

## Theme 2 – Compliance

- 3.1 This chapter examines matters relating to encouraging and enforcing compliance, including:
- Debt recovery and the global financial crisis
  - Small business services
  - Training for small business

### **Debt recovery and the global financial crisis**

- 3.2 Committee members have, over time, received anecdotal evidence from constituents that there have been changes in the way the ATO conducts its debt recovery operations, and took the opportunity at the public hearing to discuss the matter in further detail with the Commissioner of Taxation.
- 3.3 The Committee noted that the ATO had put in place more flexible debt recovery arrangements during the global financial crisis to support viable businesses in difficulty, and asked whether there had been any changes to debt recovery as the global economy had again begun to stabilise.
- 3.4 The ATO agreed that they had taken a decision at the start of the global financial crisis that they would try and help taxpayers where possible, by providing payment arrangements including, in some cases, interest free arrangements, to ensure businesses could continue to operate through short term financial difficulties, and that this approach hadn't changed.<sup>1</sup>

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<sup>1</sup> Mr D'Ascenzo, ATO, *Committee Hansard*, Canberra, 14 September 2012, p. 11.

- 3.5 The Commissioner noted that while they have taken this approach, that in cases where a taxpayer had consistently defaulted on payment arrangements, other action had to be taken:

...in situations where keeping the business going may not be in the best interests of the people themselves, and certainly disadvantageous for other businesses that are paying their tax position - we have taken what we call firmer action which might include garnisheeing. You have seen an increase in liquidation, which we put into our report. But it is not so much that all of a sudden we are taking a different approach; we are just applying a tailored approach to the facts and circumstances of the taxpayer in the context of those broad principles.<sup>2</sup>

- 3.6 The ATO also advised that it had developed software resources to enable ATO staff to discuss with taxpayers their business position and to get a more objective assessment of continued viability. The Commissioner stated:

That has meant that, in some situations, we have actually said 'No, we really cannot give you a payment arrangement or defer firmer action because in some way we actually think that you might be trading in a position, perhaps, of insolvency.'<sup>3</sup>

- 3.7 The submission provided by the ATO noted that there has been an increase in the number of business wind-ups initiated by the ATO, rising from 2% of total bankruptcies and 10.9% of total wind-ups in 2010-11 to 2.3% of total bankruptcies and 14.4% of total wind-ups in 2011-12. The submission also noted that the ATO used external consultants to conduct independent reviews of ATO management of insolvency cases.<sup>4</sup>

- 3.8 The Committee asked whether there were circumstances in which the ATO would vary an agreed payment plan to more quickly pay off a tax debt without the consent of the taxpayer. The Commissioner replied that, to his knowledge this had not occurred, and it was "not a general occurrence."<sup>5</sup>

- 3.9 In considering the ATO's approach to debt management, specifically through the lens of small business, Mr John Malkovich gave the Committee a summary of his observations over time:

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2 Mr D'Ascenzo, ATO, *Committee Hansard*, Canberra, 14 September 2012, p. 12.

3 Mr D'Ascenzo, ATO, *Committee Hansard*, Canberra, 14 September 2012, p. 12.

4 ATO, *Submission No. 1*, p. 18.

5 Mr D'Ascenzo, ATO, *Committee Hansard*, Canberra, 14 September 2012, pp. 27-28.

With debt management, initially there were issues with some people saying the ATO was a little too hard in approaching debt management. But that softened up a lot over the years and it's no longer one strike and you are out. We really pushed the issue that if you are a good taxpayer meeting your BAS [Business Activity Statement] on time and doing everything you should, if you do not get it in on time once then they do not come down on you hard. Instead you get a letter saying, 'You're a great taxpayer but you haven't got your BAS in on time this time, so make sure you do it next time.' I think that is a wonderful touch.<sup>6</sup>

## Small business services

### The ATO's 'No strings attached' small business advisory service

- 3.10 The ATO reports that it offers free, targeted, tailored small business assistance, and advises that information obtained as part of the service will not be used to commence an audit.<sup>7</sup>
- 3.11 The ATO had taken steps to promote the service, working with industry, trade and business associations. The ATO emphasises that businesses would not be subject to an audit if they were found to be operating contrary to their legislative obligations.
- 3.12 Mr John Malkovich described the service as 'fantastic' and stated:
- The ATO is going out to talk to small business people. Critical to that is that the ATO goes out and says they are not there to use this as a trigger to do an audit, but they are genuinely there to help with business processes, including ABN [Australian Business Number] registration, super, record keeping and things like that.<sup>8</sup>

## Small business benchmarking

- 3.13 The ATO noted in its submission that small business benchmarks were calculated by the ATO from information reported on tax returns and activity statements, and enabled businesses to compare their performance against similar businesses in their industry.

