

## STANDING COMMITTEE ON TAX AND REVENUE

### ANSWERS TO QUESTIONS ON NOTICE

#### Australian Taxation Office

#### Inquiry into Tax disputes

16 July 2014

**Topic:** Perceptions of fairness

**Hansard Page:** 7

**Question:** 1-2

**Ms BUTLER:** Thank you for drawing our attention to the corporate plan. In your measures for resolving disputes and under the heading 'Independent review', you have, 'Client satisfaction with independence of review and the service provided,' which strikes me as picking up this issue of whether the person feels that they have been treated fairly in the review part of the dispute resolution process. Could you offer some comments about how you are actually going to gather the data to report against that measure? On that question before about whether you have asked people whether they feel that they have been treated fairly, is there a measure in the corporate plan about fair treatment or good customer service pre-dispute—and I am sure there is—in the ordinary course of dealing with the ATO? How do you gather the data to measure that particular indicator? I am not sure I caught your answer about whether, for example, you survey or ask people about whether they perceive that they have been treated fairly. I took your point about the quality assurance process, but my question is not about whether people are treated fairly; it is about how they feel they have been treated.

**Mr Jordan:** I will make a start and I will ask deputy Hastings to pick it up from there. In terms of the independent review that you mentioned, that was started on 1 July 2013. I think early this year we did a review of about 10 or 12 cases that had gone through—19 have gone through now. They were the large market disputes and some of those were the most complex and longest disputes that we had around, so it was an interesting thing. As far as I understand it, each of the participants—both the taxpayer and their advisers—were interviewed and feedback was taken on board, because often when you start these things you need to refine them, change some of the ways that you go about things. The feedback was incredibly positive.

**Ms BUTLER:** Will that be the data that is used? Will similar interviews be undertaken to gather the data for the measures that you have in your plan, which are client satisfaction, the independence of review and the service provided? Will it be an empirical measurement? That is really what I am asking.

**Ms Hastings:** That is right—it will be. As the commissioner said, with the independent review we undertook a post-implementation review after the first six months where we interviewed everyone who had been involved in the independent review. So that included not just the taxpayers, advisers and the manager of the company but also the audit teams and our reviewers. That was to get feedback from everyone about how the process was going and how it could be improved.

What we also do, though, after every independent review is run a thorough debrief. Again, that is with everyone who is involved in the process. We use the feedback from that to continually improve the independent review process. So yes, we do have that data and that is how we go about measuring our performance there. Our performance is around the independence of the process, because that is obviously a very key part of independent review, and also around the quality of the service that we provide during the review and the professionalism of our reviewers. So they are three of the key things that we look at getting that timely feedback on.

**Ms BUTLER:** Is there explicit discussion about fairness in that interview?

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**Ms Hastings:** Certainly in the interview we talk about what worked, what did not work and what could work better, so there are lots of opportunities there. It is a discussion. We did start initially with a questionnaire, but we found that particularly the tax advisers and tax managers preferred to talk to us about it. So we do get quite a lot of data from those discussions, yes.

**Mr Olesen:** Debbie is talking about the independent review work we do. At a more general level we do statistically based surveys, twice a year or maybe annually—I have just lost track—of people who have had engagement with the organisation over that period. We ask them a range of questions which are designed to elicit their perceptions about the organisation, including around notions of fairness.

**Ms BUTLER:** Do you explicitly use the word 'fairness' in those surveys

**Mr Olesen:** I would have to check. I would be happy to share the survey with you, but I have to check that.

**Ms BUTLER:** Thank you—I appreciate it. I appreciate you have only just released this plan, but is there a measure in this plan for reporting against that goes to the perception of fairness outside of the dispute situation, prevention obviously being better than cure?

**Mr Olesen:** I would need to check. In our annual reports we routinely report on the community perception survey that we do. We have done that for quite some time. Whether there is an express measure there I cannot recall, but we do routinely put those results in our annual report, because naturally they are very important for us in understanding how the community perceives our professionalism, our courtesy and our fairness.

**Ms BUTLER:** From our perspective, obviously, prevention is better than cure, as I say, when it comes to disputes with the tax office. One way of reducing the number of disputes is to have a measure in your corporate plans against which you report that deals with perceptions of fairness in the community.

**Mr Olesen:** Yes, absolutely.

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**Answer:**

- The ATO has been conducting research over a number of years to gauge how the community rates us in terms of being fair and professional.

