

**PARLIAMENTARY JOINT COMMITTEE ON CORPORATIONS AND
FINANCIAL SERVICES**
**INQUIRY INTO ETHICS AND PROFESSIONAL ACCOUNTABILITY:
STRUCTURAL CHALLENGES IN THE AUDIT, ASSURANCE AND
CONSULTANCY INDUSTRY**
ANSWERS TO QUESTIONS ON NOTICE

Agency: Australian Taxation Office
Topic: Meeting with Luke Sayers
Senator: Barbara Pocock

Question:

In the answer to Question on Notice #94 received through this Inquiry, it was revealed that Second Commissioner Hirschhorn advised Mr Luke Sayers in August 2019 of the ATO's seven concerns with the PricewaterhouseCoopers (PwC) tax practice.

1. Please provide all documents, records and notes related to this meeting.
2. During the 26 September 2023 hearing of the Senate Finance and Public Administration Reference Committee's Inquiry into management and assurance of integrity by consulting services, Mr Hirschhorn was asked what the other concerns raised with Mr Sayers in this meeting aside from the Collins matter were. Why were details of these seven concerns not provided then?
3. Please provide details of the ATO's concern involving the Foreign Investment Review Board, including:
 - a. When the ATO first became aware of this issue,
 - b. What the ATO is specifically concerned about, and
 - c. What evidence the ATO has to support this concern?
4. Please provide details of the ATO's concern involving the responses to Request for Information (RFI), including:
 - a. When the ATO first became aware of this issue,
 - b. What the ATO is specifically concerned about, and
 - c. What evidence the ATO has to support this concern?
5. Please provide details of the ATO's concern involving cultural issues within the tax practice of PwC, including:
 - a. When the ATO first became aware of this issue,
 - b. What the ATO is specifically concerned about, and
 - c. What evidence the ATO has to support this concern?
6. Please provide details of the ATO's concern involving the adequacy of PwC's risk structure to call out bad behaviour and practices, including:
 - a. When the ATO first became aware of this issue,

- b. What the ATO is specifically concerned about, and
 - c. What evidence the ATO has to support this concern?
7. According to Mr Sayers' opening statement at the October 12 2023 hearing of the Senate Finance and Public Administration Reference Committee's Inquiry into management and assurance of integrity by consulting services, the ATO 'did not' directly and formally advise him as the CEO of PwC Australia that Peter Collins had breached obligations of confidence. He also said that the 'conversations with the second commissioner were all focused around legal professional privilege and promoter penalty issues'. How plausible is Mr Sayers' recollection that he has no memory of Mr Hirschhorn raising these other concerns?
 8. How does the ATO view Mr Sayers' opposing recollection?

Answer:

- 1-2. The ATO's evidence in relation to this matter has been fulsome, accurate and consistent. The response to Question on Notice (QoN) 'ATO concerns held' provides an accurate summary of the discussion between Mr Hirschhorn and Mr Sayers on 29 August 2019¹ (the Meeting).

Please find attached a record of the Meeting made on 2 September 2019.

A secondary email has been provided, with irrelevant material redacted, to ensure the Committee does not inadvertently draw an adverse inference in relation to the non-PwC individual named in the record. This email, which was part of an internal PwC email chain, was referenced by Mr Hirschhorn in the Meeting solely as an example of the ATO's concerns with PwC's culture and disregard for the role of regulators within senior leadership of the PwC Tax division.

3. Please see the ATO's response to QoN 'Foreign Investment Review Board approval process'.
4. Broadly, in the context of a review or audit, the ATO will typically first issue Requests for Information (RFIs), resorting to formal powers if necessary. Responses to RFIs still constitute statements to the Commissioner by the recipient (usually the taxpayer being reviewed) and are expected to be full and accurate (and not false or misleading). Often advisors assist taxpayers in responding to RFIs.

Even though the statement is technically made by the taxpayer (and the consequences of making a false or misleading statement would fall on the taxpayer), the ATO expects that an advisor does not contribute to a taxpayer's RFI response that to their knowledge is false and/or would have the tendency to mislead the ATO, and hence potentially subvert the review or audit.

- 5-6. ATO concerns regarding the culture and risk governance practices of PwC have been well ventilated throughout various parliamentary hearings and QoN responses. See the ATO's response to QoN BET044 'MAAL Restructure Scheme Timeline' for timing of key events.

¹ The meeting was on Thursday 29 August 2019, as noted in the MAAL QoN BET044 'MAAL Restructure Scheme Timeline', not Thursday 28 August as noted in the email sent from Jeremy Hirschhorn on 2 September 2019.

