

Standing Committee on Tax and Revenue

ANSWERS TO QUESTIONS ON NOTICE

Australian Taxation Office

28 March 2018

Department/Agency: ATO

Question:

Topic: Collecting disputed debt

Reference:

Member: Jason Falinski

Question:

Mr Ravello: That is the case. With 96 per cent we take no action while the dispute is underway and four per cent are a mix of what we call a fifty-fifty arrangement, where we agree the taxpayer pays 50 per cent of the primary amount under dispute. With that undertaking we give them the benefit of not charging them interest should the dispute fall our way. For the remainder, and it's a very small number, we do take recovery action, because there is evidence that they are either shifting assets or looking to evade any final outcome of the dispute.

Mr FALINSKI: What's that number?

Mr Ravello: I don't have the breakdown of the 215 as to what number is a fifty-fifty versus what percentage is recovery action. I can get it for you, but I don't have it. I'm happy to take that one away. It will be a portion of the 215.

Answer:

The figures referenced in the hearing were sourced earlier in the year. In responding to this question we have used more up to date figures, resulting in small variations.

At 5 April 2018 there were 4,323 debt cases on hand where a portion of the debt was subject to a Part IVC dispute or referral to the Administrative Appeals Tribunal or a court. Of these disputed debt cases:

- 4,073 (94.2%) were not subject to debt recovery action
- 64 (1.5%) were subject to a 50/50 arrangement and deferral of recovery
- 46 (1.1%) were under negotiation for settlement, compromise, payment plan or 50/50 arrangement
- 140 (3.2%) were subject to debt recovery action, possibly including garnishee or legal recovery – this occurs in cases where we perceive a level of risk, eg links to organised crime, phoenixing or other fraudulent activity, or where there is a concern of dissipation of assets.

Standing Committee on Tax and Revenue

ANSWERS TO QUESTIONS ON NOTICE

Australian Taxation Office

28 March 2018

Department/Agency: ATO

Question:

Topic: Enterprise register accounts updating client details

Reference:

Member: van Manen

Question:

Mr VAN MANEN: Thank you, Mr Jordan, for your opening statement and the comprehensive nature of it. I've got a pretty good idea of who the organisation is you're referring to, because I get regular emails from them. A constituent who has contacted me has an issue with the ATO that is based at least in part on this issue, but it has been brought to my attention in the past on other occasions. My concern is around the record keeping of the ATO when taxpayers advise of new or changed details. In this particular instance, I believe part of the reason there is an ongoing issue is that the ATO were advised of the taxpayer's new addresses and contact details, yet correspondence is sent to old addresses. Of course, the taxpayer didn't respond to the correspondence and the matter escalated as a result. What work is being done? I know you've had issues with IT systems in terms of outages over the past few months as well. What is being done in that space to ensure that when new details are provided they're accurately recorded in a timely manner and the issue of the correspondence being sent to old addresses is removed as a reason for a dispute escalating?

Ms Smith: I look after the enterprise register accounts. I'm not aware of there being a reason why there wouldn't be any real-time, immediate adjustment where a taxpayer has made contact with us, either directly through a call centre, or where they've gone on ATO online. I'm not aware of a reason why there would be a delay, nor do I think it acceptable that we would be sending correspondence to a previous address without somehow assisting that taxpayer. I would like to take that on notice to have a look at what could have potentially caused that issue.

Mr Jordan: If you're willing to provide the details we can get back.

Ms Smith: It's not something that's systemic.

Mr VAN MANEN: The matter is now in arbitration between the ATO and the taxpayer, which is why I'm conscious of not putting too many details out there on the public record.

Mr Jordan: We can have a look as to what happened, if anything, there.

Answer:

When a taxpayer updates their details either by phone or ATO Online Services via myGov, they are updated in real time on the ATO client register. A taxpayer can request that their address be updated at the client level, where all correspondence will be sent to that particular address. Alternatively, they can request separate addresses be updated for each of their accounts (ie. Income Tax, Activity Statement, Superannuation). Correspondence will issue relating to the account-specific address held on the register. There is scripting in place for staff to advise the taxpayers of this detail when they contact us, and similar help text within ATO Online Services.

There could be instances where there is an overlap between when correspondence issues, and when the taxpayer details were updated. If a taxpayer updates their address, and there is a correspondence item that has already been generated within the system, the correspondence may issue to the old address listed. Given the processes for generating correspondence which include sending to our print vendor and then to Australia Post, as a worst case scenario this could be between 3 to 7 days.

Standing Committee on Tax and Revenue

ANSWERS TO QUESTIONS ON NOTICE

Australian Taxation Office

28 March 2018

Department/Agency: ATO

Question:

Topic: Modernising Registry program update

Reference:

Member: Jason Falinski

Question:

Ms Crosby: We certainly have provided advice to the Minister on the modernised registry program.

Ms BUTLER: Does your advice include a recommendation as to which product to use?

Ms Crosby: There is no advice on a particular product at this point in time.

ACTING CHAIR: Do you have a time frame?

Mr FALINSKI: Did you advise the Minister to use distributed ledger technology or services?

Ms Crosby: I don't think we're that far advanced in terms of the technology. We've put a request out to the market which was twofold: one was to look at a registry system, and one was to look at innovation and how you could innovate within that system. I haven't personally seen the responses, but I imagine some of those responses would have provided responses around things like blockchain.

Mr FALINSKI: Is it possible for us to get some answers in terms of where the process started, where it's up to at the moment and what pathway it's going down, obviously without interfering with the process?

ACTING CHAIR: And a bit of a time line.

Ms Crosby: I can take that on notice and bring it back.

Answer:

The Modernising Business Registers Program commenced in December 2016 following a decision not to proceed with privatisation of the ASIC registry business.

From 9 August to 6 September 2017, through the Treasury Consultation Hub, the Government sought responses to a discussion paper on ways to improve its business registry services. 30 submissions were received, 10 of which were confidential. The non-confidential submissions were published on the Consultation Hub on 5 December 2017.

