

Senate Economics Legislation Committee
ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Additional Estimates

2016 - 2017

Division/Agency: Inspector General of Taxation (IGT)
Question No: 214
Topic: ATO IT Failure - Compensation
Reference: Hansard page 133-134 (01 March 2017)
Senator: Ketter, Chris

Question:

Senator KETTER: Are you aware of any cases of tax practitioners seeking compensation as a result of the outage?

Mr Noroozi: We have had a number of complaints raising those issues. [...] then yes.

Senator KETTER: Do you have any feel as to the numbers?

Mr Noroozi: As I said, I would have to take that on notice.

Senator KETTER: Whilst you are doing that, would you be able to provide an estimate of the total potential compensation bill?

Mr McLoughlin: That is quite difficult. The reason I say that is that the Department of Finance oversee CDDA the scheme, but there is delegation to agencies to actually look after it, so application at first instance should go, fairly, to the agency.

[...]

Senator KETTER: In December of last year, you referred to what you described as 'unintended delays or outcomes' arising from the IT issues in December of last year. Can you elaborate on what those were?

Mr Noroozi: Sorry, what context is this in?

[...]

Senator McGrath: Do you want to take it on notice, just to be safe?

Mr Noroozi: Yes, sure.

Answer:

214. **The ATO's recent Information Technology (IT) outages were important events that gave rise to concerns for taxpayers and tax professionals.**

The IT outages occurred in December and February which are both relatively quiet periods for tax administration.

The ATO made a number of public statements that no data was lost or compromised and that it would not penalise those who were unable to meet commitments due to the IT outages:

"We can confirm that there has been no loss of data ... No taxpayer information has been compromised...We will work with any clients to ensure they are not disadvantaged because of the system issues."¹

...

"I repeat a message we issued earlier in the week – no taxpayers will be disadvantaged as a result of the outage. This means if you needed to make a payment or lodge a form but couldn't, you won't be penalised."²

¹ Australian Taxation Office (ATO), 'Wednesday morning update' (Media release, QC 5076, 14 December 2016), <www.ato.gov.au>.

The ATO also communicated with the tax practitioners directly, who represent approximately 75% of individual and 90% of business taxpayers, to assure them that no taxpayer data was lost, to provide lodgment and payment deferrals, and to acknowledge their support:

“Please be assured that no data has been lost and that up-to-date information will be displayed as we complete the data restoration... For those using ELS, lodgements can still be made, although processing will be delayed...With respect to the November monthly activity statement due next week, we will provide a deferral for lodgement and payment...We would also like to acknowledge the support and assistance of the professional associations...”³

...

“I want to be clear that this was not a cyber-attack and there was no loss or compromise of taxpayer data...We are working on a number of initiatives to deliver more resilient and sustainable technology that will reduce and eliminate the number of disruptions you are experiencing...We took action to defer due dates in December as well as the 15 January income tax due date. If you lodged within the deferred period you will not be penalised and your Lodgment Program “85 percent on time requirement” will not be affected... If you have been affected by the outage and require additional deferrals you can... Staff that review these requests will consider them in light of the impacts of the outage... We understand that as a consequence of the outage some agents may not be able to meet the “85 per cent on time” Lodgment Program requirement...Where this is the case we will not apply sanctions this year.”⁴

Further, the ATO publicly announced a review by PricewaterhouseCoopers to understand the cause of the IT outage, whether the ATO response was appropriate, the existence of any residual risks, and to identify actions which could better mitigate future issues.⁵

More recently, the Commissioner of Taxation (Commissioner) also gave a guarantee that Tax Time 2017 would not be compromised.

“Claims made in today’s media that Tax Time 2017 is under threat due to our recent system outages are completely without foundation. We are absolutely confident that taxpayers will be able to lodge their returns and receive refunds on time 1 July.”⁶

Whilst there was significant community anxiety, and that certain taxpayers and tax professionals were hampered in their business operations, these concerns were subdued as a consequence of the ATO’s actions and assurances.

The IGT received twenty-four complaints about the ATO’s IT outages, as at 21 March 2017 which included seven complaints lodged by tax practitioners, a number of which called for compensation due to their inability to service their clients. In addition, tax practitioner professional bodies and their members

² ATO, ‘Commissioner of Taxation, Chris Jordan AO on system outages’, (Commissioner’s online updates, QC 5076, 16 December 2016), <www.ato.gov.au>.

³ ATO, ‘Systems outage progress update’ (Media release, 15 December 2016), <www.ato.gov.au>.

⁴ ATO, ‘ATO: December 2016 System Outage’ (Media release, QC 50969, 24 January 2017), <www.ato.gov.au>.

⁵ ATO, ‘Independent review underway into system outage’, (Media release, QC 5076, 24 January 2017), <www.ato.gov.au>.

⁶ ATO, ‘Commissioner’s statement – ATO systems’ (Media release, QC 5076, 8 February 2017), <www.ato.gov.au>.

also raised these concerns publicly.⁷ The IGT also made the ATO aware that practitioner complainants suggested that it would be appropriate for the Commissioner to personally apologise to tax practitioners, and also provide official communications that they could give to their clients that make clear the reasons for the delays.

The remaining seventeen complaints were largely from individual taxpayers who were concerned about how the IT outages may impact on fulfilling their obligations and the potential ramifications for not doing so.

The Commissioner later provided an apology to the tax profession at the Tax Institute National Convention 2017 in his speech:

“I’ll talk now about the outages, explain what happened and apologise to those of you who have been inconvenienced or impacted. I am sorry for the inconvenience caused.”⁸

The issue of compensation, as noted above, has been raised in relation to the IT outages, but needs to be appreciated in the complaints handling context. Claims for compensation would generally be made under the Commonwealth’s Scheme for Compensation for Detriment caused by Defective Administration (CDDA), which is a scheme administered by the Department of Finance who provides guidance in this regard. The management of these claims and the decision to pay compensation, however, is delegated to the relevant government agency to which the claim relates.

For any such claims that the ATO receives, the ATO is obliged to make a decision as to whether compensation is payable having regard to the Department of Finance’s guidance and any other policies that may be relevant. In making such decisions, the ATO is required to give due consideration to whether the facts amount to defective administration and, if so, whether that defective administration caused the claimed loss and whether such loss is compensable. Such claims are expected to be carefully considered to ensure their probity given any payment would be from public monies, which by its very nature may take some time to do.

Accordingly, the IGT would not expect to see complaints about compensation decisions unless a complainant remained dissatisfied with the ATO’s decision, including any internal review of that decision that may be undertaken by the ATO itself.

It is also confirmed that the IGT’s December reference to ‘unintended delays or outcomes’ is from a Sydney Morning Herald article⁹ published on 13 December 2016. This reference is unrelated to the recent ATO’s IT outages, but rather refers to a much older review undertaken by the IGT in 2010 being the Change Program review.¹⁰

⁷ Chartered Accountants Australia and New Zealand, in Submission 3 to the Standing Committee on Tax and Revenue made to the Committee’s Inquiry into Taxpayer Engagement with the Tax System, 9 February 2017, p 9.

⁸ ATO, ‘Commissioner’s address to the Tax Institute National Convention 2017’ (Media release, QC 51518, 16 March 2017), <www.ato.gov.au>.

⁹ Nassim Khadem, ‘Inspector-General of Taxation Ali Noroozi says ATO needs to say ‘sorry’ for errors’, 13 December 2016, Sydney Morning Herald, <www.smh.com.au>.

¹⁰ The Inspector-General of Taxation, *Review into the ATO’s change program* (2010).