

To: [Committee TaxRev \(REPS\)](#)  
 Subject: SUBMISSION 2017 Annual Report of the ATO  
 Date: Sunday, 15 July 2018 11:49:39 PM

15/7/18

### ATO annual reports ~~ Accentuating the positives and eliminating the negatives

For the Australian community to have confidence in our tax system, we need the tax office to be honest about how much tax evasion goes on in Australia. Unfortunately the deficiencies in the ATO Annual Report 2017 leaves more questions than answers. Hopefully this committee can provide some of the answers the Australian public deserves because there's no way for people like me to find out the answers to the questions raised below.

The fact is, tax evasion is endemic in Australia, but you wouldn't know it when you read the annual reports. ATO annual reports accentuate the positives about voluntary tax compliance and eliminate the negatives about widespread tax evasion. One of my favourite tunes from my childhood is Bing Crosby's classic Accentuate the Positive, and it describes ATO Annual Reports.

*Accentuate the Positive/  
 Eliminate the Negative/  
 Latch on to the Affirmative/  
 Don't Mess with Mister-in-Between.*

The Australian public has been treated to a never-ending production lines of tax evasion scandals in recent years. Offshore evasion, phoenixing, multinational profit shifting, organised crime, refund fraud, superannuation fraud, internal fraud, hacking attempts, panama papers, black economy. You name it, we've copped it. But you read through the Annual Reports and it barely rates a mention. The ATO tells us that voluntary compliance levels are like 95%! I have no idea where they get that figure from. As Daryl Kerrigan would say "Tell them they're dreaming!"

ATO Annual Reports are supposed to inform the parliament and the public about issues with Australia's tax system. It is past time for committees such as this one to get serious about tax evasion which is costing Australia tens of billions each year. The black economy alone has just been estimated at costing the community \$50 billion per year by the black economy taskforce. But as the ATO noted in its 2017 Annual Report on page iii about its work to counter the black economy, it has contacted 11,000 businesses to tell them about the range of tools which will help them run their business. That'll fix it.

Aussie taxpayers who are honest have a right to know how much we are being ripped off by tax evaders. Here is a top 5 list of how the ATO reports on tax evasion in its Annual Reports versus the reality of the situation.

	Problem	How the ATO Annual Report reports it	The reality
1	Systemic tax avoidance by multinationals	<p>The ATO story about multinational tax avoidance {base erosion, profit shifting, call it what you like} has shifted as much as the multinationals profits over the past decade.</p> <p>In the 2011-12 ATO Annual Report, there are vague references to "reinforcing the integrity of the corporate tax base" (page 10). But other than that, everything looked fine back then.</p> <p>In the 2012-13 ATO Annual Report, multinational tax avoidance is referred to as "tax minimisation" (page 48). This is while billions of dollars was presumably being ripped out of Australia.</p>	<p>The reality is, we have no idea how much tax has been lost through multinational profit shifting. Or when it started.</p> <p>We all know it started well before 2014 when the Corporate Tax Avoidance Inquiry commenced.</p> <p>Michael West has a list of Australia's top 40 tax dodgers and all of them are large corporates, all earning billions and paying zero in tax.  <a href="https://www.michaelwest.com.au/">https://www.michaelwest.com.au/</a></p> <p>But if you read through the ATO Annual Reports from 2011-2014, you'll see scant reference to multinational tax avoidance.</p> <p>It took the Corporate Tax Avoidance Inquiry to uncover the extent of multinational tax avoidance, and embarrass the ATO into taking some stronger</p>