On 5 December 2017 the Government opened a request for information (RFI) on AusTender to explore solutions for a potential whole-of-government registry platform. Responses to the RFI were welcomed from a broad range of businesses and were due by 15 January 2018. The RFI advised that the outcome of the evaluation would be released in May 2018.

This market testing will inform the Government's solution. A decision will be made on next steps following evaluation of the responses to the RFI.

Standing Committee on Tax and Revenue

ANSWERS TO QUESTIONS ON NOTICE

Australian Taxation Office

28 March 2018

Department/Agency: ATO

Question:

Topic: Child support payers

Reference:

Member: Terri Butler

Question:

Ms BUTLER: I'm going too quickly! When a child support payer files a tax return late, are they routinely being penalised even if they don't owe any tax debt?

Mr Olesen: I would have to check.

Ms BUTLER: Could you take that on notice?

Mr Olesen: I would be happy to.

Ms BUTLER: Since you're taking things on notice, could you take on notice the following question: what action has the ATO taken in respect of the ANAO report with respect to the collection arrangements for child support payers—sorry, not collection arrangements—pursuing people to file their tax returns

Mr Olesen: Sure. I'm happy to take that on notice.

Answer:

1. All taxpayers may be subject to failure to lodge penalties; the decision to impose the penalty is based on the taxpayer's compliance history.

The ATO currently excludes Child Support Program parents from the imposition of the failure to lodge penalty.

In 2015 the House of Representatives Standing Committee on Social Policy and Legal Affairs published its findings from the inquiry into the Child Support Program: "From Conflict to Cooperation".

Recommendation seven of the report called for the Australian Government to "*amend current policy to ensure that the penalties applicable to the non-lodgement or late-lodgement of tax returns are enforced for all clients of the Child Support Program.*" The government agreed to this recommendation in principle.

From 1 July 2018 the ATO will impose failure to lodge penalties where we believe they will be effective in obtaining lodgment of the outstanding returns.

2. Since the ANAO issued their report in May 2017, the ATO has worked closely with the Department of Human Services to better target non-lodging child support parents, as per one of the ANAO's five recommendations.

In August 2017, Human Services provided the ATO with their starting population of 256,943 parents. However, it should be noted that their population does not differentiate between paying and receiving parents, so the ATO cannot pursue a parent for lodgment on the basis that they are the paying parent. Additionally, the ATO cannot report on lodgments by child support payers.

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Australian Taxation Office

28 March 2018

From the original population, 63,184 taxpayers were removed, mainly on the basis that they had no overdue tax returns. This left a treatable population of 193,759.

In October 2017, the ATO and Human Services agreed on an annual target for 2017-18 of 120,000 finalisations from these 193,759 taxpayers, an increase of 14% from the previous target of 105,000 finalisations.

During the first nine months of 2017-18, the ATO issued 191,426 letters to 91,275 parents, made 91,563 contacts to 36,005 parents by phone, and initiated 3,768 cases. This resulted in 94,780 finalisations toward the annual target, including 2,338 default assessments. Additionally, the ATO has prosecuted 280 taxpayers (listed in Human Service's referred population) for non-lodgment, resulting in 167 convictions and \$1,175,699 in fines.

Standing Committee on Tax and Revenue

ANSWERS TO QUESTIONS ON NOTICE

Australian Taxation Office

28 March 2018

Department/Agency: ATO

Question:

Topic: Complaints aggregate

Reference:

Member: Terri Butler

Question:

Ms Smith: Yes, sure.

Ms BUTLER: I've got two questions on this. The first question is: what's being done, if anything, to monitor whether there's any difference in the amount of complaints or dissatisfaction from people who are calling through the outsourced services?

Mr Jordan: Complaints went down 30 per cent in tax time this year.

Ms BUTLER: That's great.

Mr Jordan: That's really good, because the experience is—

Ms BUTLER: I'm just wondering whether it's been disaggregated by the provider of the service—whether there's a comparison of the complaints against the call centres, who are outsourced, versus the—

Ms Smith: Yes, it is. We monitor any complaint that we get through. I note they dropped by 30 per cent last year, which was terrific, but any complaint is categorised based on whether or not it's internal or external. We always look at the complaints as an opportunity to rectify something—it might be a process; it might be training—so it's very important for us to actually understand what the source of the complaint is and what the right action for us to take is—for example, is it just a one-off or is it something that's systemic? As far as what percentage it is, I'll need to get back to you with the actual percentages—

Ms BUTLER: Could you do that. Thank you.

Ms BUTLER: But there is a difference in their legal status. They're not covered by the Public Service legislation; they're not employees of the Public Service.

Ms Smith: That's correct.

Ms BUTLER: They are clearly two different classes of service providers that you have.

Ms Smith: I agree with that, but the processes and the training are applied equally to both groups.

Answer:

The ATO investigates all complaints received about staff behaviour for both in-house and outsourced services.

From 1 July – 31 December 2017, the ATO received 11,055 complaints covering a range of topics. Of these:

- 149 were based on internal ATO staff (1.3% of all complaints)
- 241 were based on Outsourced staff (2.2% of all complaints)
- 118 were External Debt Collection Agency complaints (1.1% of all complaints)

Standing Committee on Tax and Revenue

ANSWERS TO QUESTIONS ON NOTICE

Australian Taxation Office

28 March 2018

Department/Agency: ATO

Question:

Topic: taxpayer charter - outsource providers

Reference:

Member: Terri Butler

Question:

Ms BUTLER: How does the taxpayer charter apply to those service providers?

Mr Jordan: When you talk about frontline staff, sometimes people think of audit and that.

Mr Olesen: I was just going to make the point that for that kind of work we do—if you're a small-business person or an individual being audited by the Tax Office that's almost always permanent staff in the Tax Office.

Ms BUTLER: I understand. How does the taxpayer charter apply to those outsourced providers?

Ms Smith: I'm going to take that on notice, specifically around the charter, just to confirm I'm correctly answering that question.

Ms BUTLER: I suspect it's just contractual.

