



**Australian Government**  
**Australian Taxation Office**

# ATO Submission

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Standing Committee on Tax and Revenue

14 August 2015

## Commissioner's foreword

This is the Australian Taxation Office's fourth submission to the Standing Committee on Tax and Revenue.

As this submission explains, we have successfully implemented, or are in the process of rolling out, a number of key initiatives to improve the client experience – particularly our service offerings like *myTax*, improvements to our website, online services available on mobile devices, enhancements to our app like *myDeductions*, business performance check and voice authentication.

We are making improvements to our correspondence across the board, and are providing more support material to all segments via our website and consultative forums. We have recently released the *Tax Risk Management and Governance Review Guide* to help companies self-evaluate their governance framework and strategic and operational tax risks.

Work on measuring the Tax Gap continues. Over the past year, we have been working to develop new estimates for the large market, high wealth individuals, excise taxes and pay as you go withholding (income tax). We expect some of these estimates to be published later this year. These will be in addition to the updated tax gaps for goods and services tax and luxury car tax which have been published since 2013.

Later in 2015 and going into 2016, we will progress the development of estimates for individuals and small business income tax, fringe benefits tax and superannuation guarantee.

With the Tax Time now well under way, we are on track for good results – a good take up of our new services and a good client experience.

At the time of writing, almost 4.4 million people had lodged their returns around 940,000 had lodged using *myTax* and we had issued more than 3 million refunds worth in excess of \$8 billion. Next year, *myTax* will be available for all individuals, including those with business income, and we will be retiring e-tax.

The ATO has continued to consult on the design of Single Touch Payroll, and final decisions on its adoption and implementation are yet to be taken by the Government. It is most likely that any implementation would occur from mid-2016 with a pilot phase. Consultation concerns focused on the cash flow implications of mandatory real time payments and this option has now been removed from the ATO's position.

The rollout of digital services for business is continuing as planned. From 30 June 2016, the Electronic Lodgment Service (ELS) will no longer be available for tax practitioners and in preparation for this, many practitioners are already upgrading their systems to SBR-enabled software to continue to be able to lodge income tax returns and conduct other services.

We are continuing to work closely with software developers and the tax professional community to ensure they are aware of the changes to their practice management software

and will support them fully in the transition period.

Our strategies to improve dispute resolution continue and on 1 July 2015, we completed the move of objections for all client segments out of the Compliance Group, into the separate Review and Dispute Resolution (RDR) business line in Law Design and Practice.

The ATO Executive will be available to answer questions at the hearing in September.

A handwritten signature in black ink, appearing to read 'Chris Jordan', with a horizontal line underneath.

**Chris Jordan AO**  
**Commissioner of Taxation**

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## Single touch payroll

- 1 Single Touch Payroll aims to reduce red tape for employers by simplifying tax and superannuation reporting obligations.
- 2 Under Single Touch Payroll, employers' accounting software will automatically report payroll information to the Australian Taxation Office (ATO) when employees are paid. This will eliminate the need for employers to report employee-related Pay As You Go Withholding (PAYGW) in their activity statements throughout the year and employee payment summaries at the end of the year.
- 3 In addition, the ATO will streamline Tax File Number declarations and Super Choice forms by providing digital services to simplify the process of bringing on new employees.
- 4 To ensure that the implementation of Single Touch Payroll is managed well and meets employers' expectations we are consulting extensively and widely.
- 5 Since our last appearance before the Committee in March 2015, the Treasury and the ATO consulted widely on a number of implementation options. We commenced consultation in June 2014 and have engaged with 237 members of the community across a variety of audience groups.
- 6 The following table identifies the broad section of the community consulted as part of the Single Touch Payroll proposal between June 2014 and July 2015.

<b>Audience</b>	<b>Number</b>	<b>Consultation channel</b>
Developers (Accounting and payroll software companies & Software Industry Associations)	31	Workshops, face to face, phone, video conference, interviews, and working groups
Intermediaries (tax professionals, payroll providers, Superannuation intermediaries (including clearing houses and super funds and Government)	66	Focus groups, face to face, phone, forums and contextual interviews
Industry representatives (business and tax association representative groups)	21	Phone, face to face and forums
Business (all employers)	102	Phone, face to face, contextual interviews, focus groups and forums
Employees (individuals)	17	Usability testing, focus groups and contextual interviews

- 7 Having listened carefully to the feedback received, the Government acknowledged that a start date of July 2016 would not be achievable for many businesses. In addition, the Government recognised the cash-flow implications of real time payments for business, and will therefore only be consulting further on real time reporting and voluntary real time payments as an option.

- 8 Consultation is continuing on the scope and timing for the Single Touch Payroll initiative and the feasibility of conducting targeted pilots during 2016, subject to a final Government decision to proceed with the initiative.

## Digital services for business reporting – electronic lodgment

- 9 Standard Business Reporting (SBR) is an Australian Government initiative designed to simplify business-to-government reporting. SBR will simplify and reduce the time and cost associated with collating information and submitting reports to government. Tax professionals will be able to access SBR with their AUSKey and SBR-enabled software.
- 10 The ATO notes that tax professionals have already embraced the changes technology is offering and identified efficiencies in the way they work, saving time and money. Some of the benefits of SBR for tax professionals include being able to:
  - > prepare and lodge government selected electronic forms securely and in real time
  - > receive fast confirmation that lodgment has been received
  - > interact with government more easily by reporting through a single online channel rather than through multiple systems.

## Implementation of Standard Business Reporting

- 11 The ATO has provided technical specifications relating to Tax Time 2014, Tax Time 2015 and SuperStream to software developers to enable them to update their software packages. Software packages updated to these specifications will allow tax professionals to lodge or submit forms through SBR. From 1 July 2015 the ATO will be able to accept the majority of lodgments through SBR, including:
  - > Non Individual (Company) Tax Returns and associated schedules
  - > Partnership Returns, SMSF Annual Return
  - > Activity Statements and Fringe Benefits Tax Returns.
- 12 It is expected that the ATO will be in a position to accept Individual Income Tax Return lodgments through SBR by the end of September 2015.
- 13 The updates to Tax Time 2016 software will provide some initial benefits to tax professionals such as the ability to:
  - > make client updates immediately, rather than having to wait overnight
  - > make bulk client updates and pre-fill reports with the most up to date information.

## Software Developer Progress

- 14 During the ATO's appearance in March 2015, we advised the Committee that we will be ready to receive lodgments through SBR from 1 July 2015. We noted that the number of lodgments submitted through SBR would be dependent on software developers having incorporated, tested and released the relevant code in their commercial packages.

- 15 The table below provides a comparison of the lodgments received through SBR in 2014-15 compared to 2013-14 showing an increase over the year.

Services	SBR lodgment volume	
	2013-14	2014-15
Activity Statements	97,000	199,000
Company Tax Returns	2,400	11,000
Fringe Benefit Tax	1,900	3,500
Trust Tax Returns	1,400	6,500

- 16 Software developers are continuing to use the ATO's External Vendor Test Environment as they develop their SBR-enabled software products. During the course of the 2014-15 financial year a number of software developers have released updated SBR-enabled products.
- 17 We are continuing to work closely with software developers to support them in developing SBR-enabled software. While most software developers are developing SBR-enabled products, the significant investment required means that some may choose not to invest in updating their software packages. The ATO has advised software developers that are unlikely to make the transition to SBR to notify their clients as soon as possible. This will enable them to make alternative arrangements to ensure they can continue to lodge forms to the ATO electronically.
- 18 Tax professionals are able to view the list of software developers that are developing SBR-enabled reports on the [sbr.gov.au](http://sbr.gov.au) website. Tax professionals using software that will not be updated to enable lodgment through SBR will need to make alternative arrangements to continue to lodge forms to the ATO electronically.

