

## Inquiry into the 2013-14 Australian Taxation Office Annual Report

- 2.1 The following issues are considered in this chapter:
- compliant taxpayers' relationship with the Australian Taxation Office (ATO);
  - administration of the ATO;
  - compliance strategies; and
  - policy development.
- 2.2 At the conclusion of this chapter the Committee comments on these issues and flags areas of interest to be reviewed at its next biannual hearing with the ATO in late 2015.

### **Compliant taxpayers' relationship with the ATO**

#### **Single Touch Payroll**

- 2.3 On 28 December 2014, the Assistant Treasurer, the Hon Josh Frydenberg MP, and the Minister for Small Business, the Hon Bruce Billson MP, announced that, 'the government will cut red tape for employers by simplifying tax and superannuation reporting obligations through Single Touch Payroll.'<sup>1</sup>

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<sup>1</sup> The Hon Josh Frydenberg MP, 'Cutting red tape for employers through Single Touch Payroll' *Joint Media Release with the Hon Bruce Billson Minister for Small Business*, 28 December 2014, <<http://jaf.ministers.treasury.gov.au/media-release/001-2014/>>, accessed 7 April 2015.

- 2.4 On a quarterly basis (minimum), employers must calculate the tax that applies to staff income and then report and pay it to the ATO as well as calculating superannuation contributions to report to the ATO and pay to superannuation funds on behalf of their staff. The ATO estimates that a business with six employees may have to complete in excess of 400 manual transactions each year to meet employer reporting and payment obligations.<sup>2</sup>
- 2.5 Under Single Touch Payroll, businesses will be required to report digitally, eliminating paper-based payroll reporting. Employers would be required to report employee income as well as tax and superannuation obligations to the ATO via Standard Business Reporting (SBR) at the time of the payroll event (though their payroll software). This would eliminate the requirement for employers to report employees' Pay As You Go (PAYG) withholding through activity statements and payment summaries.<sup>3</sup>
- 2.6 The Committee asked the ATO whether the introduction of Single Touch Payroll would affect cash flow for some businesses. The ATO acknowledged that feedback to date suggests that the cash flow of some businesses might be impacted by the change of remittance requirements of PAYG withholding and the Superannuation Guarantee from quarterly (at minimum) to the same time employees are paid their salary and wages:
- Consultation feedback to date indicates that shifting the remittance date of PAYGW and SG to the same day employees are paid would help ensure employers meet their taxation and superannuation obligations. However it also indicates that bringing forward the due date for payment of these liabilities would have an impact on the cash flow of businesses, in particular those businesses that do not currently provision for these liabilities on an ongoing basis. Feedback indicates that real-time payment should not be mandated for all employers.<sup>4</sup>
- 2.7 The ATO assured the Committee that, together with the Treasury, they have been conducting consultation with the community regarding the phasing of the start date for different sized employers and transition arrangements to support the move to Single Touch Payroll. This feedback
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2 ATO, *Single Touch Payroll discussion paper*, <<https://www.ato.gov.au/General/Consultation/What-we-are-consulting-about/Papers-for-comment/Single-Touch-Payroll-discussion-paper/#>>, accessed 7 April 2015.

3 ATO, *Single Touch Payroll discussion paper*, <<https://www.ato.gov.au/General/Consultation/What-we-are-consulting-about/Papers-for-comment/Single-Touch-Payroll-discussion-paper/#>>, accessed 7 April 2015.

4 ATO, *Submission 2.1*, p. 3.

will be used to inform the options being developed for Single Touch Payroll.<sup>5</sup>

- 2.8 The ATO advised the Committee that Single Touch Payroll will be introduced from July 2016.<sup>6</sup> The introduction of Single Touch Payroll is expected to reduce errors in income tax returns, reduce agency processing costs, and support early lodgement of tax returns. The automated reporting of information is intended to benefit both individuals, where a refund is due, and government, where tax is owed.<sup>7</sup>

## Standard Business Reporting

- 2.9 Standard Business Reporting (SBR) allows businesses to lodge forms directly from SBR-enabled accounting, bookkeeping, and payroll software, including: activity statements, some tax returns, tax file number declarations and PAYG payment summaries. However, SBR cannot be used to view tax account details, register for tax roles, or make payments.<sup>8</sup>
- 2.10 The ATO advised the Committee that it will be ready to receive SBR-enabled lodgements from 1 July 2015. The Second Commissioner – People, Systems and Services Group, Mr Geoff Leeper, noted, however, that the number of SBR-enabled lodgements would be dependent on software developers having incorporated, tested, and released the relevant code in their commercial packages.<sup>9</sup> Mr Leeper apprised the Committee of the ATO's collaboration with software developers working towards SBR-enabled software:

As those developers move through their own processes of incorporating the relevant pieces of code to make things like standard business reporting lodgement work, they can use what are called application program interfaces, code packets, that we would give them, which is a way of making sure that the software that they put in the marketplace talks to the ATO's back-end systems. That is a very important thing. We have an integrated test environment, which they are able to come and test their software

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5 ATO, *Submission 2.1*, p. 3.

6 ATO, *Submission 2*, p. 7.

7 ATO, *Submission 2*, p. 7.

8 ATO, *How SBR works*, <<https://www.ato.gov.au/general/online-services/use-online-services/general-services/standard-business-reporting/how-sbr-works/>>, accessed 7 April 2015.

9 Mr Geoff Leeper, Second Commissioner, People, Systems and Services Group, ATO, *Transcript of Evidence*, Canberra, Wednesday 18 March 2015, p. 3.

in, and we strongly encourage them to do that, obviously, before they release it.<sup>10</sup>

### Potential impact of SBR on tax practitioners' business models

2.11 The Committee, referring to a speech made by Mr Leeper in October 2014, asked whether tax practitioners' revenue would be impacted by the estimated \$500 million that SBR is expected to save the economy in red tape and professional fees. Mr Leeper confirmed that the introduction of SBR will significantly decrease the need for manual data entry:

It is probably unavoidable to say that if you are entering data automatically, rather than providing data to be entered by another party, that is a cost that you are going to avoid. In large part, those costs are in tax agent and bookkeeper practices. So rather than obfuscating the issue, I described it as clearly as I could. Standard Business Reporting will remove, in large part, the need for data entry and re-entry. Those are costs which would be avoided by the economy.<sup>11</sup>

2.12 The Tax Institute stated that many of its members were concerned regarding Mr Leeper's comments in October and the impact that SBR might have on their practices:

This has caused alarm amongst some practitioners who have interpreted the ATO's strategy as eliminating them from compliance work. Many practitioners are unclear as to what Standard Business Reporting means for their practices and the timetable for any broad changes.<sup>12</sup>

2.13 Mr Michael Croker, Tax Leader Australia from the Chartered Accountants of Australia and New Zealand, also conveyed practitioners' concerns regarding the future of their business models under SBR:

There is a fear factor about SBR in the sense that...if you can upload all your data so efficiently, what happens to their business models? We are trying to work with members to try and identify what the future of the tax industry looks like. It is very important from a member perspective.<sup>13</sup>

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10 Mr Leeper, ATO, *Transcript of Evidence*, Canberra, Wednesday 18 March 2015, p. 3.

11 Mr Leeper, ATO, *Transcript of Evidence*, Canberra, Wednesday 18 March 2015, p. 7.

12 Tax Institute, *Submission 3*, p. 3.

13 Mr Michael Croker, Tax Leader Australia, Chartered Accountants of Australia and New Zealand, *Transcript of Evidence*, Canberra, Wednesday 18 March 2015, p. 4.

- 2.14 However, Mr Croker assured the Committee that, despite the impact of SBR, regarding data entry, tax practitioners will continue to be valued by businesses as trusted advisors in tax matters:

We think the ATO is making a great effort to improve communications and have access to materials but, with all the other things that go on in day-to-day business, we do not see that the role of the practitioner as a trusted adviser would be supplanted by what is going on.<sup>14</sup>

- 2.15 This was supported by Mr Peter Strong, the Chief Executive Officer (CEO) of the Council of Small Business Australia, who confirmed that businesses are likely to continue to value the advice and services provided by tax practitioners even with the streamlining offered under SBR:

If you are running a business, you want to concentrate on the business...so [businesses] will go to a tax agent or an accountant or whoever it is and they will say, 'Fix this,' even though they may be able to fix it themselves. Plenty of people walk around the place and say, 'Just fix it yourself; it's cheaper.' No, they do not want to. They want to run their business. Fixing it yourself means you have got to concentrate on something else, so the market will sort this out. The accountants will sort this out.<sup>15</sup>

## Tax Agent Portal

- 2.16 The ATO noted that the introduction of SBR 'is not just a straight replacement of one lodgement channel with another form of lodgement'<sup>16</sup> and advised the Committee that the ATO will continue to maintain the Tax Agent Portal whilst also working to 'move the desired functionality to a more robust platform through ATO Online.'<sup>17</sup>

- 2.17 The Inspector-General of Taxation, Mr Ali Noroozi, highlighted the importance of the ATO allowing both the old and new system to run concurrently for some time:

I think from the submissions we have received that there is a fear, because tax agents have been using the portal for a long time, and even though there are problems with it and we hear about the problems. They fear it going and having to use a new system that may have teething problems or whatever. The most important

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14 Mr Croker, Chartered Accountants of Australia and New Zealand, *Transcript of Evidence*, Canberra, Wednesday 18 March 2015, p. 8.