Ms Smith: Yes, I also suspect that. But, if you wouldn't mind, I will take it on notice, notwithstanding what I spoke about earlier. I can't think of a reason why it wouldn't, frankly—to try and help in this discussion—but I will take that on notice.

Answer:

All outsourced staff are held accountable to the Taxpayers' Charter and are monitored on their compliance. Staff are trained on the Taxpayers' Charter throughout the induction process and measured regularly through:

- quality assessments conducted in line with the Service Delivery Quality Framework; a criterion within the framework relates specifically to ATO values and behaviours and the Taxpayers' Charter.
- additional coaching and performance management being instigated when a complaint arises as a result of the Taxpayers' Charter being breached.

Standing Committee on Tax and Revenue

ANSWERS TO QUESTIONS ON NOTICE

Australian Taxation Office

28 March 2018

Department/Agency: ATO

Question:

Topic: Outsourcing gender

Reference:

Member: Terri Butler

Question:

Ms BUTLER: Do the outsourced providers provide you with any information about the gender pay gap in their organisations in the work they're doing for tax?

Ms Cawthra: I would have to take that on notice. My colleague Ms Smith may know.

Ms BUTLER: We routinely get reports about gender issues in government departments. We get a sense in your higher levels of what the gender relationships are like, but I wouldn't have a clue about what your outsourced providers do.

Mr Jordan: I'm not sure. We would have to ask them. Fifty-eight per cent of our employees are female; 42 per cent male; 49 per cent of our executive level are female—we have a target of 50 per cent—it's 49.7 per cent or 49 point something. Why can't we just get that to 50!

Ms BUTLER: We've just done that in the Labor Party. We are at 48 per cent now.

Mr Jordan: Our SES are 42 per cent female, up from the 30s, so it's been quite a good result. The executive team now is three males, three females, and I chair it. We're pretty proud of what we've been able to achieve.

Ms BUTLER: And rightly proud of it. My point is that those same targets are not applied to the outsourced providers, are they?

Mr Jordan: I just don't know

Ms Curtis: We'd have to look at the contract, but I doubt it very much.

Ms BUTLER: I'd appreciate it. I think it would be worth looking at whether there is a gender pay gap for the staff who are doing the work and whether there is gender parity or equity in terms of the composition of the executives who are running or managing the work that's being outsourced by tax to these companies. That would be quite interesting for the committee and no doubt for yourselves as well, given the commitment you've made.

Mr Jordan: We would have to rely on what they tell us.

Answer:

Our outsource providers are committed to equitable remuneration for all employees and undertake ongoing reviews to ensure compliance to Equal Employment Opportunity principles. In addition, within the outsource network some suppliers conduct annual remuneration reviews based on performance. They report this through to the Workplace Gender Equality Agency, and comply with any of their recommendations. There is also a Group Remuneration and Benefits Manager appointed within a supplier whose role it is to conduct salary benchmarking.

Two of our 4 outsource providers have more than 50% female executives affiliated to the ATO contract.

Standing Committee on Tax and Revenue

ANSWERS TO QUESTIONS ON NOTICE

Australian Taxation Office

28 March 2018

Department/Agency: ATO

Question:

Topic: System Breaches

Reference:

Member: Terri Butler

Question:

Ms BUTLER: Do you keep data on how many breaches there are?

Ms Smith: Yes, we do.

Ms BUTLER: Do you keep it disaggregated by who is internal and who is external?

Ms Smith: Yes, we do.

Ms BUTLER: Can we have some information about how many breaches per month are from external and internal people. We don't want names or identifying information, but it would be useful to understand that too.

Ms Smith: Yes.

Answer:

Unauthorised Access incidents during 2016-17 Financial Year

Month	Internal	External*
July 2016	2	0
August 2016	1	0
September 2016	0	8
October 2016	3	45
November 2016	10	1
December 2016	0	0
January 2017	0	0
February 2017	8	14
March 2017	0	1
April 2017	0	0
May 2017	20	11
June 2017	0	0
TOTAL	44	80

Note – The larger proportion of substantiated external cases reflects proactive fraud detection activities into possible unauthorised access by the ATO non-ongoing workforce.

*External refers to all non-going ATO employees such as contractors, casuals, intermittent/irregular employees

Standing Committee on Tax and Revenue

ANSWERS TO QUESTIONS ON NOTICE

Australian Taxation Office

28 March 2018

Department/Agency: ATO

Question:

Topic: New Zealand Credit Reporting

Reference:

Member: Bert van Manen

Question:

ACTING CHAIR: In the New Zealand model, do you get put on the credit report and then get taken off again or you are on a permanently in New Zealand?

Ms Jenkins: I understand in the New Zealand model, it stays on. We can take it on notice.

Mr Ravello: I would need to check; I am not sure about that one.

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Mr VAN MANEN: Chair, I just quickly looked that up. Basically it says:

... serious credit infringements remain on a credit report for seven years from the date they're listed. However, if they have been paid they revert back to a default and will remain on the report for five years.

Answer:

New Zealand credit reporting of tax debts: commenced 1 April 2017

The New Zealand credit reporting tax debt policy is consistent with New Zealand's credit reporting industry, which can hold information for up to five years.

The New Zealand credit reporting tax debt policy does not require the tax debt information to be removed once it is listed with an approved credit reporting agency; instead this data is periodically updated as the balance changes over time.

Businesses that request this information will see, over time, the debt value change – either increasing as further debt is added, or decreasing if it's being gradually repaid (i.e. lump sums or payment arrangement), until the debt is resolved/repaid in full and the balance reaching zero.

Australian measure: announced 16 December 2016 but not yet passed

The current design is that once a taxpayer effectively engages with the ATO (which could include a payment plan) the credit reporting bureaus will be asked to remove the record.

Auckland company becomes first to have tax debt reported

POSTED 24 OCTOBER 2017



Credit: iStock by Getty Images

An Auckland company has become the first entity Inland Revenue has reported to credit agencies over the size of its tax debt.

