinski

Question:

Can you explain how you delivered on your goal of ‘being a professional and productive organisation’ and what ‘purposeful and respectful relationships’ mean? (p. 10)

Answer:

Being a professional and productive organisation

Tangible examples that demonstrate how the ATO delivered on our goal of being a professional and productive organisation throughout 2018-19 include that we:

- collected gross tax of around \$533 billion, and provided refunds of around \$107 billion, with net tax collections of \$426 billion, up \$29 billion (7.4%) over the previous year
- delivered a successful Tax Time 2018, with over 10 million individual income tax returns lodged, resulting in almost 8 million refunds
- delivered on our government commitments, including through our funded taskforces on corporate tax avoidance, the black economy and financial crime
- supported individuals to correctly claim work-related expenses, with an estimated revenue impact of \$560 million over the last two years
- continued our analysis of tax gaps and, for the first time, published the individuals gap, moving away from a focus on audit liabilities to a more preventative and pre-emptive approach
- implemented reforms to the superannuation system, including downsizer superannuation contributions, the first home super saver scheme, and early release of super on compassionate grounds
- implemented the Member Account Attribute Service and the Member Account Transaction Service
- improved the process to apply for an Australian business number (ABN) to better identify ineligible applicants.
- streamlined processes through Single Touch Payroll (STP), with its successful deployment resulting in over 160,000 employers reporting information for around 8.1 million individuals
- used information from STP to pre-fill 2018–19 tax returns

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- laid the groundwork to enable over 15 million Australians to securely access government services online – delivering key elements to establish a digital identity and integrate GovPass into the broader digital ecosystem
- invested in better technology for staff, including new computers and data analysis tools, providing access to more data to ensure better and more consistent services for our clients.

Purposeful and Respectful Relationships

Tangible examples of purposeful and respectful relationships the ATO has built and maintained throughout 2018-19 include that we:

- implemented our *Online services for agents* system, working with digital service providers (DSPs) to integrate this functionality into their agents' practice management software
- developed collaborative relationships with suppliers, using an agency-wide approach to procurement to create savings for the ATO and our providers
- implemented *Online services for DSPs* to provide a modern and secure platform for their interactions with us.

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Inquiry into the Commissioner of Taxation Annual Report 2018-19

Department/Agency: ATO

Question: 2

Topic: Income tax from individuals

Reference: Written – 23 June 2020

Member: Jason Falinski

Question:

Can you explain your assertion that ‘over 93% of income tax due from individuals is paid’?
On what do you base this assertion? (p. 11)

Answer:

More information on overall ATO tax performance is available on the ATO website at:
https://www.ato.gov.au/About-ATO/Research-and-statistics/In-detail/Tax-gap/Australian-tax-gapoverview/?page=2#The_performance_of_the_tax_system.

Each tax gap is estimated using a tailored methodology. The details of the method used for the Individuals not in business tax gap is available on the ATO website at
<https://www.ato.gov.au/About-ATO/Research-and-statistics/In-detail/Tax-gap/Individuals-not-in-business-income-tax-gap/>.

The latest published net tax gap is 6.4% giving us a tax performance ratio of 93.6%, as published in the annual report.

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Inquiry into the Commissioner of Taxation Annual Report 2018-19

Department/Agency: ATO

Question: 3

Topic: Program updates

Reference: Written – 23 June 2020

Member: Jason Falinski

Question:

Please provide an update on the following programs (p. 15):

- a. Independent Review for Small Business program pilot
- b. Dispute Assist service
- c. National Tax Clinics operated by 10 universities
- d. new Small Business Taxation Division of the Administrative Appeals Tribunal

Answer:

a. Independent review for Small Business program pilot

Since 1 July 2018, the ATO has been trialling an Independent Review service for small businesses, with the aim of reducing costs and preventing disputes.

Following the initial twelve month pilot, the independent review service has been extended for a further 18 months to 31 December 2020. The scope has also been expanded to include eligible small businesses with disputes involving income tax, goods and services tax, excise, luxury car tax, wine equalisation tax and fuel tax credits.

As at 30 June 2020, over 1,000 small businesses have been offered this service and 163 offers have been accepted. We have completed 153 independent reviews resulting in 108 recommendations, where in 14 cases the taxpayer's view was supported in full and in 34 cases the taxpayer's view was partially supported.

b. Dispute Assist service

Since 1 July 2018 to 30 June 2020, Dispute Assist received a total of 584 requests. Of these requested 60 % were from individual taxpayers; 37% were from small businesses; and the remainder from other market areas.

Of the total requests received, 344 were reviewed and found to either not meet the criteria required for the service, or involved matters which would be addressed by objection case officers and did not require the services of Dispute Assist guides. The service finalised a total of 248 dispute assist cases during this period (noting this figure includes matters that were 'in-progress' as at 1 July 2018).

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c. National Tax Clinics operated by 10 universities

In their first year of operation from 1 March 2019 to 29 February 2020, Tax Clinics directly assisted 1,776 taxpayers with their tax affairs, including 269 small businesses. They also provided tax educational activities/outreach to over 1,200 people.

Tax Clinics also offer student volunteers the opportunity to work with unrepresented taxpayers, under the supervision of qualified tax agents or other tax professionals. From 1 March 2019 to 29 February 2020 Tax Clinics provided approximately 11,322 hours of practical experience to 211 students.

Tax Clinics continue to operate as scheduled during the pandemic, mostly via telephone and/or video conferencing, expanding the breadth of their previous operations outside of their usual physical locations.

d. Small Business Taxation Division (SBTD)

Volumes

The SBTD has had a total of 115 applications lodged in the 15 months from its commencement in March 2019. As at 30 June 2020, there are 85 active matters, and 30 matters have been finalised. The SBTD matters have continued to progress throughout the COVID-19 pandemic, through the use of teleconferencing and on-line video-conferencing platforms for appearances.

Topics and outcomes

The applications cover a variety of topics, with the most common disputes involving undisclosed income/sales, deductible expenses, penalties and the R&D offset. Together these topics account for 60% of all cases.

The outcomes for the finalised matters were:

- 13 cases were settled between the parties (an agreed outcome)
- 3 cases were heard by the Tribunal (all 3 decisions were favourable to the ATO)
- 1 case was dismissed by the Tribunal (taxpayer had no reasonable prospects)
- 6 cases did not have jurisdiction
- 6 cases were withdrawn by the applicant
- 1 matter was not continued by the applicant following an extension of time.

As at 30 June 2020, one of the 3 decisions made by the SBTD had been further appealed by the taxpayer to the Federal Court. That appeal was later discontinued by the taxpayer as part of a settlement.

Use of external legal providers

The ATO has honoured its commitment that it will self-represent in the SBTD as much as possible. External legal service providers have been engaged by the ATO in 15 cases (13%). The ATO has funding agreements (or in-principle agreements to fund) in place for 7 cases (6%).

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Approximately 86% of all applications filed are currently being conducted by the ATO in-house litigator only.

In 39% of applications the taxpayer has been already legally represented at the time of lodging their application.

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Inquiry into the Commissioner of Taxation Annual Report 2018-19

Department/Agency: ATO

Question: 4

Topic: Lodged objections

Reference: Written – 23 June 2020

Member: Jason Falinski

Question:

You state that the ATO ‘resolved over 26,000 objections, which represents less than 0.1% of 37 million returns lodged’. How many objections were lodged? (p. 15)

Answer:

The ATO received 27,769 objections in the 2018-19 financial year. These can relate to previous financial years.

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Department/Agency: ATO

Question: 5

Topic: Independent assurance

Reference: Written – 23 June 2020

Member: Jason Falinski

Question:

Can you elaborate on what you mean by the term ‘independent assurance’ on the application of complex legal matters? (p. 15)

Answer:

Providing independent assurance on the application of complex matters is undertaken through various processes/programs that include advice from relevant experts from outside the ATO.

Independent Assurance of Settlements (IAS) program

The IAS program, implemented in 2016, reviews and advises on the ATO’s largest and most significant settlements.

‘Independent assurance’ is conducted by four retired Federal Court judges.

Cases are automatically selected for independent assurance if they meet the following selection criteria:

- the pre-settlement position is greater than \$50 million
- the settlement amount is greater than \$20 million
- the variance is greater than \$20 million.

Settlements can also be nominated for review by a Deputy Commissioner irrespective of size or market segment where a matter is considered controversial, or of high risk.

The ATO uses the findings and feedback received from the cases reviewed to update our settlement processes and procedures, to ensure that our settlements continue to be fair, reasonable and consistent with legal principles.

General Anti-Avoidance Rules (GAARs) Panel

The primary purpose of the General Anti-Avoidance Rules Panel is to assist the ATO in its administration of general anti-avoidance rules. It helps to ensure decisions made on the application of GAARs are objectively based and that there is a consistency in approach to various issues that arise from time to time in the application of the GAARs. The Panel does this by providing independent advice to an ATO decision-maker in those matters which are referred to it. The GAAR Panel does not make binding decisions but advice provided is considered by the ATO decision maker. The Panel is made up of former members of the

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judiciary, external independent senior counsel, and other expert tax professionals or academics. The other members of the Panel are senior tax officers.

The Public Advice and Guidance Panel

The Public Advice and Guidance Panel is a consultative panel that considers and advises on the proposed interpretation of the law and other issues that emerge in the development of public advice and guidance.

The panel is chaired by Deputy Chief Tax Counsel for Public Advice and Guidance and consists of expert tax specialists, including Senior Counsel, tax practitioners and academics. For goods and services tax (GST) matters there is also a representative from the states and territories.

The panel offers advice on interpretative matters and technical accuracy. It may also advise on a range of related issues associated with the preparation of public advice and guidance, including:

- the suitability of the topic
- whether the structure and wording can be improved to make it easier to understand
- whether there are realistic examples we can include to make it more useful
- the most appropriate date of effect
- whether there are other related topics that may also be appropriate.

The panel either supports, tests, challenges or disagrees with aspects of our proposed position from multiple perspectives and provides advice on the interpretation to be taken for consideration by us.

The panel is advisory in nature; the ATO remains the ultimate decision maker.

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Department/Agency: ATO

Question: 6

Topic: General Anti-Avoidance Rules Panel

Reference: Written – 23 June 2020

Member: Jason Falinski

Question:

Can you provide some more information about the General Anti-Avoidance Rules Panel and the share buy-back transactions? (p.15)

Answer:

The General Anti-Avoidance Rules Panel assists the Tax Office in its administration of general anti-avoidance rules (GAARs) by providing independent advice to a Tax Office decision-maker in those matters which are referred to it. The GAAR Panel does not make a decision but its advice is taken into account by the Tax Office decision maker.

Companies can buy back their shares under section 257A of the *Corporations Act 2001* (*Cth*). Under the tax law, the consideration for a share buy-back is treated, in part, as a deemed distribution of profits. At general law it is however capital. This gives rise to tax planning opportunities in some circumstances. The Panel gave advice on a range of cases to indicate those where, in its opinion, GAARs might apply.