## Consultation and engagement with software developers and tax professionals

- 19 As part of our *Re-inventing the ATO* commitment to improving the experience for tax professionals, the ATO has made a number of digital services available on the SBR platform, including client account details and transaction history. Industry consultation is progressing with tax professionals and software developers to identify further high value professional services.
- 20 The following table identifies engagement and consultation activities regarding SBR with relevant stakeholders.

Audience	Engagement and consultation activities
Software developers	<ul style="list-style-type: none"> <li>&gt; ATO technical teams providing onsite technical support to software developers, including software design review and defect resolution.</li> <li>&gt; The Electronic lodgment service (ELS) to SBR Software Developers Technical Working Group meets to discuss and resolve messaging design issues in the context of the ELS to SBR interactions to provide support to software developers to build SBR capability.</li> </ul>
Tax practitioners	<ul style="list-style-type: none"> <li>&gt; Face-to-face tax practitioner visits to communicate the latest developments regarding SBR and to identify practitioner concerns.</li> </ul>



	<ul style="list-style-type: none"><li>&gt; The ATO Tax Practitioner Advisory Group focuses on collaboratively addressing systemic administrative issues impacting tax practitioners and the tax industry, developing strategies to resolve them, and sharing information about the future design of the administration of the tax and superannuation systems.</li></ul>
<p>Tax Professionals including:</p> <ul style="list-style-type: none"><li>&gt; software developers</li><li>&gt; registered tax and BAS agents</li><li>&gt; tax professional and software industry associations</li><li>&gt; the Tax Practitioners Board</li></ul>	<ul style="list-style-type: none"><li>&gt; Future of the tax profession working groups led by the ATO meets to discuss the immediate and future support needed by the tax profession in a changing environment, particularly with changes to software and online services as we move towards a digital environment. The working groups assist the ATO to better understand trends and environmental factors impacting the future of the profession.</li></ul>

## Tax Agent Portal

- 21 The ATO's portals are the entry point for tax professionals to access a range of systems aimed at enabling their practice. During the ATO's appearance before the Committee in March 2015, we noted our plans to release a new version of the portal and work underway to move the desired functionality to a more robust platform.
- 22 We recognise the portal is an invaluable tool for tax professionals and we are working closely with them and their associations to keep them informed about the changes that are occurring in their environment. This includes ongoing and prompt communication about the portal and systems issues that may affect them.
- 23 In December 2014 we implemented a major system change to improve service delivery. We acknowledge that there continue to be a number of ongoing issues affecting the portals, including:
- > intermittent access to the portal
  - > slow response times during peak periods
  - > instances where client details may not be current
  - > various issues with viewing reports, correspondence lists and messages.
- 24 As with any production system there will be some issues with the portal from time to time. Fixing these issues promptly remains our priority and we have staff dedicated to resolving these. We have been working closely with a number of key tax professionals for earlier issues identification and testing solutions to these. We will continue to work in partnership with agents to develop longer term solutions that improve their experience, ensure that any solution we implement is workable and enhance their ability to conduct transactions on behalf of their clients.
- 25 We provide tax professionals with timely, urgent updates about the portals, including system outages and major issues, through our tax professionals' email and SMS alert services.
- 26 Additional information for tax professionals is also available through our tax professionals' newsroom, newsletter, broadcasts and the tax professionals community. Scheduled system outages, current system alerts and system troubleshooting pages are also available on the ATO website.
- > The email alert service operates 24 hours a day, 7 days a week.
  - > The SMS alert service operates 7 days a week between 9am to 5pm (For Western Australia only 9.00am to 2.00pm EDT or 9.00am to 3.00pm EST).
- 27 To improve the identification of portal issues we implemented a process in June 2015 in consultation with the call centres dealing with tax professionals. The process captures real time information about reported portal issues. The information has been used as an early warning of escalating issues and to assist in identifying specific functionality issues to enable solutions to be developed and timely updates to be provided to tax professionals.
- 28 A new version of the Tax Agent Portal was released on 28 and 29 March 2015 with a follow-up release delivered on 8 May 2015. The upgrade relocated the portal functionality to a new hosting platform that includes:
- > new hardware
  - > the latest versions of operating system software
  - > database management system
  - > application framework software, and

- > the latest development and support tools.
- 29 The new platform provides improved stability, performance and maintainability to the portal. Features of the new operating system also assist to improve application availability. For example, while the May 2015 release was being rolled out, the Tax Agent Portal was online and users were able to perform normal portal transactions. This ability to carry out zero-outage deployments will allow us to continue to make incremental improvements, such as addressing specific high incidence errors, without inconveniencing portal users.
- 30 The upgrade project is providing an improved platform for continued operation of the Tax Agent Portal functionality enabling the ATO to work towards the longer term objective of delivering this functionality through a channel that is more appropriate for the needs of tax professionals today and into the future.

## Lodgement program for tax agents

- 31 Following the ATO's appearance before the committee in March 2015, it was noted that more should be done to ensure that tax agents better understand the goals of the program and better understand the treatments that will be applied to late lodging practitioners.
- 32 The core principles of the current framework are that tax agents receive the concessional due dates available under the lodgment program, provided they:
- > lodge their clients' income tax and fringe benefits tax returns electronically, and
  - > lodge at least 85% of their clients' current income tax and fringe benefits tax returns on time.
- 33 The performance benchmark of 85% recognises that there will at times be circumstances beyond an agent's control that might prevent them from lodging 100% of clients' returns on time, and takes into account the generous lodgment concessions provided to agents. Tax agents are also able to request further lodgment deferrals on a case by case basis.
- 34 The Lodgment Working Group (which includes representatives of the ATO, tax professional associations and tax professionals) has initiated refinements to the programme to acknowledge and mitigate issues, such as an apparent lack of understanding of tax agents of the implications of not meeting the 85% performance standard. These refinements have been:
- > the development of user tested, clear communication material on how the programme operates. This includes an updated table outlining lodgment performance ranges and the treatments to be applied. It has been delivered through a communication campaign across multiple channels
  - > the 85% performance letters now focus on encouraging continual improvement
  - > where a tax agent has new or re-engaged clients with one or more outstanding returns, they may seek a deferral for the current year return so the engagement will not impact the 85% benchmark. We are also working on providing suspension of lodgment compliance activities for the outstanding returns
  - > a new electronic lodgment deferral request form has been developed to streamline the processing of lodgment deferral requests
  - > 549 participants from a random sample of 2,313 tax agents completed a formal ATO survey on the lodgment program in February 2015 to increase understanding of tax agent perceptions and identify irritants with the lodgment program. The formal survey was published 16 June 2015 and will further guide strategies for the lodgment program.
- 35 The following statistics illustrate positive outcomes of the lodgment program that include sustained behavioural changes in relation to the lodgment of income tax returns and evidence the effectiveness of our strategies.
- The last three years have seen:
- > tax agent total income tax return lodgments increase by approximately 600,000 forms
  - > tax agents lodge an additional 838,604 income tax returns on-time – 266,555 in the last year alone
  - > on-time lodgment of all income tax returns by tax agents increase from 79.9% to 86.00%.

- > Table 1 illustrates the trend of continual improvement in number of agents who have achieved 85% or more since the baseline year of 2010-11.

**Table 1**

Income Tax Year	2010-11	2011-12	2012-13	2013-14
85% or more	9,223	12,229	12,645	13,629

- > Table 2 illustrates the ranges of on-time performance of all tax agents for the 2013-14 income tax year.

**Table 2**

Income Tax Year	2013-14
≥85%	13,629
80-84.99%	3,374
75-79.99%	2,271
50-74.99%	4,173
<50	1,067
<b>Total</b>	<b>24,514</b>

- > The number of tax agents lodging income tax returns 100% by paper decreased by 36% (2,868 to 1,822) from the previous year.
- > The number of paper income tax returns lodged by tax agents for 2013-14 income tax returns has decreased by 28% (96,674 to 75,445) from the previous year's 2012-13 income tax returns.
- > Overall, electronic lodgment of income tax returns by tax agents has increased by 0.1% to 99.3% compared to previous year.