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6 Mr Malkovich, *Committee Hansard*, Canberra, 14 September 2012, p. 23.

7 ATO, *Submission No. 1*, p. 13.

8 Mr Malkovich, *Committee Hansard*, Canberra, 14 September 2012, p. 23.

- 3.14 The ATO calculates small business benchmarks calculated from income tax returns and activity statements of businesses operating in similar industries to assist businesses in comparing their performance against similar businesses. 66 per cent of tax agents surveyed by the ATO refer small business benchmarking to clients.<sup>9</sup>
- 3.15 It was further noted that benchmarking enabled the ATO to identify businesses that may be avoiding tax obligations by failing to report income, and that businesses significantly outside their benchmarks may attract the attention of the ATO.<sup>10</sup>
- 3.16 The Committee was also advised that small business benchmarking had shown changes in taxpayer behaviour – ATO targeting of six industries had shown significant increases in the number of businesses that now report income in the same range as their industry peers, when they previously reported income below that of other similar businesses.<sup>11</sup>

### The ATO's philosophical approach to supporting small business

- 3.17 The ATO outlined its philosophical approach towards small business:

The heart of what we do is helping businesses understanding their rights and obligations and making it easy as possible for businesses to properly participate in Australia's tax and superannuation systems. We recognise the diversity of small business and tailor our services accordingly.<sup>12</sup>

- 3.18 The ATO described its approach to businesses in short term financial difficulty as 'empathetic', and that it sought to support businesses through tangible assistance such as business assistance visits.<sup>13</sup>
- 3.19 The Committee was advised that these business assistance visits were targeted at businesses in financial difficulty, and had led to a reduction in compliance costs for all businesses visited. Further, these visits had resulted in increased responsiveness on behalf of the part of small business - in 2010-11:
- the average time for visited businesses to lodge activity statements was reduced by 11 days;

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9 ATO, *Submission No. 1*, p. 21.

10 ATO, *Submission No. 1*, p. 22.

11 ATO, *Submission No. 1*, p. 22.

12 Mr D'Ascenzo, ATO, *Committee Hansard*, Canberra, 14 September 2012, p. 1.

13 Mr D'Ascenzo, ATO, *Committee Hansard*, Canberra, 14 September 2012, p. 2.

- visited businesses made 13 per cent more electronic lodgements;
  - they had lower tax debt on average than the broader small business population; and
  - were less likely to be subject to further compliance action.<sup>14</sup>
- 3.20 Related to this, the ATO informed the Committee that strategies focused at certain groups of businesses yielded similar results. In 2011-12, the ATO provided information to cafes and restaurants, real estate services and carpentry services. As a result, voluntary statements lodged for these targeted industries increased on average by over 15 per cent in the relevant period.<sup>15</sup>
- 3.21 Looking further at the issue of supporting viable businesses in short-term difficulty, the ATO also supported businesses to avoid bankruptcy or insolvency by using interest-free activity statement payment arrangements where it was appropriate to do so.<sup>16</sup> The Commissioner noted there were 152,007 small business payment arrangements to the value of \$1.45 billion in effect at 30 June 2012.<sup>17</sup>
- 3.22 The ATO also discussed the way it informs business of significant reforms. Tools available to the ANAO included:
- a funded media campaign;
  - targeted, direct mail to employers; and
  - targeted, direct mail to intermediaries, such as accountants and software providers.<sup>18</sup>
- 3.23 It was also noted that the ATO distributed a monthly small business newsletter that reached approximately 1.4 million businesses, and also used its Online Small Business Forum to disseminate information to business operators.<sup>19</sup>

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14 Mr D'Ascenzo, ATO, *Committee Hansard*, Canberra, 14 September 2012, p. 2.