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Inquiry into the Commissioner of Taxation Annual Report 2018-19

Department/Agency: ATO

Question: 7

Topic: Independent Assurance of Settlements program

Reference: Written – 23 June 2020

Member: Jason Falinski

Question:

Can you provide some more information about the Independent Assurance of Settlements program and which actions were considered to ‘be fair and reasonable in 13 cases’? What happened in the other three cases? (p. 15)

Answer:

As set in out Table 6.6 on p. 169 of the Annual Report, 16 settlement cases were reviewed under the IAS program in 2018-19. In finding that 13 settlements were fair and reasonable the assurers considered that the ATO had followed the Code of Settlement Practice which provides the framework under which the ATO can enter into a settlement. The assurers concluded that settlement terms were the results of the pragmatic approach by the ATO and the taxpayer that appropriately addressed competing arguments and prudently assessed the litigation risk in the case.

In the other three matters, the reviews did not indicate any systemic concerns with the ATO’s approach to settlements but provided feedback about documentation and process.

The ATO responded to the feedback received in these cases and updated processes and training packages.

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Inquiry into the Commissioner of Taxation Annual Report 2018-19

Department/Agency: ATO

Question: 8

Topic: Digital service providers

Reference: Written – 23 June 2020

Member: Jason Falinski

Question:

How does the ATO partner with digital service providers? Can you provide some examples for the Committee? (p. 17)

Answer:

The ATO and Digital Service Providers (DSPs) partner to support taxpayers and businesses meet their tax and superannuation obligations. We offer over 270 Application Programming Interfaces (APIs) that DSPs can integrate into their software products through a machine-to-machine platform which enables over [790 million transactions](#) a year.

The ATO has a dedicated Digital Partnership Office (DPO) which collaborates with over 500 DSPs to design and build digital services and manages a network of support functions. This includes end to end technical assistance, management of the DSP Operational Framework (security requirements), consultation on new initiatives and ongoing industry engagement. The DPO manages the DSP relationships and provides a single-entry point for collaboration with digital programs in the ATO.

Some examples of how our collaboration and partnership with DSPs have delivered successful implementation of projects and initiatives and improved community outcomes include:

- 40 million income tax transactions processed this year through software (multiple transactions support the lodgment of a single return), with continual improvements to streamline the tax experience through [numerous collaboration events](#).
- 430 million payroll events lodged through single touch payroll which streamlines employer reporting obligations and provides a higher level of assurance in the payroll system. The collaboration with DSPs and industry played an integral part in successful delivery and this continues as we design phase 2.
- 300 million superannuation transactions reported this year which involved significant collaboration with industry to facilitate regular reporting of members accounts, benefiting all Australians to view and manage their super balances.
- Several thousand interactions with DSPs this year through our new DSP interactive platform allowing us to engage and support DSPs in an online environment.
- [DSP engagement model](#) developed which outlines the way we support, inform and co-design through strategic and operational working groups with DSPs and industry

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representatives, such as the Australian Business Software Industry Association (ABSIA).

Feedback to further evidence the strength of our partnerships can be seen in a Submission 82 of the Financial Technology and Regulatory Technology to the Senate Select Committee, <https://www.aph.gov.au/DocumentStore.ashx?id=2f5591f6-f637-42db-b4c7-162f38358688&subId=676644>.

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Inquiry into the Commissioner of Taxation Annual Report 2018-19

Department/Agency: ATO

Question: 9

Topic: 'Positive cultural' traits

Reference: Written – 23 June 2020

Member: Jason Falinski

Question:

What are the ATO's 'positive cultural' traits? (p. 18)

Answer:

The ATO's five cultural traits are:

- Client focused
- United and connected
- Empowered and trusted
- Future oriented
- Passionate and committed

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Inquiry into the Commissioner of Taxation Annual Report 2018-19

Department/Agency: ATO

Question: 10

Topic: Automation, artificial intelligence and sophisticated analytical techniques

Reference: Written – 23 June 2020

Member: Jason Falinski

Question:

Does the ATO have a target for the use of ‘automation, artificial intelligence and sophisticated analytical techniques’? What does success look like for the ATO in terms of being a data-driven organisation? (p. 20)

Answer:

The target for 2019/20 for the O1 measure “Tax returns – proportion of items that are pre-filled” is 85%. Our objective is to use data and insights to improve the way we work and ultimately deliver greater value for our clients.

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Australian Taxation Office

Inquiry into the Commissioner of Taxation Annual Report 2018-19

Department/Agency: ATO

Question: 11

Topic: Ride-sharing and short-term accommodation agents

Reference: Written – 23 June 2020

Member: Jason Falinski

Question:

In relation to comments made about Single Touch Payroll and data acquisition, do ride-sharing and short-term accommodation agents have better information than the ATO? Does the ATO have any plans to acquire data from these sources? (p.20)

Answer:

The ATO currently obtains data from a wide range of third-party sources, including ride-sourcing and short-term accommodation providers. Third-party data supplements and enriches the data we collect.

We have been acquiring:

- data from some ride-sourcing for our [data matching program](#) since October 2015 for the 2015-16 to 2018-19 financial years. The program will continue for the 2019-20 to 2021-22 financial years.
- data from accommodation rental platforms for our [data-matching program](#) since August 2018. Currently, this data matching program applies from the 2016-17 to 2019-20 financial years.

We publish details of the data we acquire under both of these programs and how we use it on our website at <https://www.ato.gov.au/General/Gen/Data-matching-protocols/>.

On 16 December 2019, as part of the [2019-20 Mid-Year Economic and Fiscal Outlook](#), the government announced it will introduce a third party reporting regime, which will require sharing economy online platforms to report identification and income information regarding participating sellers to the ATO for data matching purposes.

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Australian Taxation Office

Inquiry into the Commissioner of Taxation Annual Report 2018-19

Department/Agency: ATO

Question: 12

Topic: Securing taxpayer information

Reference: Written – 23 June 2020

Member: Jason Falinski

Question:

You state that the ‘ATO will continue to invest in securing taxpayer information through robust identity, authentication and authorisation platforms.’ How is the ATO dealing with Deep Fake? (p. 22)

Answer:

The ATO continues to invest in technology to combat emerging threats to the digital ecosystem. As part of the government’s Digital Identity program, the ATO has delivered myGovID, the government’s only identity provider accredited under the Trusted Digital Identity Framework (TDIF).

The ATO will continue to partner with other agencies including the Department of Home Affairs, Digital Transformation Agency, Department of Foreign Affairs and Trade and Services Australia, on the development of identity security solutions.

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Australian Taxation Office

Inquiry into the Commissioner of Taxation Annual Report 2018-19

Department/Agency: ATO

Question: 13

Topic: Creating single client accounts

Reference: Written – 23 June 2020

Member: Jason Falinski

Question:

Can you provide the Committee with an update on the ATO's progress in creating single client accounts?

Answer:

In late December 2019, the ATO successfully deployed the Activity Statement Financial Processing (ASFP) project, which involved moving approximately 17 million client accounts and financial transactions for Activity Statements from our legacy applications to the ATO's enterprise accounting system (Integrated Core Processing - ICP). This activity resulted in approximately 6 billion records being successfully transitioned from legacy applications to ICP.

The successful implementation of the ASFP project completed another step towards the ATO providing a single client accounting system. It brought processing of a majority of client accounting transactions into one system, resulting in improved functionality, streamlined processing, enhanced turnaround in issuing refunds and an enhanced client experience.

The next phase of the program, planned for implementation over the next two financial years, involves a similar transition of Excise and Excise-related accounts and financial transactions to ICP.

Upon the successful implementation of the Excise transition the ATO will have completed the implementation of a single accounting system.

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Inquiry into the Commissioner of Taxation Annual Report 2018-19

Department/Agency: ATO

Question: 14

Topic: Modern Slavery Act

Reference: Written – 23 June 2020

Member: Jason Falinski

Question:

What does the Modern Slavery Act have to do with the ATO? (p. 24)

Answer:

The Commonwealth *Modern Slavery Act 2018* established Australia's national Modern Slavery Reporting Requirement. Under the reporting requirement, certain entities must publish annual Modern Slavery Statements (statements) describing their actions to assess and address modern slavery risks.

The Commonwealth is one of those entities, with the statement to cover all non-corporate Commonwealth entities. The ATO will be covered by this statement, which will be prepared by the Department of Home Affairs and Australian Border Force.

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Australian Taxation Office

Inquiry into the Commissioner of Taxation Annual Report 2018-19

Department/Agency: ATO

Question: 15

Topic: Performance criteria for ATO Budget Statements

Reference: Written – 23 June 2020

Member: Jason Falinski

Question:

Can you provide a copy of the performance criteria for the ATO Budget Statements in the Treasury Portfolio Budget Statements and the ATO Corporate plan 2018-19 referred to on p. 25?

Answer:

Our performance criteria are set out on pages 185-189 of the [ATO Statements](#) (in the Treasury PBS) and pages 5-13 and 22-23 of the [ATO corporate plan 2018-19](#).

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Australian Taxation Office

Inquiry into the Commissioner of Taxation Annual Report 2018-19

Department/Agency: ATO

Question: 17

Topic: Problems between Treasury and the ATO

Reference: Written – 23 June 2020

Member: Jason Falinski

Question:

Can you elaborate on the problems between Treasury and the ATO mentioned on p. 31?

Answer:

Best practice for inter-agency engagement is to continually review processes and arrangements. The review conducted in 2018-19 found that the relationship was working very well.

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Inquiry into the Commissioner of Taxation Annual Report 2018-19

Department/Agency: ATO

Question: 18

Topic: Metric for pre-filled information

Reference: Written – 23 June 2020

Senator: Jason Falinski

Question:

You report that the proportion of items that are pre-filled in tax returns is 87.9%. Does the ATO have a metric for whether the information pre-filled is correct or incorrect? (p. 33)

Answer:

The 87.9% result reported in the 2018-19 annual report does not represent the proportion of items pre-filled on a tax return. It represents the proportion of data accepted by the taxpayer without change for certain data items we pre-fill on the individual tax return.

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Australian Taxation Office

Inquiry into the Commissioner of Taxation Annual Report 2018-19

Department/Agency: ATO

Question: 19

Topic: Significance of the cost to collect \$100

Reference: Written – 23 June 2020

Member: Jason Falinski

Question:

What is the significance of the cost to collect \$100? (p.35)

Answer:

The cost of collection is a common measure of efficiency/effectiveness used by tax administrations around the world, noting that there are many factors that can affect the cost to collect a figure.

The OECD has noted that “[the] ratio is computed by comparing the annual expenditure of a tax administration, with the net revenue collected over the course of a fiscal year” and “[as] the ratio is derived from a comparison of inputs (i.e. administrative costs) to outputs (i.e. revenue collections) it should over time reflect movements in relative efficiency and/or effectiveness ...”.¹

Due to differences in country by country factors and scope of revenue authority activities, the absolute level of this measure will not be directly comparable across revenue authorities. It is perhaps most useful in understanding the trend over time within a particular jurisdiction.

¹ OECD (2019), *Tax Administration 2019: Comparative Information on OECD and other Advanced and Emerging Economies*, OECD Publishing, Paris, <https://doi.org/10.1787/74d162b6-en>.