The department was given the power earlier this year to disclose a company's tax debt to approved agencies to give other creditors better protection.

Inland Revenue Collections Manager Stuart Duff says he has heard from many frustrated creditors over the years, which have done business with companies unaware they had a significant tax debt on the books.

"The law now allows us to pass this information on to credit agencies if the debt is higher than \$150,000. Anyone running a check on a company will then be able to see these details.

"This company in Auckland has significant PAYE and GST debt but has chosen to ignore us despite being given every chance to do the right thing.

"Now we have the ability to report the debt so fellow creditors can make informed decisions."

The new powers have proven to be a useful deterrent for companies in a similar situation. Twenty seven have successfully negotiated arrangements to pay off their debt, while eight firms have cleared the outstanding amount in one hit.

Taking action spares the business from having its debt reported.

Mr Duff says this is an effective measure as it takes away the opportunity for a company to hide behind its tax debt.

“This is how debt reporting happens in the commercial world so it’s good for us as government debt collectors to have this ability too.

“There are more cases in the pipeline, which meet the same criteria as the company in Auckland.

“However, we hope businesses will make the appropriate effort to clear their tax debt so that we don’t have to use this tactic more often.”

Information is only shared with credit agencies that meet strict security criteria. There is more information about these rules on the Inland Revenue website.

<http://www.ird.govt.nz/technical-tax/general-articles/credit-reporting.html>

(<http://www.ird.govt.nz/technical-tax/general-articles/credit-reporting.html>)

Media Contact: Baden Campbell 029 8901674

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Phone: 04 890 1698

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Standing Committee on Tax and Revenue

ANSWERS TO QUESTIONS ON NOTICE

Australian Taxation Office

28 March 2018

Department/Agency: ATO

Question: Internal fraud prevention processes

Topic:

Reference:

Member: Written

Question:

- 1) In the wake of Operation Elbrus, the ATO's Fraud Prevention and Internal Investigations and Internal Audit branches jointly examined the ATO's conflict of interest regime and made a number of changes (*Submission 2*, pp. 6–7.)
 - Is the ATO adequately resourced to implement these changes? Will contractors be involved? What is the anticipated time frame for implementation and how will milestones be reported?
 - What other agencies will be involved and through what mechanisms for engagement?
- 2) The ATO annual report 2016–17 lists 404 allegations of potentially fraudulent behaviour within the ATO over the course of the year—with 122 being able to be substantiated, 35 not able to be determined and 113 remaining open at year end.
 - What, in general, is the nature of the main offences detected? How many of the 'open' cases have since been resolved?
 - Can the ATO provide comparable statistics over time?
- 3) The ATO's 'Security and fraud awareness week' saw 31 sessions convened with staff across the ATO (Annual Report, p. 136). What did these sessions entail? Is it intended to offer these briefings on an ongoing basis or to new staff?

Answer:

- 1a. The ATO is adequately resourced to implement the six recommendations identified in the joint Internal Audit and Fraud Prevention and Internal Investigations review of the ATO's conflict of interest processes. External contractors have not been involved in any direct work to implement recent changes.

Milestones of recommendations are reported through implementation plans and monitored by the ATO External Scrutineers Unit. Outcomes are also reported to the ATO Audit and Risk Committee. To date, of the six recommendations made three are complete and it is anticipated that the three remaining recommendations will be implemented by 30 June 2018. The ATO's Internal Audit branch will review the implementation and effectiveness of these recommendations later in 2018.

- 1b. No other agencies have been involved to specifically address the recommendations from this review however we continue to participate in Community of Practice forums across government, such as the Inter Agency Fraud and Corruption forum, whereby matters can be discussed between practitioners regarding conflict of interest issues, best practice and learnings.

2. Nature of the main offences detected by the ATO (i.e. potentially fraudulent behaviour) and comparable statistics overtime (i.e. allegations of fraudulent behaviour investigated by the ATO):

Fraud category	FY 2016-17	FY 2015-16	FY 2014- 15
Abuse of position	18	17	6
Conflict of interest	29	3	13
Corruption	1	3	2
Fraud administration <i>(i.e. false qualifications, false medical certificates, flex fraud)</i>	40	20	18
Fraud revenue	7	14	4
Misuse of ATO facilities	6	2	1
Misuse of IT facilities	23	22	8
Release of Information	16	15	5
Unauthorised access	210*	137	106
Other <i>(i.e. allegations that are difficult to define or being dealt with by law enforcement such as criminal activity outside the workplace, threatening behaviour, stalking)</i>	54	86	132
TOTAL	404	319	295

*significant increase in unauthorised access allegations is due to improvements to the ATO's automated detection capability and proactive integrity scanning

112 of the reported cases 'open' at the end of financial year have been finalised. One case, involving a conflict of interest matter, remains unresolved due to the subject being on extended leave.

3. The ATO's Security and Fraud Awareness Week (SAFW) is an annual event.

The sessions are organised by representatives from all the security pillars in the ATO along with Fraud Prevention and Internal Investigations, Internal Communication, Site Leadership, Corporate Events and Learning and Development.

The 31 sessions in 2016-17 SAFW included the following topics:

SAFW Topic	Presenter
Cyber security across government	Special Adviser to the Prime Minister on Cyber Security
Recognising and dealing with client aggression	Code Black Threat Management
Security and personal safety	Queensland Police
Privacy and Freedom of Information	Office of the Australian Information Commissioner
Fraud and the impact on the telecommunication industry	Optus
Diagnostic matching – Facial Biometric Matching	Attorney-General's Department
The Dark Web	ATO Forensics
Behavioural analysis to predict behavioural anomalies as precursors to crime	Jayde Consulting
Data sharing and management	NSW Government
Buying bitcoin, spending bitcoin, getting free bitcoin and cashing in your bitcoin	Optus
Organised Criminal Infiltration	ATO Fraud Prevention and Internal Investigations
Overview of the foreign intelligence service (FIS) threat to Australian interests	ASIO
SCAMS: every fraud begins with a belief	ATO Information Security

Privacy and security in social media	ATO Enterprise Solutions and Technology
Travelling overseas with mobile devices	ATO IT Security Adviser
Fraud and Anti-Corruption	Australian Federal Police
Compliance culture is dead	AUSTRAC
Bitcoin and Cryptocurrency	ATO IT Forensics
Investigating Corrupt Conduct	NSW Independent Commission Against Corruption
Social engineering and digital forensics from a technological standpoint	Mercury Information Security Services
Cyber Security Operations Centre Open Day	ATO IT Security

When technology is available sessions are recorded as live stream or webinar events which are later available to all employees, for viewing at any time, on myATO (intranet).

