

STANDING COMMITTEE ON TAX AND REVENUE

ANSWERS TO QUESTIONS ON NOTICE

Australian Taxation Office

Inquiry into Tax disputes

11 December 2014

Topic: Breaches of the model litigant rules

Question: 1

In the most recent edition of Your Case Matters, the ATO has stated that there were 47 breaches of the model litigant rules reported between July 2007 and June 2012:

- (a) Do the breaches tend to be made by ATO staff or by contracted lawyers?
- (b) Is there one model litigant rule that is breached the most often?
- (c) Is there a pattern to the breaches?
- (d) What systems does the ATO have in place to ensure compliance with the model litigant rules?

Answer:

Records on earlier ATO model litigant matters are less detailed than more recent matters. Because of this, we cannot provide a detailed statistical breakdown on the information requested, but provide the following general comments and observations that are considered to adequately address the questions raised.

- (a) Between 1 July 2007 and 31 December 2012, the bulk of recorded model litigant issues related to action by ATO staff rather than panel firm solicitors. For example, of the 47 claims alleging breaches of the model litigant rules in this period, 42 were made against ATO staff and 5 were made against panel firm solicitors. Of the allegations raised, only 6 breaches were confirmed against ATO staff, and no breaches were confirmed in allegations raised against panel firm solicitors.
- (b) Of the 6 breaches confirmed over that five and a half year period, the most common concerned the failure to use the appropriate process for approval of counsel rates as per Appendix D of the *Legal Service Directions 2005* (twice – once in 2008, and once in 2010).
- (c) There is no discernible trend or pattern to the confirmed breaches.
- (d) The ATO assures general compliance with the model litigant rules based on evidence obtained from:
 - The ATO Review & Dispute Resolution monthly assurances recorded by litigation case officers;
 - ATO records of correspondence with the Office of the Legal Services Coordination (OLSC);
 - Assurances from the firms on our legal panel; and
 - Direct assurance from all the senior managers in Review & Dispute Resolution and General Counsel in preparation of the annual Certificate of Compliance to OLSC.

Law Administration Practice Statement PS LA 2009/9 includes guidelines on the ATO's obligations as a model litigant. Our officers are well aware and regularly reminded of the requirements of our model litigant obligations and the public scrutiny associated with this. Our officers escalate any criticisms by the taxpayer or by the Court to senior management for review and possible reporting.

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Topic: Tax disputes statistics by market segment

Question: 2

On page 73 of the ATO's 2014 Annual Report, there is a profile of the number of tax disputes at each stage of the process. Could the ATO please provide a break-down of these statistics by market segment?

Answer:

Market segment	Returns lodged	Adjustments arising from audits	Number of Objections	Number of cases lodged to courts/tribunals	Number of cases proceeded to decision
Individual	10,847,100	419,189	16,498	386	44
Small business	5,363,442	75,398	7,705	360	31
Medium business	226,824	4,845	473	75	8
Not for Profit	12,256	743	28	5	4
Government	1,579	58	8	0	0
Large business	13,901	268	118	14	16
Total	16,465,102	500,501	24,830	840	103

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Topic: **Written protocols for communication**

Question: **3**

Could the ATO please provide its written protocols for communication between auditors, objection officers, and taxpayers in the Private Groups and High Wealth Individuals sector, as well as for any other sectors?

Answer:

As discussed with the Committee on 19 November 2014 we are in the process of ensuring we have written protocols in place for communications between auditors, objections officers and taxpayers across all our business areas.

Currently we have general guidance in place for all objections officers and more detailed guidance in place in our small business and individual income tax area and for independent review in the large market. Further detail is provided below.

General guidance on independence in the objections process

The Taxpayers' Charter and our general administrative guidance found in the Online Resource Centre for Law Administration, requires someone other than the original decision maker to review and progress the objection.

This requirement allows for objectivity, impartiality, no conflicts of interest, no inherent bias and no undue influence. The resource contains guidance for objections staff in relation to their conduct to ensure their independence from the original decision maker in audit based objections. (Refer to Attachment 1: Independence)

In addition, reference guides supporting objection procedures encourage both independence in review and engagement with the original decision maker (and additional internal stakeholders, for example technical specialists) to determine an appropriate response to the objection.

Examples of reference guides referring to communications between auditors, objections officers and taxpayers are provided at Attachment 2: Engage with the taxpayer and Attachment 3: Working together and sharing knowledge.

These also ensure that objections resulting from audit are related in our systems to the original case, as well as following best practice to inform the auditor of the receipt and outcome of the objection.

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Specific market or product guidance

Private Groups and High Wealth Individuals

Attachment 4: Guidelines on the audit, objection and litigation end to end process in Private Groups and High Wealth Individuals provides direction and guidance in relation to the practice to be followed when considering dispute resolution in Private Groups and High Wealth Individuals. This set of guidelines is currently under review.

Small Business/Individual Taxpayers

The last memorandum of understanding between objections and active compliance streams in the Small Business/Individual Taxpayers business line was drafted in 2009 and was in effect for the 2009-2010 income year. Subsequently, there has been no new or updated written document covering communications between audit and objections officers.

At the Tax and Revenue Committee disputes inquiry Deputy Commissioner of Taxation Steve Vesperman acknowledged the deficit of such documentation and flagged with the committee that we would be putting in place and working through documenting appropriate protocols so it is very clear in our systems that there has been a conversation between the person determining the objection and the auditors. Accordingly we have drafted such a protocol (Attachment 5: Memorandum of Understanding between Small Business and Individual Taxpayers Interpretive Assistance and Active Compliance) and supplemented this by mandating to our staff, and putting as a quality measure in our quality assurance system, the need to document all communications between an objections officer and an auditor.

Large Market Independent Review

There are communication protocols in place for the Independent Review process. These state that all contact should be initiated by the Review officer, unless contact relates to processes or progress of the review. (As outlined under Stakeholder communication during the review on page 4 of Attachment 6).

Large Market Objections

In addition to the general advice within the Taxpayers' Charter and the Online Resource Centre for Law Administration, officers actioning large market objections (for taxpayers with an annual turnover of over 100 million) are required to conduct conferences with the auditor and the taxpayer. The conference is intended to apply similar principles of independence as within the Independent Review service. Conducting a case conference ensures the objection officer understands the facts and circumstances of the case and enables the auditor and the taxpayer to discuss their position. Both the auditor and the taxpayer have an opportunity to review the facts and evidence relied on and to identify further information that may be helpful. (Attachment 7: provides further information on this process)

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