15 Mr Peter Strong, Chief Executive Officer, Council of Small Business Australia, *Transcript of Evidence*, Canberra, Wednesday 18 March 2015, p. 8.

16 Mr Leeper, ATO, *Transcript of Evidence*, Canberra, Wednesday 18 March 2015, p. 3.

17 ATO, *Submission 2*, p. 25.

thing is that the tax office is not cutting one off, one day, and opening up the other but that they both will be available for some time. That is really important.<sup>18</sup>

- 2.18 Mr Leeper assured the Committee that there are no plans to close the Tax Agent Portal in the near future and that the Tax Agent Portal would not be closed without consultation and agreement from tax practitioners:

I cannot think of an actual retirement date for the taxation portal. I cannot see one in our forward plan. What we are trying to do is work with the software sector, with tax agents, to bring a new and better value added-approach to how they interact with the tax office. Somewhere down the track, we will propose to tax agents that we close the portal. That will be a discussion and an agreement, not something we will arbitrarily do. I cannot identify, in my head, that we have a close date for the portal at this point.<sup>19</sup>

- 2.19 The ATO advised the Committee that a new version of the existing Tax Agent Portal was scheduled to be released in March 2015<sup>20</sup> and that this new version would:

- increase availability, stability and performance – resulting in an improved experience for users;
- enable changes to be delivered in a more flexible manner with minimal outages; and
- provide an improved platform for services as the ATO works to implement the end state.<sup>21</sup>

- 2.20 The Tax Institute described the Tax Agent Portal as ‘a crucial tool of trade for many tax agents’ and expressed its members’ concerns and frustrations regarding the Tax Agent Portal’s operation and its impact on tax practitioners’ productivity:

Even when the Portal is operational, it can still function slowly which slows the productivity of agents using the Portal...When the Portal is down (due to maintenance or other technical problems), tax agents are unable to work until the Portal becomes available again. It is of particular concern that unscheduled disruptions to the Portal are arising in periods of peak usage.<sup>22</sup>

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18 Mr Ali Noroozi, Inspector-General of Taxation, Office of the Inspector-General of Taxation, *Transcript of Evidence*, Canberra, Wednesday 18 March 2015, p. 4.

19 Mr Leeper, ATO, *Transcript of Evidence*, Canberra, Wednesday 18 March 2015, p. 4.

20 The ATO confirmed by email, on 4 May 2015, that the technical upgrade of the Tax Agent Portal was successfully released on 30 March 2015.

21 ATO, *Submission 2*, p. 25.

22 Tax Institute, *Submission 3*, p. 2.

2.21 The Tax Institute acknowledged the ATO's advice that the migration of the Tax Agent Portal to an ATO Online platform is expected to increase the stability of the Portal. However, it noted that the ATO has not communicated a firm timeline for improvements to the Tax Agent Portal during their consultations. Furthermore, the Tax Institute informed the Committee that the ATO had not informed the Tax Institute of the new version of the Tax Agent Portal that the Committee heard would be released in March 2015.<sup>23</sup>

## Lodgement program for tax practitioners

2.22 The ATO's Lodgement Program for tax practitioners establishes concessional due dates for the lodgement of tax returns. Income tax returns are generally due by 31 October and fringe benefit tax returns are generally due by 28 May. Under the Lodgement Program, a tax practitioner may lodge by the concessional due date of 15 May the following year for income tax returns and 25 June for fringe benefits tax (FBT) returns.<sup>24</sup>

2.23 On 1 July 2013, the ATO introduced a new Lodgement Program which 'promotes a level playing field by differentiating between the lodgement performance of registered agents.'<sup>25</sup> In order to receive the concessional due dates provided by the Lodgement Program, tax agents must:

- lodge returns electronically (unless there are exceptional circumstances); and
- lodge 85 per cent or more of their clients' current year returns by the Lodgement Program due date (or when a deferral has been granted, by the deferred due date).<sup>26</sup>

2.24 The ATO may apply treatments to agents that do not lodge 85 per cent or more of their clients' returns on time. The table below outlines the ranges of lodgement performance and the ATO response.

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23 Tax Institute, *Submission 3*, p. 3.

24 ATO, *Submission 2*, p. 22-23.

25 ATO, *Requirements and how they affect you*, <<https://www.ato.gov.au/Tax-professionals/Prepare-and-lodge/Lodgment-program-framework/Requirements-and-how-they-affect-you/>>, accessed 9 April 2015.

26 ATO, *Requirements and how they affect you*, <<https://www.ato.gov.au/Tax-professionals/Prepare-and-lodge/Lodgment-program-framework/Requirements-and-how-they-affect-you/>>, accessed 9 April 2015.

Table 2.1 Lodgement performance ranges and subsequent treatments

Yearly average performance percentage levels	Approach
85% or above	No treatment. Agent is meeting the benchmark and will receive a certificate to confirm.
75-84%	No treatment. Agent is close to achieving the benchmark and can take some steps to improve performance in the future.
65-74%	No treatment. Agent needs to take some steps to improve their performance for next year or will likely be contacted by the ATO in the future.
41-64%	Treatment. The ATO will contact the agent to discuss the circumstances that are affecting the agent and the steps the agent can take to improve. The ATO will continue to monitor the agent's progress.
40% or below	Treatment. The ATO will contact the agent to discuss the agent's low performance. If the agent has been below 40 per cent for some time, the agent may be entered into a guided lodgement program. The guided lodgement program comprises of a series of progressive lodgement milestones throughout the year. It may result in the ATO writing directly to the agent's clients to seek lodgement.

Source Australian Taxation Office, *If you do not meet the performance requirement*, <https://www.ato.gov.au/Tax-professionals/Prepare-and-lodge/Lodgment-program-framework/If-you-do-not-meet-the-performance-requirement/>, accessed 9 April 2015.

2.25 The ATO advised the Committee that the new Lodgement Program has significantly improved overall lodgements and performance:

The program has demonstrated significant change, with the transitional year (2012 income tax returns) seeing a rise from 83% in the previous year to 92% of income tax returns lodged by tax agents on time. In the following year (2013 income tax returns) this figure increased to 93%.<sup>27</sup>

2.26 The Tax Institute highlighted the impacts of the new Lodgement Program on agents whose business model focuses on recalcitrant clients:

The 85% rule can sometimes operate as a blunt instrument for dealing with lodgements. For example, tax practitioners whose business model is to deal with recalcitrant clients are not automatically exempt from the rule and have to explain their situation to the ATO.<sup>28</sup>

27 ATO, *Submission 2*, p. 23.

28 Tax Institute, *Submission 3*, p. 4.

2.27 The Tax Institute also observed that the consequences of failing to lodge 85 per cent or more of their clients' returns on time are not well understood by agents:

Potential actions under the differentiated framework include provision of self-help tools, contact and assistance from the ATO, and removal from concessional due dates for lodgement of tax returns currently available to tax agents under the Lodgement Program. Whether any or all of these sanctions apply for an agent who fails to meet the 85% rule is not well understood by practitioners, as the ATO is currently focussing on dealing with the worst performing agents.<sup>29</sup>

2.28 The ATO advised the Committee that the ATO Lodgement Working Group, which comprises representatives of tax professional associations, individual tax practitioners and the ATO, has recently revisited the program and agreed to look at refining the design to:

- cater for the impact of past years' returns, including the impact of taking on new or returning clients with one or more prior years' returns overdue;
- clarify what and when treatments will be applied to underperforming agents; and
- develop effective communications to address practitioners' perceptions of the program, as compared to the actual program.<sup>30</sup>

## Stakeholder consultation

2.29 In 2013, the ATO streamlined its consultation arrangements as part of its Capability Action Plan. The number of ongoing consultation committees was reduced from 68 to eight, with special purpose and technical forums being convened as required.<sup>31</sup>

2.30 In late 2014, the Committee received mostly positive assessments of the new arrangements from stakeholders. The Tax Institute and the Council of Small Business Australia were supportive of the new arrangements. However, despite praising the ATO for reducing duplication, the Institute of Public Accountants noted that the disbandment of ongoing specialty committees reduced the ATO's engagement with industry on some taxation issues.<sup>32</sup>

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29 Tax Institute, *Submission 3*, p. 4.

30 ATO, *Submission 2*, pp. 23-24.

31 ATO, *Capability Action Plan: September 2014 Update on Progress*, p. 8.

32 House Standing Committee on Tax and Revenue, *2013 Annual report of the Australian Taxation Office: Second Report*, November 2014, p. 24.