Standing Committee on Tax and Revenue

ANSWERS TO QUESTIONS ON NOTICE

Australian Taxation Office

28 March 2018

Department/Agency: ATO

Question:

Topic: New legislation and data management

Reference:

Member: Written

Question:

- 1) The Inspector-General of Taxation has agreed that it may be timely to review ATO outsourcing of call centre staff in the context of the introduction of the new data-breach legislation.¹
 - The laws will apply to contractual and other legal obligations in respect of taxpayer security and privacy. Would the ATO provide an overview of any new measures to be taken to ensure these obligations are met both in terms of ATO employed and outsourced staff?
- 2) As a result of the legislative changes rolled out during 2016–17, the ATO will have access to more third party data (including property transfers and business transactions).² How will this data assist ATO audit processes?
- 3) At the recent hearings, the Inspector-General of Taxation highlighted his input into the Treasury consultation on the new law to require business to effectively engage with the ATO.³ What is the ATO's response to the IGT's proposal (as articulated in the Hansard at p. 8)?

Answer:

1. The Privacy Act 1988 was amended (with effect from 22 February 2018) to require specific actions be taken by Australian Privacy Principles (APP) entities (including the ATO) in the event of an 'eligible data breach' of personal information. The changes are known as the Notifiable Data Breach Scheme (NDBS). The NDBS applies only to the personal information of individuals. It does not apply to data breaches of entities that are not individuals, such as companies (with the exception of sole traders).

The Australian Taxation Office (ATO) have obligations under the taxpayer confidentiality provisions in Schedule 1 to the Taxation Administration Act 1953 (TAA 1953) in relation to 'protected information'. This applies in relation to all entities, not just individuals. In most instances, data held (or owned) by the ATO that was 'personal information' for the purposes of the Privacy Act 1988, would also be 'protected information' for the purposes of taxpayer confidentiality provisions.

Compliance to the NDBS is covered in the current Deed of Standing Offer (DoSO) that the ATO has with our Outsource Suppliers.

The DoSO requires all Suppliers to:

- adhere to the Privacy Act
- ensure all staff complete mandatory training (including training on Security, Privacy and Fraud Awareness (completed every 2 years))
- notify the ATO of a data breach or possible data breach
- comply with all directions, guidelines, determinations or recommendations of the Australian Information Commissioner (OAIC), Privacy Commissioner or ATO (in relation to Division 2 of

¹ Ms Butler MP and the Inspector-General of Taxation, *Committee Hansard*, Canberra, 28 March 2018, p. 6.

² *Explanatory Memorandum to: Tax and Superannuation Laws Amendment Bill (2015 Measures No. 5) Bill 2015*, p. 60.

³ IGT, *Committee Hansard*, Canberra, 28 March 2018, p. 8.

House of Representatives Standing Committee on Economics

Inquiry into Tax deductibility

ANSWERS TO QUESTIONS ON NOTICE

Australian Taxation Office

5 February 2016

Part III of the Privacy Act)

- comply with all applicable laws and policies.

No contractual amendments are required as a result of the changes, however the ATO issued all outsource suppliers with a communication reiterating their obligations. This includes the supplier's requirement to notify the ATO immediately if they become aware of a breach or possible breach to personal information.

In the event of a data breach or suspected data breach, ATO policy mandates that a Security Incident Report is submitted. This would include breaches that are identified internally or in instances where we are advised by an external service provider/supplier (including outsourced call centres). Prior to the Privacy Act amendments, the ATO's processes already included procedures where the OAIC was notified of any breaches or suspected breaches of the Privacy Act that arose. The Security Incident Report triggers an immediate review of the incident. If the data breach is identified as an "eligible data breach" as defined under the Privacy Act 1988, the response framework in place (which includes a 'rapid response group') ensures actions and responses are undertaken by the ATO as mandated by the NDBS.

2. The 'Tax Compliance: improving compliance through third party reporting and data matching' legislation strengthened existing 'special acquisition' reporting systems for real property, shares and units, business transactions and government grants and payments data by increasing the coverage and quality of the data.

This information will have a positive impact on:

- voluntary compliance by improving the quality and amount of data available to taxpayers through informational messaging and continued increase of the pre-filing of tax returns service as more data becomes available, making it easier for taxpayers to get it right up-front, and
- ATO compliance activities as the higher quality information will support more comprehensive profiling of taxpayer activities and better targeted audit cases.

3. Business debts will only be reported to a credit reporting bureau if a client remains disengaged after we have undertaken our usual debt collection activities which could include a letter, phone call or SMS.

A business will be notified in writing that we intend to refer their tax debt to a credit reporting bureau before we pass on the information. They will have the opportunity to seek a review if they believe they should not be reported. The business will have 21 days to make contact with the ATO to take action to prevent its tax debt information from being reported.

The requirement for the ATO to consult the Inspector-General of Taxation prior to notifying and/or reporting a business's tax debt to credit reporting bureaus is provided for in the draft law.

The draft legislative instrument also:

- states that the notice of disclosure will explain how the business may make a complaint in relation to the proposed disclosure of information, including a complaint to the Inspector-General of Taxation
- provides that the ATO must take reasonable steps to confirm that the business does not have an active debt-related complaint with the Inspector-General of Taxation before the business can be eligible for reporting.