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Department/Agency: ATO

Question: 20

Topic: Appointment of members to the Tax Practitioners Board

Reference: Written – 23 June 2020

Member: Jason Falinski

Question:

Who appoints members of the Tax Practitioners Board? (p. 36)

Answer:

The Tax Practitioners Board members are appointed by the Treasurer (section 60-25 of the *Tax Agent Services Act 2009*). This process is managed by the Department of Treasury.

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Inquiry into the Commissioner of Taxation Annual Report 2018-19

Department/Agency: ATO

Question: 22

Topic: Removing ABNs

Reference: Written – 23 June 2020

Member: Jason Falinski

Question:

You removed almost 680,000 ABNs in 2018-19? Why is removing ABNs important? (p. 38)

Answer:

The Australian Business Register (ABR) is a valuable national data asset and one of the Registrar's key roles is to ensure that Australian Business Numbers (ABN) data is current and of high quality.

The Registrar ensures that only applicants entitled to an ABN obtain one, and also removes ABNs for entities that are no longer in business. Removing non-entitled and inactive ABNs from the ABR is important to maintain the accuracy of the ABR given its use for disaster response and recovery, infrastructure planning, compliance and delivery of services.

For example, the Registrar will cancel an ABN where it has been unable to find any sign of business activity reported by the client in their tax return or through other information held by the ATO including from the Taxable Payment Reporting System and information from third parties.

Businesses that have their ABN cancelled and do not agree with the decision can reapply for an ABN or lodge an objection.

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Inquiry into the Commissioner of Taxation Annual Report 2018-19

Department/Agency: ATO

Question: 23

Topic: ABN reforms

Reference: Written – 23 June 2020

Member: Jason Falinski

Question:

What reforms to ABNs have been suggested by stakeholders? (p. 38)

Answer:

The Government announced the following reforms in the 2018-19 Budget to strengthen the ABN system:

- From 1 July 2021, ABN holders will be required to lodge their income tax return (where they have an obligation to do so).
- From 1 July 2022, ABN holders will also need to check their details annually on the ABR.

This announcement followed public consultation on ABN Regulatory Reform conducted in 2018. In addition to this public consultation, the Registrar regularly engages with representatives from business, professional associations and all levels of government through the Business Registry Strategic Advisory Council.

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Inquiry into the Commissioner of Taxation Annual Report 2018-19

Department/Agency: ATO

Question: 24

Topic: Reduction in the administrative costs of businesses and government

Reference: Written – 23 June 2020

Member: Jason Falinski

Question:

Can you explain why there has been such a small reduction in the administrative costs of businesses and government in dealing with each other? What sources are used to calculate this number? What is your estimate of the total costs of business and government dealing with each other? (p. 40)

Answer:

In 2018-19, the Australian Business Register (ABR) program reported \$1.55b in savings from the reduction in the administrative cost to business and government in dealing with each other. The reduction of 2.4% (\$38m) in savings compared to the 2017-18 financial year was due to a change in the methodology used to calculate this saving rather than any additional regulatory burden being placed on business.

These savings are calculated using transaction volumes of services that utilise improvements, tools and technologies that government has introduced under the ABR program to simplify interactions between business and government.

The ATO is unable to provide an estimate of the overall cost of businesses dealing with the government.

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Inquiry into the Commissioner of Taxation Annual Report 2018-19

Department/Agency: ATO

Question: 25

Topic: Political operations of the Australian Charities and Not-for-profits Commission

Reference: Written – 23 June 2020

Member: Jason Falinski

Question:

Can you provide some information on the political operations of the Australian Charities and Not-for-profits Commission? (p.41)

Answer:

The ACNC was established under the *Australian Charities and Not-for-profits Commission Act 2012 (Cth)* (the ACNC Act). The Commissioner is appointed by the Governor-General to administer the ACNC Act as well as other powers and functions conferred or imposed on him/her by the ACNC Act or any other law including:

- *Australian Charities and Not-for-profits Commission (Consequential and Transitional) Act 2012 (Cth)* (the ACNC Consequential and Transitional Act).
- *Australian Charities and Not-for-profits Commission Regulation 2013 (Cth)* (the ACNC regulations)
- *Australian Charities and Not-for-profits Commission (Consequential and Transitional) Regulation 2016 (Cth)*
- *Charities Act 2013 (Cth)* (the Charities Act)
- *Charities (Consequential Amendments and Transitional Provisions) Act 2013 (Cth)* (the Charities Consequential and Transitional Act)
- *Charities (Definition of Government Entity) Instrument 2013* (made under subsection 4(2) of the Charities Act).

The role of the Commissioner is a statutory office holder established in legislation to provide additional transparency regarding the roles, responsibilities and purpose of the ACNC. As a statutory office holder, the Commissioner exercises their role independently from the minister and the government.

The ACNC is not a Commonwealth entity for the purposes of the Public Governance, Performance and Accountability Act 2013 (Cth) (PGPA Act). The ACNC Commissioner sets the direction and priorities of the ACNC, determines how resources will be allocated and produces the ACNC Corporate Plan and Annual Report. The Commissioner of Taxation is the Accountable Authority for the ACNC for PGPA Act purposes and provides an independent mechanism to assist the ACNC in monitoring risk and compliance with the PGPA Act.

Standing Committee on Tax and Revenue

ANSWERS TO QUESTIONS ON NOTICE

Australian Taxation Office

Inquiry into the Commissioner of Taxation Annual Report 2018-19

Department/Agency: ATO

Question: 26

Topic: Private health insurance rebate and research and development tax offsets

Reference: Written – 23 June 2020

Member: Jason Falinski

Question:

Can you explain why the payments for the private health insurance rebate and the research and development tax offsets are reducing? (p. 42)

Answer:

The Private Health Insurance Rebate figures on p. 42 of the Annual report reflects the value of rebates reported through the annual tax return process for individuals. A range of factors influence the value of the rebate paid each year. The ATO does not have any analysis on the administered private health insurance rebates. This is a matter for the Department of Health.

The Research & Development Tax Incentive is co-administered between the ATO and the Department of Industry, Science, Energy and Resources. In relation to claims for research and development tax offsets, the amount of these offsets have varied up and down over the years the program has been in place. There would be a very wide range of factors that each individual organisation would take into account in determining whether they were going to make a claim or not. The ATO does not have data in relation to these factors. DISER have responsibility for assessing the application and determining whether it should be registered as an eligible activity.

Standing Committee on Tax and Revenue

ANSWERS TO QUESTIONS ON NOTICE

Australian Taxation Office

Inquiry into the Commissioner of Taxation Annual Report 2018-19

Department/Agency: ATO

Question: 27

Topic: Uncollected GST

Reference: Written – 23 June 2020

Member: Jason Falinski

Question:

Does Table 3.4 outline that the ATO estimates that there is \$4.9b in uncollected GST? How do you make such an estimate? (p. 51)

Answer:

Net tax gap is defined as the amount of tax not paid, i.e. taking the amount the ATO would collect if every taxpayer was fully compliant and subtracting amounts reported to the ATO, amounts related to compliance activities and voluntary disclosures.

Each tax gap is estimated using a tailored methodology. The details of the method used for the GST gap is available on the ATO website at: <https://www.ato.gov.au/About-ATO/Research-and-statistics/In-detail/Tax-gap/Goods-and-services-tax-gap/>.

Standing Committee on Tax and Revenue

ANSWERS TO QUESTIONS ON NOTICE

Australian Taxation Office

Inquiry into the Commissioner of Taxation Annual Report 2018-19

Department/Agency: ATO

Question: 27

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Standing Committee on Tax and Revenue

ANSWERS TO QUESTIONS ON NOTICE

Australian Taxation Office

Inquiry into the Commissioner of Taxation Annual Report 2018-19

Department/Agency: ATO

Question: 28

Topic: Tax gap analysis

Reference: Written – 23 June 2020

Member: Jason Falinski

Question:

Can you provide some more information on Tables 3.5 and 3.6 relating to tax gap analysis? How do you make these estimates? On what basis do you assess reliability? (p. 51-52)

Answer:

Table 3.5 and 3.6 illustrate the latest net tax gap estimates for income-based taxes and programs that the ATO administers. Net tax gap is defined as the amount of tax not paid, i.e., taking the amount we would collect if every taxpayer was fully compliant and subtracting amounts voluntarily reported to the ATO, amounts related to compliance activities and voluntary disclosures.

Each tax gap is estimated using its own methodology. The details of the method used for each gap can be found on the ATO website: https://www.ato.gov.au/About-ATO/Research-and-statistics/In-detail/Tax-gap/Principles-and-approaches-to-measuring-gaps/?page=2#Tax_gap_methodology.

All gap estimates are assessed for reliability against 10 criteria. The reliability criteria can be found on the ATO website: https://www.ato.gov.au/About-ATO/Research-and-statistics/In-detail/Tax-gap/Principles-and-approaches-to-measuring-gaps/?page=4#Reliability_assessment.

In assessing reliability, we engage a panel of three independent experts to review our approaches and working material. The expert panel assesses each estimate and provides feedback for improvements. Once all feedback is addressed, the panel considers and provides a final rating. Details on the expert panel can be found on the ATO website: https://www.ato.gov.au/About-ATO/Research-and-statistics/In-detail/Tax-gap/Australian-tax-gaps-overview/?page=3#Engagement_advice_and_assurance.

Standing Committee on Tax and Revenue

ANSWERS TO QUESTIONS ON NOTICE

Australian Taxation Office

Inquiry into the Commissioner of Taxation Annual Report 2018-19

Department/Agency: ATO

Question: 30

Topic: Voluntary disclosures regarding errors in previously lodged tax returns

Reference: Written – 23 June 2020

Member: Jason Falinski

Question:

Which sectors made voluntary disclosures regarding errors in previously lodged tax returns?
(p.56)

Answer:

The number of client requests finalised during the 2018-19 financial year, to amend a previously lodged tax return, are detailed in the following table:

<u>Market Segment</u>	<u>Client requested amendments</u>
Government	161
Large Business	1,411
Medium Business	9,122
Not for Profit	601
Personal Taxes	418,122
Small Business	196,437
Total	625,854

Standing Committee on Tax and Revenue

ANSWERS TO QUESTIONS ON NOTICE

Australian Taxation Office

Inquiry into the Commissioner of Taxation Annual Report 2018-19

Department/Agency: ATO

Question: 31

Topic: Withholding tax from working holiday makers

Reference: Written – 23 June 2020

Member: Jason Falinski

Question:

Why has withholding tax from working holiday makers gone down from \$3.2b to \$2.9b? (p. 57)

Answer:

The amounts in the table show the average amount of income tax withheld from each individual taxpayer under the Working Holiday Maker framework throughout the relevant years. To clarify, Table 3.10 indicates that, as at 30 June 2019, 2,205 returns had been lodged early for the 2018-19 year, with an average income tax withheld of \$2,983.

This is due to the timing of the Annual Report. The lodgment figures disclosed for 2018-19 are for individuals who lodged their 2018-19 tax return prior to the end of financial year (30 June 2019) which was before the due date for lodgment of 31 October 2019. This means that these figures only represent a very small segment of the overall population and, as such, no conclusions can yet be drawn as to trends emerging in the 2018-19 year.