In particular we ask respondents to give a rating to the statement “The ATO is fair and professional in how it administers the tax and superannuation system”. Recent ratings from the community in response to this question are:

| Survey   | <i>Q. The ATO is fair and professional in how it administers the tax and superannuation system</i><br><b>Agree or Strongly Agree (%)</b> |   |   |
|--|--|---|---|
| 2014 Single Corporate Perceptions Survey<br>Response scale used - 6 points   | <u>First quarter (March – May) 2014</u><br>66  |   |   |
| Tax Practitioner Research<br>Response scale used - 5 points  | <u>2011</u><br>Tax agents 49<br>BAS agents NA  | <u>2012</u><br>Tax agents 47<br>BAS agents 59 | <u>2013</u><br>Tax agents 58<br>BAS agents 66 |
| Community Perceptions Survey<br>Response scale used - 4 points   | <u>March 2011</u><br>79  | <u>March 2012</u><br>80                       | <u>March 2013</u><br>81                       |
| Community Perceptions Survey<br>Response scale used - 6 points<br>(Response scale changed as part of transition to the 2014 Single Corporate Perceptions Survey) | <u>November 2013</u><br>53   |   |   |
| Micro Perceptions Survey<br>Response scale used - 4 points   | <u>March 2011</u><br>78  | <u>March 2012</u><br>76                       | <u>March 2013</u><br>79                       |
| Small Medium Enterprise Perceptions Survey<br>Response scale used - 4 points   | <u>2011</u><br>85  | <u>2012</u><br>84                             | <u>2013</u><br>89                             |

The CPS and MPS were run every quarter, the March quarter results for each year are shown, as they are the closest match in point in time with the TPR and SMEPS.

Our former program of market-based surveys used varying methodologies and scales. Therefore comparability was limited across the different surveys. Each of the surveys used one of three different response scales (referenced in above table) with resulting scores reflecting the particular scale used for analysis and reporting.

- 4 point scale: “Strongly Agree”, “Agree”, “Disagree”, “Strongly Disagree”
- 5 point scale: “Strongly Agree”, “Agree”, “Neither Agree nor Disagree”, “Disagree”, “Strongly Disagree”
- 6 point scale: “Strongly Agree”, “Agree”, “Neither Agree nor Disagree”, “Disagree”, “Strongly Disagree”, “Don’t know”

In May 2014, the ATO’s new single Corporate Perceptions Survey was introduced, consolidating former individual market perception surveys. While it has been streamlined, it builds on our former market-based approach and includes the collection of the same important information. Notably, the new survey will enable us to correlate and compare results across the wider taxpayer community. Because of the new approach and methodology, results cannot, generally, be compared to prior surveys.

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Apart from the direct question regarding the ATO's fairness and professionalism, we do ask other relevant questions which elicit community perceptions around the notion of fairness:

| Survey   | Question   | Agree or Strongly Agree (%)   |
|--|--|-------------------------------|
| 2014 Single Corporate Perceptions Survey (first quarter) | I was treated <b>fairly</b>  | 85                            |
| Tax Practitioner Research 2013                           | Over the last 12 months, do you agree or disagree that you have found the ATO to be <b>fair</b> ?              | Tax agents 62<br>BAS agent 71 |
| Community Perceptions Survey November 2013               | In your recent experiences with the ATO, to what extent do you agree or disagree that the ATO is <b>fair</b> ? | 53                            |

We continually adapt our research agenda to assist with priority information needs. For example, for work on tax disputes the ATO will now conduct a new quarterly survey, based on a sample of taxpayers who have had their matter in dispute finalised. It will focus on a representative sample of taxpayers across markets and taxes. We currently propose to ask:

- Did the ATO treat you fairly during the dispute process? and
- Was the outcome of the dispute process fair?

Where taxpayers consider they were treated unfairly or the dispute outcome was unfair, we will ask additional questions to understand how we can improve our performance and perceptions. We aim to have the first set of dispute survey insights available in February 2015.

The ATO is also collaborating with the New Zealand Inland Revenue Department to compare taxpayer perceptions of fairness.

All our research outcomes are published on the ATO website at <https://www.ato.gov.au/About-ATO/Research-and-statistics/>.

2. The ATO Corporate Plan 2014-18, available on the ATO website at <https://www.ato.gov.au/About-ATO/About-us/In-detail/Strategic-direction/Corporate-plan/>, includes several measures relating to client perceptions and satisfaction including:

- Delivering to Government
  - Community and key stakeholders engagement and satisfaction with the ATO performance
- Fostering willing participation
  - Community and key stakeholder engagement and satisfaction with ATO performance
- Resolving Disputes
  - Client satisfaction with independence of review and the service provided
- Managing our workforce
  - Employee engagement compared to APSC state of service

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- People surveyed agreed that the ATO is respectful and courteous; is knowledgeable in dealing with me; listens to a responds to feedback

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**Topic:** Advanced Pricing Arrangements (APA)

**Hansard Page:** 9

**Question:** 3-4

**Mr TAYLOR:** This question is focused more at the bigger end of town than my previous questions up to now, which focused more on the smaller end of town. There is another perception about the ATO that you use some of the processes that you have available to collect information and expertise in preparation for disputes—about, say, the APA process. You may not like that perception; it is a perception, rather than a reality. There is an argument to say that the APA process has been used by the ATO as a way of gathering information in preparation, and that if you had an independent dispute process that would solve that problem and the ATO could actually have genuine sharing of information and attempt to pre-emptively agree on a restructure. Would an independent dispute resolution mechanism make it easier for your employees to engage with clients in a more collaborative way so that there would not be the perception that the information is going to be used against them at a later date?