Standing Committee on Tax and Revenue

ANSWERS TO QUESTIONS ON NOTICE

Australian Taxation Office

28 March 2018

Department/Agency: ATO

Question:

Topic: Cash economy

Reference:

Member: Written

Question:

- 1) As of June 2017 the ATO's approach to the cash and hidden economy has targeted regions with high cash-only business activity under the Supporting Honest Business Program (SHBP) (pp. 10–11).
 - Does the program follow the same approach as used in the 'Working with Industry Campaign' and what are the significant differences?
 - How will the ATO monitor the effectiveness of these programs into the future?
- 2) In regard to the cash-only visits program, how in practice, does delivery of the program in a high risk area such as Cabramatta influence the broader sweep of small businesses in that region, as suggested on page 12 of the ATO submission?

Answer:

- 1.(i) Both the SHBP and Working with Industry (WwI) programs form part of the ATO's focus on protecting honest businesses from unfair competition and assisting viable small businesses to thrive.

The SHBP shares a similar engagement approach to the WwI. The programs deliver tailored and localised communication followed by information sessions and personalised education and assistance visits. The ATO follows up with further visits or action where required. These programs also feature engagement with relevant intermediaries, local partners and associations.

The WwI program had a high risk industry focus covering the top three risk industries: restaurants and cafes, hair and beauty, and property and construction industries. The SHBP has a broader 'cash only' focus. It covers a wider range of retail type businesses and regions with a high proportion of cash only businesses, that have a physical presence and appear to be operating as cash only or mainly in cash transactions.
1. (ii) Effectiveness is by the:
 - increase in awareness and uptake of the ATO's digital services by small business
 - increase in more timely and accurate reporting by small business of tax and superannuation obligations
 - increase in small businesses reporting within Small Business Benchmarks
 - increase in electronic payment facilities by small business – reducing the opportunity for cash and hidden economy behaviours.
2. ATO strategies targeting the cash and hidden economy are designed to increase community confidence that small businesses are complying with their tax and superannuation obligations, and that the ATO is committed to creating a level playing field. This in turn aims to positively influence behaviours, such as limiting the acceptance of cash only behaviours and increasing awareness of the need to meet tax and superannuation obligations.

Standing Committee on Tax and Revenue

ANSWERS TO QUESTIONS ON NOTICE

Australian Taxation Office

28 March 2018

Department/Agency: ATO

Question:

Topic: Debt management

Reference:

Member: Written

Question:

- 1) The Commissioner has stated at the recent hearings that: ‘The overwhelming majority of debt is a product of self-assessment on the tax return or activity statement lodged’.¹
 - Self-assessment and the follow up process for resolution of error reverse the onus of proof onto the taxpayer. Is this an acceptable outcome for taxpayers, given tax debt continues to rise (below)?
 - Has the ATO documented improvements to accuracy in self-assessment attributable to digitalisation, such as through improved prefilling and introduction of deduction tools etc, or is it too early to demonstrate this?
- 2) The ATO annual report provides that small business debt grew by 1.5 billion in the 2017 year. (Annual Report, p. 25).
 - What are the key tools and services which the ATO has introduced to assist small business stay solvent and avoid accumulating tax debt (p. 15 of sub)?
 - How successful have the improved features of the on-line debt payments arrangements been, given debt for small business continues to increase?

Answer:

- 1a. The majority of debt is a result of tax payers accurately reporting their tax liability through the self-assessment system but being unable, or unwilling, to then pay the tax liability on time. There is only a small proportion of debt that relates to taxpayers correcting via amendment of a self-assessment.

Where a taxpayer requests an amendment to their assessment as a result of an error they made in the preparation of their original return, the Commissioner will process the request based on the information supplied. This is provided the request is made within the ordinary amendment periods.

Integrity checks are undertaken when processing both the original return and any subsequent self-amendment. These checks are designed to identify errors or other concerns that would be likely to result in an underpayment of tax on assessment. Taxpayers may be asked to provide further information about their return or amendment request before processing is finalised.

- b. The ATO are currently developing a performance measure to reflect the prefill strategy. The measure is intended to indicate our success in making it easier to comply and also be an indication of the integrity of the system, via correct reporting. This performance measure is currently on track to be reported for the first time in the Commissioner of Taxation Annual Report 2017-18.
- 2a. We are continuing to expand the range of contemporary tools and services we provide to make it as easy as possible for small businesses to pay on time or manage any debt that arises.

In terms of helping small businesses pay on time, this includes:

- cash flow coaching kit for professional advisors to help their small business clients effectively

¹ Commissioner Jordan, *Committee Hansard*, Canberra, 28 March 2018, p. 13.

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- manage their cash flow (digital version under development)
- new-2-business essentials education email service
- small business newsroom email service
- small business education webinars - tax basics
- small business education through face-to-face workshops
- enabling pre-payments of activity statement liabilities to assist clients in managing their cash flow
- sending preventative SMS payment reminders for those clients likely to pay late or not at all
- providing a business performance check tool as part of the ATO app for business operators to quickly check the financial health of their business.

In terms of helping small businesses manage any debt that arises, this includes:

- sending SMS payment reminders after a lodgment due date has passed for those who have not yet paid
 - expanding the visibility of ATO accounts online, with sole traders now able to view activity statement accounts and pay activity statement debts online (previously this was only possible for income tax)
 - providing an online payment plan estimator to help clients work out an affordable payment plan tailored to their circumstances (within parameters)
 - expanding the availability of our automated phone service by increasing the amount payment plans can be entered into from \$25,000 to \$100,000
 - enabling sole traders to set up payment plans for debts up to \$100,000 via ATO online for both income tax and activity statement debts
 - accepting verbal direct debit payment plans over the phone from tax agents and/or authorised representatives where there is no existing direct debit request authority
 - providing an online business viability assessment tool which helps business operators determine whether their business is viable
 - re-designing debt letters to make it easier for small businesses to understand why they are getting the letter, what they have to do, how they can do it, when they have to do it by and the consequences if they do not take action
- picking up the phone earlier to talk to small businesses and having natural, tailored conversations about payment of their debt.

- b. The expansion of our online self-service tools is proving to be successful.