The numbers for 2018-19 will be updated in next year's report and will give a fuller picture of the overall position.

Standing Committee on Tax and Revenue

ANSWERS TO QUESTIONS ON NOTICE

Australian Taxation Office

Inquiry into the Commissioner of Taxation Annual Report 2018-19

Department/Agency: ATO

Question: 32

Topic: Fraud case involving the ex-Deputy Commissioner

Reference: Written – 23 June 2020

Member: Jason Falinski

Question:

Can you provide an update on the fraud case involving the ex-Deputy Commissioner? (p. 59)

Answer:

Mr Michael Cranston faced two criminal charges for alleged abuse of public office as the result of an investigation conducted by the AFP in conjunction with the ATO. Mr Cranston was found not guilty on both charges on 15 February 2019.

Standing Committee on Tax and Revenue

ANSWERS TO QUESTIONS ON NOTICE

Australian Taxation Office

Inquiry into the Commissioner of Taxation Annual Report 2018-19

Department/Agency: ATO

Question: 33

Topic: Commonwealth Fraud Control Framework 2017

Reference: Written – 23 June 2020

Member: Jason Falinski

Question:

Can you provide a brief overview of the Commonwealth Fraud Control Framework 2017? (p. 61)

Answer:

In order to manage the risk of fraud against the Commonwealth, the Government developed the Commonwealth Fraud Control Framework under the *Public Governance, Performance and Accountability Act 2013*. The framework consists of three tiered documents:

- Section 10 of the *Public Governance, Performance and Accountability Rule 2014* – a legislative instrument binding all Commonwealth entities setting out the key requirements of fraud control
- Commonwealth Fraud Control Policy – a Government policy binding non-corporate Commonwealth entities setting out procedural requirements for specific areas of fraud control such as investigations and reporting
- Resource Management Guide No. 201: Preventing, detecting and dealing with fraud – a better practice document setting out the Government's expectations in detail for control arrangements within all Commonwealth entities.

The framework outlines the core elements of fraud control as rigorous risk assessments, fraud control plans, and appropriate prevention, detection and investigations measures.

The ATO follows key procedural requirements and obligations set in the framework to protect public resources, protect the integrity and reputation of the ATO and provide accountability in fraud control.

Standing Committee on Tax and Revenue

ANSWERS TO QUESTIONS ON NOTICE

Australian Taxation Office

Inquiry into the Commissioner of Taxation Annual Report 2018-19

Department/Agency: ATO

Question: 34

Topic: Use of ‘contemporary communication products’ in fraud prevention activities

Reference: Written – 23 June 2020

Member: Jason Falinski

Question:

Can you give some examples of ‘contemporary communication products’ used in fraud prevention activities? (p. 61)

Answer:

We use a range of products and channels to engage and communicate:

- myATO news articles – to share detailed fraud related information focussing on increasing fraud awareness and willingness to report
- Reminder messages via foyer screens, myATO banners and security lock screens – to provide visual prompts with specific calls to action that help encourage employees to read/access material and keep fraud control at the forefront of minds
- Yammer campaigns – to reach staff in an innovative and timely manner via social media posts
- Consistent tag lines in Executive messaging – by using blog posts, or the introduction of weekly alerts to “what’s new” or “what’s happening”
- Self-service material and a suite of education products – that assist staff and allow managers to have awareness raising conversations
- Tailored business line dashboards – that provide ATO Executives with high level trend and focus areas to mitigate risk
- Mandatory training modules – that provide staff with an understanding of ATO related fraud issues
- Annual ATO Security, Integrity & Fraud Awareness Week – which raises fraud and broader integrity awareness widely within the ATO
- Purposeful promotion during recognised observances or events – to increase fraud awareness messages during Risk Month, International Fraud Awareness Week, International Anti-Corruption Day and National Whistle-blower day.

Standing Committee on Tax and Revenue

ANSWERS TO QUESTIONS ON NOTICE

Australian Taxation Office

Inquiry into the Commissioner of Taxation Annual Report 2018-19

Department/Agency: ATO

Question: 35

Topic: Illicit Tobacco Taskforce

Reference: Written – 23 June 2020

Member: Jason Falinski

Question:

Regarding the Illicit Tobacco Taskforce, wouldn't reducing the tax on tobacco achieve the same end of dismantling organised crime syndicates that deal in illicit tobacco? (p. 62)

Answer:

The ATO cannot comment on policy matters, including in relation to the rates of duty levied on tobacco products.

Standing Committee on Tax and Revenue

ANSWERS TO QUESTIONS ON NOTICE

Australian Taxation Office

Inquiry into the Commissioner of Taxation Annual Report 2018-19

Department/Agency: ATO

Question: 36

Topic: Reports presented to the Audit and Risk Committee

Reference: Written – 23 June 2020

Member: Jason Falinski

Question:

Can you provide a list of reports presented to the Audit and Risk Committee? (p. 62)

Answer:

The ATO Audit and Risk Committee (ARC) is presented with the following reports at their quarterly meetings:

- Dashboard reports that provide an overview of the ATO's compliance with the ARC's responsibilities under the *Public Governance, Performance and Accountability Act 2013* (PGPA Act), and the ATO's other PGPA obligations
- Internal Audit reports finalised since the previous ARC meeting
- Implementation of Scrutineer Recommendations report
- Integrity Indicators and Conformance with Obligations report
- Any other reports tendered by advisors as part of their quarterly submissions to the ARC
- Reports as requested by the ARC.

The ARC also provides oversight in relation to the development of key ATO reports that form part of the ATO's Annual Report. For example, the Financial Statement report.

Standing Committee on Tax and Revenue

ANSWERS TO QUESTIONS ON NOTICE

Australian Taxation Office

Inquiry into the Commissioner of Taxation Annual Report 2018-19

Department/Agency: ATO

Question: 37

Topic: Staff in Sydney

Reference: Written – 23 June 2020

Member: Jason Falinski

Question:

Where are all the staff in Sydney housed? (p. 80)

Answer:

ATO staff in Sydney are housed at 52 Goulburn Street, Sydney NSW 2000.

Standing Committee on Tax and Revenue

ANSWERS TO QUESTIONS ON NOTICE

Australian Taxation Office

Inquiry into the Commissioner of Taxation Annual Report 2018-19

Department/Agency: ATO

Question: 38

Topic: Definition of non-ongoing employees

Reference: Written – 23 June 2020

Member: Jason Falinski

Question:

Does the definition of non-ongoing employee include contractors, such as KPMG? (p. 82)

Answer:

No.

Standing Committee on Tax and Revenue

ANSWERS TO QUESTIONS ON NOTICE

Australian Taxation Office

Inquiry into the Commissioner of Taxation Annual Report 2018-19

Department/Agency: ATO

Question: 39

Topic: Number of contractors

Reference: Written – 23 June 2020

Member: Jason Falinski

Question:

How many contractors does the ATO use? (p. 82)

Answer:

As at 31 May 2020, there were 731 labour hire contractors working for the ATO.

Standing Committee on Tax and Revenue

ANSWERS TO QUESTIONS ON NOTICE

Australian Taxation Office

Inquiry into the Commissioner of Taxation Annual Report 2018-19

Department/Agency: ATO

Question: 40

Topic: Rate of staff turnover

Reference: Written – 23 June 2020

Member: Jason Falinski

Question:

What rate of staff turnover does the ATO aim for? (p. 84)

Answer:

The ATO does not have a staff turnover target.

Standing Committee on Tax and Revenue

ANSWERS TO QUESTIONS ON NOTICE

Australian Taxation Office

Inquiry into the Commissioner of Taxation Annual Report 2018-19

Department/Agency: ATO

Question: 41

Topic: Staff member who has worked at the ATO for 50 years

Reference: Written – 23 June 2020

Member: Jason Falinski

Question:

What is the name of the person who has worked at the ATO for 50 years? Can we honour them for their service? (p. 84)

Answer:

The individual employee's name is withheld for privacy reasons. The officer has since retired but was recognised for their service.

Standing Committee on Tax and Revenue

ANSWERS TO QUESTIONS ON NOTICE

Australian Taxation Office

Inquiry into the Commissioner of Taxation Annual Report 2018-19

Department/Agency: ATO

Question: 42

Topic: Default super fund

Reference: Written – 23 June 2020

Member: Jason Falinski

Question:

Does the ATO Enterprise Agreement include a default super fund? (p. 85)

Answer:

The ATO Enterprise Agreement does not include a default super fund.

Standing Committee on Tax and Revenue

ANSWERS TO QUESTIONS ON NOTICE

Australian Taxation Office

Inquiry into the Commissioner of Taxation Annual Report 2018-19

Department/Agency: ATO

Question: 43

Topic: Pay and conditions

Reference: Written – 23 June 2020

Member: Jason Falinski

Question:

Do your pay and conditions inhibit recruitment? (p. 86)

Answer:

No. The ATO's pay and conditions are competitive.

Standing Committee on Tax and Revenue

ANSWERS TO QUESTIONS ON NOTICE

Australian Taxation Office

Inquiry into the Commissioner of Taxation Annual Report 2018-19

Department/Agency: ATO

Question: 45

Topic: Key management personnel

Reference: Written – 23 June 2020

Member: Jason Falinski

Question:

For all key management personnel listed in Table 4.21, prior to their current positions, what roles did they have either internally or externally? (p. 87)

Answer:

Details of the roles held by the key management personnel (KMPs) listed in the annual report prior to their current positions are as follows:

- **Chris Jordan** – Chairman of Partners, KPMG NSW
- **Jeremy Hirschhorn** – Deputy Commissioner, Public Groups and International, ATO
- **Ramez Katf** – Managing Director, Accenture
- **Jacqui Curtis** – Deputy Commissioner, ATO People, ATO
- **Melinda Smith** – Commercial Director, Masters Hardware.

The KMPs included in the 2018-19 Annual Report who are no longer ATO employees are:

- **Andrew Mills** – Director, Greenwoods & Freehills
- **Neil Olesen** – Deputy Commissioner, Superannuation, ATO
- **Frances Cawthra** – Deputy Commissioner, Client Account Services, ATO.

Standing Committee on Tax and Revenue

ANSWERS TO QUESTIONS ON NOTICE

Australian Taxation Office

Inquiry into the Commissioner of Taxation Annual Report 2018-19

Department/Agency: ATO

Question: 46

Topic: Bonuses paid to Second Commissioners

Reference: Written – 23 June 2020

Member: Jason Falinski

Question:

What were the criteria for the bonuses paid to Second Commissioners? (p. 87)

Answer:

As statutory officers covered by the Principal Executive Officers (PEO) determination, ATO Second Commissioners' performance pay is paid in accordance with written guidelines issued by the Remuneration Tribunal. Refer to [PEO-Performance-Remuneration-Guidelines](#).

Standing Committee on Tax and Revenue

ANSWERS TO QUESTIONS ON NOTICE

Australian Taxation Office

Inquiry into the Commissioner of Taxation Annual Report 2018-19

Department/Agency: ATO

Question: 47

Topic: Approved part-time study for staff

Reference: Written – 23 June 2020

Member: Jason Falinski

Question:

How many staff have been approved for part-time study? (p. 89)

Answer:

1,283 staff accessed part-time study leave to complete studies in 2018-2019.

