



THE TAX INSTITUTE

THE MARK OF EXPERTISE

16 March 2015

Mr David Monk
Inquiry Secretary
Standing Committee on Tax and Revenue
House of Representatives
PO Box 6021
Parliament House
Canberra ACT 2600

By email: taxrev.reps@aph.gov.au

Dear Mr Monk,

Inquiry into the *Annual Report of the Australian Taxation Office 2014*

The Tax Institute welcomes the opportunity to make a submission to the House of Representatives Standing Committee on Tax and Revenue (**Committee**) in relation to its Inquiry into the *Annual Report of the Australian Taxation Office 2014*.

The Tax Institute (**Institute**) is Australia's leading professional association in tax, with more than 15,000 members. Further details about The Tax Institute are included at Appendix A.

Executive summary

Given the broad terms of this Inquiry, we have focussed this submission on those aspects of the Australian Taxation Office's (**ATO**) practice that are of particular relevance to our members.

In summary, the main points contained in this submission are:

- (a) We welcome recent senior appointments to the ATO that have resulted in initiatives such as the ATO project to review and improve its guidance materials.
- (b) The ATO has recently announced a series of technological changes. A timetable for these changes, and clear guidance on what these changes mean for tax practitioners, should be communicated as soon as possible.

- (c) The ATO has recently implemented a framework whereby tax agents may be sanctioned for late lodgement of their clients' returns. The current framework should be assessed to ensure that it is operating fairly and effectively.
- (d) Our members have raised concerns regarding the tenor of correspondence recently issued by the ATO. All correspondence should be reviewed by a centralised team within the ATO to ensure consistency.

Personnel changes

There has been an unprecedented number of senior private sector appointments to the ATO in recent times, led by the appointments of Commissioner Chris Jordan AO, and Second Commissioner Andrew Mills, and more recently, Chief Tax Counsel Jeremy Hirschhorn and Deputy Chief Tax Counsel Kirsten Fish. There have been a number of positive changes as a result. For example, the ATO is currently reviewing its published rulings and guidance and help ensure that the most useful and up-to-date guidance is available to tax advisers and taxpayers. We understand that this is a key priority issue for Andrew Mills and Jeremy Hirschhorn as part of the 'reinvention' of the ATO, and it is an initiative we welcome.

Technological changes

Tax Agent Portal

The ATO is increasing its emphasis on electronic interactions with tax agents and their clients. For example, in order for tax agents to access later due dates for lodgement of their clients' returns, the returns must be lodged electronically through the Lodgement Program. In another example, tax agents are being directed to use electronic services instead of ATO telephony. This increasingly requires tax agents to rely on the Tax Agent Portal (**Portal**) and other ATO electronic systems.

The Portal is a secure ATO website available only to tax agents. It allows agents to undertake online activities essential to their day-to-day practice. This includes communicating securely with the ATO, viewing and updating ATO information about their clients and lodging activity statements. Since the Portal was introduced in October 2002, tax agents have come to heavily rely on its existence. It has become a crucial tool of trade for many tax agents.

Members continue to tell us of their frustrations and concerns regarding the Portal both when it is operational and when it is down. Even when the Portal is operational, it can still function slowly which slows down the productivity of agents using the Portal. The information available on the Portal is updated in batches rather than in 'real time', which can also hamper agents' ability to obtain the most up-to-date information at any point in time. When the Portal is down (due to maintenance or other technical problems), tax agents are unable to work until the Portal becomes available again. It is of particular concern that unscheduled disruptions to the Portal are arising in periods of peak usage.

The ATO has responded to such queries by indicating that the Portal has been relatively stable in recent months and that often difficulties in using the Portal arise from other systems such as the internet browser used by the practitioner, the practitioner navigating through the Portal incorrectly, or an unstable internet connection. These

responses suggest that the ATO should improve its communication strategy and user guides in relation to the Portal. They are also an indication that the Portal is out of date, as it is incompatible with commonly used internet browsers.