- 2.31 At that time, the Inspector-General of Taxation, Mr Ali Noroozi, commented that smaller tax practitioners, particularly those in regional areas, believed that the ATO had shifted away from active consultation and towards one-way provision of information when the Tax Practitioner Forum (ATPF) was replaced by the Tax Practitioner Advisory Group (ATPAG). The Inspector-General also observed that the new consultation arrangements may have resulted in reduced transparency, but that he is confident that the ATO will 'self-correct' and reinstate committees as required.<sup>33</sup>
- 2.32 The ATO advised the Committee that the new consultation framework is 'now bedded down' and that a post-implementation review will be conducted this year, from March to June.<sup>34</sup> The ATO is working with the Consultation Steering Group (comprising representatives from the tax, legal, and accounting professional associations; and superannuation and business associations) to develop terms of reference for this review. The draft terms of reference include:
- Reviewing the effectiveness of the arrangements against the intent, assessing positives and/or shortcomings, whether best practice is being used and whether arrangements are dynamic, fit for purpose and cost-effective.<sup>35</sup>
- 2.33 The ATO also reported on its improvements to the 'quality and presentation of matters under consultation' published on the ATO's website. This includes improving initial stakeholder engagement and improving the methods by which members of the community can raise matters for consultation and register their interest in participating in consultation.<sup>36</sup>

## ATO correspondence

- 2.34 The Tax Institute informed the Committee that its members have raised concerns regarding the tenor and accuracy of the ATO's correspondence with their clients. The Tax Institute noted that the quality and tone of the ATO's correspondence varied and that some letters had a 'heavy-handed tone' whilst others were 'appropriately drafted'. Further, poor correspondence was affecting taxpayers' confidence in the tax system:

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33 House Standing Committee on Tax and Revenue, *2013 Annual report of the Australian Taxation Office: Second Report*, p. 24.

34 ATO, *Submission 2*, p. 18.

35 ATO, *Submission 2*, pp. 18-19.

36 ATO, *Submission 2*, p. 19.

It is not uncommon to receive letters from the ATO that state that a form has not been lodged or a payment has not been made, with a small note to those who have received the letter incorrectly. These letters negatively impact on the confidence of complying taxpayers in the administration of the tax system.<sup>37</sup>

- 2.35 The ATO outlined its processes regarding the generation and distribution of this correspondence, with the Second Commissioner, Mr Leeper, informing that Committee that:

In many cases, letters such as these would be system-generated, which means that something about the relationship between the tax office and the taxpayer has triggered an event. The event generates a system-driven letter.<sup>38</sup>

- 2.36 The First Assistant Commissioner – ATO Corporate, Ms Suzanne Sinclair, assured the Committee that the ATO is focusing on improving its correspondence, including the style and clarity of its letters, and seeking to better understand and refine the ways in which it communicates with taxpayers.<sup>39</sup> The Acting Second Commissioner – Compliance Group, Mr Michael Cranston, noted that:

A lot of our reinvention work is about the client experience and a big part of that is getting the right culture to deliver that client experience. The aim is to ensure that the content of our letters delivers the right sort of experience. If we are after some information, we should just ask for it nicely. I think that will help too.<sup>40</sup>

- 2.37 The Chartered Accountants of Australia and New Zealand, supported the comments made by Tax Institute and confirmed that they had received similar reports from members. However, Mr Croker, from Chartered Accountants Australia and New Zealand, informed the Committee that the ATO has been consulting with them regarding refining the language used in ATO correspondence.<sup>41</sup>
- 2.38 The ATO explained how it is utilising behavioural analytics, and drawing on the experiences of the United Kingdom, to develop its correspondence

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37 Tax Institute, *Submission 3*, p. 5.

38 Mr Leeper, ATO, *Transcript of Evidence*, Canberra, Wednesday 18 March 2015, p. 4.

39 Ms Suzanne Sinclair, First Assistant Commissioner, ATO Corporate, ATO, *Transcript of Evidence*, Canberra, Wednesday 18 March 2015, p. 5.

40 Mr Michael Cranston, Acting Second Commissioner, Compliance Group, ATO, *Transcript of Evidence*, Canberra, Wednesday 18 March 2015, p. 5.

41 Mr Croker, Chartered Accountants of Australia and New Zealand, *Transcript of Evidence*, Canberra, Wednesday 18 March 2015, p. 5.

and communication in the area of debt. Mr Leeper detailed how the ATO was using colours as signals in its letters:

When you enter into a payment agreement, the confirmation you get from us has a green tone to it – which is to signify ‘go’. If the person becomes noncompliant with those arrangements, the colour will change. You do not want to get a red letter – because it basically says, ‘We are going to institute legal action.’ We are trying to work with both the layouts and with getting the right signals to the person.<sup>42</sup>

- 2.39 The ATO is also seeking to move away from call centre scripts to allow service providers to ‘actually have natural conversations.’ The First Assistant Commissioner – ATO People, Mrs Jacqui Curtis, informed the Committee that the ATO is investing in training programs for staff, particularly in debt and service delivery, to ensure that ‘things are being done properly’ whilst also empowering staff to have natural conversations instead of rigidly following a script.<sup>43</sup>

## No touch tax returns

- 2.40 The ATO’s new lodgement product, *myTax*, streamlines the lodgement of tax returns by using the shared registry information provided by banks, government agencies, and employers to prefill individuals’ tax returns. It is available on tablets, smartphones, and computers.<sup>44</sup>
- 2.41 To use *myTax*, taxpayers are required to create a myGov account and link it to the ATO. Before lodging a return, taxpayers must review the prefilled details and declare any donations, work-related expenses, investment income expenses or taxation fees that they have incurred.<sup>45</sup>
- 2.42 In 2014, the ATO released *myTax* for taxpayers with straightforward tax affairs, where the taxpayer:
- was an Australian resident for tax purposes from 1 July 2013 to 30 June 2014;
  - only received income from salary and wages, allowances, bank interest, dividends and/or Australian government payments;

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42 Mr Leeper, ATO, *Transcript of Evidence*, Canberra, Wednesday 18 March 2015, p. 5.

43 Mrs Jacqui Curtis, First Assistant Commissioner, ATO People, ATO, *Transcript of Evidence*, Canberra, Wednesday 18 March 2015, p. 6.

44 ATO, *MyTax* <<https://www.ato.gov.au/Individuals/Lodging-your-tax-return/Lodge-online/MyTax/>>, accessed 15 April 2015.

45 ATO, *Submission 2*, p. 5

- only had deductions for work-related expenses, expenses relating to income from interest or dividends, gifts and donations and/or the cost of managing their own tax affairs; and
  - only had tax offsets for the seniors and pensions tax offset, the zone and overseas forces tax offset and/or the private health insurance rebate.<sup>46</sup>
- 2.43 The ATO advised the Committee that as of 24 February 2015, more than one million taxpayers had prepared and lodged their returns using *myTax*. The ATO reported that *myTax* has been very well received, with 90 per cent of users 'satisfied' or 'very satisfied' and 83 per cent of users rating *myTax* as 'much better' or 'better' than their previous method of lodgement.<sup>47</sup>
- 2.44 In 2015, the ATO plans to expand *myTax* to taxpayers with medium complexity, such as those with more complex investment income, superannuation and foreign pensions. In 2016, the ATO plans for *myTax* to be available for all individual taxpayers, including those with complex affairs and to retire the e-tax lodgement product.<sup>48</sup>
- 2.45 The ATO intends to continue to improve the personalisation of the lodgement experience, including incorporating a facility that will allow taxpayers to upload relevant records directly into ATO systems. The ATO also plans to expand its range of online services available to individuals to include amendments for 2014 and 2015 returns and the lodgement of prior year (2014) returns.<sup>49</sup>
- 2.46 The ATO advised the Committee that the automated reporting of information, following the introduction of Single Touch Payroll in July 2016, will further streamline the tax return process for individuals and make prefill information available earlier.<sup>50</sup>

## Administration of the ATO

### Performance measurement and reporting

- 2.47 In 2013, the Australian Public Service Commission conducted and published the Capability Review of the ATO. The Capability Review found a number of issues, including that the ATO's governance

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46 ATO, *MyTax* <<https://www.ato.gov.au/Individuals/Lodging-your-tax-return/Lodge-online/MyTax/>>, accessed 28 April 2015.

47 ATO, *Submission 2*, p. 5.

48 ATO, *Submission 2*, pp. 5-6.

49 ATO, *Submission 2*, p. 6.

50 ATO, *Submission 2*, p. 7.

arrangements were too 'rules driven' and that corporate management practices were too elaborate and formulaic.<sup>51</sup>

2.48 In response, the ATO produced a Capability Action Plan to address the issues identified, including three key documents to focus its strategic direction: the *ATO strategic intent*; the *ATO corporate plan 2014-18*; and the *ATO IT strategy*.<sup>52</sup> The ATO advised the Committee that its implementation of the Capability Action Plan is 'progressing well' and that its progress is 'on track.'<sup>53</sup>

2.49 The ATO advised the Committee that it is placing more emphasis on measuring the impact of its activities rather than just measuring the activities.<sup>54</sup> The *ATO Strategic Intent* outlines twelve key performance indicators (KPIs) against which the ATO now measures its performance:

- community and key stakeholders engagement and satisfaction with ATO performance;
- number of customer service interactions delivered through its multi-channel environment;
- proportion of businesses and individuals registered in the system;
- proportion of businesses and individuals that lodge on time;
- proportion of liabilities paid on time by value for each of the major tax revenue types;
- adjusted average cost to individual taxpayers of managing their tax affairs;
- net cost to collect \$100;
- earlier resolution of disputed cases;
- ratio of collectable debt to net tax collections;
- GST gap as a proportion of GST revenue;
- operating within budget; and
- employee engagement compared to APSC state of service.<sup>55</sup>

2.50 The Committee asked the ATO how frequently it would report on these KPIs and how this information will be published. The Committee drew the ATO's attention to the example set the United Kingdom's Revenue and Customs department, which publishes performance updates on its

51 Australian Public Service Commission, *Capability Review of the Australian Taxation Office*, p. 12.

52 ATO, *Our strategic direction*, <<https://www.ato.gov.au/About-ATO/About-us/Our-strategic-direction/>>, accessed 15 April 2015.