		<p>In the 2013-14 ATO Annual Report, the ATO says it is increasing focus on base erosion and profit shifting to ensure multinationals pay the “right amount of tax”. All very nice. The ATO trumpets its large number of Advance Pricing Arrangements as a sign of voluntary compliance by multinationals. Yet as the Corporate Tax Avoidance Inquiry uncovered some of these APAs were just a written licence to shift profits out of Australia and ended up being ripped up years later. Who knows how much we tax we lost.</p> <p>The ATO rhetoric changed remarkably as the Corporate Tax Avoidance Inquiry commenced in late 2014. Suddenly the multinationals were “gaming the system” and “enough was enough”. But the multinationals behaviour hadn’t changed from 2011 to 2014 had it? The only thing that changed was greater scrutiny of the ATO and increasing pressure to be honest about how much tax evasion was going on.</p>	<p>action against aggressive multinational profit shifting. Wasn’t it the ATO’s job to inform the Australian Parliament of the problem of multinational profit shifting in its Annual Reports rather than wait for a parliamentary committee to acknowledge the problem?</p>
2	<p>The ever-increasing amount of tax debt in Australia</p>	<p>The ATO story for many years on tax debt has been how the ATO is getting better at managing the level of tax debt in Australia.</p> <p>One problem with this story has been the irrepressible fact that total tax debt rises every year. From 2010-11 at \$31 billion, it was steadily increasing year on year to \$35 billion in 2014-15.</p> <p>Even the greatest spin doctor would find it hard to put a favourable spin on tax debt increasing by \$1 billion per year. But the ATO came up with an ingenious solution to that perception problem.</p> <p>Rather than reporting on total tax</p>	<p>It was a relief to see the Inspector-General of Taxation finally cotton on to this issue in his submission to this committee {February 2018 submission, page 3}</p> <p>A cynic might suggest that if total tax debt had gone down in 2015-16, the ATO would have reported it and continued reporting on it in 2016-17 if it kept falling. But we can be confident it went up. So the ATO eliminated the negative and left it out of the Annual Reports. The parliament didn’t notice and it took 2 years for the Inspector-General to notice it.</p> <p>Also don’t we have a right to know how much tax debt gets written off each year? Why isn’t this in the annual reports?</p>

		<p>debt, as it had done for decades in its Annual Reports, the ATO stopped reporting total tax debt from the 2015-16 year onwards.</p> <p>E-lim-i-nate the negatives.</p> <p>It then accentuated the positives by reporting on collectable debt whatever that is.</p> <p>“Over the year to 30 June 2016, the collectable debt owed by individuals fell by 8.2% while the number of cases of collectable debt fell by 11.4%. This reflects our program to reduce the level and incidence of outstanding tax debt through early intervention, such as SMS reminders to habitual late-payers, and extending the options available to taxpayers to set up and commit to payment plans online.” {ATO Annual Report 2015-16, page 19}</p> <p>See how the ATO was able to present its performance on tax debt as a win?</p> <p>I saw the ATO was at it again in its answers to Questions which this committee asked. In that response it noted how it was “delivering an improved payment experience” and how it was providing “significant commentary” on debt related issues. There was no explanation for its decision to cease reporting on total tax debt from 2015-16 onwards.</p>	
3	Refusing to estimate Australia’s total tax gap	<p>The ATO prides itself on being a world leading revenue agency. But it stands out like a sore thumb in its refusal to estimate the total tax gap. If tax offices in the UK, USA, Canada, Italy, Denmark, Sweden, Finland, Mexico and Chile can estimate tax gaps, why can’t the ATO? All we get is a drip feed of partial tax gaps to mitigate the outrage.</p>	<p>The partial tax gaps the ATO does publish say Australia only misses out on about 5-7% of tax. The GST gap is estimated at about \$4.5 billion per year. Yet the black economy taskforce estimated the black economy at \$50 billion per year. I have no idea how those figures marry up with each other? Perhaps the chair of the black economy taskforce can explain it if this committee was interested in a \$50 billion per year problem.</p>

		E-lim-i-nate the negatives.	
4	The lack of reporting on how much tax evaders pay	<p>The ATO is quick to publicise how it is always cracking down on tax evaders and using the full force of the law on them. But how effective is it? How many tax evaders are repeat offenders? Why doesn't the annual report provide more detail on tax evasion?</p> <p>Phoenix activity has been around for decades and hurts so many honest businesses and consumers its ruined so many of my friends businesses. So you'd think the ATO Annual Report would give it the attention its due. Instead in the 2015-16 ATO Annual Report, it noted on page 31 that the ATO had "raised liabilities of around \$250 million" on tax crime, including phoenix operators.</p> <p>That sounds ok. But when a journalist asked the ATO how much money it collected from that \$250 million in liabilities it raised this was their response:</p> <p>"The ATO ... refused to reveal what proportion of the \$250 million in liabilities it has recovered."</p> <p><i>Insolvency News Online – Confidential ATO data shows phoenixing on the rise':</i>  <a href="https://insolvencynewsonline.com.au/odwyer-confidential-ato-data/">https://insolvencynewsonline.com.au/odwyer-confidential-ato-data/</a></p> <p>E-lim-i-nate the negatives.</p> <p>That same journalist also "asked the ATO how it justified telling the public that its "approach in tackling illegal phoenix activity continues to</p>	<p>We finally got a sneak peak at how much tax evaders really get away with in Australia when the media uncovered a secret study from the ANU which said most tax penalties do not even get paid!</p> <p><i>Report critical of tax evasion penalties causes angst and discomfort at ATO</i></p> <p><a href="http://www.abc.net.au/news/2018-03-24/report-critical-of-tax-evasion-causes-angst-discomfort-at-ato/9582552">http://www.abc.net.au/news/2018-03-24/report-critical-of-tax-evasion-causes-angst-discomfort-at-ato/9582552</a></p> <p>But there didn't seem to be any comment from the ATO in the article about this. Why not?</p> <p>E-lim-i-nate the negatives.</p> <p>Isn't this something this committee should follow up? Or has Australia just given up on punishing tax evaders?</p>