Standing Committee on Tax and Revenue

ANSWERS TO QUESTIONS ON NOTICE

Australian Taxation Office

Inquiry into the Commissioner of Taxation Annual Report 2018-19

Department/Agency: ATO

Question: 48

Topic: Lost time injury

Reference: Written – 23 June 2020

Senator: Jason Falinski

Question:

Why has there been a spike in lost time injury? (p. 90)

Answer:

The lost time injury rate figure for 2018-19 was actually 0.8 – a reduction from 2017-18. A correction will be included in the 2019-20 Annual Report.

Standing Committee on Tax and Revenue

ANSWERS TO QUESTIONS ON NOTICE

Australian Taxation Office

Inquiry into the Commissioner of Taxation Annual Report 2018-19

Department/Agency: ATO

Question: 49

Topic: Recipients of grants awarded by the ATO

Reference: Written – 23 June 2020

Member: Jason Falinski

Question:

Can you provide more detailed information on who was awarded grants by the ATO and why? (p. 101)

Answer:

The ATO awarded 14 grants with a total value of \$1,240,408 during 2018-19.

Information on the grants awarded is available at grants.gov.au.

Standing Committee on Tax and Revenue

ANSWERS TO QUESTIONS ON NOTICE

Australian Taxation Office

Inquiry into the Commissioner of Taxation Annual Report 2018-19

Department/Agency: ATO

Question: 50

Topic: Difference between Economic Transactions Method (ETM) and Taxation Liability Method (TLM)

Reference: Written – 23 June 2020

Member: Jason Falinski

Question:

What is the difference between Economic Transactions Method (ETM) and Taxation Liability Method (TLM)? How do they interact? (p. 105)

Answer:

Economic Transactions Method (ETM) and Taxation Liability Method (TLM) are the basis of revenue recognition that the ATO applies when recognising administered revenue.

Economic Transaction Method (ETM)

Under the ETM, revenue is applied when the ATO is able to forecast economic benefits. Where a taxation revenue type can be measured reliably, including transactions that are yet to occur but are likely to be reported, the ETM is applied.

Estimation techniques rely on assumptions such as wage growth, gross domestic product (GDP) and recent historical information.

Taxation Liability Method (TLM)

The TLM is applied where a taxation revenue type is not able to be measured reliably using estimation techniques. Revenue is recognised at the earlier of when an assessment of a tax or superannuation liability is made, or payment is received by the ATO.

Revenue recognised under the TLM basis is generally recognised at a later time than would be the case if it were measured under ETM.

Standing Committee on Tax and Revenue

ANSWERS TO QUESTIONS ON NOTICE

Australian Taxation Office

Inquiry into the Commissioner of Taxation Annual Report 2018-19

Department/Agency: ATO

Question: 51

Topic: Communication infrastructure projects

Reference: Written – 23 June 2020

Member: Jason Falinski

Question:

Please provide more detail on ‘communication infrastructure projects’? How much did they cost? (p. 110)

Answer:

Communication infrastructure projects relate to the ATO’s investment in modernising IT platforms including telephony transformation and end user workspace projects which improve the client and staff experience.

These projects include work directly aligned to Improving ATO IT Systems program and the ATO Program of Work key corporate priorities (Tax Time, Legislative Program, Single Touch Payroll, Superannuation and Digital Identity).

The 2018-19 costs form part of the \$1.462b suppliers expenses in the Statement of Comprehensive Income on p. 109 of the 2018-19 Annual Report.

Standing Committee on Tax and Revenue

ANSWERS TO QUESTIONS ON NOTICE

Australian Taxation Office

Inquiry into the Commissioner of Taxation Annual Report 2018-19

Department/Agency: ATO

Question: 52

Topic: Net assets

Reference: Written – 23 June 2020

Member: Jason Falinski

Question:

Why has there been a substantial reduction in net assets? (p. 111)

Answer:

The reduction in net assets year on year was predominantly driven by a reduction in appropriations receivable. This was due to timing differences in cash drawdowns and payments for goods and services.

Standing Committee on Tax and Revenue

ANSWERS TO QUESTIONS ON NOTICE

Australian Taxation Office

Inquiry into the Commissioner of Taxation Annual Report 2018-19

Department/Agency: ATO

Question: 53

Topic: Research and development tax incentive

Reference: Written – 23 June 2020

Member: Jason Falinski

Question:

Why were claims for the research and development tax incentive so far down? (p. 118)

Answer:

The ATO does not have data in relation to these factors.

Standing Committee on Tax and Revenue

ANSWERS TO QUESTIONS ON NOTICE

Australian Taxation Office

Inquiry into the Commissioner of Taxation Annual Report 2018-19

Department/Agency: ATO

Question: 54

Topic: Withholding tax

Reference: Written – 23 June 2020

Member: Jason Falinski

Question:

How does withholding tax drive higher income receipts? (p. 119)

Answer:

Income tax withholding is a major component of income tax revenue, accounting for almost two thirds of total income tax. For the year ended 30 June 2019, income tax withholding was worth \$204,764 million out of \$333,379 million in income tax.

Standing Committee on Tax and Revenue

ANSWERS TO QUESTIONS ON NOTICE

Australian Taxation Office

Inquiry into the Commissioner of Taxation Annual Report 2018-19

Department/Agency: ATO

Question: 55

Topic: Special accounts

Reference: Written – 23 June 2020

Member: Jason Falinski

Question:

What are special accounts? Why do you need appropriations? Is this consistent with overseas? (p. 123)

Answer:

A special account is an appropriation mechanism and is used to set aside an amount of money in the Consolidated Revenue Fund for specific Commonwealth payments.

An appropriation is the legal release of money from the Consolidated Revenue Fund. The Government needs an appropriation, authorised by the Parliament, in order to spend public money. The Budget process in Australia is the decision-making process for allocating public resources to the Government's policy priorities. It is through the Budget process that the government gains the Parliament's authority to spend relevant money through the passage of the annual appropriation acts and other legislation that establishes special appropriations.

In democracies such as the UK, New Zealand, Canada and USA, approval of the Parliament is necessary for the government to spend money.

Standing Committee on Tax and Revenue

ANSWERS TO QUESTIONS ON NOTICE

Australian Taxation Office

Inquiry into the Commissioner of Taxation Annual Report 2018-19

Department/Agency: ATO

Question: 56

Topic: Separations and redundancies payments

Reference: Written – 23 June 2020

Member: Jason Falinski

Question:

What constitutes separations and redundancies payments? (p. 137)

Answer:

A separation payment consists of eligible accrued leave entitlements at cessation of employment. A redundancy payment relates to the taxable and tax free components of an ETP (Eligible Termination Payment) and payment in lieu of notice when employees are terminated and/or excess to organisational requirements.

Standing Committee on Tax and Revenue

ANSWERS TO QUESTIONS ON NOTICE

Australian Taxation Office

Inquiry into the Commissioner of Taxation Annual Report 2018-19

Department/Agency: ATO

Question: 57

Topic: Onerous leases

Reference: Written – 23 June 2020

Member: Jason Falinski

Question:

What is the definition of an onerous lease? (p. 139)

Answer:

An onerous lease is recognised where the unavoidable costs of meeting the obligations under the contract exceed the economic benefits expected to be received under it. The threshold to recognise an onerous lease associated with a non-cancellable lease is \$250,000 per lease.

Standing Committee on Tax and Revenue

ANSWERS TO QUESTIONS ON NOTICE

Australian Taxation Office

Inquiry into the Commissioner of Taxation Annual Report 2018-19

Department/Agency: ATO

Question: 59

Topic: Private health insurance rebates

Reference: Written – 23 June 2020

Member: Jason Falinski

Question:

Why did private health insurance rebates drop by \$40m in 2018-19? (p. 145)

Answer

Please refer to response to question 26.

Standing Committee on Tax and Revenue

ANSWERS TO QUESTIONS ON NOTICE

Australian Taxation Office

Inquiry into the Commissioner of Taxation Annual Report 2018-19

Department/Agency: ATO

Question: 60

Topic: Company and individual tax receipts vs. super

Reference: Written – 23 June 2020

Member: Jason Falinski

Question:

Why did company and individual tax receipts go up but super go down? (p. 147)

Answer:

There are many varying economic, employment and investment market factors that contribute in different ways to movements in different types of tax receipts.

Standing Committee on Tax and Revenue

ANSWERS TO QUESTIONS ON NOTICE

Australian Taxation Office

Inquiry into the Commissioner of Taxation Annual Report 2018-19

Department/Agency: ATO

Question: 61

Topic: Bank levy

Reference: Written – 23 June 2020

Member: Jason Falinski

Question:

Is the bank levy already at \$1b? (p.149)

Answer:

The bank levy exceeded \$1b in 2018-19; the major bank levy was \$1.56b in 2018-19, as reported in Table 3.1 on p. 48 of the ATO's Annual Report 2018-19.

Standing Committee on Tax and Revenue

ANSWERS TO QUESTIONS ON NOTICE

Australian Taxation Office

Inquiry into the Commissioner of Taxation Annual Report 2018-19

Department/Agency: ATO

Question: 62

Topic: Superannuation surcharge

Reference: Written – 23 June 2020

Member: Jason Falinski

Question:

Why are you still assessing the superannuation surcharge 15 years after it was abolished? (p. 149)

Answer:

No new debit assessments (originals or amendments) are being raised.

The superannuation surcharge still applies in limited contexts on legacy accounts where payment is deferred until the member's retirement.

Standing Committee on Tax and Revenue

ANSWERS TO QUESTIONS ON NOTICE

Australian Taxation Office

Inquiry into the Commissioner of Taxation Annual Report 2018-19

Department/Agency: ATO

Question: 63

Topic: Remittances

Reference: Written – 23 June 2020

Member: Jason Falinski

Question:

Why are remittances considered ‘non-financial’ assets? (p.151)

Answer:

Statutory receivables (as reported on p. 151 of the Annual Report 2018-19) are not financial assets, as defined in AASB 132 *Financial Instruments: Presentation*, because there is no contract that provides the entity with the right to future cash flows. ATO administered receivables arise from statutory requirements (for example, income tax) and as a result these receivables are recognised as non-financial assets.

Standing Committee on Tax and Revenue

ANSWERS TO QUESTIONS ON NOTICE

Australian Taxation Office

Inquiry into the Commissioner of Taxation Annual Report 2018-19

Department/Agency: ATO

Question: 64

Topic: FBT receipts

Reference: Written – 23 June 2020

Member: Jason Falinski

Question:

Why has there been a jump in FBT receipts? (p. 151)

Answer:

The figures on p. 151 refer to Fringe Benefits Tax (FBT) 'Receivables' representing outstanding unpaid debt, rather than FBT receipts. The annual increase of \$70m is less than 2% of FBT collections and is not material.