53 ATO, *Submission 2*, p. 12.

54 ATO, *Submission 2*, p. 20.

55 ATO, *ATO Strategic intent*, July 2014, p. 13.

business plan indicators quarterly.<sup>56</sup> The Committee asked whether it might expect the same from the ATO.<sup>57</sup>

- 2.51 The ATO responded that it expects to report on its performance annually and that the first performance reporting against the new KPIs (for the year of 2014-15) will be published in October 2015.<sup>58</sup> The ATO also advised the Committee that it is continuing to refine its KPIs and is working to incorporate the findings of both the Organisation for Economic Cooperation and Development (OECD) Measures of Tax Compliance Outcomes 1 and the Australian National Audit Office (ANAO) pilot project on key performance indicators.<sup>59</sup>

### Perception of fairness KPI

- 2.52 The ATO informed the Committee that it recently commissioned new research into perceptions of fairness in tax disputes. The research focused on the individuals and micro small business markets, based on the proportion of disputes that arise in these markets.<sup>60</sup> The ATO intends to conduct surveys regarding perceptions of dispute resolution quarterly; research for the second quarter (October to December 2014) is currently being conducted.<sup>61</sup>
- 2.53 The ATO reported that its initial research considered a sample of 231 disputes finalised between 1 July and 30 September 2014. The research found that across the sampled taxpayers who had recently finalised a dispute with the ATO:
- on average, 50 per cent agreed or strongly agreed that the overall disputes process was fair;
  - where the outcome fully supported the taxpayer (allowed in full), 64 per cent agreed or strongly agreed that the process was fair;
  - where the outcome partially supported the taxpayer (allowed in part), 51 per cent agreed or strongly agreed that the process was fair; and

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56 United Kingdom's Her Majesty's Revenue and Customs, *Business plan indicators*, <<https://www.gov.uk/government/publications/business-plan-indicators>>, accessed 22 April 2015.

57 Mr Angus Taylor MP, Federal Member for Hume, *Transcript of Evidence*, Canberra, Wednesday 18 March 2015, p. 9.

58 Mr Leeper, ATO, *Transcript of Evidence*, Canberra, Wednesday 18 March 2015, p. 9.

59 ATO, *Submission 2*, p. 20.

60 ATO, *Submission 2*, p. 15.

61 Mr Leeper, ATO, *Transcript of Evidence*, Canberra, Wednesday 18 March 2015, p. 9.

- where the outcome did not support the taxpayer (disallowed in full), 25 per cent agreed or strongly agreed that the process was fair (60 per cent disagreed or strongly disagreed).<sup>62</sup>
- 2.54 The ATO advised the Committee that it plans to work closely with its objection teams to improve its average overall perception of fairness from 50 per cent to 60 per cent in the next twelve months.<sup>63</sup> The Second Commissioner, Mr Leeper, advised the Committee that the ATO will be focusing on five areas as a result of this survey:
- undertaking more reasonable explanations of the process (making sure that taxpayers are not feeling ‘ambushed’ by things that the ATO knows and the taxpayer ought to know);
  - taking individual circumstances into account;
  - making sure the taxpayer has a sense of control over the way the objection is handled;
  - making appropriate interest and penalty decisions; and
  - meeting reasonable costs for the taxpayer.<sup>64</sup>
- 2.55 The Committee asked whether the perception of fairness is likely to become a KPI. The First Assistant Commissioner, Ms Sinclair, responded ‘definitely’.<sup>65</sup> Ms Sinclair highlighted the shift in focus from measuring only the general perception of fairness to measuring perceptions of fairness within the context of dispute resolution. Ms Sinclair informed the Committee that the ATO’s research has resulted in the development of indicators around the perception of fairness:
- So we went and did that research and now we have some indicators around the perception of fairness in disputes...the idea would be to continue that on so that we can develop some trends and also so that we can respond to some of the findings out of the research.<sup>66</sup>
- 2.56 The Committee’s report on its inquiry into tax disputes, tabled on 26 March 2015, recommended that the ATO review its performance reporting measures and develop a measureable KPI of taxpayer perceptions of fairness in tax disputes.<sup>67</sup>

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62 ATO, *Submission 2*, pp. 15-16.

63 ATO, *Submission 2*, p. 17.

64 Mr Leeper, ATO, *Transcript of Evidence*, Canberra, Wednesday 18 March 2015, p. 9.

65 Ms Sinclair, ATO, *Transcript of Evidence*, Canberra, Wednesday 18 March 2015, p. 9.

66 Ms Sinclair, ATO, *Transcript of Evidence*, Canberra, Wednesday 18 March 2015, p. 9.

67 House Standing Committee on Tax and Revenue, *Tax disputes*, March 2015, p. 17.

## Resourcing

- 2.57 The ATO informed the Committee that its workforce had been reduced by more than 3,500 people between July 2013 and December 2014, through a combination of retirement, resignation, transfers, and redundancies. The redundancies were on a voluntary basis and were assessed using a scale of business needs, critical positions and skills.<sup>68</sup>
- 2.58 The ATO advised that more than 90 per cent of those who took redundancies were in positions where opportunities for efficiency had been identified and were 'non-essential for business delivery' as the skills were 'easily available and accessible elsewhere'. Of these positions, nearly 40 per cent were middle management (Executive Level 1 and 2).<sup>69</sup>
- 2.59 The ATO described its remaining workforce as being 'more qualified', 'younger' and having 'less unplanned leave.' The ATO acknowledged that whilst it has lost some experienced people, with the departing group having an average tenure of 19 years, 'a good deal of experience remains', with the remaining workforce having an average tenure of 12 years.<sup>70</sup>
- 2.60 The ATO assured the Committee that it is 'used to turnovers in the workforce and dealing with the resulting transfer of knowledge and skills' and that it has 'strategies in place to ensure revenue collection and services are not adversely affected by recent staffing reductions.' The ATO also noted that it is 'operating within its budget, is meeting all published service delivery standards and is on track or ahead of Compliance revenue plans.'<sup>71</sup>
- 2.61 The ATO outlined a number of strategies that it has in place to minimise any negative impacts of staffing reductions to date and to prepare the organisation for any further efficiencies over the forward estimates, including:
- reviewing supplier costs;
  - redesigning business processes, procedures and system fixes;
  - removing internal red tape and unnecessary meetings, processes and reporting requirements;
  - rationalisation of property and infrastructure;
  - better use of data matching and risk profiling;
  - focusing on upstream prevention, rather than correction;

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68 ATO, *Submission 2*, p. 8.

69 ATO, *Submission 2*, p. 8.

70 ATO, *Submission 2*, p. 8.

71 ATO, *Submission 2*, p. 8.

- early engagement, dispute resolution and sensible settlements;
- using new technology (e.g. *myTax*, voice authentication, mobile app);
- rationalisation and efficiencies in back office functions, including moving people from back office roles to frontline service roles;
- flattening and delaying management structures; and
- using a mix of ongoing, non-ongoing, casual and externally provided staff.<sup>72</sup>

2.62 The Tax Institute commented favourably on the ATO's new staffing arrangements noting that the ATO's work reviewing and updating published guidance as well as the 'reinvention of the ATO' were welcome initiatives resulting from the 'unprecedented number of senior private sector appointments to the ATO in recent times.'<sup>73</sup>

## Reinventing the ATO blueprint

2.63 Immediately following the hearing, the ATO released the *Reinventing the ATO: program blueprint*. The program is intended to 'reinvent' the client and staff experience in the tax and super systems and to change the culture of the ATO.<sup>74</sup> Mr Leeper informed the Committee that:

The blueprint describes the kind of experience Australians can expect when they deal with the ATO. It will guide everything we do in the coming years as we endeavour to transform the tax and superannuation experience for all taxpayers. The blueprint outlines how we will be changing and when these changes will take place. It anchors our entire reinvention program.<sup>75</sup>

2.64 Mr Leeper told the Committee that the blueprint reflects feedback from thousands of people across different market segments, as well as feedback from tax and legal professionals, other government agencies, ATO staff and the Committee itself.<sup>76</sup>

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72 ATO, *Submission 2*, p. 9.

