



CHARTERED ACCOUNTANTS
AUSTRALIA + NEW ZEALAND

Submission No. 3
Inquiry into ATO Annual Report 2016

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Ms Loes Ann Slattery
Senior Research officer
Standing Committee on Taxation and Revenue
Department of the House of Representatives
PO Box 6021
CANBERRA ACT 2600

Dear Ms Slattery

Standing Committee on Taxation and Revenue (the Committee) Inquiry into the 2015-16 Annual Report of the Australian Taxation Office (ATO)

Thank you for the opportunity afforded to Chartered Accountants Australia and New Zealand (**Chartered Accountants ANZ**) by the Committee to participate in the roundtable hearing on the ATO's 2015-16 Annual Report.

As you noted in your email dated 17 November 2016, the limited timeframe means that we have not prepared a detailed submission. Rather, we have identified a number of important discussion points which we think Committee members may wish to explore at the hearing.

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Comments regarding the ATO relationship with tax professionals

We concur with and welcome the General Review comments in the report made by the Commissioner, Mr Chris Jordan:

“Over the past couple of years, there have been growing concerns about some of our services for the profession, so this year we invested in greater communications, connections and making improvements. We consulted extensively, including visits to many practitioners' offices, to understand their experiences and what we could do to 'fix' irritants; in particular, with the client correspondence list (CCL) and performance of the Tax Agent Portal.

We conducted 'show me what, how and why' sessions for agents to help them optimise the performance of the portal and their own technology, introduced a complex issue resolution service, eliminated irritants with the CCL and worked with software providers to build the new practitioner lodgment service (PLS) for Tax Time 2016 and beyond.

In the coming year, we will continue to improve the experience of the tax profession and will work collaboratively with them and software providers to bed down PLS, offer more online tools, and help create a joint future that provides 'value-add' services for Australians and businesses.”

Like many other professions, the tax profession is facing the challenges of digital transformation – and this applies equally to those working within the ATO.

Technology may be making compliance easier, but Australia's taxation laws remain complex. Technology does not necessarily make data accurate. Despite the prospect of artificial intelligence, current technology does not interpret tax law and guidance although it is making answers to less complex tax questions easier to find.

In this context, we therefore welcome the fact that ATO management acknowledge the continuing role that skilled, ethical tax and BAS agents play in a well-functioning tax system. We are keen to explore with the ATO how we can identify new tax risk assurance services which suit the modern tax and superannuation administration environment.

Chartered Accountants ANZ participates in various ATO forums which regularly discuss the future of the tax profession and we will continue to do so. The success of these forums very much depends on ATO officials sharing with us, as openly as they can, their strategic thinking and forward work programs.

Multinational tax avoidance

The Annual Report canvasses the ATO's work on multinational tax avoidance and the organisation is clearly devoting substantial resources to this important issue.

No doubt the Committee will be interested in an update from senior ATO officials on more recent progress, particularly the outcome – in general terms – of the ATO invitations to certain companies to discuss the application of the recently enacted Multinational Anti-avoidance Law (referred to as “the MAAL”).

However, we think it is also important for Committee members to appreciate the need for the ATO to be given time and space to do its work. The ATO is a trusted institution within our society, and constant parliamentary scrutiny can have the unintended effect of conveying to

the community the incorrect impression that the ATO has somehow been asleep at the wheel. The international structures put in place by multinational companies can also be complex, and legitimate arrangements implemented before the enactment of the MAAL may take time to adjust. Jurisdictions other than Australia may be impacted by any revised tax-structuring and the tax authorities in these other countries may need to be engaged.

Although difficult in the current political environment, we also believe the ATO should not be judged simply by the extra tax revenue raised in the short term by applying the MAAL. The community should also look at the longer term revenue benefits arising from any restructuring which sees a greater number of multinationals operating in Australia through a permanent establishment (i.e. a taxable presence).