Information regarding FBT receipts is provided in the Annual Report at p. 48, Table 3.1 'Net tax cash collections'. FBT receipts amounted to \$3,911m for the 2018 income year and \$3,794 million for the 2019 income year – a decrease of \$117 million (3%).

Standing Committee on Tax and Revenue

ANSWERS TO QUESTIONS ON NOTICE

Australian Taxation Office

Inquiry into the Commissioner of Taxation Annual Report 2018-19

Department/Agency: ATO

Question: 66

Topic: Unclaimed super payments

Reference: Written – 23 June 2020

Member: Jason Falinski

Question:

Does the ATO really have over \$1b in unclaimed super payments? What is being done to reduce this? (p. 153)

Answer:

As at 30 June 2019 the ATO estimated the value of unclaimed super payments to be about \$1.7b. This figure is an estimate of amounts of unclaimed super the ATO will pay out to individuals in the future.

The *Treasury Laws Amendment (Protecting Your Superannuation Package) Act 2019* received Royal Assent on 12 March 2019, with effect from 1 July 2019. The law introduced new powers for the Commissioner to proactively consolidate ATO-held unclaimed super (including inactive low-balance accounts).

From 1 November 2019, the ATO commenced proactively reuniting more eligible individuals with their unclaimed super money (USM) through the implementation of the Protecting Your Superannuation (PYS) Package.

Between 1 November 2019 and 31 May 2020, we proactively reunited about 2.5 million accounts worth about \$3.3b.

We have ongoing campaigns to reunite individuals with their lost and unclaimed super. To date these have included:

- Our annual postcode data released in November 2019, which raised awareness of lost and unclaimed super in the community. This included a large marketing campaign that generated significant media coverage.
- An outbound SMS/email campaign directly to individuals for whom we were holding unclaimed super monies, conducted in April 2020.

Standing Committee on Tax and Revenue

ANSWERS TO QUESTIONS ON NOTICE

Australian Taxation Office

Inquiry into the Commissioner of Taxation Annual Report 2018-19

Department/Agency: ATO

Question: 67

Topic: Contingent liabilities

Reference: Written – 23 June 2020

Member: Jason Falinski

Question:

Are contingent liabilities entirely disputed amounts already collected? (p. 154)

Answer:

The contingent liability represents the estimated aggregate value of tax in dispute, for which a provision has not been made. Disputed amounts already collected are subject to a provision for refund.

Standing Committee on Tax and Revenue

ANSWERS TO QUESTIONS ON NOTICE

Australian Taxation Office

Inquiry into the Commissioner of Taxation Annual Report 2018-19

Department/Agency: ATO

Question: 68

Topic: Purpose of Special Accounts

Reference: Written – 23 June 2020

Member: Jason Falinski

Question:

What is the purpose of the Special Accounts outlined on page 160?

Answer:

Special accounts are established on a case-by-case basis, as considered by the Finance Minister. The purpose of a special account is to narrow the spending scope to specific purposes set out in legislation. In comparison, the payment purposes for annual appropriations are based on broad entity functional Outcome statements.

The purpose of the special accounts on p. 160 of the Annual Report 2018-19 are as follows.

Australian Charities and Not-for-profits Commission Special Account

Purpose:

- a. paying or discharging the costs, expenses and other obligations incurred by the Commonwealth in the performance of the Commissioner's functions
- b. paying any remuneration and allowances payable to any person under *Australian Charities and Not-for-profits Commission Act 2012* (including staff mentioned in section 120-5)
- c. meeting the expenses of administering the Account.

Services for Other Entities and Trust Moneys Special Account - Australian Taxation Office (Comcare receipts)

Purpose: for the receipt of moneys temporarily held in trust for other persons.

Standing Committee on Tax and Revenue

ANSWERS TO QUESTIONS ON NOTICE

Australian Taxation Office

Inquiry into the Commissioner of Taxation Annual Report 2018-19

Department/Agency: ATO

Question: 69

Topic: Cost of the Australian Charities and Not-for-profits Commission

Reference: Written – 23 June 2020

Member: Jason Falinski

Question:

How much does the Australian Charities and Not-for-profits Commission cost? (p. 160)

Answer:

For the 2018-19 financial year, the Australian Charities and Not-for-profits Commission's operating expenditure was \$14.86m and their capital expenditure was \$1.66m.

The annual performance statement for the ACNC is included as part of the Australian Charities and Not-for-profits Commission annual report 2018-19.

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ANSWERS TO QUESTIONS ON NOTICE

Australian Taxation Office

Inquiry into the Commissioner of Taxation Annual Report 2018-19

Department/Agency: ATO

Question: 70

Topic: Money for the Australian Charities and Not-for-profits Commission

Reference: Written – 23 June 2020

Member: Jason Falinski

Question:

Where does the money for the Australian Charities and Not-for-profits Commission come from? (p. 160)

Answer:

The Australian Charities and Not-for-profits Commission Special Account is the appropriation mechanism that sets aside an amount within the Consolidated Revenue Fund to be expended for the purposes of the ACNC Act (as per Division 125 of the *Australian Charities and Not-for-profits Commission Act 2012*).

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ANSWERS TO QUESTIONS ON NOTICE

Australian Taxation Office

Inquiry into the Commissioner of Taxation Annual Report 2018-19

Department/Agency: ATO

Question: 71

Topic: Australian Charities and Not-for-profits Commission's clients

Reference: Written – 23 June 2020

Member: Jason Falinski

Question:

Who are the Australian Charities and Not-for-profits Commission's clients? (p.160)

Answer:

ACNC clients include:

- Not-for-profits seeking charity registration
- Registered charities
- Individuals who provide support to charities (donors/volunteers)
- Researchers
- The general public.

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ANSWERS TO QUESTIONS ON NOTICE

Australian Taxation Office

Inquiry into the Commissioner of Taxation Annual Report 2018-19

Department/Agency: ATO

Question: 72

Topic: Explanation of accounts

Reference: Written – 23 June 2020

Member: Jason Falinski

Question:

Please provide an explanation of the accounts on page 161. What are they for?

Answer:

The Special Accounts presented on p. 161 of the Annual Report 2018-19 are as follows:

Superannuation Holding Accounts Special Account

Used to receipt small superannuation contributions from depositors and distribution to individuals. The Superannuation Holding Accounts Special Account is established under the Small Superannuation Accounts Act 1995 (SSA Act).

Services for Other Entities and Trust Moneys Special Account (SOETM)- Australian Taxation Office

Used to receipt moneys temporarily held in trust for other persons. The purpose of the SOETM Special Account is to:

- (a) disburse amounts held on trust or otherwise for the benefit of a person other than the Commonwealth
- (b) disburse amounts in connection with services performed on behalf of other governments and bodies that are not PGPA Act agencies
- (c) repay amounts where an Act or other law requires or permits the repayment of an amount received
- (d) reduce the balance of the Special Account (and, therefore, the available appropriation for the Special Account) without making a real or notional payment.

Superannuation Clearing House Special Account

The purpose of the Superannuation Clearing House Special Account is to hold amounts received from small business employers to make superannuation contributions for the benefit of their employees. After receiving the amounts via the Small Business Superannuation Clearing House (SBSCH) the ATO will pay the amounts to nominated superannuation funds on behalf of the employers.

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ANSWERS TO QUESTIONS ON NOTICE

Australian Taxation Office

Inquiry into the Commissioner of Taxation Annual Report 2018-19

Department/Agency: ATO

Question: 73

Topic: Design of cost recovery amounts for FISL, EEG and TPB

Reference: Written – 23 June 2020

Member: Jason Falinski

Question:

How are the cost recovery amounts for FISL, EEG and TPB designed? How do we know they are efficient? (p. 162)

Answer:

Cost recovery amounts for FISL, EEG and TPB have been designed in line with the Australian Government Cost Recovery Guidelines ([RMG 304](#)).

The ATO tracks, forecasts and reports on the cost to administer these programs in order to inform fee and levy amounts for future years.

The way fees and charges are modelled and implemented is contained in the relevant cost recovery implementation statements (CRIS).

- Financial Industry Supervisory Levy (FISL) –
https://www.apra.gov.au/sites/default/files/cost_recovery_implementation_statement_prudential_regulation_of_financial_institutions_2019-2020.pdf
- Tax Practitioners Board (TPB) –
https://www.tpb.gov.au/sites/default/files/tpb_cost_recovery_implementation_statement.pdf
- Excise Equivalent Goods (EEG) – a copy of the Cost Recovery Implementation Statement for Cargo and Trade related activities is available from the Department of Home Affairs.

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ANSWERS TO QUESTIONS ON NOTICE

Australian Taxation Office

Inquiry into the Commissioner of Taxation Annual Report 2018-19

Department/Agency: ATO

Question: 74

Topic: Acts that give the ATO powers

Reference: Written – 23 June 2020

Member: Jason Falinski

Question:

How many Acts give the ATO powers? Can you provide a list of other Acts applicable to the Commissioner? (p.164)

Answer:

The list in Appendix 1 of the ATO Annual report refers to 30 laws conferring powers or functions on the Commissioner of Taxation. Other Acts which impart powers are:

- *Proceeds of Crime Act 2002* – allows the Commissioner to give a financial institution a notice directing them to give financial information to an authorised officer
- *VET Student Loans Act 2016* – the Commissioner can make assessments of vocational education student loan debts and determine amounts to be repaid in respect of that debt
- *Trade Support Loans Act 2014* – the Commissioner has powers to make, defer and amend assessments of trade support loan debts
- *Boosting Cash Flow for Employers (Coronavirus Economic Response Package) Act 2020* – provides the Commissioner with general administration of this Act related to the cash flow boost COVID-19 measure
- *Coronavirus Economic Response Package (Payments and Benefits) Act 2020* – provides financial support to entities directly or indirectly affected by the Coronavirus known as COVID-19
- *Franchise Fees Windfall Tax (Collection) Act 1997* – Commissioner has general powers of administration of the Act and to make arrangements with the States about matters in the Act
- *Student Identifiers Act 2014* – allows the Commissioner to collect student identifiers for the purposes of exercising his powers under the *VET Student Loans Act 2016*.

The list in Appendix 1 also represents responsibilities imparted on the Commissioner of Taxation. Other Acts which impart responsibilities on the Commissioner are:

- *The Privacy Act 1988* – regulates how Australian Government agencies handle personal information
- *Public Governance, Performance and Accountability Act 2013* – establishes a coherent system of governance and accountability for public resources, with an emphasis on planning, performance and reporting
- *Charter of Budget Honesty Act 1998* – legislative framework for the conduct and reporting of Government fiscal policy

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Inquiry into the Commissioner of Taxation Annual Report 2018-19

- *Financial Management and Accountability Act 1997* – accountability for managing financial risk. The Commissioner is responsible for ensuring proper use of ATO resources.

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ANSWERS TO QUESTIONS ON NOTICE

Australian Taxation Office

Inquiry into the Commissioner of Taxation Annual Report 2018-19

Department/Agency: ATO

Question: 75

Topic: Client and Community Confidence survey

Reference: Written – 23 June 2020

Member: Jason Falinski

Question:

1. How many respondents were there to the Client and Community Confidence survey to enable you to assess the ATO's performance against the Taxpayers' Charter?
2. What is this as a percentage of total number of interactions with the ATO?
3. Were standard deviation and the confidence interval calculated for these scores? (p. 165)

Answer:

1. Total: 17,818
10,682 Clients (those who had an interaction with the ATO)
7,136 Community (general Australian population gathered from a market research panel)

This is a statistically representative sample, based on advice and expertise from our external market research providers and the Australian Bureau of Statistics.