In 2017-18 (to 31 March 2018) the number of online payment plans increased by 45.2% and they were 18.2 percentage points more likely to be complied with compared to those set up through more traditional channels.

At 31 March 2018 small business collectable debt was \$14.1 billion, up 10.1% year-on-year. This increase aligns with net tax collections (for all taxpayers), which were up 9.6% over this period.

Standing Committee on Tax and Revenue

ANSWERS TO QUESTIONS ON NOTICE

Australian Taxation Office

28 March 2018

Department/Agency: ATO

Question:

Topic: Debt data reporting

Reference:

Member: Written

Question:

- 1) The IGT submission to the inquiry has found reporting deficiencies in the ATO's reporting of debt in 2016-17 (refer pp. 3—4 of IGT sub). The annual report does not provide sufficient analysis of tax debt nor comparative data over time as reported in previous years.
 - Why has the reporting on this important subject decreased, compared with previous years?
 - Will the ATO provide disaggregated data on debt categories in the next annual report as indicated in the Government Response to the Committee's Annual Report 2016 recommendations?

Answer:

- 1a. In the Commissioner of Taxation Annual Report 2015-16 and 2016-17 we discussed tax payment performance and provided a wide range of metrics measuring the effectiveness of our payment and debt strategies, including:
 - proportion of liabilities paid on time by value
 - proportion of liabilities paid over time
 - value of collectable debt
 - a 12 month rolling average of the ratio of collectable debt to net tax collections
 - value of provision for bad and doubtful debts
 - ratio of debt uneconomical to pursue to ATO net cash collections.

We also provided specific examples of our approach and its effectiveness. One such example explained that taxpayers with outstanding debts are often more willing to initiate contact with us and enter into a payment plan if they can do this online or via automated phone service, and that online payment plans were more effective in collecting debt compared to payment plans entered through more traditional channels.

In the Commissioner of Taxation Annual Report 2016-17 we provided explicit commentary on the range of factors that adversely impacted payment and debt performance during the year, namely:

- a year on year increase of \$1.8 million in audit raised liabilities, including liabilities flowing from the Tax Avoidance Taskforce, the Serious Financial Crime Taskforce, Operation Elbrus and Operation Nosean

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Australian Taxation Office

5 February 2016

- the decrease in debt collection activities due to the lead-up to an ATO system upgrade in November 2016
- the failure of storage hardware in December 2016, which impaired payment and debt related activities into February 2017
- the deferral of debt collection activities in April and May 2017 for those impacted by Tropical Cyclone Debbie in Queensland and northern New South Wales.

We also clearly outlined our long-term approach to delivering an improved payment experience through:

- a holistic focus on payment and debt prevention
- comprehensive risk-based analytical models for increasingly tailored interactions
- tailored campaigns targeting high-risk debtor populations
- online and integrated payment solutions that make it easier to pay.

We also provided significant commentary on our approach to delivering contemporary and tailored services, explaining how we are:

- making it easy to pay on time
- helping those with short-term cash flow issues
- helping those facing challenging economic conditions or unexpected events
- taking stronger action to maintain a level playing field.

In the Commissioner of Taxation Annual Report 2016-17 we also provided extensive commentary on why collectable debt was increasing and our long-term approach to delivering an improved payment experience.

- b. Yes, in the Commissioner of Taxation Annual Report 2017-18 we will provide the following breakdowns, including prior year comparisons:
- total debt holdings by collectable debt, disputed debt and insolvent debt
 - collectable debt into activity statement collectable debt, income tax collectable debt and superannuation guarantee charge collectable debt
 - non-pursuit by irrecoverable at law and uneconomic to pursue.

Standing Committee on Tax and Revenue

ANSWERS TO QUESTIONS ON NOTICE

Australian Taxation Office

28 March 2018

Department/Agency: ATO

Question:

Topic: Garnishee and small business insolvency

Reference:

Member: Written

Question:

- 1) In his opening statement to the Tax and Revenue Committee hearing the Tax Commissioner referred to statements made in 'a submission to parliament' ¹ about the ATO bankrupting a small business before it has a chance to dispute a tax debt. Could the source of such submission and the inquiry it related to be identified.
- 2) During the hearing the Tax Commissioner stated that the ATO issued 23 700 garnishees in the 2017 financial year.²
 - How many of these related to small business and how did it compare to previous years?
 - How much was garnished in total and what is the average garnished amount?
 - What internal ATO processes must be met before triggering such action?
- 3) The Tax Commissioner noted during the hearing that in the 2017 financial year that the ATO initiated 640 bankruptcies and 1 295 wind-ups.³
 - Please itemise the mechanisms for initiating ATO insolvency action.
 - How many of these cases relate to small business?
 - On average, how many small business wind-ups are there per month?
 - How many small business insolvencies are there per month due to the ATO using powers to recover outstanding tax debts via garnishee notices or other means?
- 4) The IGT's January 2015 report on the ATO's Management of Tax Disputes states that 'submissions have expressed concerns against the use of garnishee notices during tax disputes, especially where these were issued against taxpayers' business accounts, effectively hampering business as usual and denying access to necessary funds to challenge ATO decisions'.⁴
 - Mr Ravanello notes in evidence that in 96 per cent of tax debt disputes no action is taken and in the remaining four per cent of cases garnishee action occurs in some cases. Were any garnishees issued in 2017 to small business while the parties were in dispute?

Answer:

1. In Self-Employed Australia's (SEA) response to the invitation to make submissions to the Treasury Laws Amendment (Tax 3 Transparency) Bill 2018: Transparency of taxation debts, SEA stated the following reasons for opposing the bill:
 - a) The ATO already has draconian powers that far exceed those of any police force in Australia or arguably any other government instrumentality.
 - b) The ATO already has the power to raid a person's home without a warrant, allege a debt, demand payment of an alleged debt, garnishee a person's bank account to force settlement of an alleged debt, sell a person's house and bankrupt a person before the person has a chance to 'disprove' the debt.