7-8. Please refer to Mr Hirschhorn's testimony at Senate Estimates on 25 October 2023 (commencing page 118) where he testified to his recollection of the Meeting. This testimony is supported by contemporaneous records and PwC Australia's Review of Tax Confidentiality Breaches and Related Questions and, in particular, paragraphs 1.39 to 1.43 of that Review.

From: Jeremy Hirschhorn
Sent: Monday, 2 September 2019 5:29 PM
To: Mark Konza; Rebecca Saint; Anthony Marvella
Subject: Meeting with Luke Sayers of PwC [DLM=Sensitive:Legal]

FYI, I had a meeting with Luke Sayers of PwC Thursday 28 August 2019.

Short notes of topics:

General discussion of upcoming Senate Enquiry into Big 4 firms

Discussion of ATO relationship with PwC

Status of provision of documents

- KWM not giving proper details to allow cross referencing (have discussed with Tom Seymour)
- next phase is action in relation to those clients which hold back
- There have been sloppy claims (docs that could never be privileged) + claims on embarrassing documents

Possible actions / concerns (not necessarily to be pursued by us / others) seem to include

- Breach of notices
- Promoter penalty investigations (most likely around MAAL, CCIRS), noting may also have R&D & GST promoter penalty reviews in works
 - o Cannot discuss resolution until ATO comes to initial positions
 - o Extremely unlikely to go down Enforceable Voluntary Undertaking route
- Breach of Treasury consultation confidentiality
- FIRB abuse / aggressive planning / false statements (including indirectly misleading FIRB via misleading meeting with ATO, including where PwC partners present but silent)
- Knowingly false statements in RFIs prepared for clients
- Breach of professional duties (legal, auditor, CAANZ)
- Breach of US mandatory disclosure rules around confidentiality agreements (by requiring LPP engagements / claims)
- Culture issues (culture of disdain for senior management, regulators (ATO or FIRB))
- Engagement model of allowing to be contractually subcontracted to lawyer when PwC is actually providing the advice (eg Glencore – Appleby – KWM – PwC, noting KWM may be conflicted in determining current privilege claims)

I read out several emails which evidenced some of these concerns.

I noted that it seemed that many of their problems arose from the overlap of the MDP (and not following protocols) and the rover model. The apparent “success” of this business did not seem to have been adequately tested / probed by senior management. I noted that current tax senior management did not seem to have the respect of some of the senior tax partners, and that this did not seem sustainable. I also noted that the risk structure which was in position to call out these practices seemed to have failed.

SPECIFIC ACTION

Minimal specific action required

Anthony – could you please provide me copies of filenotes etc around time of [REDACTED] presentation to Mat Umina and me + evidence of structure being determined prior to that meeting

Anthony – could you please provide me copy of email where possible intervention with Chris Bowen was discussed

Jeremy Hirschhorn

Second Commissioner – Client Engagement

Australian Taxation Office



ATO. Working for all Australians

From: Pete Calleja/AU/TLS/PwC

To: Peter Collins/AU/TLS/PwC@AsiaPac

Cc: Michael Bersten/AU/TLS/PwC@AsiaPac, Paul Abbey/AU/TLS/PwC@AsiaPac, Tom Seymour/AU/TLS/PwC@AsiaPac

Date: 11/02/2016 12:44 PM

Subject: Treas lunch & Canberra meeting

the back flipping highly politicised leadership of Jordan is a real problem

with no end in sight under current ATO governance structure

i had an irate client on phone today who vented their displeasure with current one upmanship of jordan vs treasurer on external review processes

the dynamics of current external environment means now more than ever Jordan desperately needs a stable strategic short, medium and long term governance structure perhaps akin to the reserve bank govt appointed external board (with real authority independent chair etc) to oversee him

Tom - this would be a good conversation to have with bowen in Canberra as it would reinstate trust in a sustained manner (wld be heavily supported by business) vs current opportunistic chaos causing task force type announcements of current govt)

at present jordan really only has his deputy commissioners and informal discussions with other territory commissioners/OECD and maybe treasury to turn to for innovation and idea generation. Obviously ali charter is grossly ineffective. An external board of highly experienced advisors from diverse backgrounds wld be far more effective in driving performance

while this is not a new idea (last i recall KRudd floated it 5 years ago or so) I wld be interested in treasury's current view of the proposition as a means to evolve the performance of the ato and reinstate confidence in it from all sides

Pete Calleja