We have been involved in extensive consultation with the ATO in relation to the Portal. The ATO has indicated that it is progressively moving towards migrating the Portal to an ATO Online platform which should increase the stability of the Portal. The ATO has not communicated a firm timeline for improvements to the Portal in our consultations with them.

We had not been made aware of the development in paragraph 97 of the ATO submission to the Committee dated 27 February 2015 that a new version of the existing Portal will be released this month. As far as we are aware, this release has not been widely communicated to tax practitioners. We would appreciate further information on this development and why it has not previously been discussed in consultation.

Standard Business Reporting

From 1 July 2016, practitioners will require SBR-enabled software to lodge forms to the ATO. The ATO has at times conflated this limited change with the broader changes envisaged for 2020 and beyond. This has added to the confusion amongst practitioners to what they can expect from the ATO in terms of technological changes.

Our members have brought to our attention comments made by Geoff Leeper, Second Commissioner, at the Accountants Technology Showcase Australia in Melbourne in October 2014. Mr Leeper is reported to have said "*The red-tape reduction savings from SBR, which is a priority for the government, total probably \$500 million in the economy. A lot of that will come from professional fees.*" This has caused alarm amongst some practitioners who have interpreted the ATO's strategy as eliminating them from compliance work.

Many practitioners are unclear as to what Standard Business Reporting means for their practices and the timetable for any broad changes. The ATO should confirm its short, medium and long-term strategies in relation to its interactions with tax practitioners. We understand that the ATO is working towards publishing a roadmap for changes this month and we look forward to that release.

Lodgment Program

The Commissioner has the power to defer the time by which taxpayers are required by law to lodge their tax returns. The Commissioner exercises this power in issuing the Lodgment Program each year. Under the Lodgment Program, tax agents are allowed to lodge their clients' returns later than the statutory due dates. For example, individuals are generally required to lodge their returns for an income year by 31 October but under the Lodgment Program they can generally lodge through an agent by 15 May the following year. This assists agents to spread their workload throughout the financial year rather than suffer the effects of having the majority of their lodgment work due only on the statutory dates for lodgments.

Effective 1 July 2012, the ATO introduced a new differentiated framework for the Lodgement Program for tax agents, requiring tax agents to lodge 85% of client returns by the due dates in the Lodgement Program. The purpose of the differentiated framework is to encourage agents to bring late lodging clients into line, thereby having an overall positive impact on lodgements to the ATO.

From 1 July 2013, tax agents who have not met the 85% lodgement requirement have been subject to various treatments from the ATO, the severest of which is removing the agent from the Lodgement Program such that they no longer have an extended time to lodge their client's returns.

The 85% rule can sometimes operate as a blunt instrument for dealing with lodgements. For example, tax practitioners whose business model is to deal with recalcitrant clients are not automatically exempted from the rule and have to explain their situation to the ATO. The ATO has encouraged practitioners to remove these clients from their lodgement list (ATO submission to the Committee dated 27 February 2015 at paragraph 88), which may in fact undermine the goal of getting these clients back on track with their lodgements.

Potential actions under the differentiated framework include provision of self-help tools, contact and assistance from the ATO, and removal from concessional due dates for lodgement of tax returns currently available to tax agents under the Lodgement Program. Whether any or all of these sanctions apply for an agent who fails meet the 85% rule is not well understood by practitioners, as the ATO is currently focussing on dealing with the worst performing agents.

In a public hearing of the Committee on 27 August 2014, Neil Olesen, Second Commissioner stated: *"I think it is worth noting too that the vast majority of agents, based on the survey work we do, are quite happy with the 85 per cent regime. I think I saw a stat that said that 90 per cent of the agents we have surveyed are quite happy with the way the 85 per cent standard is operating."* The ATO has since indicated that the statistics referred to could not be released publicly as they were not part of an official survey and has commenced a formal survey of tax practitioners regarding the Lodgement Program (para 92 of the ATO submission to this Committee dated 27 February 2015). We look forward to seeing the results of this survey.