## Stakeholder consultation

- 36 The ATO's consultation arrangements were implemented from 1 July 2013 following a review undertaken in the first half of 2013. The consultation arrangements established a more effective framework to ensure that:
- > the ATO consults with the right people, at the right time about the right issues and in a timely way
  - > consultation provides enduring benefits and adds value to Australia's taxation and superannuation systems.
- 37 As outlined to the Committee in March 2015, an independent post implementation review of the ATO's consultative arrangements was conducted from the end of March 2015 through to May 2015 by Russell Miller AM from the Centre for Strategy and Governance. The review consisted of interviews with 36 external and ATO participants and a short online survey sent to 188 consultation participants comprising 36 external and 52 ATO participants.
- 38 The review verified that the consultation arrangements are 'fit for purpose' and noted significant improvements including greater focus on achieving outcomes and improved transparency.
- 39 The review reports favourably on the implementation of the ATO's consultation arrangements and concluded that the consultation system, as it operates today, is far more effective than it was in 2013. The key findings from the review were:
- > The current consultation system is fit for purpose with no significant change required. The focus should be on refining the ATO's consultation processes to improve the efficiency of the system and the outcomes it produces.
  - > The current governance framework is appropriate. It is a coherent structure with flexibility to engage stakeholders in the full range of appropriate consultative approaches.
- 40 Through interviews and a short online survey, consultation participants responded that:
- > changes instituted in 2013 have produced a significantly improved consultation system. Overall satisfaction is high with strong support for the working group model
  - > consultation is focused on more significant issues and is more collegiate
  - > there is much more focus on achieving outcomes, especially with the use of issue-specific working groups and much less duplication
  - > contrary to the Inspector-General of Taxation's (IGT) recent report on ATO services for tax practitioners, feedback from tax professionals and ATO senior executive stakeholders involved in consultation has been very positive. The IGT's report refers to a report by an independent consultant which was completed in May 2013 and no longer reflects our current consultative arrangements.
- 41 The survey indicated that 72% of ATO participants thought consultation outcomes were worthwhile and 70% of external stakeholders were satisfied they were being listened to.
- 42 The report also noted the ATO Consultation Hub had improved transparency and accountability significantly. The ATO's approach compared very favourably with the way other agencies interviewed managed their consultative arrangements. The review concluded that the ATO's consultation website meets, and in many respects exceeds, best practice standards for transparency.

- 43 The review provided suggestions to further improve the ATO's consultation arrangements which follow five main themes:
- > improving stewardship committee engagement by reducing the number permanent attendees from the ATO and represented associations and introducing a member appointment regime to ensure healthy rotation
  - > seeking and publishing an estimated completion date for each matter under consultation
  - > improving interactivity between stewardship committees through a regular meeting of chairs of the stewardship committees
  - > strengthening the governance of consultation arrangements through the Consultation Steering Group
  - > publicising the consultation material available on the ATO website and linking that material to [www.australia.gov.au](http://www.australia.gov.au)
  - > periodic training for business line staff involved with consultation groups and induction training for new committee chairs.

## ATO's correspondence program

- 44 Improving the client experience is a key to building trust and confidence in the tax and superannuation systems. We continue work to deliver a positive client experience, ensuring our services and interaction are professional, contemporary and tailored to take into account different circumstances.
- 45 We have spoken to the taxpayers who use our services every day and listened to their views. We have taken steps to improve how we communicate with them by:
- > clearing out and cleaning up the content on our website
  - > improving the search functionality of our website and making it more user friendly both on the computer and mobile devices
  - > encouraging our call centre operators to have natural rather than scripted conversations with our clients. We are moving away from the robotic, process-driven approach that resulted in rigid conversations without any flexibility for individual circumstances.
- 46 Our new approach puts our clients at the core of all we say and do. With the new approach, clients are saying they feel like they are being listened to and conversations are focused on their individual circumstances.
- 47 During the ATO's appearance before the Committee in March 2015 we outlined the various improvements being made as part of our correspondence program.
- 48 We have continued to reinvent the way we develop, issue and manage all outbound correspondence. This is underpinned by the objective to ensure the community can expect the best possible experience when interacting with us via correspondence channels. Our program ensures that we:
- > reduce duplication of messages
  - > remove correspondence products that are no longer in use
  - > improve the client experience by making correspondence interactions clearer, more contemporary and easier to follow
  - > streamline current business processes to ensure correspondence interactions can be developed faster and managed more efficiently
  - > make better use of digital channels
  - > improve governance.
- 49 To achieve these outcomes, the program comprises the following primary work streams:
- > Establish a single area within the ATO with responsibility for the development, distribution and ongoing management of all ATO Outbound correspondence.
  - > Rationalise the ATO's existing correspondence products to make them clearer, more contemporary and easier to follow in line with the community's expectations.
  - > Implement a single digital correspondence platform that can adapt to the ATO's future technology needs while helping the ATO to better manage its current and future correspondence inventory.

## Rationalising current correspondence

- 50 The ATO's current correspondence inventory includes approximately 3300 different letter varieties which are being progressively reviewed to be simplified and reduce duplication. The rationalisation work started in June 2015 and we will expect it will continue well into 2016.



- 51 Our current inventory of correspondence products is linked to more than 20 different systems. This creates difficulties when updating correspondence content. We aim to migrate all rationalised correspondence to a single digital correspondence platform, making them easier to manage and faster to change/update when required. It will also enable correspondence to be issued via multiple channels, including SMS, email and to *myGov*.

## Outbound correspondence Style Guide

- 52 As part of the rationalisation process, we are developing a new Style Guide to guide content and format when developing outbound correspondence interactions. This will help us to develop and deliver more consistent, clearer and more contemporary correspondence interactions. The new Style Guide is due to be completed in October 2015.

## Tone of correspondence

- 53 We are implementing a range of tactics to ensure the tone of our correspondence interactions is appropriate and consistently applied.
- 54 To support the use of appropriate tone, we:
- > are introducing writing principles to be applied when developing correspondence interactions. These principles address issues such as
    - purpose/intent
    - clarity of key messages
    - use of tone appropriate to the channel and nature of the interaction.
  - > are making better use of our marketing and communications capability with writing and editing expertise when developing correspondence interactions
  - > will conduct user-testing when designing/redesigning higher-risk, higher-volume interactions
  - > are applying behavioural insights principles to influence the tone of certain interactions, such as our Debt letters.

## Known irritants and high volume letters

- 55 In late 2014, we completed a review of high-volume, known-irritant letters with the aim of providing a more contemporary client experience from our existing outbound platforms. Subject specialists with expertise in behavioural insights and contemporary content writing were engaged to assist this effort.
- 56 Examples of irritant letters included letters relating to:
- > Eligibility for claimed tax offsets – improved by reducing irrelevant content and including additional information on a separate page.
  - > Pay As You Go credits – improved by ensuring greater consistency of these letters across the ATO.
- 57 Several letter suites were also reviewed. Examples include:
- > Superannuation Guarantee – revising a series of sensitive client letters regarding employers not paying superannuation.
  - > Superannuation Co-contributions/Low Income Superannuation Contributions – references to SuperSeeker and *myGov* were included to encourage electronic interactions.