¹ Commissioner Jordan, *Committee Hansard*, Canberra, 28 March 2018, p. 13.

² Commissioner Jordan, *Committee Hansard*, Canberra, 28 March 2018, p. 13.

³ Commissioner Jordan, *Committee Hansard*, Canberra, 28 March 2018, p. 14.

⁴ Chapter 3, para 3.82.

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5 February 2016

2a.

	2014-15	2015-16	2016-17
Total number of garnishees issued	55,741	40,406	23,712
Proportion of total garnishees issued to small businesses	74.7%	75.5%	76.1%

Note:

- To enable comparisons with previous years, the number of small businesses are defined by market segment.
- We can issue more than one garnishee in relation to a debt. All garnishees issued are included in the calculations.

- 2b. The total value of garnishees and the average value of garnishees is not readily available and can only be calculated by manually reviewing every garnishee notice issued. However, the amount of debt owed by each taxpayer when we issue a garnishee, which is not necessarily the value that the garnishee was issued for, is readily available.

In 2016-17 we issued 23,712 garnishees in relation to taxpayers that owed \$4.6 billion when the garnishees were issued, meaning taxpayers owed on average \$195,892 at the time a garnishee was issued.

Note:

We can issue more than one garnishee in relation to a debt. All garnishees issued are included in the calculations.

- 2c. Where a taxpayer owes a debt we initiate our early intervention actions, including SMS, letter, phone call and referral to an external collection agency.

When our early intervention actions fail to engage a taxpayer we consider using firmer actions, including garnishees and director penalty notices.

Before taking firmer action we issue a warning notification (most commonly a letter) advising the next steps we may take and giving the taxpayer a further opportunity to address their debt. The exception to this is a small number of high risk cases (eg links to organised crime, phoenixing or other fraudulent activity, or where there is a concern of dissipation of assets) where no warning notification is issued.

The issuing of a garnishee is not an automated process – debt collection officers exercise their judgment to determine if this is the most appropriate action. Staff issuing garnishees must complete training and adhere to ATO policies and procedures. Debt delegation and authorisation levels reflect staff capability and remove unnecessary escalations.

We conduct regular quality assurance assessments of garnishee cases to ensure the quality of decision making. New staff and newly trained staff are subject to more of their work being reviewed.

If a taxpayer disagrees with our decision to issue a garnishee they can lodge a complaint with the ATO or the Inspector General of Taxation, or make an application to the Federal Court.

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5 February 2016

- 3a. Insolvency proceedings are considered after our early intervention actions and firmer intervention actions have failed to engage the taxpayer (see response to question 2).

A common reason for initiating insolvency proceedings is to address unfair financial advantage, ie to stop an entity that is continuing to incur debts (to the ATO, employees or suppliers) and is competing unfairly with businesses that are meeting their obligations.

The first step is to make a formal demand for payment (eg summons). Many taxpayers pay their debt at this point. If a debt remains unresolved we may initiate insolvency (company wind up or personal bankruptcy) via application to a court, exercising the same rights available to any other creditor. As an unsecured creditor, we receive no priority over other unsecured creditors in relation to tax debts. However, superannuation guarantee charge debts which we collect on behalf of employees rank ahead of other ordinary, unsecured debts.

Ultimately, the court decides whether a taxpayer is insolvent or not based on evidence provided by both the ATO and the taxpayer.

An independent external review of our insolvency decisions completed in June 2017 concluded that our collection practices do not prematurely lead to viable businesses being made insolvent, noting our performance in progressing insolvencies tends to be conservative. This report is available on our website.

- 3b. We are unable to provide this breakdown.
- 3c. We are unable to provide this figure because its calculation relies on the breakdown requested in the previous question, which we are unable to provide.
- 3d. It is not possible to attribute insolvency to the issuing of a garnishee notice.

Ultimately, the court decides whether a business is insolvent or not based on evidence provided by both the ATO and the taxpayer.

4. The figures referenced in the hearing were at a point in time. They were sourced earlier in the year. In responding to this question we have used more up to date figures, resulting in small variations.

At 5 April 2018 there were 4,323 debt cases on hand for all taxpayers where a portion of the debt was subject to a Part IVC dispute or referral to the Administrative Appeals Tribunal or a court. Of these disputed debt cases:

- 4,073 (94.2%) were not subject to debt recovery action
- 64 (1.5%) were subject to a 50/50 arrangement and deferral of recovery
- 46 (1.1%) were under negotiation for settlement, compromise, payment plan or 50/50 arrangement
- 140 (3.2%) were subject to debt recovery action, possibly including garnishee or legal recovery – this occurs in cases where we perceive a level of risk, eg links to organised crime, phoenixing or other fraudulent activity, or where there is a concern of dissipation of assets.

Standing Committee on Tax and Revenue

ANSWERS TO QUESTIONS ON NOTICE

Australian Taxation Office

28 March 2018

Department/Agency: ATO

Question:

Topic: Fairness to taxpayers

Reference:

Member: Written

Question:

- 1) The IGT's submission observes that while the Committee's recommendation for reporting on fairness measures for taxpayer and tax agent experience, I was supported by the ATO in the Government Response it was not addressed in the current annual report.(p. 14)
 - Would the ATO provide an update on its development of fairness measures, and the intended program for monitoring and reporting in the Annual Report?

Answer:

- The ATO collects a range of data to measure perceptions of fairness:
 - taxpayer and tax agent experience with the outcome
 - processes
 - information provided
 - interaction with staff.Examples of these interactions include finalised audits, advice, debts and disputes (objections).
- Fairness data and insights are used internally to drive a range of activities that focus on delivering an experience to both taxpayers and tax agents they perceive to be fair.
- Fairness data is reported against internal measures and distributed to allow teams to assess the impact of their strategies on a particular market. Examples include fairness training for all team leaders in client facing areas.
- The ATO is working to finalise its reporting methodology for the 2017-18 Annual Report to communicate the ATO's performance with respect to perceptions of fairness in a manner that is relevant to the community.

¹ Recommendation 10, 2016 Annual Report review.