15 Mr D'Ascenzo, ATO, *Committee Hansard*, Canberra, 14 September 2012, p. 2.

16 Mr D'Ascenzo, ATO, *Committee Hansard*, Canberra, 14 September 2012, p. 2.

17 Mr D'Ascenzo, ATO, *Committee Hansard*, Canberra, 14 September 2012, p. 2.

18 Mr Peterson, ATO, *Committee Hansard*, Canberra, 14 September 2012, p. 19.

19 Mr Quigley, ATO, *Committee Hansard*, Canberra, 14 September 2012, p. 19.

## Simplifying lodgement for small business

- 3.24 The ATO reported in its submission that a review was currently underway which sought to find avenues to simplify lodgement processes for medium, small and micro businesses.
- 3.25 The ATO announced that the process would consider opportunities to leverage data matching to automate components of various business returns through pre-filling. It also identified the following measures aimed at reducing the amount of information a business is expected to provide in its annual return:
- removing around 30 labels from the annual returns;
  - halving the length of the capital gains tax schedule;
  - deleting the capital allowances schedule;
  - deleting the personal services income schedule; and
  - reallocating a number of labels from the tax returns to the international dealings schedule to better target the collection of that information.<sup>20</sup>

## The small business commissioner

- 3.26 At the public hearing, the Tax Institute advised the Committee that while the Government had announced the creation of a small business commissioner position, that it had not yet been filled, and that it would be beneficial if the position functioned as a single point of contact for small business.<sup>21</sup>
- 3.27 The Tax Institute identified the role a small business commissioner could play as a focal point for regulatory matters; a role that was identified at an event run in conjunction with the Council of Small Business of Australia (COSBOA) earlier in the year:

COSBOA and the Tax Institute earlier this year held what was effectively a small business roundtable and we discussed not only tax but all of the different regulatory issues that small business face. Not only is it a challenge for small business to meet those, but in raising concerns there are about 16 different departments for them to go to. That is unsustainable. So the small business

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<sup>20</sup> ATO, *Submission No. 1*, p. 18.

<sup>21</sup> Mr Jeremenko, The Tax Institute, *Committee Hansard*, Canberra, 14 September 2012, p. 28.

commissioner position, when it is filled, I think will be an important liaison point and intermediary for small business.<sup>22</sup>

- 3.28 The Federal Government has since appointed Mr Mark Brennan to the role of Australian Small Business Commissioner, noting the role of the Commissioner is to provide information, advice, advocacy and representation of small business interests within the Australian Government.<sup>23</sup>

## Training for small businesses

### Proposal for mandatory training

- 3.29 John Malkovich spoke to the Committee about the value of a basic knowledge of business fundamentals before a new business owner starts out:

I think for people starting off initially their biggest driver to get out there is to make money. So, with anything else that is above and beyond that, they think, 'I'll just put that on the backburner for now.'

...As to getting them to do a course, I have thought about this quite a bit and discussed it with some of my colleagues. Before you can get an ABN, an ACN [Australian Company Number], a business name or anything like that, there could be a form that you complete that asks for ID, what industry you are going into and says, 'Fantastic. Have you finished the compulsory course in business fundamentals are your local TAFE [Technical and Further Education] or CIT [Canberra Institute of Technology]? If you haven't, why not?' You could also get some recognition for prior learning.

...Show them how profit and loss work. Explain to them that it does not matter what the profit and loss are; it is what the cash flow is doing and whether or not the money is coming in. A simple thing is having an offset account where you put one-tenth

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22 Mr Jeremenko, The Tax Institute, *Committee Hansard*, Canberra, 14 September 2012, p. 28.

23 DIISRTE, Australian Small Business Commissioner, <http://www.innovation.gov.au/SMALLBUSINESS/SMALLBUSINESSCOMMISSIONER/Pages/default.aspx> (accessed 18 October 2012).

of your takings in as your GST so you can meet your obligations. It is simple things like that...

...with that extra knowledge, they are in a better position to run a more successful business. They are in a better position to realise that they have obligations to the Australian government to pay their tax...

...The benefit is that, when they know all of that, they are less likely to default on tax payment. Later, if they do get a letter from the ATO saying they have not done something, ignorance is no excuse, because they have done the course and know that they needed to pay tax and pay their GST. So those are the real benefits of it.