2. 10,682 respondents who had an interaction with the ATO represents less than 0.1 per cent of the total number of interactions with the ATO. See pages 168, 182 and 183 of the 2018-19 ATO Annual Report for data regarding the total number of interactions, disaggregated across a range of interaction types.

As per (1), this is a statistically representative sample, based on advice and expertise from our external market research providers and the Australian Bureau of Statistics.

3. The standard deviation and confidence intervals are not routinely calculated. Results are a straight average, as we seek to understand our shifts in performance in absolute terms instead of a spectrum. We do conduct significance testing to understand when the change in a measure is statistically relevant, which includes implicit calculation of variance.

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ANSWERS TO QUESTIONS ON NOTICE

Australian Taxation Office

Inquiry into the Commissioner of Taxation Annual Report 2018-19

Department/Agency: ATO

Question: 76

Topic: Amount paid in settlements

Reference: Written – 23 June 2020

Member: Jason Falinski

Question:

Why has there been a jump in the amount paid in settlements? (p. 169)

Answer:

In entering into a settlement, the ATO must follow the principles set out the Code of Settlement Practice on a case-by-case basis. In doing so the difference between the ATO position and the settled position will vary each year.

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ANSWERS TO QUESTIONS ON NOTICE

Australian Taxation Office

Inquiry into the Commissioner of Taxation Annual Report 2018-19

Department/Agency: ATO

Question: 77

Topic: Levels of client group

Reference: Written – 23 June 2020

Member: Jason Falinski

Question:

Did you choose the levels of client group specified in Table 6.8? How? (p. 170)

Answer:

These client experience groups are used for a range of operational purposes. The current grouping framework has been in place since 2017 with minor adjustments over time.

Standing Committee on Tax and Revenue

ANSWERS TO QUESTIONS ON NOTICE

Australian Taxation Office

Inquiry into the Commissioner of Taxation Annual Report 2018-19

Department/Agency: ATO

Question: 78

Topic: Legal services expenditure

Reference: Written – 23 June 2020

Member: Jason Falinski

Question:

Can you explain Table 6.9 relating to legal services expenditure? (p. 171)

This question was later further clarified as – The Committee would like to know why we report the legal services expenditure in Table 6.9.

Answer:

The *Legal Services Directions 2017* (the Directions) are a set of binding rules issued by the Attorney-General about the performance of Commonwealth legal work.

Pursuant to subparagraph 11.1(ba) of the Directions, all non-corporate Commonwealth entities regulated by the Public Governance, Performance and Accountability Act 2013 (Cth) (PGPA Act) are required to report on legal services expenditure, to the Office of Legal Services Coordination (OLSC) by 30 October each year.

The ATO publishes this in the Annual Report and subsequently on ato.gov.au. The format chosen to publish this information is in accordance with the Legal expenditure reporting requirements set in the Directions, and published Guidance Notes.

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ANSWERS TO QUESTIONS ON NOTICE

Australian Taxation Office

Inquiry into the Commissioner of Taxation Annual Report 2018-19

Department/Agency: ATO

Question: 79

Topic: Briefs to counsel

Reference: Written – 23 June 2020

Member: Jason Falinski

Question:

Why do you report on the categories in Table 6.10 relating to briefs to counsel? How many are male versus female? How do you determine whether someone is senior or junior? (p. 172)

Answer:

The *Legal Services Directions 2017* (the Directions) are a set of binding rules issued by the Attorney-General about the performance of Commonwealth legal work.

Pursuant to subparagraph 11.1(da) of the Directions, all non-corporate Commonwealth entities regulated by the Public Governance, Performance and Accountability Act 2013 (Cth) (PGPA Act) are required to report on legal services expenditure, to the Office of Legal Services Coordination (OLSC) within 60 days of the end of financial year.

The ATO publishes this data in its annual report and subsequently on ato.gov.au. The format chosen to publish this information is in accordance with the Legal expenditure reporting requirements set in the Directions, and published Guidance Notes.

The legal services expenditure report must include:

- total value of counsel briefs (broken down by method of brief (direct or indirect), gender, and seniority (junior or senior barristers)
- total number of counsel briefed, broken down by method of brief (direct or indirect) gender and seniority
- whether the entity has met the Gender Equitable targets set out in paragraph 4D(d) of Appendix D to the Directions.

To comply with OLSC reporting requirements the ATO requires all external legal service providers to prepare a Barrister List Report within 21 days of the last business day of the quarter. As per the figures in Table 6.10 of the Annual Report 2018-19, there were:

- 696 Briefs to Male Counsel (both Senior and Junior)
- 350 Briefs to Female Counsel (both Senior and Junior).

For the purposes of reporting, the definitions of senior barrister and junior barrister are set out in paragraph 33 of the OLSC Legal Services Directions Guidance notes, as follows:

- A senior barrister includes:
 - a barrister of 10 or more years standing at the private bar
 - counsel who has 10 or more years' experience in being briefed as a barrister to advise or appear
 - a barrister who is Queen's Counsel or Senior Counsel.

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- A junior barrister means all other barristers or counsel.

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ANSWERS TO QUESTIONS ON NOTICE

Australian Taxation Office

Inquiry into the Commissioner of Taxation Annual Report 2018-19

Department/Agency: ATO

Question: 80

Topic: Significant cases

Reference: Written – 23 June 2020

Member: Jason Falinski

Question:

Please provide some more information on the significant cases outlined in Table 6.11? How long did they take? How much did they cost? What was the cost across the tax system? What does it mean to be a model litigant? (p.173)

Answer:

How long did they take?

Table A below (refer “Duration” column) shows the approximate duration of the litigation (rounded to the nearest month) for each case calculated from the date of the originating application to the date of the judgment reported in Table 6.11.

If the case was appealed from a lower jurisdiction then the date of the originating application in the lowest jurisdiction was used as the commencement date. This reflects the duration of the entire litigation up to the point of the decision reported in Table 6.11. As noted in Table 6.11 some of the cases continued into the 2019-20 income year which will be reported in the ATO’s Annual Report 2019-20.

How much did they cost?

The total “Legal Expenditure” shows the approximate cost of external legal expenditure (including counsel) incurred in the conduct of the litigation during the period described above is \$12.1 million.

Of the cases listed in Table 6.11, six were test case funded either for the entire duration or at a particular point(s) during that time. The total amount of test case funding provided by the ATO during this time was \$1.7million

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Australian Taxation Office

Inquiry into the Commissioner of Taxation Annual Report 2018-19

Table A

Case listed in Table 6.11	Duration (months)
Federal Commissioner of Taxation v Thomas [2018] HCA 31	63
Sandini Pty Ltd as trustee for the Karratha Rigging Unit Trust v Ellison v Commissioner of Taxation for the Commonwealth of Australia [2018] HCA trans 190	33
Trustee for the Michael Hayes Family Trust v Commissioner of Taxation [2019] FCA 426	20
Watson as trustee for the Murrindindi Bushfire Class Action Settlement Fund v Commissioner of Taxation [2019] FCA 228	11
Commissioner of Taxation v BHP Billiton Ltd [2019] FCAFC 4	30
Commissioner of Taxation v Resource Capital Fund IV LP [2019] FCAFC 51	61
Commissioner of Taxation v Sharpcan Pty Ltd [2018] FCAFC 163	23
EE&C Pty Ltd as trustee for the Tarcisio Cremasco Family Trust and Commissioner of Taxation [2018] AATA 4093	49
Eichmann and Commissioner of Taxation [2019] AATA 162	17
Harding v Commissioner of Taxation [2019] FCAFC 29	18
Mingos v Commissioner of Taxation [2019] FCA 834	16
Satyam Computer Services Limits v Commissioner of Taxation [2018] FCAFC 172	13
Victoria Power Networks Pty Ltd v Commissioner of Taxation [2019] FCA 77	16
Aussiegolfa Pty Ltd (Trustee) v Commissioner of Taxation [2018] FCAFC 122	12
BlueScope Steel (AIS) Pty Ltd v The Australian Workers' Union [2019] FCAFC 84	11
Commissioner of Taxation v ACN 154 520 199 Pty Ltd (in liq) (formerly EBS & Associates Pty Ltd [2018] FCA 1140	21
Commissioner of Taxation v Tomaras [2018] HCA 62	37
Comptroller General of Customs v Zappia [2018] HCA 54	21
Deputy Commissioner of Taxation v Buzadzic [2019] VSC 141	24

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Australian Taxation Office

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Fyna Projects Pty Ltd v Deputy Commissioner of Taxation [2018] FCA 2041	14
Iannuzzi v Commissioner of Taxation [2019] FCAFC 39	7
Linfox Australia Pty Ltd and Commissioner of Taxation [2019] AATA 222	20
Pintarich v Commissioner of Taxation [2018] HCASL 322	29
Racing Queensland Board v Commissioner of Taxation [2019] FCA 509	18
Scone Race Club Ltd v Commissioner of Taxation [2019] FCA 976	20
The Bell Group Limited v Australian Securities and Investments Commission (No 2) [2018] FCA 1970	18
Travelex Limited v Commissioner of Taxation [2018] FCA 1051	19

What was the cost across the tax system?

On 30 June the question was clarified: *In regards to the question “what was the cost across the tax system”, it means the financial implications of the decision. That is to say, if the ATO lost a particular case and the principle was applied across the entire tax system what would be the financial implications?*

The financial implications of a decision is not the only factor of a significant case. The ATO cannot determine financial implications across the entire tax system.

What does it mean to be a model litigant?

The ATO conducts and manages litigation in accordance with obligations under:

- Legislation and case law
- The Attorney-General's Legal Services Directions 2017, which include the Model Litigant Obligations (MLOs) in Appendix B
- Court and tribunal rules, practice notes and directions
- ATO policies and guidelines, and the principles and rules applied to legal practitioners by State governing bodies.

Under the [Legal Services Directions 2017](#) we have an obligation to act as a model litigant. This means that in handling claims and litigation, brought by or against us, we are required to act with complete propriety, fairness and in accordance with the highest professional standards. The ATO acknowledges and understands that its role in litigation is to assist the AAT or court to arrive at the right outcome.

The MLOs require us to act consistently across cases to avoid:

- relying upon technical arguments unless the government's interests would be prejudiced by not doing so
- taking advantage of taxpayers who do not have the same resources to pursue a claim.

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Inquiry into the Commissioner of Taxation Annual Report 2018-19

The MLOs state that they do not prevent the ATO from acting firmly and properly to take all legitimate steps to pursue claims by the ATO or to test or respond to claims against the ATO.