**Mr Olesen:** I am unsure about the foundation for that perception. The reason we have products like APAs is to try and get agreement for the future and to work cooperatively with taxpayers to that end—and where we have entered into those agreements, that is the basis of the conversation we have had with the them. My suspicion is that having a separate organisation would just defer consideration. I do not think it would help drive a culture of better engage with taxpayers; I think there is a risk the other way.

**Mr TAYLOR:** So you do not think there is information being collected during those APA processes that could be used in a dispute against the client?

**Mr Mills:** But in order to get a proper APA based on the real facts there has to be a sharing of information. So I must admit I am a little unclear as to—

**Mr TAYLOR:** I agree. The question is about whether that information and expertise gained by those people can be used at a later date in a dispute. It would be much more difficult to do that if it was an independent group managing the dispute.

**Mr Jordan:** I am not sure that is the case actually. It does not matter whether it is us at the ATO or someone else at a separate agency who has the facts that are important to prosecute a dispute. The APA process is one that we want, that we encourage. We do not indirectly get facts to use against them; we want all the facts on the table and we want agreement, because that means we do not have to put resources into it and there will not be a dispute.

**Mr TAYLOR:** I can assure you that some people involved in APA processes do not feel that way. Anyway, I understand what you are saying.

**Mr Jordan:** Yes, we do not want a dispute. The whole point of an APA is to avoid future disputes by getting all the information up front and agreeing on it. If we do not agree with the information, or the treatment, they will not get an APA—that is quite straightforward—or they will have to modify certain aspects of what they want an APA on to get agreement. It is all about mutual agreement.

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**Mr TAYLOR:** I understand. But you would agree that these are often complex cases which are more likely than other cases to end up in a dispute?

**Mr Jordan:** Not if there is an APA.

**Mr TAYLOR:** Not if you agree an APA.

**Mr Jordan:** Yes, not if we agree an APA. The mere fact that we are in a discussion on an APA indicates that it is a complex area. That is the point: they are uncertain and we are saying, 'Let's get together and share all the information and work out how we can agree treatment of these things.' We encourage APAs.

**Mr TAYLOR:** Since the process has been in place how many APAs have you come to?

**Mr Olesen:** I would have to check the number. I have got a number in my head but I am not confident about it so I will check it.

**Mr TAYLOR:** And how many processes that you have started have actually ended up in disputes?

**Mr Olesen:** We are happy to look into that.

**Mr Jordan:** The only area where there is some issue right now that I am aware of is in the e-commerce space; we have paused on rolling over or renewing certain APAs because we want to understand better some of the actual operations and structures and typologies around some of these companies that have been in the media. So we are pausing some of these things. That is known. I have been queried on that and I say, 'That's just a normal thing to do. Why would we agree to a treatment that we are uncertain of?'—whether that is in a dispute or not is another matter. But there are certain ones now—and they are the type you are referring to—that we are just pausing because we want to know a bit more before we commit to certain treatments that will be in place. They will not be challenged once the APA is there. As long as the treatment is consistent with what we have been told, there will clearly never be a dispute for the period of that APA.

#### **Answer:**

The ATO does not have the total number of Advanced Pricing Arrangements (APAs) that have been put in place since the APA process began. The first APAs were concluded over 20 years ago and we do not have continuous data over that period.

Data is available for the period from 1 July 1999 to 30 June 2014, during this time 505 APAs were completed.

Being a program of agreements, disputes do not arise out of the APA program. A small number of applications may not reach agreement, though data on these is not held.

During the 2013-2014 income year:

- 37 APAs reached successful agreement;
- 9 APA applications have been declined or deferred; and
- 1 taxpayer withdrew their APA application (no other ATO action was undertaken).

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Of the 9 APA applications declined or deferred during 2013-2014:

- 6 cases were referred for compliance review due the presence of particular risks;
- 2 cases have been deferred awaiting outcome of other audit activities before proceeding with the APA renewals; and
- 1 became an aged case because no information was provided by the taxpayer over a prolonged period of time.