		<p>pay off” when its own confidential data indicated that the problem was growing.”</p> <p>E-lim-i-nate the negatives.</p> <p>The ATO Annual Report 2016-17 provided some more detail see page 60 stating that its phoenix audit activities “resulting in liabilities of \$326.8 million and cash collections of \$133 million, which is significantly higher than 2015–16.”</p> <p>So it knew all along how much was collected in 2015-16 but simply refused to say. That instils confidence in the integrity of our revenue authority.</p> <p>E-lim-i-nate the negatives.</p>	
5	Settlements with tax avoiders and evaders	<p>The ATO now measures itself on how many disputes with taxpayers end up in court. The less disputes in court, the better it looks for the ATO. But shouldn’t it be taking tax evaders to court and not settling with them?</p> <p>The ATO Annual Report 2016-17 does provide a bit of information on settlements. For example it tells us that the ATO gives away 60% of the tax it assessed to High Wealth Individuals in disputes. But we’re not told why the ATO is giving away so much tax in settlements every year nearly \$2 billion in 2016-17 alone.</p> <p>The ATO defends its settlements by noting that some retired judges have reviewed a handful and found them to be reasonable. So the Australian community is expected to rely on the views of retired judges operating in a</p>	<p>The annual report doesn’t tell us why the ATO gives away nearly \$2 billion in settlement reductions. Is it because the law is unclear? Then tell the parliament about it so it can be fixed rather than wait for inquiries like for corporate tax avoidance or work related deductions.</p> <p>How many cases has the ATO settled with taxpayers who have been penalised or found to have committed evasion? We wouldn’t know from the Annual Report.</p> <p>The settlements details splits up the taxpayer settlements into segments like small businesses, High Wealth Individuals, individuals, large businesses.</p> <p>But when I read in the newspapers how the ATO settles disputes with organised criminals, I wondered how many of these settlements it does every year? How many organised criminals get a discount on their tax? Do honest Australian taxpayers have a right to know this?</p>

		<p>cloak of secrecy and the judges don't even provide the public with reasons for why the taxpayer didn't have to pay their full amount of tax and penalties. I'm sure we all have faith in that process. Much like when ASIC got independent law firms to review banks' behaviour on the fees for no service arrangements.</p>	<p>Here is one interesting article I read:</p> <p>'Gatto settles \$15m tax bill for less than \$4m'</p> <p><a href="https://www.theage.com.au/national/victoria/gatto-settles-15m-tax-bill-for-less-than-4m-20170426-gvsqx3.html">https://www.theage.com.au/national/victoria/gatto-settles-15m-tax-bill-for-less-than-4m-20170426-gvsqx3.html</a></p> <p>Is this parliamentary committee willing to accept all these ATO settlements even though its presumably never even seen the details of one of them? how many multinationals got to settle their transfer pricing disputes while the corporate tax avoidance inquiry raged on? Look at what's happened to ASIC with its 'enforceable undertakings' with the banks. The Australian public is sick and tired of confidential settlements with those who break the law.</p> <p>Surely it'd be pretty straightforward to redact the taxpayers names and this committee could review a random sample of tax settlements involving high culpability penalties, to ensure the Australian community isn't losing \$2 billion per year from those taxpayers who are 'gaming the system'?</p>
--	--	---	---

Perhaps this committee needs to ask itself whether honest Australian taxpayers have a right to know the answers to the above questions in the ATO annual reports?