- 3.30 The ATO reported on its program called Right from the Start, a web-based program with tailored information about small business support offered by the ATO, including tips and fact sheets. The Committee was advised that the ATO had been trying to expand its communication with small business and to promote knowledge of its online resources.<sup>24</sup>

### ATO online resources

- 3.31 The ATO also outlined the electronic tools and calculators it provided on ato.gov.au to enable small businesses to self-assess or calculate tax obligations or entitlements, and also to access guidance tailored to their small business requirements. The ATO outlined several key online tools for small business, with all established tools having anywhere from 13,000 to 129,000 views over the first five months of 2012:

- Is your business tax-ready?
- GST property tool
- Research and development tool
- Employee/contractor decision tool
- Building and construction industry – employee/contractor decision tool
- Capital Gains Tax small business concessions tool
- Payment arrangement calculator.

- 3.32 Philip Halton of COSBOA reported that in his role with the Australian Livestock and Rural Transporters Association they had worked to ensure

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24 Mr Quigley, ATO, *Committee Hansard*, Canberra, 14 September 2012, p. 26.



that its members were able to use various price calculators to assist them in understanding potential costs to assist with setting appropriate prices for services. It was also noted that COSBOA had created a calculator to assist businesses in estimating their costs after the introduction for the price on carbon.<sup>25</sup>

- 3.33 Paul Drum of CPA Australia informed the Committee that his organization had been conducting webinars and providing podcasts using its own facilities to enable the ATO to engage with tax professionals through a conduit other than the ATO website.<sup>26</sup>

## The ATO and social media

- 3.34 The ATO's submission reports on its use of social media, with the ATO describing the benefits of social media to improving compliance:

Social media enables us to provide practical guidance and information in a time, manner, and place suitable to taxpayers. These tools are a valuable alternative for taxpayers, giving them the ability to receive a response from us in a manner and location convenient to them. The channels also enable us to scan social media comments and conversations to understand how the community perceives us, what issues are a priority for the community, and to respond accordingly.<sup>27</sup>

- 3.35 The submission also outlined the status of the ATO's social accounts as at 9 August 2012:

- Facebook – launched 1 July 2011, 2,110 'likes'
- Twitter - launched 1 March 2010, 9,749 'followers'
- YouTube – launched July 2011, almost 100 videos uploaded, and more than 197,258 views of ATO.

- 3.36 Additionally, the ATO advised that it used its Twitter page to provide the latest information on new measures, changes to legislation, reminders, information on system outages, and scams.<sup>28</sup>

- 3.37 In its appearance before the Committee, the ATO noted that its presence on social media was still relatively small.<sup>29</sup>

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25 Mr Halton, COSBOA, *Committee Hansard*, Canberra, 14 September 2012, p. 26.

26 Mr Drum, CPA Australia, *Committee Hansard*, Canberra, 14 September 2012, p. 26.

27 ATO, *Submission No. 1*, p. 15.

28 ATO, *Submission No. 1*, p. 15.

29 Mr D'Ascenzo, ATO, *Committee Hansard*, Canberra, 14 September 2012, p. 27.

- 3.38 Considering rural and regional Australia, COSBOA noted that in these areas, traditional social networks were still the most trusted source of information.<sup>30</sup> In response, the Commissioner agreed, and reported that this was one of the reasons the ATO sought to provide information through representative bodies, journals and contacts, and to try and engage the public where possible through representative bodies.<sup>31</sup>

## Committee Comment

- 3.39 The Committee notes the assurances from the Commissioner that there has been 'no change'<sup>32</sup> in the ATO's approach to debt recovery as the pressures from the global financial crisis have eased. There are clear benefits from the ATO adopting a flexible approach to debt recovery, and this approach is preferred to a punitive approach in which businesses are closed, and jobs are lost.
- 3.40 The Committee is also interested to see the improved analytical systems that enable the ATO to detect businesses that may be close to insolvency. Assessing struggling businesses to determine their viability provides an increased level of support for both business owners and their employees and creditors. It also serves to protect the tax base.
- 3.41 It is pleasing to hear of initiatives like the 'no strings attached' small business advisory service being used to provide a concrete example to small business that the ATO believes a collaborative approach to compliance is beneficial. The statistics that show increased compliance after a visit indicate that the service is a valuable one that has clear benefits both to small business and to the ATO itself.
- 3.42 Small business benchmarking is another ATO initiative that has clear benefits both for business and for the ATO. By assisting businesses to compare themselves with their contemporaries, small business owners are able to see areas in which they can improve their performance and increase their profits. Side benefits for the ATO of identifying businesses that may be performing outside their sector benchmark and therefore may not be fully compliant is obvious and is an initiative supported by the Committee.