## Debt letter examples

- 58 In March 2015, we implemented a fresh suite of correspondence products as part of the Debt Risk Strategy Delivery Plan 2014–15. This suite aimed to increase community engagement and payment compliance by through use of more client-centric language. To achieve this, we:
- > applied behavioural insights gleaned from research to redesign and enhance Debt correspondence
  - > implemented visual changes to the design and format of each interaction, including the use of colour
  - > included clearer, more concise and more purposeful messages in each interaction used plain language and appropriate tone.
- 59 By applying learnings from extensive usability testing and stakeholder feedback, the new suite of products helps the clients to understand:
- > Why - they are getting the communication
  - > What - they have to do
  - > How - they can do it
  - > When - when they have to do it by
  - > Consequences - if they do not.

## Light or no-touch tax returns

- 60 The ATO has previously provided the Committee with an outline of our work to provide a light touch tax experience to those who willingly comply with their obligations, using contemporary tools like *myTax* that can be used online and with mobile devices.
- 61 *myTax* is the ATO's streamlined online tax return for people with straightforward to medium complexity tax affairs. The success of *myTax*, offering a mostly pre-filled tax return to eligible individuals is an example of the changing ATO.
- 62 We are pleased to report that last financial year 1,050,789 taxpayers used *myTax* to complete and submit their tax returns online, with over 90 per cent of users expressing satisfaction with the new service. Community feedback during Tax Time 2014 was very positive:
- > 90% of *myTax* users were 'satisfied' or 'very satisfied' with *myTax*
  - > 83% rated *myTax* as 'much better' or 'better' than their previous method of lodgement.
- 63 In Tax Time 2015, the ATO has expanded eligibility for *myTax* to taxpayers with medium complexity affairs, for example those with more complex investment income, superannuation and foreign pensions. As well as expanding eligibility, functionality was added to allow taxpayers to view and amend their 2015 tax returns and lodge claims for Refund of franking credits online.
- 64 The usage of *myTax* has already shown substantial growth with around 940,000 using *myTax* at the time of writing. We have issued more than 3 million refunds worth in excess of \$8 billion. Next year, *myTax* will be available for all individuals, including those with business income, and we will be retiring e-tax. We expect to reach one million *myTax* lodgements in the second half of August 2015, building to more than 2 million for this Tax Time.
- 65 On 21 July 2015 we also launched *myDeductions*, a brand new online tool designed to help Australians keep track of their deductions by allowing them to capture expenses on the go. With almost 10 million Australians claiming over \$24 billion in deductions each year, *myDeductions* is going to make life a lot easier come tax time next year.
- 66 By 2016, *myTax* will be available for all individual taxpayers. *myTax* will provide a seamless experience with new integrated online support tools to provide a more tailored, sustainable level of assistance to those who need it. The intent is to reduce complexity and ensure taxpayers get the right result.

## Performance measurement and reporting

### 2014–15 performance information

- 67 As we have previously advised the Committee, the ATO is on track to report 2014–15 performance in October 2015 through the Commissioner of Taxation annual report 2014–15. The annual report will include performance against the 12 new key performance indicators from the ATO strategic intent.
- 68 We have also considered the Committee's advice and will move to publish more frequent performance reports. The third quarter performance report (for January–March 2015) is available on [ato.gov.au](http://ato.gov.au). This report includes performance against the 12 performance measures outlined in the *ATO strategic intent*.
- 69 Across the 12 performance measures, the ATO is performing as well as or better than in mid-2013. In most cases the improvement has been modest, but this is contextualised against a tighter resourcing environment, including a 16% reduction in full time equivalent staff.

### 2015–16 performance information

- 70 The ATO corporate plan 2015–19 was released on Monday, 6 July 2015. The plan was redesigned to improve the performance information and meet the new requirements under the Public Governance, Performance and Accountability Act 2013.
- 71 Significant improvement has been made to the performance information in the corporate plan including:
- > redesigning the outcome framework (page 11) to
    - shift the focus from the measurement of just activities to a focus on measuring the impact of our activities
    - include the latest international thinking, including the Organisation for Economic Co-operation and Development's Measures of Tax Compliance Outcomes (integrity, willing participation and revenue).
  - > introducing more relevant measures that are reflective of a reinvented ATO
  - > reducing the total number of measures
  - > publishing prior year trend information (where applicable).
- 72 The 12 key performance measures from the ATO strategic intent have been integrated under the outcome framework in the ATO corporate plan 2015–19.
- 73 The review of measures is ongoing, with further refinements to continue in 2015–16, including a review of service commitments.
- 74 The ATO corporate plan 2015–19 will be the basis for public and ATO Executive Committee reporting in 2015–16.

- 75 Public reporting against the corporate plan will include:
- > monthly performance results for service commitments to ato.gov.au
  - > a quarterly performance extract (aligned to the impact indicators and selected output measures) published on ato.gov.au
  - > the Commissioner of Taxation annual report 2015–16 with the new annual performance statement.
- 76 The new annual performance statement is required as part of the annual report under the Public Governance, Performance and Accountability Act 2013 for the 2015–16 reporting period onwards.