73 Tax Institute, *Submission 3*, p. 2.

74 ATO, *Reinventing the ATO: program blueprint*, March 2015, p. 7.

75 Mr Leeper, ATO, *Transcript of Evidence*, Canberra, Wednesday 18 March 2015, p. 1.

76 Mr Leeper, ATO, *Transcript of Evidence*, Canberra, Wednesday 18 March 2015, p. 1.

## Compliance strategies

### Tax gap

- 2.65 The ATO defines the tax gap as the difference between the amount of tax legally payable (assuming full compliance by all taxpayers) and the amount of tax actually collected.<sup>77</sup> The tax gap has been a subject of interest for parliamentary committees for a number of years.
- 2.66 In 2012, the Joint Committee of Public Accounts and Audit (JCPAA) recommended that the ATO 'examine tax gap methodologies' and 'publically release its Tax Gap analysis relating to Goods and Services Tax (GST) collections'.<sup>78</sup> The ATO now publishes its estimations for the GST gap and the Luxury Car Tax (LCT) gap in its annual report.<sup>79</sup>
- 2.67 For 2013-14, the GST gap was estimated to be 6 per cent, equating to a revenue gap of \$3.1 billion, and the LCT gap was estimated to be 4.8 per cent, equating to a revenue gap of \$21.4 million.<sup>80</sup>
- 2.68 The ATO reported that the GST gap has trended downwards since the introduction of the GST and has been broadly consistent over the past few years, 'suggesting that compliance levels are being maintained'. The LCT gap has remained relatively stable since the ATO began measuring it in 2009-10, 'providing assurance that compliance levels have been maintained'.<sup>81</sup>
- 2.69 The ATO informed the Committee that in 2014 it refreshed the estimates for the GST and LCT and in 2015 it is scheduled to produce estimates of:
- the income tax gap for the large market;
  - a tax gap for excise revenue products;
  - the income tax gap for high wealth individuals; and
  - a withholding gap for employer PAYG obligations.<sup>82</sup>
- 2.70 Furthermore, in 2016, the ATO is scheduled to produce estimates of:
- the individual income tax gap;
  - the small to medium business income tax gap; and

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77 ATO, *Tax gap overview*, <[https://www.ato.gov.au/Business/Bus/Measuring-tax-gaps-in-Australia-for-the-goods-and-services-tax-\(GST\)-and-the-luxury-car-tax-\(LCT\)/?page=2#Tax\\_gap\\_overview](https://www.ato.gov.au/Business/Bus/Measuring-tax-gaps-in-Australia-for-the-goods-and-services-tax-(GST)-and-the-luxury-car-tax-(LCT)/?page=2#Tax_gap_overview)>, accessed 17 April 2015.

78 Joint Committee of Public Accounts and Audit, *Report 434: Annual Public Hearing with the Commissioner of Taxation – 2012*, pp. 38-39.

79 ATO, *Annual report 2013-14*, p. iv.

80 ATO, *Annual report 2013-14*, p. iv.

81 ATO, *Annual report 2013-14*, p. 56.

82 ATO, *Submission 2*, p. 26.

- a consolidated estimate for all taxes administered.<sup>83</sup>
- 2.71 The ATO has completed its preliminary estimates for the large market, excise and PAYG gaps, which it expects to be validated and refined over the coming months. The Acting Second Commissioner, Mr Cranston, told the Committee that:
- We have actually worked up the methodology for the large market, which is one of the most difficult... We have looked at the data and we have some rough estimates at this stage, but before we share that we really need to take it back to the experts to get the methodology signed off, to ensure that it is credible.<sup>84</sup>
- 2.72 This will be achieved through a process of engagement with recognised experts in the field, other revenue authorities who publish tax gap estimates, other Australian government agencies and external stakeholders (such as the ATO's Large Business Liaison Group). The ATO advised the Committee that the decision regarding whether to make these estimates public will be made 'once there is an informed view on the relative certainty and credibility of the estimates'.<sup>85</sup>

### Random audit program

- 2.73 The ATO has been advised by the United Kingdom's Revenue and Customs and the United States' Internal Revenue Service that 'the absence of a random audit program means the ATO is unlikely to develop credible estimates.'<sup>86</sup> The ATO advised the Committee that it will initially develop estimates for the individual income tax gap and the small to medium business income tax gap without the use of a random audit program.<sup>87</sup>
- 2.74 However, the ATO informed the Committee that it is actively considering the benefits of the inclusion of a random audit program as well as how it might minimise the cost and impost of such a program on taxpayers. The ATO will consult with industry on the potential design of a random audit program prior to July 2015 and, if commissioned, the program would be scheduled to commence in early 2016.<sup>88</sup>
- 2.75 The Inspector-General of Taxation, Mr Noroozi, commented on the use of a random audit program, noting that it may be useful for a number of reasons but is unlikely to be popular with taxpayers:

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83 ATO, *Submission 2*, pp. 26-27.

84 Mr Cranston, ATO, *Transcript of Evidence*, Canberra, Wednesday 18 March 2015, p. 10.

85 ATO, *Submission 2*, p. 26.

86 ATO, *Submission 2*, p. 27.

87 ATO, *Submission 2*, p. 27.

88 ATO, *Submission 2*, p. 27.

Taxpayers may not like it necessarily. If they are perfectly compliant, then they are not going to appreciate somebody knocking on their doors and wanting to go through everything. On the other hand it can be an effective feedback loop into your risk assessment tools. If you do a number of random audits and you identify further characteristics you should be looking for, it could be quite useful.<sup>89</sup>

- 2.76 The Deputy Inspector-General of Taxation, Mr Andrew McLoughlin, advised the Committee that it is important to consider and mitigate the impact that a random audit program might have on taxpayers' perception of the tax system:

If we are going to have random audits we might want to embrace the idea of providing some sort of incentive so that people do not feel disadvantaged. So, if you are doing the right thing and you get picked for a random audit, it may be that you get compensated as a way of trying to remove stigma or difficulty associated with it...Obviously you do not want people feeling as though they are being shaken down when they are not doing anything wrong whatsoever.<sup>90</sup>

### Voluntary disclosure initiatives

- 2.77 The Acting Second Commissioner, Mr Cranston, advised the Committee that whilst the ATO is aware of the potential impacts on the community, there are other benefits of improving risk assessments through the use of a random audit program, including the potential to better educate the community. Mr Cranston gives the example of the ATO's work regarding reporting for the building and construction industry:

One area that has really helped us identify a number of taxpayers who have not lodged is taxable payments reporting for the building and construction industry. Contractors have to disclose the payments they make to subcontractors. Through our matching exercises additional income tax and GST liabilities of \$2.2 billion were voluntarily reported to the ATO by businesses whose incomes were reported under this system. It resulted in the lodgement of returns of \$265 million and goods and services tax of \$500 million. That is one example of trying to bring some back into

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89 Mr Noroozi, Inspector-General of Taxation, *Transcript of Evidence*, Canberra, Wednesday 18 March 2015, p. 13.

90 Mr Andrew McLoughlin, Deputy Inspector-General of Taxation, Office of the Inspector-General of Taxation, *Transcript of Evidence*, Canberra, Wednesday 18 March 2015, p. 14.

the system, and there are other areas as well. The project has been a good initiative.<sup>91</sup>

2.78 Mr Croker, from the Chartered Accountants of Australia and New Zealand, noted that the UK utilises periodic voluntary tax disclosures, particularly when introducing initiatives for improving data collection:

HMRC will have rolling series of domestic programs: ‘Come forward now and you will come back into the tax system, because sooner or later we’re going to get you.’ They have had projects on undisclosed rents. They have focused on particular trades. Peter has mentioned the building trade, for example. So I think that is something worth considering, but it does not seem to have had much traction yet in the Australian context.<sup>92</sup>

## Cash economy

2.79 The ATO defines the cash economy (also commonly referred to as the ‘hidden’ or ‘shadow’ economy) as businesses (including those outside of the system) that deliberately hide income to avoid paying the right amount of tax by not recording or reporting all their cash or electronic transactions.<sup>93</sup> This behaviour is characterised by businesses:

- avoiding obligations by not registering or lodging tax returns and business activity statements;
- not reporting all income, including income collected in cash and electronically; and/or
- paying cash wages and not deducting PAYG withholding.<sup>94</sup>

2.80 In 2010, the World Bank reported that Australia has one of the world’s smallest ‘shadow economies’, ranking 14<sup>th</sup> out of 120 countries. In 2013, the Australian Bureau of Statistics (ABS) estimated that the size of the ‘non-observed economy’ was approximately 1.5 per cent of Gross Domestic Product (GDP).<sup>95</sup>

2.81 However, the ATO advised the Committee that there are a number of industries (more than 200 Australian and New Zealand Standard Industrial Classification (ANZSIC) codes) where the cash economy is

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91 Mr Cranston, ATO, *Transcript of Evidence*, Canberra, Wednesday 18 March 2015, p. 15.

92 Mr Croker, Chartered Accountants of Australia and New Zealand, *Transcript of Evidence*, Canberra, Wednesday 18 March 2015, p. 5.

93 ATO, *About the cash and hidden economy*, <<https://www.ato.gov.au/General/How-we-check-compliance/In-detail/Cash-economy/Overview/About-the-cash-economy/>>, accessed 24 April 2015.