Finally, we all need to be mindful that Australia is a comparatively small, capital importing country, and our economy needs in-bound investment to continue along the path of economic success. Our company tax rate is high by world standards. If overly restrictive tax laws, foreign investment conditions and administration discourages such investment – or creates an environment in which multinational companies simply seek to do “the bare minimum” to pass muster with the regulators (as distinct from pursuing more expansive investment), than the longer term damage to our country could be substantial.

The Panama Papers

The Committee may be interested in discussing, again in general terms, the progress of the ATO’s investigations on the leaked Panama Papers and the preliminary outcomes from the recent “week of action” which involved a taskforce of agencies, including the ATO.

The illegal cash economy

It appears to us that the ATO has recently ramped-up its work on the illegal cash economy. We are also aware that the Board of Taxation has a keen interest in this topic and may soon make recommendations to Government.

The Committee may be interested in exploring with the ATO whether it has the legislative and administrative tools it needs to adequately address this difficult area of tax administration.

We believe there are a number of “out of the box” ideas which should be explored in this context, such as:

- The use of non-tax sanctions (whereby other legal entitlements or commercial benefits are jeopardised by non-compliance with the tax law as part of a broader social contract)
- The issue of tax compliance certificate as a pre-condition for the taxpayer applying for a government tender
- The use of tax bonds as a condition of obtaining an Australian Business Numbers for repeat cash economy offenders

Cyber security

The ATO has a long-established, excellent reputation for handling and protecting sensitive data. As with any organisation nowadays, that reputation can be undone by a single cyber security incident impacting a sizeable number of taxpayers or providers of tax data. Cyber incidents also pose a risk beyond Australia’s shores as tax data is increasingly shared with other jurisdictions, some of which do not possess the ATO’s strong reputation for security.

Chartered Accountants ANZ has been working with the ATO as part of a group which seeks to:

- Publish common sense cyber security safeguards, for tax and BAS agents and their clients
- Establish a rectification procedure whereby agents and the ATO (or other tax-related stakeholders) collaborate quickly and effectively to address cyber breach incidents

The Committee may wish to discuss with the ATO its broader cyber security strategy and whether it has the resources it needs – in collaboration with other government agencies – to minimise the risk of cyber incidents.

Digital transformation

As the Annual Report notes, the ATO has substantial plans to digitally transform Australia's tax system as part of its Reinvention strategy. From an ATO perspective, this is rightly portrayed as "delivering a better experience" to taxpayers and other stakeholders such as agents, software developers and suppliers of tax-related data.

As with any major business transformation however, implementation is the key to success. There is also the difficult task of educating those impacted by the changes.

Put simply, taxpayers need to feel that the new ATO products don't just streamline things for the ATO's benefit (i.e. lowering tax collection costs), but also produces tangible benefits for taxpayers.

The Committee hearing provides an opportunity for the ATO to summarise its key tax initiatives, convey insights from taxpayer readiness surveys undertaken, the roll-out strategy, timelines, and how these changes will be "pitched" as beneficial to taxpayers, particularly small business.

There is also a small but important group of citizens – those without access to technology or the ability to use technology, less well-educated members of our society, disabled persons, those from non-English speaking backgrounds or living in remote communities – who will continue to need one-to-one support from the ATO in a digital environment. The Annual Report makes reference to the ATO having "provided tailored support to meet the needs of specific groups and ensure no one is left behind in the transition from paper to digital services". We feel it is important that Committee members (and MPs and Senators generally) gain a more specific understanding of how such individuals will be supported in the new world of online government services.

Chartered Accountants ANZ also believes that the ATO's modernisation efforts can be assisted by parliamentarians open to changes to the machinery provisions of the tax law which provide administrative benefits to taxpayers, complementing the ATO's own digital transformation plans. Examples here include:

- the better alignment of PAYG instalment arrangements with small business cash flow and reporting
- changed lodgment deadlines
- less draconian penalties and interest for those who make mistakes, particularly during change implementation periods

It could be that the ATO has its own such plans, using the Commissioner's general powers of administration. Either way, the Committee hearing provides a useful opportunity for the ATO and other stakeholders to discuss their ideas for sharing the benefits of modernisation.