## Perceptions of fairness key performance indicator (KPI)

### Research into perceptions of fairness

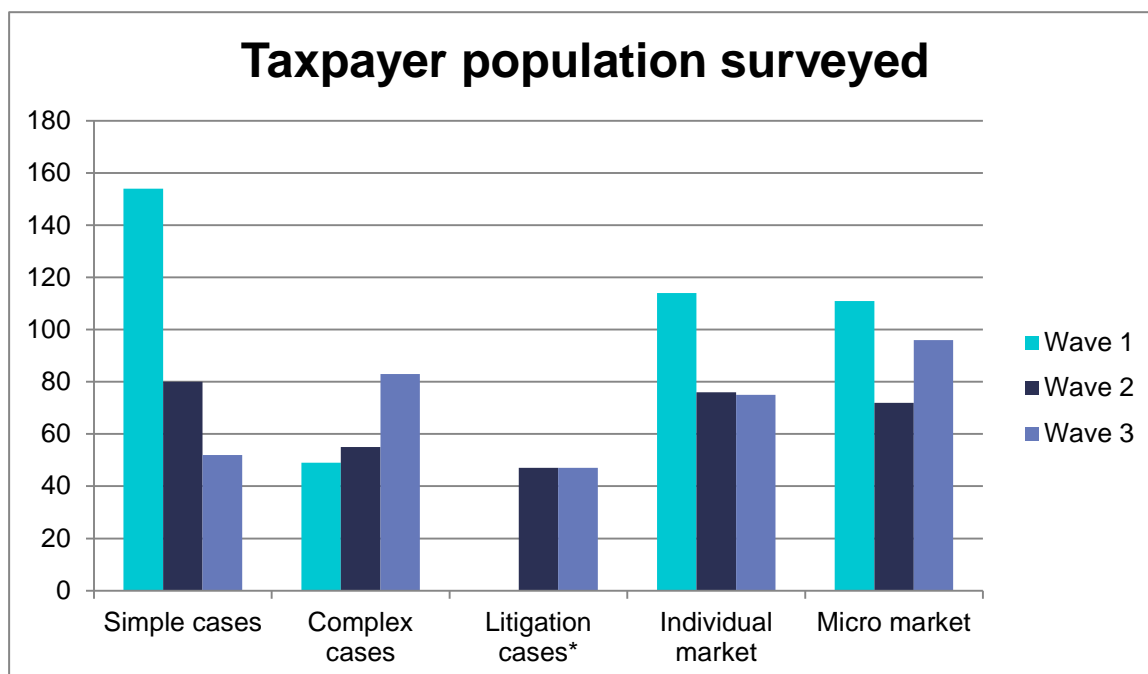
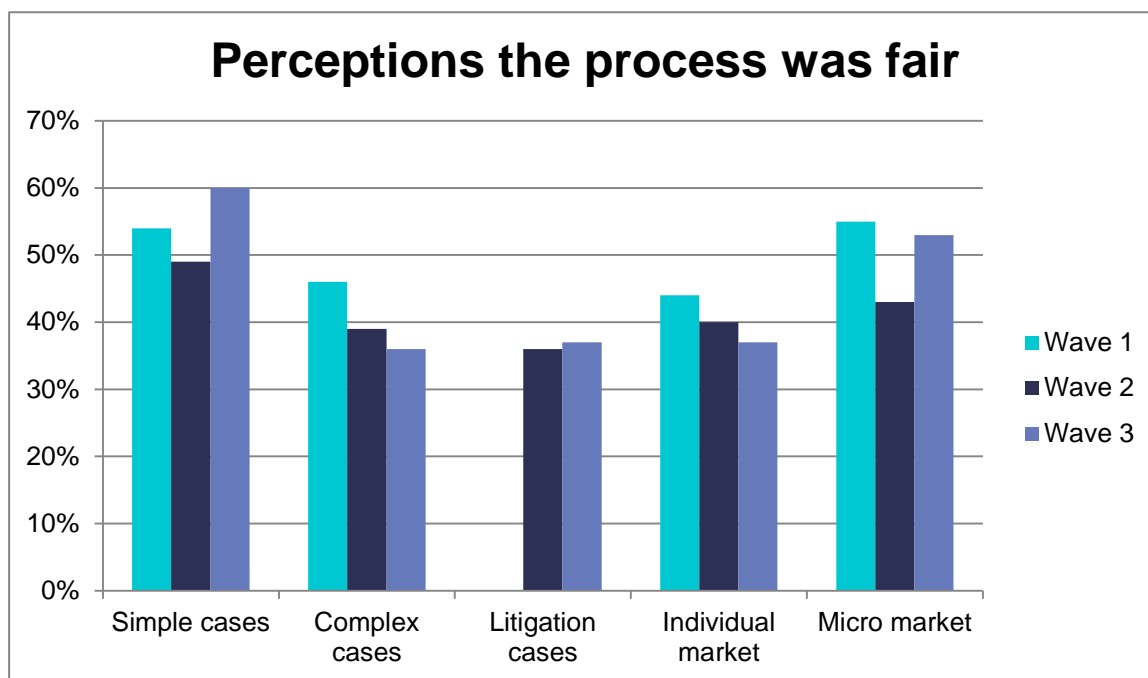
- 77 Trust and confidence in the tax system is improved by providing clients with certainty, engaging early and being professional, respectful and fair.
- 78 As previously outlined to the Committee, we have undertaken research to understand the perceptions of fairness of the administration of the tax and superannuation system, and the level of confidence the community has in our administration. This research has then informed development of a measure and target for improving perceptions of fairness in disputes.
- 79 We have now completed three quarterly waves of quantitative surveys, supplemented with qualitative interviews, to better understand taxpayer's perception in relation to fairness in disputes.
- 80 The dimensions of fairness, derived from social justice and criminology literature, comprises:
- > distributive fairness – perceptions of the outcome and the decisions made by the ATO
  - > procedural fairness – perceptions of the processes and procedures used
  - > interpersonal fairness – perceptions of how taxpayers are treated by the ATO in terms of courtesy, respect and dignity
  - > informational fairness – perceptions of the accuracy, relevance, ease of understanding and timeliness of information
  - > appropriate consequences – perceptions of fairness relating to penalties and interest.
- 81 This research has helped to develop an understanding of how taxpayers perceive fairness when they have a dispute with the ATO, and in relation to the outcome of the dispute process.
- 82 The overall outcome measure for perceptions of fairness in disputes is derived from the percentage of favourable responses to the survey question:
- “Overall, how much do you agree or disagree that the process was fair?”

### Perceptions of fairness KPIs

- 83 The ATO committed to developing KPIs to measure perception of fairness, as noted at paragraphs 2.54 to 2.55 in the 2014 Annual Report of the Australian Taxation Office by the House of Representatives. As a result, “Fairness – perceptions of fairness in disputes” has now been included as a performance measure of Integrity in the *ATO Corporate Plan 2015-19* (p. 12).
- 84 The ATO's executive have set a target of 60% overall perceptions of fairness in disputes to be achieved over a 12 month period to 30 June 2016. This proposes an improvement on the 50% benchmark for perceptions that the overall dispute process was fair, established in 2014, from the first wave of client surveys undertaken by Millward Brown on behalf of the ATO.

## Preliminary Findings from the Perceptions of Fairness Surveys

85 The graphs below depict overall agreement that the process was fair, and the population surveyed, across the three waves of surveys. The population surveyed comprised taxpayers who had disputes finalised during a three month period, with a mixture of simple, complex and litigation case matters. The survey results are primarily based on responses from individuals and micro businesses (with a turnover of less than \$2 million).



<sup>1</sup> \* Due to small population sizes in litigation cases in Wave 1 and Wave 2, the results were combined. Wave 1 comprised 231 respondents, Wave 2 comprised 154 respondents and Wave 3 comprised 182 telephone interviews.

## Opportunities for improvement

- 86 The survey results confirm that taxpayers have a higher perception of fairness when decisions support them<sup>2</sup>, and a lower perception of fairness when the decision favours the ATO<sup>3</sup>.
- 87 The surveys have provided us with a better understanding of opportunities for improvement in our processes where there is a dispute, which may help to improve future perceptions of fairness. Indicators for improvement include:
- > better explanation of our processes
  - > ensuring individual circumstances are taken into account in any decision processes and the way the objection is handled so the taxpayer has some control in that process
  - > making appropriate interest and penalty decisions
  - > ensuring there is transparency in internal discussions.
- 88 Where a dispute is in litigation, improvement opportunities also include:
- > keeping the taxpayer informed on progress
  - > ensuring the process is independent and free from bias
  - > access to the right ATO people
  - > a fair final decision.
- 89 As a result of all objections work moving into the ATO Review and Dispute Resolution business line from 1 July 2015, there are significant opportunities to influence dispute resolution outcomes, through the use of alternate dispute resolution, in-house facilitation of disputes and improved procedures relating to the management of objections.
- 90 Work is also being undertaken more broadly, to understand the perceptions of fairness in other of our interactions with taxpayers (such as audit, advice and debt) to identify further opportunities to improve our processes and the taxpayer experience.

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<sup>2</sup> Wave 1 was 64% favourable perception, Wave 2 was 62% favourable perception and Wave 3 was 83% favourable perception.

<sup>3</sup> Wave 1 was 25% favourable perception, Wave 2 was 23% favourable perception and Wave 3 was 15% favourable decision.



## Tax gap

- 91 The ATO has refreshed and published estimates for the Goods and Services Tax (GST) and Luxury Car Tax (LCT) gaps. We have also worked with international and local experts to develop draft estimates and methodologies for:
- > large company income tax
  - > tobacco excise and excise equivalent goods
  - > petroleum and diesel excise equivalent goods
  - > beer excise and excise equivalent goods
  - > pay as you go withholding
  - > wine equalisation tax payable.
- 92 Final consultation on these estimates with industry and government agencies has begun. Whilst we do not envisage significant changes, this consultation could result in the assessed reliability and credibility of the estimates being revised. As such, we do not intend to release the estimates until the consultation is finalised.
- 93 We expect to give final consideration to the estimates in September 2015, with the intention to publish the results in the *ATO 2015 Annual Report*.
- 94 We have previously advised that we are undertaking an estimate of a high wealth individuals' tax gap. A model has been developed however it requires further refinement. We are working with our expert advisors to address the models' limitations. This will delay the publication of a high wealth individual tax gap estimate until 2016.
- 95 We have commenced consultation with industry and government stakeholders on the design of a random audit program. Central to the design is a premise of random selection with a decision to proceed to audit being based on an assessment of non-compliance. As such, any costs borne by the community would be attributable to identifiable suspected non-compliance. Further, based on our current risk review outcomes we anticipate that relatively few of the reviews would progress to a comprehensive audit.
- 96 Subject to consultation feedback, we will give consideration to endorsing the random audit program in September 2015. If endorsed the program would commence in November 2015.
- 97 Work has commenced on the development of the phase two estimates. In particular, in 2016 we intend to develop tax gap estimates of:
- > individuals income tax
  - > small and medium business income tax
  - > superannuation income tax
  - > fringe benefits tax
  - > superannuation guarantee
  - > petroleum resource rent tax
  - > fuel tax credits
  - > wine equalisation tax rebate.