94 ATO, *Submission 2*, p. 28.

95 ATO, *Submission 2*, p. 28.

prevalent and that, despite businesses moving away from the use of physical currency, cash still makes up approximately half of all payments made by consumers.<sup>96</sup>

- 2.82 The ATO noted that, despite being one of the world's smallest 'shadow economies' the cash economy is an endemic problem due to its presence across such a large number of industries. Furthermore, the cash economy has 'remained at a persistent level for a decade.'<sup>97</sup>
- 2.83 The cash economy cheats the community and unfairly disadvantages compliant businesses. Mr Strong, the CEO of the Council of Small Business Australia, commented that 'people [are] getting angry that someone is getting a leg up because they are not paying tax.'<sup>98</sup>
- 2.84 The Committee raised concerns regarding community perceptions that there are businesses 'rotting the system' and commented on the importance of ensuring that taxpayers can be confident that the obligations being placed on them are being shared equally. Mr Angus Taylor MP noted that:

I think it is fair to say that at the moment there is not an overwhelming amount of community sentiment, from what I can tell, that there are not increasingly large pockets of the economy that are I suppose rotting the system through the cash economy. That might just be a perception thing; it might not be factually true. But that is a huge issue, a really, really big issue.<sup>99</sup>

- 2.85 Mr Croker, from Chartered Accountants Australia and New Zealand, agreed that the cash economy was a 'huge issue' and commented that tax evasion, despite being a community problem, was not often considered in terms of 'whole-of-community solutions':

For example, if I am a landlord who is not disclosing the rents I receive, should I have standing in the eyes of, say, a tenancy tribunal if trying to eject an unruly tenant? They could just say, 'Hang on: there's no record of you having any —'. So, put more societal obligations around the cash economy. I think that is an idea worth exploring.<sup>100</sup>

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96 ATO, *Submission 2*, p. 28.

97 ATO, *Submission 2*, pp. 28-29.

98 Mr Strong, Council of Small Business Australia, *Transcript of Evidence*, Canberra, Wednesday 18 March 2015, p. 15.

99 Mr Angus Taylor MP, Federal Member for Hume, *Transcript of Evidence*, Canberra, Wednesday 18 March 2015, p. 13.

100 Mr Croker, Chartered Accountants of Australia and New Zealand, *Transcript of Evidence*, Canberra, Wednesday 18 March 2015, p. 5.

2.86 The ATO assured the Committee that it is committed to 'support honest businesses and prevent unfair competition from those not doing the right thing.'<sup>101</sup> The ATO advised the Committee that the focus of its strategies has shifted from primarily auditing taxpayers to 'taking a broad 'omitted income' focus addressing registration, lodgement and correct reporting.' Examples of these initiatives include:

- increasing community awareness of the impacts of the cash economy, including the adverse impacts on honest businesses (e.g. YouTube videos asking the community to consider whether cash economy behaviours that damage small businesses are fair);
- engaging with industry groups to explore how to jointly reduce unfair competition suffered by honest businesses within those industries;
- engaging on a geographic basis (e.g. the Haymarket area of Sydney, where the ATO took a more visible approach by physically visiting approximately 170 businesses to provide them with education material and an opportunity for consultation);
- continuing to improve risk models, analytics, data sources, data matching and industry benchmarking; and
- exploring how the ATO's risk modelling and benchmarking tools can be used cooperatively with taxpayers to help them lodge on time, correctly report their income, and avoid the risk of audit.<sup>102</sup>

2.87 The Acting Second Commissioner, Mr Cranston, advised the Committee that in 2013-14 the ATO conducted 160,000 activities (ranging from reviews, quick checks, integrity checks and more comprehensive audits) and raised the total revenue of \$197.1 million as a result of cash economy related casework. In 2014-15, as of 31 December, the ATO had conducted 102,946 activities with total revenues of \$120 million.<sup>103</sup>

### Emerging elements in the cash economy

2.88 The ATO informed the Committee that there are a number of emerging elements in the cash economy, including the use of crypto-currencies; recent developments in the sharing economy; and the use of sales suppression technologies to hide income.<sup>104</sup>

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101 ATO, *Submission 2*, p. 29.

102 ATO, *Submission 2*, p. 29.

103 Mr Cranston, ATO, *Transcript of Evidence*, Canberra, Wednesday 18 March 2015, p. 12; ATO, *Submission 2*, p. 30.

104 ATO, *Submission 2*, p. 29.

- 2.89 The ATO advised that, in December 2014, it finalised a number of public rulings and guidance material about the tax treatment of transactions undertaken with bitcoin and similar crypto-currencies.<sup>105</sup>
- 2.90 The ATO advised that it is examining the impacts of the emerging sharing economy in industries such as the taxi industry and accommodation industry (e.g. Uber, Airbnb). The ATO is working to develop a better understanding of these kinds of operations and providing advice on the taxation implications for all parties.<sup>106</sup>
- 2.91 The ATO is also closely monitoring for the use of sales suppression technology (e.g. Zappers) to hide income by allowing electronic cash register and point of sale records to be electronically manipulated after a transaction is recorded.<sup>107</sup>

### Industry benchmarks

- 2.92 The ATO uses benchmarks, in addition to other risk indicators, to identify businesses that may be avoiding their tax obligations by failing to report some or all of their income. A business' tax return or activity statement is compared with the key benchmark for its industry.<sup>108</sup>
- 2.93 Benchmarks are calculated from information reported to the ATO by businesses and account for businesses with different turnover ranges (up to \$15 million) across more than 100 industries. They are published as a range to recognise the variations that occur between businesses due to factors such as location and business circumstances. The benchmarks are updated annually using the latest available data and are independently verified.<sup>109</sup>
- 2.94 Mr Strong told the Committee that, whilst he thinks that 'the benchmarks are excellent', his members are concerned with businesses that operate outside of the system entirely:

From what we hear from our members, the people in the cash economy who disturb them are the ones who are outside the system who do not come anywhere near benchmarks, who do not

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105 ATO, *Submission 2*, p. 29.

106 ATO, *Submission 2*, p. 30.

107 ATO, *Submission 2*, p. 30.

108 ATO, *Small business benchmarks: how we use benchmarks*, <[https://www.ato.gov.au/Business/Small-business-benchmarks/In-detail/About/Small-business-benchmarks/?page=4#How\\_we\\_use\\_benchmarks/](https://www.ato.gov.au/Business/Small-business-benchmarks/In-detail/About/Small-business-benchmarks/?page=4#How_we_use_benchmarks/)>, accessed 21 April 2015.

109 ATO, *Small business benchmarks*, <<https://www.ato.gov.au/Business/Small-business-benchmarks/In-detail/About/Small-business-benchmarks/>>, accessed 21 April 2015.

even pretend to be in a particular industry. They are the ones who cause the most anger among those members we have.<sup>110</sup>

- 2.95 Mr Cranston told the Committee that the development of transparent and well-communicated industry benchmarks has helped the ATO improve its approach to the cash economy:

We believe that has been really important in getting the message out especially for tax practitioners to be able to say to their clients: 'These are the benchmarks. This is what the ATO...' - not necessarily saying you are wrong, if you are outside the benchmarks but you will be asked to explain why are you actually outside them. Having that conversation with taxpayers helps tax practitioners and I think it helps get the behaviour right.<sup>111</sup>

- 2.96 The Committee asked the ATO whether benchmarks are effective against businesses that 'ensure that they just fit in at the lower end' by reporting enough of their income to fit the benchmark regardless of their actual income. The Committee also questioned whether there are compliance activities to test for this.<sup>112</sup>

- 2.97 Mr Cranston advised the Committee that, unless there was additional evidence of noncompliance, the ATO would not be concerned with businesses that are meeting the benchmarks. However, Mr Cranston noted that the ATO 'may make inquiries if [businesses] came in and out at the bottom end.'<sup>113</sup> The Inspector-General of Taxation, Mr Noroozi, noted the need for revenue agencies to use risk assessment tools (like the industry benchmarks) when monitoring compliance, as 'all revenue agencies, at least in the developed world, cannot audit every single taxpayer.'<sup>114</sup>

## Crowdfunding

- 2.98 The ATO defines crowdfunding as the use of the internet and social media to raise funds for specific projects or particular business ventures. The promoter of the project or venture will typically engage an intermediary to

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110 Mr Strong, Council of Small Business Australia, *Transcript of Evidence*, Canberra, Wednesday 18 March 2015, p. 14.

111 Mr Cranston, ATO, *Transcript of Evidence*, Canberra, Wednesday 18 March 2015, p. 12.

112 Mr Michael Sukkar MP, Federal Member for Deakin, *Transcript of Evidence*, Canberra, Wednesday 18 March 2015, pp. 12-13.