Smarter Data – A two-way street

The Annual Report rightly notes the importance of data to the ATO's operations: big data "is increasingly being used to make things easier, reduce the compliance burden and tailor our interactions with clients".

The inflow of data to the ATO is however a cost to those required to supply it, and Chartered Accountants ANZ believes that it is time for the ATO to reveal more about its efforts in supplying de-identified data *back* to the community so that the benefits of its substantial data bank can be shared. We acknowledge that the ATO is but one agency in what we understand is a whole of government data-sharing strategy under development. But just as it is a leader in data access and analytics, we believe that the ATO should also show leadership in data *sharing*.

Leaving aside the broader economic issue of data-sharing, there is also an issue about whether citizens and Australian businesses should have greater access to the tax data held about them by the ATO.

Redesigning tax advice and guidance

Chartered Accountants ANZ congratulates the ATO on its recent efforts to:

- streamline advice and guidance
- publish law companion guides and practical compliance guides
- publish safe harbour guidance
- update the ATO legal database

The only slightly negative feedback we hear from our members relates to the withdrawal of ATO Interpretative Decisions and the need to rejuvenate older, binding public rulings on important topics.

Our members would find it useful to:

- Establish whether all ATOIDs are to be eventually withdrawn (and the flow-on impact on the future of the Private Binding Rulings database)
- See the ATO work plan for revising important public rulings

Small business tax debt

As noted by the ATO in the Annual Report:

"The small business segment remains a key area of focus with just 72.3% of small business tax liabilities being paid on time up to the end of 2015-16. Small businesses accounted for 65.2% (\$12.5 billion) of total collectable debt holdings at 30 June 2016. This is an increase of 1.9% over the previous year".

Small business tax debt continues to be a difficult area for the ATO despite a number of worthwhile initiatives such as:

- Early ATO intervention / contact with the taxpayer
- Taxpayer "nudge" techniques (based on behavioural science)
- Re-designed ATO debt correspondence which makes it crystal clear that a debt is owing and what to do about it
- Online debt repayment plans (although some CAs believe the ATO has made it too easy to get tax debt payment extensions)
- An ATO small business cash flow education product to be rolled-out in 2016-17
- Warnings before more drastic action is taken by the ATO

Nonetheless, Chartered Accountants ANZ believes that the time is fast approaching for Government to consider policy interventions in this difficult area. For example:

- Should some mandatory business training be required before an ABN is granted for a first-time start-up small business?
- Should some industries be subject to immediate PAYG instalments from the commencement date of the business (as distinct from the quarter in which the first income tax return is assessed), with a low, initial instalment rate set by the ATO?
- Should special-purpose PAYG withholding mechanisms be considered for some business to business transactions in certain industries (e.g. building and construction) so that tax is put aside by the payer on behalf of the payee?
- Should intermediaries – such as banks and accountants – have a greater role in helping start-up small businesses (e.g. to ensure that a well-considered business plan exists)?
- Should a limit be placed on the number of debt payment arrangements a taxpayer can be granted in respect of the same tax debt obligation?
- Should tax debt repayment plans for amounts exceeding a specified amount be required to be accompanied by a debt work-out plan prepared by a suitably qualified accountant?
- Should taxpayers with unpaid tax debts exceeding a specified threshold be reported to credit reference agencies so that others become aware of the commercial risk of dealing with such persons? New Zealand has recently implemented this model.
- What steps should be taken to better regulate so-called pre-insolvency advisory firms?

It would be surprising indeed if ATO officials have not already considered these and other policy ideas. The Committee may wish to discuss.

For larger unpaid tax debts, Chartered Accountants ANZ has also raised with the ATO whether greater use should be made of insolvency experts (investigation reports) to determine, for example, whether company directors have made any preferential payments to creditors or associates which may be recovered.

Should you wish to discuss matters raised in this letter, please do not hesitate to contact me

Yours sincerely

Michael Croker
Australian Tax Leader