## Strategies to address the cash economy

### Community awareness and engagement initiative

- 98 The ATO is continuing its strategy to protect honest businesses in industries where cash economy behaviours have been identified.

#### Industry and stakeholder consultation

- 99 In June 2015, we held a consultation workshop with stakeholders including industry representatives and businesses aimed at identifying opportunities for improvement. Common themes that emerged from the workshop for the ATO to consider included:
- > Expand promotion of the non-tax ramifications of non-compliance e.g. poor record keeping impact at the time of selling the business.
  - > Work more closely with other government agencies, chambers of commerce and industry associations to help small business compliance.
  - > Continue to make better use of data to both assist compliance and protect honest businesses.

#### Working with industries

- 100 As part of our national focus on restaurants and cafes we commenced a campaign in Adelaide. The campaign included discussions with businesses, tax professionals, industry associations, local councils and the Chamber of Commerce.
- 101 Over 40 of our staff visited more than 400 restaurants, cafes, and mobile food vendors in the Adelaide CBD to provide them with information on the campaign. These visits have been followed up where businesses needed additional assistance or help. The follow-up visits identified a number of common issues including poor cash control and record keeping systems, poor lodgement and a number of unregistered businesses. We will continue its work in Adelaide over the next 12 to 18 months and will commence similar projects in other locations.

#### Small business benchmarks – promotion as a business performance tool

- 102 Small business benchmarks continue to be a fundamental part of assisting and protecting honest businesses.
- 103 We updated the benchmarks in March 2015 with data from 2012-13. We have also streamlined and improved the readability of the benchmark content on ato.gov.au. By removing repetitive information, we have reduced the number of pages from 600 to 100.
- 104 Small business benchmarks have also been included as a key part of the business performance tool on the ATO application.

#### Using social media to promote fairness

- 105 We have published two videos on Facebook and YouTube to promote the 'Protecting Honest Business' campaign.
- > The Facebook video was clicked on over 93,000 times giving rise to over 1100 likes and 350 comments on the post.
  - > 20% of the over 75,000 people that were exposed to the video on YouTube watched it to the end against a government benchmark of 5%.

## Dealing with non-compliance

### Reviews and audits

- 106 In 2014-15 we conducted 280,000 cash economy related activities; including writing to businesses in three industries to provide an update on our campaigns, reviews, quick checks, integrity checks and more comprehensive audits. These activities raised total revenue of \$215.8 million.

### Making better use of third party data

- 107 Using third party data to protect honest businesses is a key part of the cash economy program. We currently collect data from merchant terminals, specialised payments systems for example PayPal and on-line auction houses such as eBay. We use the data to identify:
- > business that continue to trade despite either not-lodging or telling us they have ceased to trade
  - > businesses that are not reporting all their income
  - > businesses that are trading under the radar completely.
- 108 The third party data is proving to be particularly useful for identifying businesses that trade under the radar or outside of the system completely. We are identifying businesses that trade on and use on-line platforms such as eBay to mask their activities.
- 109 A pilot in 2014-15 contacted 1,070 eBay account holders who had in excess of \$100,000 in trading activity in the 2012-13 year yet their accounts could not be matched to records held in ATO systems. Approximately 300 (representing 28%) of these cases have been escalated for compliance action for issues including:
- > understatement or non-reporting of the trading activity
  - > significant periods of disengagement through non-lodgment
  - > businesses trading outside the tax system (where the trader was subsequently identified).
- 110 Most of the businesses were doing the right thing and we were able to make sure this was reflected on our systems to prevent future contact.
- 111 The trial will be evaluated in November / December 2015. Preliminary results have been very positive both from a revenue and community confidence perspective. We have had a good level of positive feedback from taxpayers who have been declaring income but observing competitors they suspect of doing otherwise.

## ATO's examination of the impacts of the sharing economy and its taxation implications

- 112 In response to emerging elements in the cash economy, the ATO has been working with the community, industry stakeholders and other government departments, to examine and understand sharing economy models, such as in the taxi and accommodation industries, to provide advice on the taxation implications for relevant stakeholders.
- 113 The 'sharing economy' (also referred to as collaborative consumption, peer-to-peer or similar terms) is a new way of connecting buyers ('users') and sellers ('providers') for economic activity. Sharing economy arrangements are generally booked through a facilitator using a website or app.
- 114 Common examples of what providers do in some sharing economy services include:
- > renting out or letting a room or other property for accommodation (for example Airbnb)
  - > renting out or letting car parking space (for example Divvy)
  - > providing odd jobs, errands, deliveries or more skilled services on an ad hoc basis (for example Airtasker)
  - > using a car to transport members of the public for a fare (for example Uber).

### The ATO view

- 115 In May 2015 we settled a view on the GST and income tax implications of sharing economy models, and published guidance material to assist taxpayers to comply with their tax obligations and to understand their entitlements. A general guidance document on the sharing economy and tax and a specific product on providing taxi travel services through ride-sourcing and your tax obligations were issued on 20 May 2015.
- 116 In summary, our view is that:
- > The tax laws which apply to activity conducted in a conventional manner apply in the same way to activity conducted in the sharing economy.
  - > In some instances engaging in sharing economy activities will mean that a person or other entity (person) is earning assessable income regardless of whether they are carrying on a business. They can also claim income tax deductions, appropriately apportioned for any private use.
  - > A person may have GST obligations where they have an enterprise (and can claim GST credits, apportioned for private use). Broadly, an enterprise is an activity done in the form of a business
    - If a person rents out property (for example, a car parking space) on a regular basis to make money, this will be an enterprise (even if it is not a business).
    - If a person provides ride-sourcing services to the public they are likely to be carrying on an enterprise. This is particularly the case if they operate in a business-like manner where, for example, invoices are provided to their customers. However, if they operate infrequently or their activities are otherwise non-commercial, they may not be carrying on an enterprise.
  - > A person must register for GST if their annual turnover from their sharing economy enterprise is \$75,000 or more
    - They do not count amounts they receive from renting out a room in a residential house or apartment in their turnover, because these supplies are generally input taxed and do not count towards the turnover threshold.

- If they provide 'taxi travel' they need to be registered regardless of their turnover. If they have an enterprise of driving passengers in a car for a fare they are providing 'taxi travel' and must register for GST.

## Compliance approach

- 117 In relation to ride-sourcing services, to allow taxpayers an opportunity to arrange their tax affairs, and to register for an ABN and for GST, we have provided a period of grace until 1 August 2015 before compliance would be enforced (subject to evidence of fraud or evasion, or other significant matters). We have been actively promoting driver obligations through social media, webinars and other forums.

## Consultation and feedback

- 118 The publication of the ATO view involved wide consultation and received a significant amount of media attention, locally and internationally, particularly in respect of the approach (the ATO view) adopted for ride-sourcing services.
- 119 8A ride-sourcing facilitator based in the Netherlands, Uber B.V., has challenged the ATO view in the Federal Court. Uber Australia has confirmed the challenge in the media and criticised the ATO's consultation process as being unduly influenced by other parties. The ATO categorically refutes the claims made by the facilitator and remains committed to continued consultation with the industry, including drivers and ride-sourcing facilitators, to ensure compliance with the law.