113 Mr Cranston, ATO, *Transcript of Evidence*, Canberra, Wednesday 18 March 2015, p. 12.

114 Mr Noroozi, Inspector-General of Taxation, *Transcript of Evidence*, Canberra, Wednesday 18 March 2015, pp. 13-14.

- operate an online platform that allows the promoter to connect to potential funders.<sup>115</sup>
- 2.99 In November 2014, the ATO published guidance on the GST implications of crowdfunding. The guidance states that the GST treatment of crowdfunding for a promoter may vary depending on:
- the model adopted and what supplies (if any) are made to the funder;
  - whether the promoter is carrying on an enterprise;
  - whether the promoter is registered for GST, or required to be registered;
  - whether the promoter makes supplies that are connected with Australia; and
  - whether the funder is in Australia.<sup>116</sup>
- 2.100 Furthermore, the intermediary will have a GST liability for services to the promoter if:
- the intermediary is carrying on an enterprise;
  - the intermediary is registered for GST, or required to be registered;
  - the intermediary provides the services for consideration;
  - the services are connected with Australia.<sup>117</sup>
- 2.101 However, supplies by a promoter may not be subject to GST if either the promoter or the funder is not in Australia. Supplies by the intermediary may also not be subject to GST if the intermediary is not in Australia.<sup>118</sup>
- 2.102 The specific GST implications depend on the crowdfunding model. The ATO's guidance provides detailed information for each of the four main crowdfunding models: donation-based funding; reward-based funding; equity-based funding; and debt-based funding.<sup>119</sup> The ATO advised the Committee that, aside from any GST obligations, crowdfunding may give rise to other tax obligations, for example, assessable income.<sup>120</sup>

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115 ATO, *GST and Crowdfunding*, <<https://www.ato.gov.au/Business/GST/In-detail/Rules-for-specific-transactions/GST-crowdfunding/>>, accessed 21 April 2015.

116 ATO, *GST and Crowdfunding*, <<https://www.ato.gov.au/Business/GST/In-detail/Rules-for-specific-transactions/GST-crowdfunding/>>, accessed 21 April 2015.

117 ATO, *GST and Crowdfunding*, <<https://www.ato.gov.au/Business/GST/In-detail/Rules-for-specific-transactions/GST-crowdfunding/>>, accessed 21 April 2015.

118 ATO, *GST and Crowdfunding*, <<https://www.ato.gov.au/Business/GST/In-detail/Rules-for-specific-transactions/GST-crowdfunding/>>, accessed 21 April 2015.

119 ATO, *GST and Crowdfunding*, <<https://www.ato.gov.au/Business/GST/In-detail/Rules-for-specific-transactions/GST-crowdfunding/>>, accessed 21 April 2015.

120 ATO, *Submission 2*, p. 31.

## Multinational enterprises

- 2.103 In its 2013-14 annual report, the ATO reported that economic globalisation and the expansion in e-commerce has resulted in the increase of cross-border trade and international related-party dealings. The report stated that in 2013 over 6,300 businesses reported international related-party dealings and collectively paid \$40 billion in company income tax.<sup>121</sup>
- 2.104 The annual report asserted that the ATO is focused on ensuring that the \$40 billion in company income tax 'represents a fair share of tax under current international tax rules.'<sup>122</sup> The Deputy Commissioner, Mr Konza, advised the Committee that:
- The Commissioner has said that he wants us to examine e-commerce arrangements most closely. So we have an e-commerce project looking at the situation where money is not declared in Australia at all, and we have an International Structuring and Profit Shifting Program looking at the cases where people earn income here and shift it offshore.<sup>123</sup>
- 2.105 The International Structuring and Profit Sharing Program for large businesses is in its second year and 'focuses on companies that have undertaken international restructures or have significant levels of cross-border related-party arrangements.' A key element of the program is to ensure 'that companies do not artificially shift profits offshore and that Australia's international tax laws are being complied with.'<sup>124</sup> Mr Konza informed the Committee that the program has approximately 40 audits and 200 reviews underway.<sup>125</sup>
- 2.106 Companies can apply to the ATO for advance pricing arrangements, under which the company agrees, in advance, the basis for pricing their cross-border related-party transactions. The ATO reported that as of 30 June 2014, it had 175 advance pricing arrangements in place (including 35 advance pricing arrangements that were completed during the income year). These applications may also be on a bilateral basis involving overseas tax administrators.<sup>126</sup>

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121 ATO, *Annual report 2013-14*, p. 60.

122 ATO, *Annual report 2013-14*, p. 60.

123 Mr Mark Konza, Deputy Commissioner, Public Groups International, ATO, *Transcript of Evidence*, Canberra, Wednesday 18 March 2015, p. 16.

124 ATO, *Annual report 2013-14*, p. 60.

125 Mr Konza, ATO, *Transcript of Evidence*, Canberra, Wednesday 18 March 2015, p. 16.

126 ATO, *Annual report 2013-14*, p. 60.

## Policy development

### Section 25-90

- 2.107 In 2001, section 25-90 of the *Income Tax Assessment Act 1997* was introduced, along with the Thin Capitalisation measures, to reduce compliance costs for Australian businesses with overseas investments. It enables Australian companies to 'claim interest deductions on investments in their overseas businesses which produce foreign non-assessable non-exempt income.'<sup>127</sup>
- 2.108 The ATO raised concerns during the Committee's inquiry into the 2013 ATO Annual Report relating to attempts by tax structures to shift profits by loading debts into Australian entities. The ATO informed the Committee that these structures may employ interactions between Thin Capitalisation measures, exempt foreign income measures, and the benefits of section 25-90 to avoid tax liabilities.<sup>128</sup>
- 2.109 The ATO provided an update on this matter to the Committee, advising that in the Mid-year Economic and Fiscal Outlook (MYEFO), released on 15 December 2014, the Government announced that it 'would not proceed with a targeted anti-avoidance provision to address certain 'conduit' arrangements involving foreign multinational enterprises.'<sup>129</sup>
- 2.110 The ATO informed the Committee that this decision was made in light of advice from Treasury that 'such a provision would result in significant increases in complexity and compliance costs, and would impede legitimate taxpayer activity in investing offshore.'<sup>130</sup>
- 2.111 The ATO advised the Committee that the amendments tightening the Thin Capitalisation ratios received royal assent on 16 October 2014. The new ratios aim to ensure that 'multinationals do not allocate a disproportionate amount of debt to their Australian operations.' The new ratios will apply to income years commencing on or after 1 July 2014.<sup>131</sup>

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127 ATO, *Submission 2*, p. 32.

128 House Standing Committee on Tax and Revenue, *2013 Annual report of the Australian Taxation Office: Second Report*, p. 37.

129 ATO, *Submission 2*, p. 32.

130 ATO, *Submission 2*, p. 32.

131 ATO, *Submission 2*, p. 32.

## Committee comment

### Compliant taxpayer's relationship with the ATO

- 2.112 The Committee commends the ATO for its focus on incorporating modern technology into its systems in its efforts to improve both the accuracy of tax information and the taxpayer experience.

### Single touch payroll

- 2.113 The Committee notes that the ATO will be introducing Single Touch Payroll from July 2016. The Committee is pleased to hear that the digitisation and automation of payroll reporting will reduce the amount of time employers are required to spend meeting their reporting and payment obligations.
- 2.114 The Committee notes that the introduction of Single Touch Payroll may affect the cash flows of some businesses. Further, the Committee notes the feedback received by the ATO indicating that real-time payment should not be mandated for all employers. The Committee is aware that, as with the introduction of any new technology or system, both the ATO and employers will need time to adjust to the new system. The Committee will continue to monitor how the ATO supports employers during the transition from manual to automated payroll reporting.

### Standard Business Reporting

- 2.115 The Committee is pleased to note that the ATO will be ready to receive SBR-enabled lodgements from 1 July 2015; however, the Committee appreciates that the number of SBR-enabled lodgements will depend on the availability and use of SBR-enabled software.
- 2.116 The Committee recognises the concerns of tax practitioners regarding the impact of SBR on the future of their business models, due to the significant decrease in the need for manual data entry. Nevertheless, the Committee is confident in the valuable role that tax practitioners play outside of manual data entry. The Committee trusts that whilst there may be some changes to the way in which tax practitioners operate, their role as trusted advisors and tax experts will continue to be valued and utilised by the business community.

### Tax Agent Portal

- 2.117 The Committee notes the ATO's release of the new version of the existing Tax Agent Portal in March 2015 and the ATO's commitment to actively maintain the Tax Agent Portal. The Committee recognises that the Tax Agent Portal remains a crucial tool of trade for many tax practitioners. The

Committee is satisfied by the ATO's assurances that the Tax Agent Portal will not be closed without consultation and agreement from tax practitioners.

### Lodgement Program for tax practitioners

- 2.118 The Committee appreciates tax practitioners' concerns regarding the application of sanctions for tax practitioners who fail to meet the requirements of the Lodgement Program. However, as the ATO's prescribed treatments under the Lodgement Program mostly involve the ATO contacting late lodging practitioners and working closely with them to improve their performance, the Committee is satisfied that the treatments are appropriate and not unduly onerous.
- 2.119 The Committee acknowledges the Lodgement Program's achievements to date in improving overall lodgements and performance. The Committee notes that the Lodgement Working Group has recently agreed to refine the design of the program. The Committee believes that more should be done to ensure that tax practitioners better understand the goals of the program and better understand the treatments that will be applied to late lodging practitioners.

### Stakeholder consultation

- 2.120 The Committee is pleased to note that the new consultation framework is now 'bedded down' and that the ATO has received mostly positive assessments of the new arrangements from stakeholders. The Committee also notes that the ATO has committed to conducting a post-implementation review from March to June 2015.