We note that the ATO submission to this Committee dated 27 February 2015 states that overall on-time lodgements for all entity types have improved significantly, and that there has also been a rise in the returns lodged by tax agents on time since the introduction of the program. We would be interested in a comparison of the trends in lodgement through tax agents and lodgements more broadly to determine whether the Lodgement Program has had a significant impact.

ATO correspondence

Our members have raised concerns regarding the tenor of the ATO's correspondence to their clients. Some recent examples relate to rental expenses, taxable payments reports and business income.

In the first example, clients received letters in relation to rental expenses late last year that implied the amounts claimed were incorrect and foreshadowed the issuing of assessments. Members complained about the heavy-handed tone of the letters and the ATO indicated that the letters have been stopped pending a review of their wording.

In the second example, a member received a letter on behalf of a client that stated "YOUR TAXABLE PAYMENTS REPORT IS OVERDUE" even though their client is not required to lodge this report. At the bottom of the letter, recipients are advised to complete a particular form if they do not need to lodge.

In the third example, a member received a letter on behalf of a client which stated "AMEND YOUR TAX RETURNS AND ACTIVITY STATEMENTS IMMEDIATELY TO AVOID PENALTIES" and below "You have not reported all your income in you tax returns and activity statements". No amendment to the client's returns was necessary. The letter had been issued because the ATO systems had not detected that the client's business entity had reported the relevant income in its income tax return.

It is not uncommon to receive letters from the ATO that state that a form has not been lodged or a payment has not been made, with a small note to those who have received the letter incorrectly. These letters negatively impact on the confidence of complying taxpayers in the administration of the tax system.

At the same time, we see other correspondence from the ATO, which is appropriately drafted, and contains all relevant information. Accordingly, the ATO practices in this regard appear to be variable.

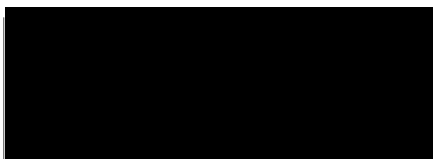
The ATO has indicated that they usually consult on the correspondence they propose to send to taxpayers. In recent times the ATO has consulted on debt correspondence and correspondence relating to the Lodgement Program. It is important that a centralised communications team within the ATO review all correspondence prior to issue in order to ensure consistency.

Conclusion

The Institute looks forward to providing additional details on any of the matters set out above or to address the Committee more generally at future public hearings of this Committee.

If you would like to discuss this matter, please contact me or Tax Counsel, Thilini Wickramasuriya on [REDACTED].

Yours sincerely,

A large black rectangular redaction box covering the signature area.

Stephen Healey
President

APPENDIX A

About The Tax Institute

The Tax Institute is Australia's leading professional association and educator in tax, with more than 15,000 members. We set the benchmark for the most up-to-date tax professional development events and education programs in the country. Meaning our members are best placed to have the highest level of expertise in the field.

Our growing membership base includes tax professionals from commerce and industry, academia, government and public practice throughout Australia.

In 2012, we introduced the internationally recognised Chartered Tax Adviser (CTA) designation to ensure our members have the credentials to demonstrate their tax expertise to employers and clients.

In 2014, we became accredited as a higher education provider and introduced the Graduate Diploma of Applied Tax Law, which has been designed to meet the changing needs of the tax profession.

Our reach extends to over 40,000 Australian business leaders, tax professionals, government employees and students through the numerous specialist, practical and accurate tax publications – all of which ensure that the latest information is available at their fingertips.

Established in 1943, the purpose of The Tax Institute was to provide education and information products and services to the tax profession as well as support improvements in the tax law and its administration. That core purpose remains.

Today we lead the tax profession with a strong and authoritative voice in supporting a fair and equitable tax system in Australia, whilst at the same time providing a full suite of education and information products that keep today's tax professional up-to-date and build the capacity of the next generation of tax professionals.

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