## Crowdfunding

- 121 As previously discussed with the Committee in March 2015, the ATO has published guidance on the GST implications of crowdfunding on our website, [ato.gov.au](http://ato.gov.au) and noted that aside from any GST obligations, crowdfunding may give rise to other tax obligations such as assessable income.
- 122 The ATO is currently finalising guidance in relation to the income tax consequences of crowdfunding. We expect to publish guidance on [ato.gov.au](http://ato.gov.au) prior in August.
- 123 There are typically three parties involved in crowdfunding arrangements - promoters, intermediaries and funders. The income tax consequences for these parties follow established tax law principles.

### Promoters

- 124 Depending on the nature of funds received and the way in which they are received or earned, the funds may be assessable income of the promoter.
- 125 The income tax consequences will commonly require consideration of whether the funding is ordinary income. Characterising an amount as ordinary income depends on matters of fact and degree. Relevant circumstances include whether the amounts are received as employment income, the extent to which a profit making intention exists or whether amounts are received in the course of carrying on a business.

### Intermediaries

- 126 Depending on the nature of the involvement of the intermediary, its fees and some or all of the total funding may be assessable income of the intermediary.

### Funders

- 127 Funders are defined as the individuals or entities who pledge money or property. Depending on the nature of the promoter's project and the nature of any promised return on funds contributed, such a return may be considered assessable income.
- 128 There may also be other income tax consequences. Rules regarding assessable recoupment, capital gains tax (CGT) or trading stock may be relevant to the promoter's circumstances.
- 129 The website guidance material will include examples of arrangements and the income tax consequences that would stem from them.

## Compliance approaches to larger corporate taxpayers

- 130 Economic globalisation and the expansion of e-commerce have resulted in increasing cross-border trade but can also raise concerns about whether Australia receives its share of taxation under the current international tax rules. In this context, the ATO has allocated significant resources to combat corporate tax avoidance and minimisation risk, including:
- > ensuring income is properly declared in Australia, notably an issue in e-commerce
  - > ensuring income that is recognised in Australia is not artificially shifted offshore.
- 131 We have provided guidance on international tax rules to enhance voluntary compliance and reduce compliance costs. Rulings have been issued to clarify the new transfer pricing law. Simplified rules have been introduced for smaller businesses. The ATO's Advance Pricing Arrangement (APA) Program which gives guidance to taxpayers on their international tax obligations has been revamped to address risk more effectively and improve efficiency.
- 132 To tackle these risks, we have a four year International Structuring and Profit Shifting (ISAPS) compliance program focusing on companies that have undertaken international restructures or have significant cross-border arrangements. To date, the ISAPS program has raised over \$400 million in liabilities.
- 133 We are taking a leading role in driving collaborative approaches on international taxation matters by engaging with a number of jurisdictions both multilaterally and bilaterally to foster greater cooperation between tax administrations. This has included a strong focus on e-commerce and its impact on taxation.
- 134 We are also assisting Treasury in the renegotiation of the features of the international tax agreements which give rise to some of these risks.

### ISAPS Program

- 135 The ISAPS compliance program is funded by government with \$242 million over four years (2013-2017). This program commenced on 1 July 2013 and looks at multinational enterprises which may have artificially shifted profits or not declared appropriate amounts of income through inappropriate tax planning or business restructures. It supports fairness for taxpayers who are doing the right thing.
- 136 The ISAPS program focuses on key international risks including a number of structures and issues highlighted by the OECD as major base erosion and profit shifting (BEPS) issues. We see most of these risks in domestic and foreign owned multinational enterprises. The ISAPS program specifically examines international tax planning risks including:
- > debt dumping and thin capitalisation which increase interest expense deductions
  - > marketing/procurement hubs that enable shifting of profits to low tax jurisdictions
  - > offshore digital tax structures that involve booking Australian revenue directly offshore
  - > hybrid structures and instruments that create mismatches between income and deductions
  - > treaty 'shopping' that can reduce the withholding tax on payments to non-residents through changing the treaty jurisdiction of that non-resident.
- 137 In tackling these risks and deciphering the linkages, where appropriate, we are moving to treat clusters (groupings) and not individual cases. Analysing clusters help us to:

- > move towards treating risk systemically
  - > use data and analytics to understand complex business structures
  - > develop collaborative and pragmatic approaches to resolve disputes and ambiguity that are focused on prevention before correction
  - > provide a platform for strong and purposeful relationships with early engagement focused on getting it right.
- 138 As at 30 June 2015, we had commenced over 200 risk reviews under ISAPS. There are 43 audits in progress where we have identified significant concerns. Of these, 12 are technology companies and 3 companies are in the pharmaceutical industry.
- 139 At 30 June 2015, the ISAPS program has raised over \$400 million in liabilities. The ISAPS program is committed to delivering over \$1.1 billion in increased revenue from its compliance activities up to 30 June 2017.

## e-commerce

- 140 Globalisation and the expansion of e-commerce have resulted in increasing cross-border trade. A key priority for the ATO is to drive collaborative approaches on international taxation matters involving e-commerce. We have established a multilateral working party to undertake joint compliance with other jurisdictions. Six jurisdictions were involved in investigating the activities of seven e-commerce multinational enterprises.
- 141 We have had a specific focus on multinationals operating in the digital economy since late 2012. Our work in this area has evolved with our understanding of how these entities typically structure their arrangements and how we can address the embedded tax risk.
- 142 Initially, we sent a questionnaire to a number of high profile technology inquiring as to their structure and sales into Australia. As a consequence of this initial scoping exercise, we progressed to a comprehensive work program that encompassed compliance work on a number of e-commerce multinational enterprises (MNEs) in parallel with engagement with Treasury, participation in the OECD BEPS Project's Taskforce on the Digital Economy, and collaboration with a number of tax authorities to share knowledge on the industry and on certain IT MNEs.
- 143 Currently we have 12 audits underway on e-commerce entities. E-commerce is one of the ISAPS clusters discussed above.
- 144 Tax structuring entered into by e-commerce companies is not confined to the digital economy but characteristics of the digital economy exacerbate BEPS risk.
- 145 One common structure used by e-commerce entities is the 'direct sales model'. This is where Australian customers contract with a non-resident members of the MNE which is typically located in a low tax jurisdiction. The Australian subsidiary facilitates these transactions by providing marketing and service functions for which it is remunerated at cost plus a margin. The only way Australian territorial sales can be assessed in Australia is for the ATO to deem there to be 'permanent establishment' of the non-resident in Australia. However, these entities generally structure their affairs to avoid such a determination. The issue is currently being looked at by the OECD BEPS project under its action 7. The final report is due out in September 2015.
- 146 Due to the high risk nature and extent of the direct sales model, special provisions to address the model (Multinational Anti-Avoidance Legislation) were announced by the Treasurer in the May Budget. It is intended that the measure will complement any law changes that will come about as a result of the OECD BEPS Project.



## APA Program

- 147 The APA (advance pricing arrangement) program enables taxpayers to agree, in advance with the ATO, on the method of application of the arm's length principle to their covered cross border dealings. This provides them with certainty as to their Australian tax position before they lodge their tax return.
- 148 The APA process is underpinned by mutual expectations, openness and transparency. The taxpayer has the option for applying and withdrawing from the program as does the ATO. The ATO provides reasons for withdrawing and explains the escalation process. The APA process is contrasted to the audit product due to information under the APA being provided on a co-operative basis without recourse to the use of the ATO's formal powers. The extent of information gathering is in line with our level of perceived risk. More complex transactions require more information and will be garnered on a cooperative and collaborative basis.
- 149 APAs encourage compliance by:
- > providing certainty for taxpayers for transfer pricing issues for future years, which will offer certainty for taxpayer's operations and relevant tax obligations
  - > reducing taxpayer compliance costs by mitigating the risk of a transfer pricing audit
  - > improving tax compliance services provided by the tax authorities, facilitating the balanced development of administration and service, and assuring taxpayers of the relevant rights and benefits
  - > helping taxpayers to avoid transfer pricing audits and double taxation risks in two or more jurisdictions.
- 150 As of 30 June 2015, the APA program across the ATO consists of 148 operational APAs and 74 under negotiation. In the last 12 months we have declined or deferred only 8 APA applications.
- 151 We are presently updating our APA program based on external and internal feedback to continue to increase the effectiveness in assisting companies in managing their business and international tax policies, whilst ensuring adherence to our international tax laws. This has included updating our market guidance material around accessing and using APAs.