### ATO correspondence

- 2.121 The Committee appreciates the concerns raised regarding the tenor and accuracy of ATO correspondence and communication with taxpayers. However, the Committee also notes the ATO's commitment to improve the style and clarity of its letters and refine its communication with taxpayers.
- 2.122 The Committee is interested in the ATO's work utilising behavioural analytics and colour signals in its correspondence and its work empowering its call centre staff to have 'natural conversations'. The Committee will continue to follow the ATO's work refining its communication methods and would like to be updated on this at the next hearing.

### Providing light or no-touch tax returns

- 2.123 The Committee is pleased to note that *myTax* has been very well received by taxpayers. The Committee notes the ATO's plans to expand *myTax* to taxpayers with medium complexity in 2015 and to all individual taxpayers, including those with complex affairs, in 2016.
- 2.124 The Committee acknowledges that the automated reporting of information, following the introduction of Single Touch Payroll in July 2016, will further streamline tax returns and make prefill information available earlier. However, the Committee recognises that the amount of information that is available for pre-fill will depend on the ATO receiving shared registry data in a timely fashion.
- 2.125 The Committee will continue to monitor the expansion of the availability of *myTax* in 2015 and 2016 and would like to be updated on the ATO's progress of this work at the next hearing.

### Administration of the ATO

- 2.126 The Committee continues to be impressed with the ATO's articulation of its strategic direction through documents such as the *ATO Strategic intent*, *ATO Corporate Plan* and the *ATO IT Strategy*. The Committee also notes the release of the *Reinventing the ATO: program blueprint* in March 2015.

### Performance measurement and reporting

- 2.127 The Committee continues to be pleased with the ATO's efforts to improve its performance measurement by placing greater emphasis on measuring effectiveness by focusing on the impact of activities rather than just measuring the activities alone.
- 2.128 The Committee acknowledges that the ATO will be reporting on its performance in its annual report every year; however, the Committee would like to see the ATO follow the example of the United Kingdom and aim to publish performance information more frequently.<sup>132</sup>
- 2.129 The Committee appreciates that the ATO is still in the process of refining its performance measurement and reporting strategies. The Committee will continue to follow the ATO's efforts to improve its performance measurement and reporting.

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132 United Kingdom's Her Majesty's Revenue and Customs, *Business plan indicators*, <<https://www.gov.uk/government/publications/business-plan-indicators>>, accessed 22 April 2015.

### Perception of fairness KPI

- 2.130 The Committee maintains an interest in taxpayers' perception of fairness in tax disputes. The Committee acknowledges the research undertaken by the ATO on this matter and is pleased to note the ATO's plans to work with its objection teams to improve its average overall perception of fairness.
- 2.131 However, the Committee reaffirms the recommendation it made in the report on its inquiry into tax disputes, tabled on 26 March 2015, that the ATO review its performance reporting measures and develop a measurable KPI of taxpayer perceptions of fairness in tax disputes.

### Resourcing

- 2.132 The Committee notes the strategies that the ATO has in place to minimise any negative impacts of staffing reductions and is satisfied that the ATO has achieved staff reductions in a considered and strategic manner. The Committee notes the ATO's claim that revenue collection and services have not and will not be adversely affected by its recent staffing reductions.
- 2.133 The Committee also notes the ATO's claim that it is operating within its budget whilst meeting all published service delivery standards and being on track for its compliance revenue plans.

### Compliance strategies

#### Tax gap

- 2.134 The Committee maintains its interest in the measurement of the tax gap and commends the ATO's continuing efforts to improve its measurement and reporting of the tax gap. The Committee believes that a reliable tax gap measurement will assist the ATO in identifying and addressing problematic areas of the taxation system as well as enabling it to provide better advice to government, parliament and the community. As such, the Committee strongly supports the publication of tax gap estimates.
- 2.135 The Committee appreciates that the use of a random audit program is a key element in the production of credible tax gap estimates. The Committee acknowledges that the use of a random audit program might not be popular with taxpayers and believes that it is important that the ATO considers ways in which it might mitigate the impact that a random audit program might have on compliant taxpayers' perceptions of the tax system. The Committee notes the ATO's plans to consult with industry on the potential design of a random audit program prior to July 2015.

- 2.136 The Committee notes that the ATO has refreshed the estimates for the GST and LCT gaps. The Committee is pleased to note that in 2015 the ATO plans to produce estimates of: the individual tax gap for the large market; a tax gap for excise revenue products; the income tax gap for high wealth individuals; and a withholding gap for employer PAYG obligations. In addition, the ATO plans, in 2016, to produce estimates for: the individual income tax gap; the small to medium business income tax gap; and a consolidated estimate for all taxes administered.
- 2.137 The Committee notes that the ATO is considering the potential of the random audit program, and the subsequent improvement of risk. The Committee is interested in hearing more about voluntary disclosure initiatives and their potential to bring non-compliant taxpayers back into the tax system.
- 2.138 The Committee continues to have a keen interest in the ATO's work to develop and refine its estimate of the tax gap in Australia and looks forward to observing the development of estimates of the tax gap in 2015 and 2016.

### Cash economy

- 2.139 The Committee acknowledges that the cash economy is a complex issue with many driving factors including social norms and consumer behaviours. The Committee also recognises that businesses may choose to utilise cash payments for a range of reasons other than to avoid tax liability.
- 2.140 The Committee acknowledges that the cash economy in Australia is small, when compared to the cash economy in other countries. However, despite this, it remains an endemic issue and is present across a large number of industries. The Committee is concerned with the unfair advantage that the cash economy grants non-compliant businesses and the impact that this has on the community's perceptions and confidence in a fair and equitable tax system. The Committee is further concerned that there is a community perception, whether factual or not, that the cash economy is growing.
- 2.141 The Committee commends the ATO on its commitment to support honest businesses and prevent unfair competition and its efforts to reduce the cash economy. The Committee notes the ATO's initiatives to increase community awareness of the impacts of the cash economy, engage with industry groups, and engage directly with businesses. The Committee also notes the ATO's ongoing work to improve risk models, data sources, data matching and industry benchmarking.

- 2.142 The Committee views the cash economy as a key issue and as such would like to be updated on the ATO's progress regarding its initiatives to address the cash economy at the next hearing.

#### Emerging elements in the cash economy

- 2.143 The Committee notes the ATO's work regarding emerging elements in the cash economy, such as the finalisation of rulings and guidance regarding the tax treatment of bitcoin and other cryptocurrencies. The Committee is looking forward to hearing the results of the ATO's examination of the impacts of the sharing industry and its taxation implications.

#### Crowdfunding

- 2.144 The Committee is pleased to note the ATO's publication of guidance on the GST implications of crowdfunding. The Committee acknowledges that crowdfunding may also give rise to other tax obligations, such as assessable income, aside from GST obligations.

#### Multinational enterprises

- 2.145 The Committee recognises that economic globalisation and the expansion of e-commerce have resulted in the increase of cross-border trade and international related party dealings. As such, the Committee commends the ATO for its commitment to ensure that companies are paying a 'fair share under current international tax rules'.
- 2.146 The Committee is very interested in the ATO's 'e-commerce project', (addressing income that is not being properly declared in Australia) and the International Structuring and Profit Sharing Program (addressing income earned in Australia that is shifted overseas). The Committee is also interested to hear more about the ATO's progress in advanced pricing arrangements and the impact that these arrangements have on encouraging compliance.
- 2.147 The Committee is interested to hear more about these programs and their progress at the next hearing.

#### Policy development

##### Section 25-90

- 2.148 The Committee noted the ATO's update on section 25-90 of the *Income Tax Assessment Act 1997*, advising that the government would not proceed with a targeted anti-avoidance provision due to the resulting increases in

complexity and compliance costs and the impact that this would have on compliant taxpayers.

- 2.149 The Committee also notes that the amendments tightening the Thin Capitalisation ratios will apply to income years commencing on or after 1 July 2014.

## Next hearing

- 2.150 The Committee is pleased with the ATO's progress towards achieving its goal of being 'relevant and valuable to the Australian community for the long term – trusted and respected here and internationally and considered a leading organisation by all stakeholders.'<sup>133</sup>
- 2.151 The Committee commends the ATO for clearly articulating its strategic direction and its commitment to linking corporate goals and priorities to meaningful performance indicators. The clear measurement and reporting of performance information not only serves in improving and refining the ATO's practices, but also increases transparency, oversight, and trust in the tax system itself.
- 2.152 The Committee is pleased with the steps the ATO has taken, and continues to take, to 'reinvent' the client and staff experience and to change the culture of the ATO itself. The Committee is encouraged by the ATO's enthusiasm and drive and looks forward to seeing more of the ATO's achievements at the next hearing.
- 2.153 The Committee plans to next meet with the ATO and its scrutineers in late 2015 and requests that the ATO's submission provide information on its progress in the following areas:
- single touch payroll;
  - the development and take-up of SBR-enabled software;
  - the refinement of communication methods – tailoring the tone of correspondence;
  - the ATO's performance against its new KPIs;
  - the introduction and performance against perceptions of fairness in a dispute resolution KPI;
  - the improvement of tax gap measurements;
  - strategies to address the cash economy and the use of non-tax responses, including international approaches; and

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133 ATO, *ATO strategic intent*, p. 1.

- compliance approaches to large corporate taxpayers including the e-commerce project and the International Structuring and Profit Shifting program.

Bert van Manen MP  
Chair