Under the current MLO compliance framework set out by the Office of Legal Services Coordination (OLSC), the ATO must report to the OLSC potential breaches of the MLOs. This includes allegations of breaches made by taxpayers, judicial commentary indicating a potential breach of the model litigant obligations and ATO staff or legal service providers self-reporting potential breaches. MLO allegations are investigated and reported to OLSC by ATO General Counsel, which is a separate and independent area from ATO Review and Dispute Resolution which handles tax disputes with taxpayers.

The ATO remains active to ensure the highest standards are maintained in relation to its litigation work. This includes employing qualified lawyers to work on litigation cases, providing regular training (both internal and external to the ATO) on model litigant obligations and engaging external solicitors and counsel for more complex or higher risk matters.

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ANSWERS TO QUESTIONS ON NOTICE

Australian Taxation Office

Inquiry into the Commissioner of Taxation Annual Report 2018-19

Department/Agency: ATO

Question: 81

Topic: Flexible payment arrangements for small businesses

Reference: Written – 23 June 2020

Member: Jason Falinski

Question:

Does the Tax Office have flexible payments arrangements that allow Australian small businesses to defer the payment of the principal of their Pay As You Go Instalment (PAYGI) income tax for up to 22 months without incurring any late payment penalties? If not, why not?

Answer:

Yes, in accordance with our published practice statement (PSLA 2011/14), the Commissioner can consider flexible payment arrangements for those taxpayers demonstrating difficulty meeting their existing and ongoing tax liabilities, including low interest terms.

The length of the payment arrangements is considered on a case by case basis and consideration of the taxpayer's past behaviour and reasons for any previous non-compliance.

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ANSWERS TO QUESTIONS ON NOTICE

Australian Taxation Office

Inquiry into the Commissioner of Taxation Annual Report 2018-19

Department/Agency: ATO

Question: 82

Topic: Small business PAYGI payments – private sector assistance

Reference: Written – 23 June 2020

Member: Jason Falinski

Question:

Does Australia's current tax administration framework allow for private sector operators to help Australian small businesses fund their PAYGI payments while facilitating timely revenue collection in the same way that ReadyTax providers can under the New Zealand system as enabled through its Tax Administration Act 1994?

Answer:

Australian taxation laws do not specifically provide for arrangements similar to ReadyTax.

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ANSWERS TO QUESTIONS ON NOTICE

Australian Taxation Office

Inquiry into the Commissioner of Taxation Annual Report 2018-19

Department/Agency: ATO

Question: 83

Topic: Deferral of PAYGI payments

Reference: Written – 23 June 2020

Member: Jason Falinski

Question:

Why doesn't Australia's tax administration framework support Australian small businesses being able to pay a small upfront interest payment to a registered and approved private sector operator (like a ReadyTax provider) to facilitate the deferral of their PAYGI payment obligations?

Answer:

Australian taxation laws currently do not support a registration and approval system for private sector operators to have a role in the PAYGI system.

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ANSWERS TO QUESTIONS ON NOTICE

Australian Taxation Office

Inquiry into the Commissioner of Taxation Annual Report 2018-19

Department/Agency: ATO

Question: 85

Topic: Lyons vs Commissioner of Taxation

Reference: Written – 23 June 2020

Member: Jason Falinski

Question:

I refer to a Federal Court ruling of 14 May this year, Lyons v Commissioner of Taxation [2020] FCA 651 (14 May 2020) <http://classic.austlii.edu.au/au/cases/cth/FCA/2020/651.html>

The brief facts to the case are that a Mr and Mrs Lyons ran a restaurant in Queensland.

- On 7 June 2011 – the ATO issued tax assessments asserting undeclared income.
- On 24 June 2011 the ATO issued garnishees resulting in the Lyons' bank withdrawing future financial support.
- On 31 May 2013 – The ATO allowed the Lyons objections reducing the tax bill from \$715,806.44 to nil. That is the ATO accepted that the ATO assessment was wrong.

By this time (May 2013) however damage to the Lyons business had been done. The May 2020 ruling found that the ATOs rejection of the Lyons claim for compensation could not be reversed under the CDDA scheme that operated at the time.

I am not asking for comment on the case. But the Lyons case is consistent with the sort of complaints made against the ATO in the Four Corners show of April 2018.

- a) Can the ATO provide the Committee the total tax debt the ATO says small business owe for the last 5 years and provide the split of that debt in each year into:
 - i. Primary debt owed
 - ii. Interest
 - iii. Penalties
 - iv. How much of the debt relates to tax payers self-assessment
 - v. How much of the debt relates to debt created through ATO audits
- b) The ATO has the power to collect on a debt even before appeals and objections have been heard or decided. The Lyons case demonstrates this. In comparison in the United States and in the United Kingdom the tax authorities (IRS & HMRC) cannot collect an alleged tax debt until all appeals and objections have been decided including appeals to the courts.

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Australian Taxation Office

Inquiry into the Commissioner of Taxation Annual Report 2018-19

Can the Commissioner provide an understanding from an operational perspective of the positives and negatives of the ATO having the power to collect debt before appeals and objections have been heard or decided.

Answer:

- a) The ATO is unable to provide the split of the tax debt into interest and penalties, however, can provide the total tax debt for the small business client experience owed for the last 4 years.

FY	Collectable debt	Disputed debt	Insolvent debt	Total
2018-19	\$16.5b	\$1.4b	\$3.9b	\$21.8b
2017-18	\$15.1b	\$1.0b	\$3.7b	\$19.8b
2016-17	\$13.9b	\$1.8b	\$4.0b	\$19.7b
2015-16	\$13.0b	\$3.5b	\$3.8b	\$20.3b

Note: The 2015-16 & 2016-17 figures may not match those previously reported due to timing of data extraction.

The ATO does not segment the debt on an account down to the proportion of which is audit raised vs the portion that is raised through self-assessment and cannot provide this breakdown.

- b) Section 14ZZM and 14ZZR of the *Taxation Administration Act* 1953 provide that disputed tax debts may be recovered by the ATO. The ATO have several published practice statements covering the use of our legislative power to recover debt including the use of this power in the context of objections and audits (i.e. 'disputed debts').

Reference:

- PSLA 2011/4 *Collection and recovery of disputed debts*; and
- PS LA 2011/18 *Enforcement measures used for the collection and recovery of tax-related liabilities and other amounts*.

ATO will generally not enforce payments while a debt is subject to a review, dispute or objection. Where the ATO enforces payments, it would be based on a careful risk assessment, primarily focused on our confidence that any outstanding tax can and will be paid when the dispute is finalised. A risk based approach is also a useful safeguard to ensure that disputes are not used as a mechanism to frustrate recovery, delay or avoid revenue collection.

Even in those cases where we consider risk exists, a number of alternatives are usually explored including:

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Australian Taxation Office

Inquiry into the Commissioner of Taxation Annual Report 2018-19

- For lower risk cases, taxpayers may be able to enter a 50/50 arrangement in relation to a disputed debt, where they pay 50% of the primary assessment component of a disputed debt amount. This is a mutually beneficial arrangement. It provides a level of protection to the revenue and minimises taxpayer exposure to general interest charge that would normally accrue at the statutory rate while an amount of disputed debt remains unpaid, in the event the objection is unsuccessful.
- For higher risk cases involving phoenix activity or where a significant risk of asset dissipation exists, we might look to the taxpayer to provide an appropriate level of security (e.g. mortgage, bankers guarantee, enforceable undertaking etc;) whilst their dispute is being considered rather than insisting on payment.

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Australian Taxation Office

Inquiry into the Commissioner of Taxation Annual Report 2018-19

Department/Agency: ATO

Question: 88

Topic: Frydenberg declaration

Reference: Written – 17 July 2020

Member: Jason Falinski

Question:

Does the ATO believe that the “Frydenberg declaration” accurately describes the government legislation? (The Treasurer made it clear that both April and March turnovers and other triggers made eligible enterprises entitled to JobKeeper).

Answer:

There are various requirements which JobKeeper applicants must meet for them to be eligible for JobKeeper. One of those requirements is the decline in turnover test. This test is based on a reasonable self-assessment for a period which an eligible entity can choose.

As detailed in the Commissioner’s Law Companion Ruling LCR 2020/1: *JobKeeper payment – decline in turnover test*, the following provides detailed guidance as to how the ATO will administer the test:

- As per paragraph 11, the turnover test must be a calendar month that ends after 30 March 2020 and before 1 October 2020 (that is, March 2020, April 2020, May 2020, June 2020, July 2020, August 2020 or September 2020), or a quarter that starts on 1 April 2020 or 1 July 2020.
- As per paragraph 14, an entity can choose whether they are comparing monthly or quarterly periods.
- As per paragraph 9, an entity can choose to compare the relevant month or quarter, regardless of whether they report quarterly or monthly for GST reporting.
- As per paragraph 53, the Commissioner will accept an entity’s assessment of these turnovers unless he has reason to believe that their calculation of their projected GST turnover was not reasonable
- As per paragraph 54, if there’s a significant difference in the projected turnover and what eventuates, we would likely make further enquires to ascertain whether their assessment of what was likely to happen was reasonable.

The LCR represents how the ATO will administer the JobKeeper rules.

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Australian Taxation Office

Inquiry into the Commissioner of Taxation Annual Report 2018-19

Department/Agency: ATO

Question: 89

Topic: Frydenberg declaration tax auditors

Reference: Written – 17 July 2020

Member: Jason Falinski

Question:

How many other tax auditors have ignored the government law as set out in the “Frydenberg declaration” on JobKeeper?

Answer:

The ATO has done the necessary work to ensure that staff who are working on the JobKeeper scheme understand the technical requirements of the law and the ATO’s views and positions on the law. We ensure we have consistent business processes and staff have access to technical referral points. There are also appeals processes for employers as part of the JobKeeper scheme.

Standing Committee on Tax and Revenue

ANSWERS TO QUESTIONS ON NOTICE

Australian Taxation Office

Inquiry into the Commissioner of Taxation Annual Report 2018-19

Department/Agency: ATO

Question: 90

Topic: Reversal of tax rulings

Reference: Written – 17 July 2020

Member: Jason Falinski

Question:

Will any such tax rulings be reversed – including the one in question – and what should taxpayers who receive such a false ruling do?

Answer:

The Law Companion Ruling represents how the ATO will administer the JobKeeper rules.

Any decisions made by the ATO which relate to failing the decline in turnover test, which an applicant does not agree with, can be appealed as per our usual processes.

Applicants are entitled to request detailed reasons for ATO decisions and an opportunity to seek a review and to discuss.

Standing Committee on Tax and Revenue

ANSWERS TO QUESTIONS ON NOTICE

Australian Taxation Office

Inquiry into the Commissioner of Taxation Annual Report 2018-19

Department/Agency: ATO

Question: 91

Topic: JobKeeper rulings

Reference: Written – 17 July 2020

Member: Jason Falinski

Question:

Is the ATO using deliberately false JobKeeper rulings as a way of putting pressure on taxpayers who have disputes in other areas?

Answer:

No. Where a taxpayer disagrees with our JobKeeper assessment, they should contact the ATO, and an independent officer from an independent division of the ATO will reconsider the matter.

If the disagreement continues, then taxpayers have normal recourse to the Inspector General of Taxation / Taxation Ombudsman, the Tribunal system and ultimately the Courts.