## Interpretive Advice

- 152 To obtain certainty, taxpayers can apply for a ruling. A ruling is the Commissioner's opinion on the tax interpretation of the law and is binding on the Commissioner. It requires a full and true disclosure of all the material facts to allow us to form a view.
- 153 We encourage taxpayers to engage with us early if they are considering applying for formal advice. Early engagement helps clarify technical issues or concerns and assists us in working with taxpayers to meet their commercial timeframes.
- 154 In the 2014-15 year our interpretive assistance teams in Public Groups and Internationals provided 303 private rulings to public group taxpayers. Of these, 62 had international taxation as their primary issue.

## Improvements to dispute resolution

- 155 From 1 July 2015, the Review and Dispute Resolution (RDR) business line within the ATO has responsibility for all of the objection, independent review, alternate dispute resolution and litigation functions of the ATO.
- 156 To strengthen independence and transparency of disputes decision making, comprehensive communication protocols and an overt service commitment now govern the engagement and ongoing relationship between RDR staff, ATO compliance officers and taxpayers. The communication protocols are based on principles of natural justice and transparency, ensuring in any dispute that taxpayers are informed as to the ATO's approach and information it holds upon which any decision is made. The protocols and service commitment were drafted following extensive external and internal consultation.
- 157 With the centralisation of functions within RDR, planned improvements to triage and business management processes will allow for increased and earlier access to senior technical decision-makers and expertise so as to promote resolution of disputes.

## Improvements to management and governance of disputes

- 158 Since July 2013 the ATO has introduced a number of initiatives and enhancements to the way we manage disputes, including:
- > Encouraging early and direct contact with taxpayers or their advisors through the “pick up the phone” strategy.
  - > The continued and increased use of alternate dispute resolution (ADR) processes earlier in a dispute, using either external ADR practitioners (such as former judges) or independent ATO in-house facilitators, depending on the nature and scale of the dispute. In the 2014-15 year, 13 ADR processes with external practitioners were conducted (of which seven resolved the dispute) and 53 in-house facilitation processes were run (of which 35 fully resolved the dispute and five partially resolved the dispute). We also participated in approximately 90 ADR processes initiated by the courts and tribunals.
  - > The ATO engaged the Australian Centre for Justice Innovation (ACJI) - part of Monash University - to independently evaluate our ADR processes and the users' experience for the period 1 July 2013 to 30 June 2014, with its final report handed down on 23 February 2015.<sup>4</sup> The perceptions of those involved were generally very positive with most people viewing the ADR processes as fair, often leading to earlier resolution of part or all of the dispute and saving considerable sums of money.
  - > Since 1 July 2013, large market taxpayers have been able to request an independent review of the technical merits of an income tax audit case prior to finalisation of the ATO position. The service provides an opportunity for an independent senior officer in RDR to conduct the review. Since the commencement of this service there have been 28 cases completed with 26 recommendations, one settled and one withdrawn. Of the 26 recommendations, 15 supported the ATO position, 8 supported the taxpayer's position, and 3 were partially supportive of each party's position. To date, no cases have gone onto litigation.
  - > Early in 2015 the ATO commenced regular quarterly surveys of a sample of small business and individual taxpayers in dispute with the ATO, measuring perceptions of fairness in their dealings with the ATO. The survey results will inform the ATO's progress against a new

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<sup>4</sup> Sourdin T and Shanks A, *Evaluating Alternate Dispute Resolution in ATO Disputes*, Australian Centre for Justice Innovation, Monash University, released 23 February 2015 at [http://www.monash.edu/data/assets/pdf\\_file/0011/142202/evaluating-adr-in-ato-disputes-final-report23-02-15.pdf](http://www.monash.edu/data/assets/pdf_file/0011/142202/evaluating-adr-in-ato-disputes-final-report23-02-15.pdf)

corporate key performance indicator in the 2015-16 year about fairness, which has been reported on elsewhere in this submission.

- > In consultation with external stakeholders, the ATO's Test Case Litigation program has been reviewed and updated to meet changing community expectations. It is now easier for taxpayers to access to the program and the ATO is now more proactive in identifying potential test cases earlier in the disputes process. For the 2014-15 year, of the 11 test cases finalised, nine cases provided law clarification and two are currently on appeal to the High Court. The test cases involved broad ranging issues including the GST implications for leasing arrangements in the property industry, clarifying the meaning of 'commercial car parking station' for FBT purposes and providing certainty in relation to superannuation contributions surcharge liability for certain government employees.
- > The ATO is working with the legal profession and the Federal Court to explore the use of declaratory proceedings in revenue matters as a way to resolve disputes earlier in the disputes process.
- > On 15 October 2014, a revised Code of Settlement was released, reducing in size from 42 pages to 2 pages. This code provides streamlined guidance that supports settlements as a sensible, cost-effective option for resolving disputes and providing certainty for taxpayers for the future.
- > The ATO is currently designing and trialling a process for the independent and external assurance of concluded tax settlements to help provide the community with confidence that the ATO is settling the right cases in the right ways. The process is being developed with the assistance of a former judge. The trial will examine settlements from 2014-15 to develop and refine our sampling criteria as well as assessment criteria and ratings. It is envisaged that the process will formally be in place for the 2015-16 reporting year and beyond.
- > Strengthened and improved relationships with the legal practitioner community to promote greater awareness and understanding of the ATO's refreshed approach to dispute prevention and resolution. This includes the ATO providing professional development opportunities for the profession.
- > Continued engagement with professionals and practitioners outside of the ATO to obtain an external perspective on a range of dispute prevention and resolution strategies including the revised code of settlement, improvement opportunities flowing from the ACJI report into ADR processes, the Disputes Service Commitment, the communication protocols and the independent and external assurance of settlements.

## Recent disputes statistics and the our approach to litigation

- 159 In 2014-15, there were around 370,000 adjustments arising from audits, around 26,000 objections, around 700 cases lodged with courts/tribunals and only 153 litigation cases proceeded to a decision (97 cases at the AAT and 56 cases within the courts). Of these matters decided by courts and tribunals:
- > 69% accepted the Commissioners position
  - > 11% accepted the taxpayers position
  - > 20% accepted elements of both the Commissioner's position and the taxpayer's position.
- 160 Evidence of the downward shift in formal dispute numbers and the increase in instances of earlier resolution of disputes using settlement demonstrate:
- > A reduction in total objections received from 27784 in 2013-14 to 26654 in 2014-15. Over this period, objections received from the small business segment decreased from 9945 to 9733.
  - > A reduction in total Part IVC litigation applications received (both at first instance and on appeal) from 1079 in 2013-14 to 625 in 2014-15. Of note is the significant shift downwards in applications received over this period in the small business segment from 493 to 274.

- > An increase in the number of settlements from 393 in 2013-14 to 1037 in 2014-15. There was an increase in the percentage of total settlements occurring pre-litigation from 47% in 2013-14 to 66% in 2014-15.

161 While litigation remains an important component of the ATO's dispute management strategy, we are adopting a more disciplined approach as to when we will litigate. We will litigate when:

- > there is a contentious or uncertain point of law requiring clarification and it is in the public interest to do so
- > the behaviour is such that we need to send a strong message to an individual – or broadly to the community that we won't sit idly by
- > the dispute is intractable and alternate means of resolving the dispute have been attempted but have not produced an acceptable outcome.