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30 Mr Halton, COSBOA, *Committee Hansard*, Canberra, 14 September 2012, p. 27.

31 Mr D'Ascenzo, ATO, *Committee Hansard*, Canberra, 14 September 2012, p. 27.

32 Mr D'Ascenzo, ATO, *Committee Hansard*, Canberra, 14 September 2012, p. 11.

- 3.43 The Committee was interested to hear that 66 per cent of tax agents that were aware of small business benchmarking had recommended it to their clients. The Committee believes that number can be built upon and is interested to see if the ATO can increase this figure in next year's submission.
- 3.44 Business assistance visits for businesses struggling to meet their compliance obligations also demonstrate the ATO's commitment to ensuring compliance through cooperative rather than punitive measures. By engaging businesses having difficulties with compliance, the ATO is able to intervene earlier to assist these businesses and to attempt to maintain their viability.
- 3.45 The Committee does acknowledge, however, that the ATO can, and does take more serious action where it is warranted. In his appearance before the Committee, the Commissioner reported that in cases where a taxpayer had consistently defaulted on payment arrangements, other action had to be taken, and the Committee acknowledges and supports the use of these measures where it is required. Further, the Committee notes the comments of the Commissioner that the ATO is unable to support businesses that are clearly not viable, and supports the Commissioner's comments.
- 3.46 The measures canvassed above, should provide sufficient evidence that the ATO's actions match their rhetoric when looking at the philosophical approach they take to engaging small business. The adoption of a proactive, rather than punitive approach is one that should be praised, and the Committee hopes to see the ATO continue to think in this way to encourage compliance, and to use punitive measures only when required.
- 3.47 The Committee also notes the ATO's review to further simplify lodgement for businesses, and is pleased to see pre-filing also move to the business sector from the personal income tax sector.
- 3.48 The suggestion that there be mandatory training for new business owners was one that interested the Committee, as it clearly came from considerable thought over ways to improve compliance. The Committee believes that anyone starting a new business with no previous experience should enter into the process understanding all of their responsibilities, and that they should draw from available assistance to ensure they will comply with their tax obligations.
- 3.49 However, the Committee is not convinced that compulsory training prior to engaging in business is the way to go, as it would slow down the ability to start new businesses. The Committee was also satisfied that the ATO provided adequate checklists and training resources for new business

owners, and that there were also professional organisations that could be contacted that would extend assistance. ATO resources on starting a new business are easy to find on its website, however, the ATO could emphasise these resources more, and strongly recommend that new business owners properly go through these resources prior to opening their businesses.

- 3.50 In a related issue, the Committee was interested to hear that other organisations were providing calculators similar to those provided by the ATO, but targeted at specific industries. This valuable support provided by professional organisations could be better supported by the ATO, and the ATO should encourage organisations to make sure the underlying assumptions and figures that inform these calculators are accurate.

### **Recommendation 3**

**That the Australian Taxation Office offer to provide assistance to professional organisations that provide online calculators relating to taxation to ensure these resources are based on accurate figures and assumptions, and that the Australian Taxation Office promote this service to these organisations.**

- 3.51 The Committee was interested to hear the ways in which the ATO interacts with taxpayers through social media. Its explanation of how it uses its Twitter account was informative, and the Committee notes the immediacy of this method of communication.
- 3.52 The Committee sees a lot of value in the ATO's YouTube channel as a way of providing easy to understand advice to taxpayers. The ability to easily provide information in different languages for business owners and taxpayers of non English speaking backgrounds is of significant value and can only assist with ensuring increased compliance.
- 3.53 Touching briefly on Facebook, which is the most popular social networking tool in Australia, the Committee notes the relatively low number of subscribers compared to the ATO Twitter account. The Committee notes the format of Facebook requires users to "like" corporate pages. As this is the case, the Committee suggests that the ATO consider renaming their page to make it more appealing to users and to more accurately reflect the purpose of the ATO's social media accounts.
- 3.54 The Committee sees promotion of social media as an area that could be improved upon by the ATO, as its subscription rates are quite low

compared with the number of taxpayers and businesses in Australia. Accordingly, the Committee recommends:

#### **Recommendation 4**

**That the Australian Taxation Office continue to promote its social media resources and to seek feedback from business consultative groups about the usefulness of these resources. Further, that the Australian Taxation Office determine and report on the effectiveness of these resources in its submission to next year's hearing.**

